



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 148

1998

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 17 of 1998: Prisons Act, 1998.

P1/129 (A)
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Act No. 17, 1998

PRISONS ACT, 1998**ACT**

To provide for the establishment of the Namibian Prison Service and for matters incidental thereto.

(Signed by the President on 12 June 1998)

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BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

Definitions

1. In this Act, unless the context otherwise indicates -

“assistant officer in charge”, in relation to a prison, means the prison member appointed under section 16(1) as assistant officer in charge of that prison;

“commission”, in relation to a senior prison member, means a commission conferred by the President in terms of section 6(4);

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“Commissioner” means the Commissioner of Prisons appointed under Article 32(4)(c)(cc) of the Namibian Constitution;

“compulsory after care order” means a compulsory after care order referred to in section 102;

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

“Deputy Commissioner” means the Deputy Commissioner of Prisons appointed under section 6;

“disciplinary board” means a disciplinary board appointed under section 39(1);

“disciplinary inquiry”, in relation to a senior prison member, means a disciplinary inquiry referred to in section 39 or, in relation to a junior prison member, section 42;

“disciplinary offence” means an offence referred to in section 38;

“infant” means a child younger than 2 years of age;

“Inspector-General” means the Inspector-General of Police referred to in Article 116 of the Namibian Constitution;

“institutional committee” means an institutional committee appointed under section 104;

“junior prison member” means a prison member of one of the ranks of junior prison members set out in the First Schedule;

“juvenile” means a person of 18 years of age or younger;

“major prison offence” means an offence referred to in section 75;

“mechanical restraint” means physical restraint of a prisoner by the use of handcuffs, fetters, straight-jacket or any other prescribed form of restraint;

“medical officer” means the medical practitioner appointed, designated or engaged under section 19 as a medical officer of a prison;

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“medical practitioner” means a medical practitioner as defined in section 1 of the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993);

“member of the police” means a member of the Namibian Police Force as defined in section 1 of the Police Act, 1990 (Act No. 19 of 1990);

“Minister” means the Minister of Prisons and Correctional Services;

“minor prison offence” means an offence referred to in section 74;

“National Release Board” means the National Release Board referred to in section 108;

“officer in charge”, in relation to a prison, means the senior prison member appointed under section 16(1) as officer in charge of that prison;

“prescribe” means prescribe by regulation;

“prison” means a prison established under section 13, and includes a temporary prison declared under section 14;

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

“Prisons Council” means the Prisons Council established by section 10;

“prison management committee” means a prison management committee referred to in section 106;

“prison member” means a member of the Prison Service of one of the ranks set out in the First Schedule, and includes a temporary prison member;

“Prison Service” means the Namibian Prison Service established by section 2;

“probation officer” means a probation officer as defined in section 1 of the Children’s Act, 1960 (Act No. 33 of 1960);

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

“Public Service” means the Public Service as established under the Public Service Act, 1995 (Act No. 13 of 1995);

“regulation” means a regulation made under section 124;

“senior prison member” means a prison member of one of the ranks of senior prison members set out in the First Schedule;

“temporary prison member” means a person appointed as a temporary prison member under section 9;

“this Act” includes the regulations made thereunder;

“visiting justice” means a visiting justice referred to in section 112;

“weapon” includes a firearm, baton, tear-gas, or any other prescribed implement; and

“zonal release board” means a release board referred to in section 110.

PART I**ESTABLISHMENT, FUNCTIONS AND ADMINISTRATION OF
THE NAMIBIAN PRISON SERVICE****Establishment of Namibian Prison Service**

2. (1) There is hereby established a prison service to be known as the Namibian Prison Service.

(2) The Prison Service shall consist of -

(a) the Commissioner of Prisons, appointed by the President in accordance with Article 32(4)(c)(cc) of the Namibian Constitution, who shall be the head of the Prison Service;

- (b) a Deputy Commissioner of Prisons appointed under section 6; and
- (c) such prison members as may be appointed under sections 6 and 7.

(3) Any member of the Prison Service appointed under section 2(1) of the Prisons Act, 1959 (Act No. 8 of 1959), and in service at the commencement of this Act shall, notwithstanding the repeal of that Act by this Act, continue to serve in the Namibian Prison Service with due recognition of his or her period of service under the Act so repealed, as if he or she were a prison member of comparable rank appointed under this Act.

Functions of Prison Service

3. The functions of the Prison Service shall be -
- (a) to ensure that every prisoner is secured in a prison in safe custody until lawfully discharged or removed therefrom;
 - (b) as far as practicable, to apply such treatment to convicted prisoners as may lead to their reformation and rehabilitation and to train them in habits of labour and industry;
 - (c) to perform all work necessary for, arising from, or incidental to, the effective management, administration and control of prisons; and
 - (d) to perform such other functions as the Commissioner may from time to time assign to the Prison Service.

Appointment and functions of Commissioner

4. (1) The appointment of the Commissioner pursuant to Article 122 of the Namibian Constitution, shall be on such terms and conditions as the President may determine.

(2) The Commissioner shall, in addition to such other powers, duties and functions as may be conferred upon or assigned to him or her by or under this

Act, be responsible for the efficient supervision, administration and control of the Prison Service.

(3) Subject to the provisions of this Act, the Commissioner may, for the efficient supervision, administration and control of the Prison Service and for observance by prisoners and prison members, make or issue such rules, standing orders or administrative directives as he or she may consider necessary or expedient.

(4) In the exercise of his or her powers and the performance of his or her duties and functions under this Act, the Commissioner shall be accountable to, and subject to the directions of, the Minister.

Vacation of Commissioner's office

5. (1) The President may, on the recommendations of the Security Service Commission and after the Security Service Commission has afforded the Commissioner an opportunity to be heard, remove the Commissioner from office -

(a) for good cause, including -

(i) continued ill health;

(ii) misconduct; or

(iii) inability to efficiently carry out the functions of that office; or

(b) in the public interest.

(2) The Commissioner 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 deem sufficient,

subject to such conditions as to retirement as may be prescribed.

Appointment of senior prison members and Deputy Commissioner and commissions by President

6. (1) Subject to the provisions of this Act and the Public Service Act, 1995 (Act No. 13 of 1995) and the Labour Act, 1992 (Act No. 6 of 1992), the Commissioner may, on the recommendation of the Prisons Council, appoint and promote senior prison members, other than the Deputy Commissioner, according to the ranks specified for senior prison members in the First Schedule.

(2) The Minister shall, on the recommendation of the Commissioner, appoint from amongst the ranks of Senior prison members, a Deputy Commissioner of Prisons.

(3) The Deputy Commissioner shall -

- (a) exercise or perform such powers, duties or functions of the Commissioner as the Commissioner may delegate or assign to him or her under section 122; and
- (b) generally assist the Commissioner in the performance of his or her functions under this Act, subject to the Commissioner's direction and control.

(4) (a) The President may confer a commission on any senior prison member, and may issue to such senior prison member a Deed of Commission bearing his or her signature or a replica thereof.

(b) A senior prison member on whom a commission has been conferred by the President shall hold such commission during the pleasure of the President.

Appointment of junior prison members

7. Subject to the provisions of this Act and the Public Service Act, 1995 and the Labour Act, 1992, the Commissioner may -

- (a) appoint fit and proper persons to be junior prison members according to the ranks specified for junior prison members in the First Schedule;
- (b) promote, demote, or discharge any junior prison member; and
- (c) transfer any junior prison member to any post in the Prison Service other than the post held by such prison member.

Assistance by members of police in emergency

8. (1) In an emergency, and for the purpose of securing good order in a prison, the Inspector-General may, on the request of the Commissioner, temporarily make available for duty in such prison such number of members of the police as he or she may consider necessary to assist in securing the good order of such prison.

(2) A member of the police made available for duty in a prison under subsection (1) shall, while assisting in that prison, exercise the powers and perform the duties and functions, and be subject to the responsibilities, discipline and penalties of, a prison member.

Temporary prison members

9. Whenever it is necessary for the safe custody or transportation of any prisoner or for any other purpose -

- (a) the Commissioner; or
- (b) the officer in charge, with the prior written approval of the Commissioner,

may appoint such number of suitable persons as he or she may deem expedient, to serve as temporary prison members on such terms and conditions as may be prescribed.

Establishment and constitution of Prisons Council and terms of office of members

10. (1) There is hereby established a council to be known as the Prisons Council, to perform the functions and duties entrusted to or imposed upon

that Council by or under this Act.

(2) The Prisons Council shall comprise -

(a) the Assistant Commissioner: Personnel Services; and

(b) appointed by the Minister -

(i) a member of the Public Service Commission, nominated by that Commission, who shall be the chairperson;

(ii) a staff member in the management cadre of the Public Service; and

(iii) not less than three and not more than five senior prison members.

(3) A member of the Prisons Council other than the Assistant Commissioner shall hold office for a period of three years, but shall at the expiration of his or her period of office be eligible for re-appointment as such member.

(4) The Minister may, after having given such member an opportunity to be heard, remove from office a member of the Prisons Council referred to in subsection (2)(b) -

(a) on account of continued ill-health;

(b) on account of misconduct;

(c) on account of unfitness for the duties of such office or incapacity to carry them out efficiently; or

(d) if, for reasons other than a reason referred to in paragraph (c), his or her removal from such office will promote the efficiency of the Prisons Council.

(5) The Minister may allow a member of the Prisons Council referred to

in subsection (2)(b) to vacate at his or her request his or her office as such member -

- (a) on account of continued ill-health; or
- (b) for any other reason which the Minister may deem sufficient.

(6) Any vacancy on the Prisons Council arising from any circumstance referred to in subsections (4) and (5), or caused by the death of any member of the Prisons Council, shall be filled in accordance with the provisions of subsection (2), and such member shall hold office for the unexpired portion of the period of office of the member who has vacated his or her office or who has died, as the case may be.

Functions of Prisons Council

11. The functions of the Prisons Council shall be, in addition to such functions and duties as may be entrusted to or imposed upon it by or under this Act, to -

- (a) consider or inquire into, and make recommendations to the Minister with regard to, any matter pertaining to -
 - (i) the administration of prisons;
 - (ii) the welfare and efficiency of the Prison Service;
 - (iii) the conditions of service of prison members other than conditions of service determined under section 13 of the Public Service Act, 1995 (Act No. 13 of 1995);
- (b) consider or inquire into, and make recommendations to the Commissioner with regard to, any matter pertaining to the appointment and promotion of senior prison members other than the Deputy Commissioner; and
- (c) perform such other duties and functions as the Minister, without derogating from the functions of the Commissioner, may direct.

Meetings of Prisons Council

12. (1) The Prisons Council shall meet at least once every three months at such times and places as the chairperson of that Council may determine.

(2) If the chairperson is absent from or for any other reason unable to preside at any meeting of the Prisons Council, the members present thereat shall elect one from amongst their number to act as chairperson at that meeting.

(3) The chairperson or any other person who acts as chairperson shall determine the procedure of the meeting of the Prisons Council over which he or she presides.

(4) The quorum for a meeting of the Prisons Council shall be a simple majority of its members.

(5) The decision of the majority of the members of the Prisons Council present at a meeting thereof shall constitute a decision of the Council and, in the event of an equality of votes relating to any matter, the member presiding at the meeting shall have a casting vote.

(6) The Prisons Council shall cause a record to be kept of the proceedings at its meetings.

PART II**ESTABLISHMENT, ADMINISTRATION AND CONTROL OF PRISONS****Establishment of prisons**

13. (1) The Minister may by notice in the *Gazette* -

(a) establish prisons throughout Namibia for the reception, detention, confinement, rehabilitation, training or discipline of persons liable to imprisonment or detention in custody;

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

(c) declare any such prison closed.

(2) A prison established under this section shall include all land-branches, outstations and camp buildings thereof, and any buildings or grounds within or attached to the prison premises and used by the prisoners or prison staff for the purposes of this Act.

(3) A prison established under the Prisons Act, 1959 (Act No. 8 of 1959), and in operation at the commencement of this Act shall, notwithstanding the repeal of that Act by this Act, continue in operation as if it was a prison established under this Act.

Temporary prisons

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

- (a) the number of prisoners in any prison is greater than can be conveniently accommodated therein and that it is not convenient to transfer any of such prisoners to another prison; or
- (b) due to an outbreak of an epidemic within a prison or for any other reason, it is necessary to provide for the temporary shelter or safe custody of any prisoners therein,

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

Male and female prisoners to be confined separately

15. Except for the purposes of training and only under strict supervision, male and female prisoners shall be kept apart and confined in separate prisons or separate parts of the same prison.

Officer in charge

16. (1) The Commissioner shall in respect of every prison appoint a

senior prison member as the officer in charge, and another prison member as the assistant officer in charge, of such prison.

(2) The officer in charge of a prison shall, subject to the provisions of this Act -

- (a) direct, supervise and control all administrative matters relating to such prison;
- (b) in order to ensure compliance with this Act and the safe custody of prisoners and to maintain good order in the prison, issue directives or instructions to prison members and prisoners, and ensure compliance therewith;
- (c) keep such records in respect of such prison as may be required by the Commissioner or under this Act; and
- (d) perform such other duties or functions as the Commissioner may assign to him or her under this Act.

(3) The officer in charge shall be responsible to the Commissioner in the performance of his or her functions under this Act, and for the conduct of the prison members and treatment of prisoners in his or her charge.

(4) The assistant officer in charge shall -

- (a) exercise or perform such powers, duties, or functions of the officer in charge as the officer in charge of the prison in question may delegate or assign to him or her under section 122; and
- (b) 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) (a) The Commissioner may, until such time as he or she appoints an officer in charge for a prison under subsection (1), designate a senior prison member to act as the officer in charge of such prison.

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- (b) A prison member designated as officer in charge under paragraph (a) shall exercise the powers and perform the duties and functions of an officer in charge, subject to such limitations as the Commissioner may impose, and shall be under the direction and control of the Commissioner.

Inspection of prisons

17. (1) Every prison shall be inspected, at such intervals as may be prescribed or the Commissioner may direct, by such prison members as the Commissioner may authorise thereto.

(2) A prison member referred to in subsection (1) shall in respect of an inspection contemplated in that subsection perform such functions as may be prescribed or the Commissioner may assign to him or her by administrative directive or specific instruction.

Security measures

18. The Commissioner shall determine the security measures applicable to prisons, and may determine different security measures in respect of different prisons.

PART III**APPOINTMENT, POWERS AND DUTIES OF MEDICAL OFFICER****Appointment, designation, or engagement of medical officer**

19. (1) The Commissioner shall, subject to the Public Service Act, 1995, appoint a medical practitioner of not less than three years experience, in respect of each prison, to serve as a full-time medical officer for that prison.

(2) Where a medical practitioner is not available for appointment under subsection (1), the Permanent Secretary: Health and Social Services may designate the district medical officer of the district in which a prison is situated, to serve as a part-time medical officer for that prison.

(3) Where a medical officer appointed or designated under subsection (1) or (2), as the case may be, is unable to perform his or her duties at the prison by reason of his or her absence or other disability, the officer in charge may, with the approval of the Commissioner, engage the services of another medical practitioner during such period of absence or disability, and such other medical practitioner shall for that period be the medical officer for that prison.

Functions of medical officer

20. (1) The medical officer -

(a) shall be responsible for the health care of all prisoners in the prison for which he or she has under section 19 been appointed, designated or engaged, as the case may be, and shall -

(i) where practicable, ensure that every prisoner is medically examined on admission to, and discharge from, that prison;

(ii) ensure that on admission to the prison, every prisoner is kept apart from other prisoners until he or she has been examined as contemplated in subparagraph (i);

(iii) where practicable, visit the prison daily or at other regular intervals or when so requested by the officer in charge, and medically examine prisoners at such times as he or she may deem necessary;

(iv) keep a record or cause a record to be kept of the state of health of every prisoner; and

(v) report to the officer in charge any circumstance or condition regarding the prison, a prisoner, or treatment of prisoners which may in his or her opinion require consideration on medical or health grounds; and

(b) may, for the purposes of safeguarding or restoring the health of any prisoner or preventing the spread of any disease, take any action or

direct any action to be taken with regard to a prisoner or prisoners in his or her care, including -

- (i) force feeding any such prisoner;
- (ii) inoculating or vaccinating any such prisoner against disease;
- (iii) medically examining and treating any such prisoner; or
- (iv) isolating any such prisoner.

(2) The powers referred to in paragraph (b) of subsection (1) may be exercised by the medical officer without the consent of the prisoner concerned.

(3) A prisoner shall submit himself or herself to a medical examination by the medical officer if ordered to do so by the officer in charge, on the recommendation of that medical officer.

Observation of prisoner in solitary confinement or prison hospital

21. The medical officer shall ensure that every prisoner detained in solitary confinement or in a prison hospital is medically examined or checked on each day that the medical officer visits the prison or hospital, but not less than once a week.

Observation of mentally ill prisoner

22. The medical officer shall regularly examine the state of mental health of any prisoner who is detained in a prison -

- (a) pursuant to a court order for the observation and report on the mental health of such prisoner; or
- (b) pending an application, or as the result of an application, for the transfer of such prisoner to a mental institution under the Mental Health Act, 1973 (Act No. 18 of 1973).

Duty upon death of prisoner

23. (1) Upon the death of a prisoner in custody, the officer in charge shall immediately notify -

- (a) the Commissioner;
- (b) the medical officer concerned;
- (c) the magistrate of the district in which the prison is situated; and
- (d) the next of kin, if any, of the deceased.

(2) The medical officer shall upon the death of a prisoner issue a certificate of death in respect of that prisoner, and record in a register to be kept for that purpose the following particulars relating to the prisoner in so far as they can be ascertained, namely -

- (a) the date on which that prisoner was sentenced;
- (b) the date on which that prisoner was admitted to prison;
- (c) if that prisoner was ill, the date on which he or she first complained of the illness or was observed to be ill, the date on which the medical officer or any other medical practitioner was first informed thereof and the nature of the illness from which the prisoner was suffering at the time of death;
- (d) the labour, if any, in which the prisoner was engaged, as well as his or her diet, on the day of his or her death;
- (e) whether or not that prisoner was ever admitted to hospital and the date thereof;
- (f) the date on which the prisoner was last seen by the medical officer or any other medical practitioner;

- (g) the date and time of death, the cause of death, the appearance of the body after death and any special remarks with respect thereto, that the medical officer may deem relevant; and
 - (h) any other particulars relating to the death of the prisoner that the medical officer may deem relevant.
- (3) Where the medical officer is of the opinion that the prisoner has died from unnatural causes, he or she shall report such death in accordance with the Inquests Act, 1993 (Act No. 6 of 1993) to the police.

PART IV

POWERS, DUTIES, FUNCTIONS AND PRIVILEGES OF PRISON MEMBERS

General functions of prison members

24. Every prison member shall -
- (a) exercise or perform such powers and duties or functions as are conferred upon or assigned to such prison member by or under this Act by virtue of his or her rank; and
 - (b) obey all lawful orders and directives in respect of the execution of such duties or functions as he or she may from time to time receive from prison members senior in rank to him or her.

Prison members responsible for security and discipline of prisoners

25. Subject to section 53, prison members employed in a prison shall be responsible for ensuring -
- (a) the security and safe custody of all prisoners detained in custody in that prison; and
 - (b) that the treatment and discipline of prisoners therein is in accordance with the provisions of this Act,

and shall 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 Act and the rules, standing orders and administrative directives made or issued by the Commissioner in terms of section 4(3).

Prison members to exercise police powers

26. Subject to the provisions of this Act, every prison member shall, by virtue of his or her office as a prison member, exercise the same powers, authority, protection and privileges as a member of the police, and may use all lawful means in his or her power to detain in safe custody the prisoners under his or her charge and to secure the recapture of any prisoner who has escaped from lawful custody.

Prison members assigned to any part of Namibia

27. A prison member may at any time be assigned by the Commissioner to any part of Namibia to perform any function conferred upon or assigned to such prison member by or under this Act.

Powers of search

28. (1) (a) A prison member may, at any time, examine anything within or being brought into or taken out of a prison, and may stop and search or cause to be stopped and searched -

- (i) any vehicle, person or prisoner within a prison or going into or out of a prison;
- (ii) any vehicle which is being driven or parked close to the prison or a prisoner,

where the prison member has reasonable grounds to suspect that such vehicle is unlawfully carrying, or such person or prisoner has unlawfully in his or her possession, a prohibited article or any property belonging to, or under the control of, the Prison Service or is about to be involved in the commission of an offence under this Act.

- (b) To the extent that the provisions of paragraph (a) authorizes the interference with the privacy of a person in conflict with Article 13 of the Namibian Constitution, such interference shall be authorized in terms of that Article only on the grounds of, and to the extent necessary for, the prevention of disorder or crime or for the protection of the rights and freedoms of others or where a delay in obtaining a judicial authority carries with it the danger of prejudicing the objects of the search or the public interest.

(2) A prison member on duty in a prison shall refuse entry onto the prison premises to any person who refuses to be searched as contemplated in subsection (1), and shall order any person on the prison premises who is not a prisoner and who refuses to be searched to leave such premises or to be forcefully removed therefrom in the event of a refusal to leave.

(3) Subject to section 68, where, upon a search made under subsection (1), a person, other than a prisoner, is found to be in the unlawful possession of a prohibited article or any property belonging to, or under the control of, the Prison Service, the prison member having made such search shall arrest that person, and as soon as practicable hand him or her over to the nearest police station.

(4) The prison member arresting a person under subsection (3) 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, and the provisions of section 30, 31 and 32 of the Criminal Procedure Act, 1977, shall *mutatis mutandis* apply in respect of anything seized under this section.

(5) Any search of a person under this section shall be made in accordance with this Act and any rules, standing orders or administrative directives made or issued by the Commissioner under section 4(2).

Punishment of prisoners to be authorised

29. No prison member shall punish a prisoner, unless such punishment has been authorized by the Commissioner or by the officer in charge in writing.

Use of force or weapons by prison members

30. (1) The officer in charge may authorise prison members to use such force against a prisoner as is reasonably necessary to ensure compliance with lawful orders or to maintain discipline in the prison.

(2) Subject to the provisions of subsections (3), (4) and (5), a prison member may not use a weapon against any person except -

(a) a prisoner 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 prison door, wall, fence, gate, or other part of the prison;
- (iii) using or threatening to use violence against a prison member or another prisoner or any other person; or
- (iv) engaged in violently disorderly behaviour; or

(b) a person who -

- (i) assists a prisoner in escaping or uses or threatens to use violence against a prison member, or a prisoner 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 door, wall, fence, gate, or other part of the prison.

(3) Notwithstanding the provisions of subsection (2), a prison member shall not use a weapon against any 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 -

- (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 suffering grievous bodily harm.
- (4) Notwithstanding the provisions of subsection (2), no prison member shall in the presence of another prison member senior in rank to him or her, use a weapon in pursuance of that subsection, except on the orders of that other prison member.
- (5) Whenever a weapon or force is used in pursuance of this section, a prison member shall 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 prison member acting in circumstances contemplated in subsection (2) or (3), kills or wounds any prisoner he or she shall not commit an offence.

Power to take photographs, fingerprints, etc.

31. (1) Subject to subsection (2), an officer in charge may for the purposes of assisting in the conduct of investigations cause photographs, measurements, foot-prints and casts thereof, palm prints and fingerprints of any prisoner to be taken by any prison member or other person duly authorised by him or her, and where any prisoner refuses to have his or her photograph, measurement, footprint or cast thereof, palm print or fingerprint taken, the officer in charge may use or cause to be used such force as is necessary to secure compliance.

(2) The photographs, measurements, footprints and casts thereof, palmprints and fingerprints taken under subsection (1) shall be destroyed if the person concerned is found not guilty at his or her trial, or if his or her conviction is set aside by a superior court, or if he or she is discharged at a preparatory examination, or if no criminal proceedings with reference to which such prints or photographs were taken

or such record was made are instituted against the person concerned in any court or if the prosecution declines to prosecute such person.

Indemnity

32. (1) The State, the Minister, the Commissioner, an officer in charge, a prison member, a staff member in the Ministry of Prisons and Correctional Services or a person referred to in section 39(2), 108(2) or 110(3) shall not be liable in respect of anything done *bona fide* under this Act.

(2) No act done by a prison member under a warrant issued by a judge, magistrate or other competent authority or written directive or authorization by the Commissioner or officer in charge shall be invalidated or rendered unlawful only by reason of an irregularity in that warrant, directive or authorization, as the case may be, if the prison member acted in good faith and believed on reasonable grounds that the warrant, directive, or authorization was validly issued.

PART V

OFFENCES AGAINST THE PRISON SERVICE

Mutiny

33. (1) Any prison member who in circumstances not amounting to an offence under any other provision of this Act -

- (a) conspires with any other prison member to mutiny;
- (b) causes a mutiny;
- (c) joins a mutiny;
- (d) is aware of, or suspects, another prison member of conspiring to cause a mutiny, and he or she fails to report such fact without delay to the Commissioner,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 8 000 or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

(2) For the purposes of subsection (1) "mutiny" means conduct, speech, or any other act directed against the authority of the Prison Service with the intention to breach public order and incite rebellion against such authority.

Absenteeism and desertion

34. (1) No prison member shall absent himself or herself from his or her post or official duties without reasonable cause or the prior written permission of the Commissioner, the officer in charge, or another prison member authorized by the Commissioner to grant such permission.

(2) A prison member who, without reasonable cause or the explicit permission of the Commissioner, the officer in charge, or another prison member authorized by the Commissioner to grant such permission absents himself or herself from duty for a period of twenty-one days or longer shall be deemed to have deserted the Prison Service.

(3) A prison member who -

(a) absents himself or herself from his or her post or official duties without reasonable cause or the permission referred to in subsection (1); or

(b) deserts the Prison Service as contemplated in subsection (2),

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment, and such officer may, subject to sections 41(3) and 44(2), in addition to the proceedings in terms of this subsection, be subject to disciplinary proceedings in terms of section 38(d)(iv) or (f) in respect of such absenteeism.

(4) A prison member who has deserted from the Prison Service as contemplated in subsection (2) may be arrested without a warrant of arrest.

Inciting prison members to desert

35. Any person who directly or indirectly incites or persuades or attempts to incite or persuade any prison member to desert the Prison Service, or who aids,

abets or is an accessory to the desertion of any prison member or who harbours such deserter or aids in concealing or rescuing such prison member from apprehension, shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.

Assault by prison member on another prison member

36. A prison member who assaults or threatens with violence another prison member during the course of duty shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment, and such officer may, subject to sections 41(3) and 44(2), in addition to proceedings in terms of this section, be subject to disciplinary proceedings in terms of section 38(b)(ii) and (iii) in respect of such assault or threat.

Miscellaneous other offences by prison members or persons employed in or about prison

37. A prison member or any other person employed in or about a prison who, outside the ambit of his or her functions under this Act or such employment, as the case may be, and without the prior authorization of the Commissioner or the officer in charge -

- (a) sells or has a direct or indirect interest in any sale of any article to a prisoner;
- (b) has any direct or indirect interest or advantage in the procurement of prison supplies;
- (c) conducts any business dealing, other than a business dealing contemplated in paragraph (a), with a prisoner or with another person acting on behalf of a prisoner;
- (d) solicits, accepts or receives any fee, gift, gratuity, or reward from a prisoner or another person acting on behalf of a prisoner;

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- (e) with intent to commit or aid the commission of an offence under this Act or any other law, directly or indirectly communicates, corresponds or has any dealings with a prisoner, or conveys any communication or article to or from a prisoner;
- (f) permits any intoxicating liquor, tobacco, habitforming drug, opiate, money, clothing, letter, document or any other provision or article to be sold to or on behalf of a prisoner;
- (g) lends or gives to any prisoner any intoxicating liquor, tobacco, habit-forming drug, opiate, money, clothing, letter, document or other provision or article;
- (h) conveys or permits any letter, document, or other article to be conveyed out of a prison; or
- (i) informs the press or any other person of any confidential matter concerning a prison or a prisoner or any confidential matter derived from official sources connected with or related to the Prison Service;
- (j) communicates verbally or otherwise with a prisoner,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 4 000 or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment, and such prison member may, subject to sections 41(3) and 44(2), in addition to proceedings in terms of this section, be subject to disciplinary proceedings in terms of section 38(d)(vii) or (j)(i), (ii) or (iii).

PART VI**DISCIPLINE OF PRISON MEMBERS****Disciplinary offences by prison members**

- 38.** A prison member shall commit a disciplinary offence and is guilty of -
- (a) disobedience to lawful orders, if he or she, without reasonable cause, disobeys, refuses, neglects or omits to carry out a lawful order from

a prison member senior in rank to him or her;

(b) oppressive conduct, if he or she -

- (i) is oppressive or tyrannical in conduct towards a prison member subordinate in rank to him or her or a prisoner;
- (ii) uses obscene, abusive, or insulting language towards any other prison member or a prisoner;
- (iii) assaults any other prison member or a prisoner;
- (iv) threatens or uses unwarranted violence towards any person in his or her custody;
- (v) wilfully or negligently makes any false, frivolous, or vexatious complaint against any other prison member or a prisoner, or wilfully suppresses any material fact in any disciplinary inquiry held, or makes or joins in making any anonymous complaints;

(c) insubordinate conduct, if he or she -

- (i) is disrespectful in words, conduct, or demeanour to a prison member senior in rank to him or her;
- (ii) talks or otherwise misbehaves while on parade;
- (iii) resists his or her lawful arrest, custody, or escort;

(d) neglect of duty, if he or she -

- (i) neglects or omits, without reasonable cause, to promptly and diligently attend to or carry out anything which it is his or her duty to attend to or carry out;
- (ii) idles or gossips or sits or lies down without reasonable cause when on duty;

- (iii) sleeps when on duty;
 - (iv) leaves his or her post or official duties without reasonable cause or the explicit permission of the Commissioner, the officer in charge, or another prison member authorized by the Commissioner to grant such permission;
 - (v) by neglect or default allows, or contributes to, the escape of any prisoner;
 - (vi) fails to make or send a report or return which it is his or her duty to make or send;
 - (vii) assists or connives with any prisoner to obtain or keep any prohibited article;
 - (viii) neglects or refuses to arrest any prisoner or prison member whom he or she has been ordered to arrest; or
 - (ix) without reasonable cause omits to make any necessary entry in any official document or book;
 - (x) feigns or exaggerates any sickness or injury with intent to evade duty; or
 - (xi) while absent from duty on account of sickness, neglects, or without reasonable cause omits to carry out any instruction of a medical officer or practitioner or of a member of the hospital staff, or acts or conducts himself or herself in a manner intended to retard his or her return to duty; or
 - (xii) neglects or refuses to observe any rule, standing order or administrative directive made under section 4(3);
- (e) discreditable conduct, if he or she acts in a disorderly manner or in any manner prejudicial to the discipline of a prison or likely to bring discredit on the good order and reputation of the Prison Service;

- (f) absence without leave, if he or she without reasonable cause or excuse is absent without leave from any duty;
- (g) being late for duty, if he or she is late for any parade or other duty;
- (h) falsehood if he or she -
 - (i) wilfully or negligently makes any false, misleading, or inaccurate statement in his or her official duties; or
 - (ii) without good cause destroys or mutilates any official document or record, or alters or erases any entry therein;
- (i) prevarication, if he or she prevaricates at any proceedings where an inquiry is being made into a disciplinary charge against any prison member or prisoner;
- (j) breach of confidence, if he or she -
 - (i) divulges any matter which it is his or her duty to keep secret;
 - (ii) without proper authority communicates to the public, press, or to any unauthorised person any confidential matter concerning the Prison Service;
 - (iii) without proper authority shows to any person not in the Prison Service any confidential book, record, or document belonging to the Prison Service; or
 - (iv) fails or neglects to report the fact that he or she is suffering from a contagious disease;
- (k) disorderliness, if he or she, while on duty, or off duty in uniform in a public place, is without reasonable cause improperly dressed or is dirty or untidy in his or her clothing or accoutrements;
- (l) damage to property, if he or she wilfully or negligently causes any

waste, loss or damage to any clothing, accoutrements, book, document or other property of the Prison Service issued or entrusted to his or her care or fails or neglects to report to the officer in charge such waste, loss or damage;

- (m) drunkenness or use of habit-forming drugs, if he or she -
 - (i) is unfit for duty through the consumption of intoxicating liquor or habit-forming drugs; or
 - (ii) habitually uses to excess intoxicating liquor or habit-forming drugs;
- (n) unlawfully entering licensed premises, if he or she enters any public bar licensed for the sale of intoxicating liquor when on duty, except when his or her presence is required in such licensed premises in the execution of duty;
- (o) engaging in employment other than his or her prison duties, if he or she engages in such employment without the prior authorization referred to in section 17(2) of the Public Service Act, 1995;
- (p) using a weapon without authorization or just cause, if he or she uses a weapon without authorization or just cause.
- (q) unlawful removal of a prisoner, if he or she without authority of the officer in charge removes a prisoner from one part of a prison to another part of such prison, or from the prison precinct; or
- (r) conniving at, or being an accessory to, any disciplinary offence referred to in paragraphs (a) to (q).

Disciplinary inquiries into conduct of senior prison members

39. (1) For the purposes of disciplinary control over senior prison members, the Minister may appoint an *ad hoc* disciplinary board to inquire into the conduct of any senior prison member to ascertain whether such member has committed

a disciplinary offence, and to report its findings and make recommendations to the Commissioner as to the disciplinary measures, if any, to be taken against such senior prison member.

(2) A disciplinary board shall comprise not less than three persons, and where a senior prison member is appointed as a member of such board, he or she shall be of a rank not lower than that of the prison member into whose conduct the board is to inquire.

(3) The Minister shall designate a member of a disciplinary board as the chairperson of that board.

(4) A disciplinary board shall hold its inquiry on such date and at such times and places as the chairperson of that board may determine.

(5) Before commencing a disciplinary inquiry under this section, the disciplinary board shall give at least fourteen days' written notice thereof to the senior prison member into whose conduct the board is to inquire, and in such notice disclose the nature and particulars of the charge against such member and summon him or her to appear before that board at a specified date, time and place, to answer the charge.

(6) A senior prison member receiving a notice under subsection (5) may, before the date of the disciplinary inquiry as set out in such notice, submit a written reply to the disciplinary board, admitting the commission of the disciplinary offence in question, and thereafter such board shall, without holding the disciplinary inquiry, report such fact to the Commissioner, and may recommend to the Commissioner that any one or more of the disciplinary measures referred to in subsection (16) be imposed upon that member.

(7) The disciplinary board may conduct a disciplinary inquiry notwithstanding the fact that the alleged disciplinary offence forms or is in the opinion of the disciplinary board likely to form the subject of criminal proceedings in a court of law.

(8) A disciplinary board may for the purposes of an inquiry referred to in subsection (1) -

- (a) in writing summon any person who, in the opinion of the board, is able to furnish information of material importance to the inquiry, or who the board has reason to believe has in his or her possession or custody or under his or her control any book, document, thing, record or other evidence relevant to the subject of the inquiry, to appear at a time and place specified in the summons to be examined or to produce such book, document, thing, record or other evidence, and may retain for examination any book, document, thing, record or evidence so produced; and
 - (b) through the chairperson, administer an oath to, or accept an affirmation from, any person present at the inquiry, and examine him or her or cause him or her to be examined by a person appointed by the board to adduce the evidence at the inquiry, and instruct him or her to produce any relevant book, document, thing, record or other evidence in his or her possession or custody or under his or her control.
- (9) A disciplinary inquiry in terms of this section shall be in accordance with such rules of procedure and evidence as may be prescribed.
- (10) A senior prison member charged with a disciplinary offence and appearing before a disciplinary board shall at such inquiry be entitled in person or through his or her legal representative -
- (a) to be heard;
 - (b) to call witnesses;
 - (c) to cross-examine any person called as a witness in support of the charge;
 - (d) to examine any book, document, thing, record or other evidence produced in evidence; and
 - (e) to give evidence himself or herself.
- (11) The chairperson of a disciplinary board shall keep a record or cause

a record to be kept of the proceedings at its inquiry and of all the evidence given.

(12) Where in a disciplinary inquiry against a senior prison member the disciplinary board is of the opinion that the disciplinary offence alleged to have been committed would not be adequately punished by any of the penalties provided for in subsection (16) by reason of -

- (a) the gravity of the offence;
- (b) previous convictions of such senior prison member; or
- (c) any other factor,

the disciplinary board may, with the approval of the Minister, submit the matter together with all relevant documents and statements to the Prosecutor-General for his or her decision.

- (13) (a) Where a senior prison member has been found guilty of a disciplinary offence in a disciplinary inquiry and the disciplinary board is of the opinion that such disciplinary offence would for any of the reasons referred to in subsection (12) not be adequately punished by any of the penalties provided for in subsection (16), such disciplinary board may adjourn such disciplinary inquiry and transfer the matter to a magistrate's court for sentencing.
- (b) Where disciplinary proceedings against a senior prison member have been transferred to a magistrate's court under paragraph (a), such senior prison member shall be liable in that court for such conviction to a fine not exceeding 12 months of such member's salary as prison member or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.

(14) Subject to subsection (15), a person who, having been summoned to appear before the disciplinary board and to testify or to produce a book, document, thing, record or other evidence relevant to the inquiry, without reasonable cause -

- (a) fails or refuses to appear before the disciplinary board at the specified time and place;

- (b) having appeared before the disciplinary board, refuses or fails to answer any question put to him or her truthfully and to the best of his or her knowledge;
- (c) knowingly makes a false statement or representation to the disciplinary board; or
- (d) refuses or fails to produce or surrender any book, document, thing, record or other evidence in his or her possession, to the disciplinary board,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 8 000 or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

(15) No person shall be compelled to answer any question or produce any book, document, thing, record or other evidence at a disciplinary board's inquiry which he or she would not have been compelled to answer or produce before a court of law during criminal proceedings.

(16) Where a senior prison member admits under subsection (6) to have committed the disciplinary offence in question, or where at the conclusion of an inquiry under this section the disciplinary board is of the opinion that the senior prison member concerned is guilty of a disciplinary offence, it shall, after having heard evidence in mitigation, report its findings and the evidence in mitigation to the Commissioner, and it may recommend that any one or more of the following disciplinary measures be imposed by the Commissioner upon that member, namely -

- (a) a reprimand;
- (b) a fine not exceeding half of that member's monthly salary;
- (c) a reduction in rank or seniority;
- (d) suspension from duty;
- (e) dismissal from the Prison Service.

(17) Where the disciplinary board advises the Commissioner that the senior prison member concerned is -

- (a) not guilty of the disciplinary offence, the Commissioner shall dismiss the charge against such member; or
- (b) guilty of the disciplinary offence, the Commissioner may impose such of the disciplinary measures referred to in subsection (16) as he or she may deem fit,

and the Commissioner shall in writing inform that prison member whether or not he or she has been found guilty of the disciplinary offence in question and of the disciplinary measure, if any, which is imposed upon him or her in terms of paragraph (b).

(18) No disciplinary measure imposed upon a senior prison member under subsection (17)(b) shall be effected -

- (a) until the time prescribed for lodgement of an appeal under section 40 has expired, and the senior prison member concerned has not lodged an appeal; or
- (b) where an appeal has been lodged under that section, until the appeal has been dismissed or withdrawn.

Appeals by senior prison members

40. (1) Any senior prison member who is aggrieved by a decision of the disciplinary board at the conclusion of a disciplinary inquiry against him or her in terms of section 39, or by a disciplinary measure imposed upon him or her under that section, may, within fourteen days of receiving the notice referred to in subsection (17) of that section, appeal in writing to the Minister against -

- (a) the findings of that board or any of its recommendations; or
 - (b) the disciplinary measure in question.
- (2) The Minister may in respect of an appeal lodged in terms of subsection

(1), after consultation with the Commissioner and on consideration of the disciplinary board's report to the Commissioner under section 39(16) and the grounds of appeal -

- (a) confirm or set aside the findings and recommendations of the disciplinary board;
- (b) confirm or set aside the disciplinary measure in question; or
- (c) take any other measure that he or she may deem expedient.

Disciplinary proceedings against senior prison member not to prejudice civil or criminal liability

41. (1) The institution of a disciplinary inquiry against a senior prison member under section 39 shall not prejudice the right of any person to institute civil proceedings or of the Prosecutor-General to institute criminal proceedings against that member based on the same facts.

(2) Nothing in this section shall prevent the disciplinary board from conducting a disciplinary inquiry and imposing a penalty upon such senior prison member for a disciplinary offence arising from the same facts.

(3) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning in a disciplinary inquiry shall not be admissible as evidence against the person concerned in criminal or civil proceedings in a court of law: Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person stands trial on a charge contemplated in section 39(14).

Disciplinary inquiries into conduct of junior prison members

42. (1) For the purpose of disciplinary control over junior prison members, the Commissioner or a senior prison member authorised thereto by the Commissioner may inquire into the conduct of a junior prison member for the purposes of ascertaining whether such prison member has committed a disciplinary offence.

(2) Before commencing a disciplinary inquiry under this section, the

Commissioner or senior prison member referred to in subsection (1), as the case may be, shall give at least fourteen days' written notice thereof to the junior prison member into whose conduct he or she is to inquire, and in such notice disclose the nature and particulars of the charge against such member and summon him or her to appear before him or her at a specified date, time and place to answer the charge.

(3) A junior prison member receiving a notice under subsection (2) may, before the date of the inquiry as set out in that notice, submit a written reply to the Commissioner or senior prison member to be responsible for conducting such inquiry, admitting the commission of the disciplinary offence in question, and thereafter the Commissioner or such senior prison member may impose one or more of the disciplinary measures referred to in subsection (12) upon that junior prison member without holding a disciplinary inquiry.

(4) The Commissioner or senior prison member conducting a disciplinary inquiry in terms of subsection (1), as the case may be, may for the purposes of such inquiry -

- (a) in writing summon any person who, in his or her opinion is able to furnish information of material importance to the inquiry, or who he or she has reason to believe has in his or her possession or custody or under his or her control any book, document, thing, record or other evidence relevant to the subject of the inquiry, to appear at a time and place specified in the summons to be examined or to produce such book, document, thing, record or other evidence, and may retain for examination any book, document, thing, record or other evidence so produced;
- (b) administer an oath to, or accept an affirmation from, any person present at the inquiry and examine him or her and instruct him or her to produce any relevant book, document, thing, record or other evidence in his or her possession or custody or under his or her control.

(5) A disciplinary inquiry in terms of this section shall be in accordance with such rules of procedure and evidence as may be prescribed.

(6) A junior prison member charged with a disciplinary offence and appearing before the Commissioner or senior prison member referred to in subsection

(1) shall at such inquiry be entitled in person or through his or her legal representative -

- (a) to be heard;
- (b) to call witnesses;
- (c) to cross-examine any person called as a witness in support of the charge;
- (d) to examine any book, document, thing, record or other evidence produced in evidence; and
- (e) to give evidence himself or herself.

(7) The Commissioner or senior prison member conducting the disciplinary inquiry, as the case may be, shall keep a written record or cause a written record to be kept of the proceedings at such inquiry and of all the evidence given.

(8) Where in a disciplinary inquiry against a junior prison member the Commissioner or senior prison member conducting the disciplinary inquiry, as the case may be, is of the opinion that the disciplinary offence alleged to have been committed would not be adequately punished by any of the penalties provided for in subsection (12) by reason of -

- (a) the gravity of the offence;
- (b) previous convictions of such junior prison member; or
- (c) any other factor,

the Commissioner or such senior prison member, with the approval of the Commissioner, may submit the matter, together with all relevant documents or statements, to the Prosecutor-General for his or her decision.

- (9) (a) Where a junior prison member has been found guilty of a disciplinary offence in a disciplinary inquiry and the Commissioner or senior prison member conducting such inquiry, as the case may

be, is of the opinion that such disciplinary offence would for any of the reasons referred to in subsection (8) not be adequately punished by any of the penalties provided for in subsection (12), the Commissioner or such senior prison member, with the approval of the Commissioner, may adjourn such disciplinary inquiry and transfer the matter to a magistrate's court for sentencing.

- (b) Where disciplinary proceedings against a junior prison member have been transferred to a magistrate's court for sentencing under paragraph (a), the junior prison member shall be liable in such court for such conviction to a fine not exceeding 12 months of such member's salary as prison member or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.

(10) Subject to subsection (11), a person who, having been summoned to appear before the Commissioner or senior prison member concerned and to testify or to produce a book, document, thing, record or other evidence relevant to the inquiry, without reasonable cause -

- (a) fails or refuses to appear before the Commissioner or such senior prison member at the specified time and place;
- (b) having appeared before the Commissioner or such senior prison member, refuses or fails to answer any question put to him or her truthfully and to the best of his or her knowledge;
- (c) knowingly makes a false statement or representation to the Commissioner or such senior prison member; or
- (d) refuses or fails to produce or surrender any book, document, thing, record or other evidence in his or her possession, to the Commissioner or such senior prison member,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 8 000 or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

(11) No person shall be compelled to answer any question or produce any book, document, thing, record or other evidence at an inquiry held in terms of subsection (1) which he or she would not have been compelled to answer or produce before a court of law during criminal proceedings.

(12) Where a junior prison member admits under subsection (3) to have committed the disciplinary offence in question, or where at the conclusion of a disciplinary inquiry under this section the Commissioner or senior prison member conducting the disciplinary inquiry, as the case may be, finds the junior prison member concerned guilty of a disciplinary offence, the Commissioner or such senior prison member may, after having heard evidence in mitigation, impose any one or more of the following disciplinary measures upon that prison member, namely -

- (a) a verbal warning;
- (b) a written warning;
- (c) a fine not exceeding one month's salary;
- (d) a last written warning;
- (e) stoppage of salary where there has been loss by neglect of or damage to public property;
- (f) stoppage, deferment or withholding of any increment of salary for which the junior prison member may be eligible;
- (g) reduction in rank or seniority;
- (h) dismissal from the Prison Service.

(13) The Commissioner or the senior prison member conducting the disciplinary inquiry shall in writing inform the junior prison member concerned of any decision taken or disciplinary measure imposed under subsection (12).

(14) A disciplinary measure imposed under subsection (12) by a senior prison member authorized by the Commissioner to hold a disciplinary inquiry shall

be subject to written confirmation by the Commissioner.

(15) Subject to subsection (14), a disciplinary measure imposed under subsection (12) shall not be effected -

- (a) until the time prescribed for lodgement of an appeal under section 43 has expired, and the junior prison member concerned has not lodged an appeal; or
- (b) where an appeal has been lodged under that section, until the appeal has been dismissed or withdrawn.

(16) Where the Commissioner or a senior prison member conducting a disciplinary inquiry takes a disciplinary measure against a junior prison member for a disciplinary offence, he or she may order that such measure be suspended for a period not exceeding six months, during which period -

- (a) if the junior prison member commits no further disciplinary offence, such measure shall lapse at the end of such period; or
- (b) if the junior prison member commits any other disciplinary offence, the suspended measure shall forthwith be put into effect.

Appeals by junior prison members

43. (1) Any junior prison member who is aggrieved by a decision of the Commissioner or the senior prison member referred to in subsection (1) of section 42 at the conclusion of a disciplinary inquiry against him or her in terms of that section, or by a disciplinary measure imposed upon him or her under that section, may, within fourteen days of receiving the notice referred to in subsection (13) of that section, appeal in writing to the Minister against -

- (a) the findings of the Commissioner or senior prison member, as the case may be; or
- (b) the disciplinary measure in question.

(2) The Minister may in respect of an appeal lodged in terms of subsection (1), on consideration of a report on the disciplinary inquiry in question, to be submitted to the Minister by the person who presided at such inquiry, and the grounds of appeal -

- (a) confirm or set aside the decision taken against the junior prison member;
- (b) confirm or set aside the disciplinary measure in question; or
- (c) take any other measure that he or she may deem expedient.

Disciplinary proceedings against junior prison member not to prejudice civil or criminal liability

44. (1) The provisions of sections 41(1) and (2) shall *mutatis mutandis* apply to a disciplinary inquiry against a junior prison member under section 42.

(2) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning in a disciplinary inquiry shall not be admissible as evidence against the person concerned in criminal or civil proceedings in a court of law: Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person stands trial on a charge contemplated in section 42(10).

Suspension of prison members

45. (1) Where a prison member is charged with an offence under this Act or any other law, including the common law, the Commissioner, or any other senior prison member duly authorised thereto by the Commissioner, may suspend that prison member from the performance of his or her functions as a prison member, pending the outcome of the court or disciplinary inquiry against that member.

- (2) (a) A prison member suspended in terms of subsection (1) shall not be entitled to any remuneration for the period of his or her suspension, except to such extent as may be approved by the Prime Minister, on the recommendation of the Public Service Commission

established by section 2 of the Public Service Commission Act, 1990 (Act No. 2 of 1990).

- (b) A prison member referred to in paragraph (a) may, within seven days after his or her suspension, appeal in writing to the Prime Minister against his or her non-entitlement to any remuneration or any part thereof, and shall in writing give the Commissioner notice of such appeal.

(3) The Commissioner shall forthwith permit a prison member who has been suspended in terms of subsection (1) to reassume his or her duty, and such prison member shall be paid his or her full remuneration for the period of his or her suspension if, in respect of the charge for which he or she was suspended -

- (a) he or she is found not guilty;
- (b) he or she successfully appeals under this Act or any other law his or her conviction of such charge; or
- (c) such charge does not result in such member's dismissal from the Prison Service.

(4) A prison member suspended under subsection (1) shall not by reason of such suspension cease to be a prison member, but shall during that period continue to be subject to the same discipline and penalties as if he or she had not been suspended.

Searches and arrest of prison members

46. (1) Subject to subsection (2) and for the purposes of ascertaining whether or not an offence under this Act has been committed by a prison member, the officer in charge may order that such prison member, as well as his or her living quarters, be searched by another prison member senior in rank to such prison member.

(2) A search under subsection (1) shall not be conducted unless it has been authorised by a warrant issued by a magistrate or judge within the jurisdiction where such living quarters are situated, upon oath by the officer in charge that -

- (a) there are reasonable grounds to suspect that the provisions of this Act are being contravened in those living quarters; and
 - (b) that the entry and search of the living quarters are necessary for a purpose referred to in Article 13(1) of the Namibian Constitution: Provided that nothing in this subsection shall be construed as prohibiting a search without a warrant under Article 13(2)(b) of the Namibian Constitution.
- (3) A search conducted under this section shall not be excessively intrusive having regard to the contravention suspected, and shall comply with the provisions of subsection (3)(a) and (4) of section 21 and section 29 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Emoluments not to accrue during absence without leave or imprisonment

47. A prison member shall not be entitled to any emoluments in respect of any period during which he or she is absent from duty without leave, or is serving a sentence of imprisonment, except where the Commissioner or a senior prison member not below the rank of Assistant Commissioner authorises the payment of such emoluments equal to not more than one half of the prison member's salary for that period, as he or she may deem fit.

PART VII

ADMISSION, CUSTODY AND TREATMENT OF PRISONERS

Admission of prisoners into prison

48. (1) No person shall be received into prison custody except under the authority of -
- (a) a remand warrant, order of detention, warrant of conviction or committal, signed or authenticated by a person authorised to sign or authenticate such warrant or order under the provisions of any law;
 - (b) a warrant of an immigration officer issued under the provisions of the Immigration Control Act, 1993 (Act No. 7 of 1993); or

- (c) a written order of detention signed by a member of the police of or above the rank of Sergeant, which order shall be valid only for such period as is necessary to obtain a warrant or order referred to in paragraph (a) and no longer.
- (2) The officer in charge shall satisfy himself or herself before the admission of any person into prison custody that -
 - (a) the particulars of such person are accurately described in the warrant or order referred to in subsection (1) accompanying such person; and
 - (b) such warrant or order has been properly issued or authenticated.
- (3) The officer in charge shall not refuse to admit a person into prison custody only by reason of an error on the face of the warrant or order referred to in subsection (1), but shall take steps, as soon as is practicable, to have the error rectified.

Admission of female prisoner with infant

49. (1) Subject to such conditions as may be prescribed and the Commissioner may impose, either in general or in a specific case, a female prisoner may be admitted into prison custody with her infant.

- (2) An infant referred to in subsection (1) shall be supplied with clothing and other necessities by the State until such infant attains the age of two years, in which case the officer in charge shall, on the recommendation of the medical officer -
 - (a) on being satisfied that there is a relative or friend of the infant able and willing to support it, 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 may approve for that purpose.

Search of prisoner on admission, and disposal of personal effects

50. (1) Every person shall on admission to a prison to be detained therein, be searched and all prohibited articles removed from his or her possession, and such search shall be conducted by a prison member of the same sex as the person being searched and shall not be conducted in the presence of a person of the opposite sex.

(2) On admission of a person to a prison to be detained therein, all money, clothes and personal effects belonging to such person which he or she is not permitted by or under this Act to retain, shall be placed into the custody of the officer in charge, and which shall, subject to subsections (4) and (5), be returned to such person on his or her release from prison.

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

(4) Where in the opinion of the officer in charge the clothes or personal effects of a person referred to in subsection (2) are so old, worn out, or dirty as to be unsuitable for further use, the officer in charge may order it to be destroyed, and on release of that person from prison the officer in charge shall provide such person with the necessary suitable clothing or personal effects at the State's expense.

(5) The officer in charge may prohibit any prisoner admitted to prison from retaining any property which, by reason of its bulk or nature, cannot conveniently be stored in the prison.

(6) Every prisoner whose property has been taken into custody under subsection (2) 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 prison, and such name or names shall be recorded in the relevant registers by the officer in charge.

(7) Where, within six months after the release from prison or the death of a prisoner, the property of such prisoner is for any reason not returned to that prisoner or to his or her personal representative or a person named by that prisoner under subsection (6), as the case may be, the officer in charge shall submit an inventory of such property to a magistrate's court, for disposal of such property.

(8) Where an inventory of a prisoner's property is submitted to a magistrate's court under subsection (7), 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 fourteen days of the notice.

(9) If within fourteen days of the notice mentioned in subsection (8) 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 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 State Revenue Fund.

Classification and separation of prisoners

51. Prisoners shall, on admission to a prison, be classified by the officer in charge into one or more of the following groups, namely -

- (a) convicted prisoners;
- (b) unconvicted prisoners;
- (c) juvenile prisoners;
- (d) adult prisoners;
- (e) first offenders;
- (f) prisoners with previous convictions;
- (g) prisoners who are suffering from a mental illness; and
- (h) such other groups as the Commissioner may determine,

and so far as the prison accommodation renders it practicable, each group shall be detained separately.

Prisoners in custody of officer in charge

52. (1) Subject to subsection (3), every person committed to a prison shall be in the lawful custody of the officer in charge during the whole period of imprisonment, and shall be subject to prison discipline and the provisions of this Act.

(2) The officer in charge shall ensure that every person committed to prison 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.

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

(b) A prisoner who escapes from the custody of a prison member, member of the police or probation officer referred to in paragraph (a), as the case may be, shall escape from lawful custody for the purposes of any law, including the common law.

Custody of female prisoners

53. Female prisoners shall at all times during their detention or imprisonment be under the care, custody and supervision of female prison members, who shall be responsible for their discipline.

Custody of person under arrest

54. A person arrested in pursuance of any warrant or order of court or under the provisions of the Criminal Procedure Act, 1977, providing for an arrest without a warrant may be handed over to the officer in charge of a prison for custody and detention, and such officer shall cause that person to be brought before the nearest

magistrate's court in accordance with the provisions of Article 11(3) of the Namibian Constitution.

Custody of remanded prisoners

55. Where a prisoner is committed for remand in a prison by order of a court or other competent authority, he or she shall be handed over to the custody of the officer in charge thereof with the warrant of commitment, and the officer in charge shall -

- (a) detain such prisoner in custody for such period; and
- (b) cause such prisoner to be delivered to the court or competent authority or to be released from prison at such time,

as the terms of the warrant in question may specify.

Custody of unconvicted juveniles

56. (1) A juvenile who is awaiting trial or the conclusion of his or her trial shall not be detained in a prison, unless, in the opinion of the Commissioner, such detention is necessary and no suitable place of detention as defined in the Children's Act, 1960 (Act No. 33 of 1960) 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 prison, she shall at all times be under the care and charge of a female prison member.

Prisoners under police escort

57. (1) Where a prisoner on remand or awaiting trial is required to

attend court, he or she shall be taken from prison to the court in the custody of a member of the police and shall remain under such police supervision and guard until he or she is returned to prison or discharged by the court.

(2) Subject to section 52(3), where a prisoner is being conveyed from prison to another place and the number of prison members required to escort such prisoner is insufficient to secure his or her safe custody, the officer in charge of the prison from which the prisoner is to be conveyed may with the general or special permission of the Inspector-General commit such prisoner into the custody of such number of members of the police, detailed for such duty, as he or she may deem fit.

Prisoner required at court

58. (1) Where a prisoner 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 where that prisoner is detained, requiring him or her to produce the prisoner at the time and place specified in the order, and the officer in charge shall comply with such order.

(2) The court before which a prisoner 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 deem fit.

Preparation of defence by prisoner

59. A prisoner shall before commencement of, and during his or her trial, be afforded adequate facilities in the prison 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 prisoner's legal representative has adequate facilities to privately interview the prisoner; and
- (b) where the prisoner is unable to communicate with his or her legal representative in the official language, a suitable interpreter is provided.

Questioning of prisoner by member of police

- 60.** (1) Subject to subsection (2), a member of the police may -
- (a) with the approval of the officer in charge; or
 - (b) on the production of a written order from the member of the police in charge of a police station or of or above the rank of warrant officer; and
 - (c) in the sight and hearing of a prison member,

question within a prison, any prisoner for the purposes of any criminal investigation.

(2) Where the officer in charge is satisfied that a prisoner has no objections to being questioned by a member of the police out of the hearing and sight of a prison member, he or she may permit the questioning to be conducted in the presence of not less than two members of the police, within the prison and without a prison member being present.

- (3) (a) Where a prisoner is required at a police station for questioning for purposes of a criminal investigation, the court may on the application of a member of the police -
- (i) of or above the rank of warrant officer, in respect of an unconvicted prisoner; or
 - (ii) of or above the rank of chief inspector, in respect of a convicted prisoner,

order that such prisoner be temporarily removed from prison and be handed over to the custody of a probation officer or a member of the police for that purpose.

- (b) A prisoner who escapes from the custody of a probation officer or a member of the police referred to in paragraph (a) shall be deemed to have escaped from lawful custody for the purposes of any law, including the common law.

Transfer of prisoner from one prison to another

61. (1) Any sentence of imprisonment lawfully imposed upon a person may be served partly in one prison and partly in another prison.

(2) The Commissioner may by general or special order direct that a prisoner be transferred from the prison to which he or she was committed or in which he or she is detained to another prison.

(3) Where a prisoner is transferred from one prison to another pursuant to this section, the officer in charge shall, where the whereabouts of such prisoner's immediate family is known to the prison authorities, inform such family of such transfer.

Mental cases

62. (1) A prisoner who, while serving a sentence of imprisonment, is removed to an institution as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973), shall, as soon as he or she is fit for discharge therefrom be returned to the prison in question 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 prison has not been completed.

(2) Where a prisoner, who has been admitted to an institution referred to in subsection (1), 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 referred to in section 99(1) shall release such prisoner from prison in the prescribed manner, and in writing inform such institution of such release.

(3) The period during which a prisoner was detained in an institution referred to in subsection (1) while serving a term of imprisonment, shall be deemed to be part of such term of imprisonment.

Transfer of prisoner to hospital

63. (1) Where a prisoner is so seriously ill as to warrant admission to hospital for treatment, the officer in charge shall, on the recommendation of the

medical officer, authorise the transfer of that prisoner to hospital, but in the case of an emergency or in the absence of the medical officer, the transfer of that prisoner to hospital shall be authorised by the officer in charge without the prior recommendation of the medical officer.

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

- (a) whether or not the prisoner should be admitted to hospital for the purposes of treatment; and
- (b) where practicable, the period for which such prisoner should remain in the hospital.

(3) Where after treatment of a prisoner, the medical superintendent in charge of the hospital to which such prisoner was admitted under subsection (1) is of the opinion that such prisoner is fit for discharge from hospital, he or she shall, if the sentence in respect of which such prisoner was committed to prison has not been completed, notify the officer in charge of the prison in which that prisoner was detained, and the prisoner shall be discharged from hospital and be handed over into the custody of such officer in charge for completion of his or her sentence.

(4) Where a prisoner, who has been admitted to an 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 imprisonment, the officer in charge referred to in section 99(1) shall release such prisoner from prison in the prescribed manner, and in writing inform such hospital of such release.

(5) The period during which a prisoner is detained in a hospital for treatment under this section while serving a term of imprisonment, shall be deemed to be part of such term of imprisonment.

Custody of prisoner in hospital or mental institution

64. (1) A prisoner who is detained in a hospital in terms of section

63 or a mental institution referred to in section 62 for the purposes of treatment shall, during such detention, be deemed to be in lawful custody for the purposes of any law, including the common law.

- (2) (a) The officer in charge shall take such measures as he or she may deem necessary to secure the custody of a prisoner while he or she is undergoing treatment in a hospital or mental institution.
- (b) Where a prisoner has been committed into the custody of a prison member under paragraph (a), such prison member shall take every reasonable precaution to prevent the prisoner concerned from escaping.

Prisoner to be informed of provisions of Act and applicable rules, orders and directives

65. The provisions of this Act and any rule, standing order, or administrative directive made or issued under section 4(3) relating to the treatment and conduct of prisoners shall be printed in the official language and in any other languages that the Commissioner may determine, and shall -

- (a) be made available to every prisoner immediately on admission to a prison, or if a prisoner 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 prisoner;
- (b) be displayed in writing in a conspicuous part of every prison.

Visitors, procurement of necessities, receiving of letters and other privileges

66. (1) Subject to this Act and any applicable rule, standing order, or administrative directive made or issued under section 4(3), the officer in charge of a prison may permit any prisoner to -

- (a) receive visitors;

- (b) receive from outside of the prison such food, unfermented drink, bedding, clothing, literature and other necessities of life as may be permitted under strict examination; and
- (c) receive letters, subject to censorship by the officer in charge or other prison member authorized thereto by the officer in charge.

(2) The Commissioner may grant other privileges or indulgences as he or she may deem fit to any prisoner, and may, after having given such prisoner an opportunity to be heard, withdraw or amend any such privilege or indulgence.

(3) To the extent that the provisions of paragraph (c) of subsection (1) authorise interference with the privacy of a person's correspondence in conflict with Article 13 of the Namibian Constitution, such interference shall be authorised in terms of that Article only on the grounds of, and to the extent necessary for, the prevention of disorder or crime or the protection of the rights and freedoms of others.

Letters and documents written by or on behalf of prisoner

67. (1) Subject to subsection (2), every letter or document written in a prison by or on behalf of a prisoner shall, before being dispatched from prison, 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 prison member censoring such letter or document shall endorse on such letter or document -

- (a) the name of such prison;
- (b) a statement authorising the dispatch of the letter or document; and
- (c) his or her signature.

(2) The provisions of subsection (1) shall not apply to a letter or document addressed to -

- (a) the Ombudsman under section 3(3) of the Ombudsman Act, 1990 (Act No. 7 of 1990); or

- (b) the legal representative of such prisoner.

(3) To the extent that the provisions of subsection (1) authorize interference with the privacy of a person's correspondence in conflict with Article 13 of the Namibian Constitution, such interference shall be authorized in terms of that Article only on the grounds of, and to the extent necessary for, the prevention of disorder or crime or the protection of the rights and freedoms of others.

PART VIII

PENALTIES FOR CERTAIN OFFENCES

Possession of prohibited article

68. (1) Subject to subsection (2), any person other than a prisoner who -

- (a) has in his or her possession or under his or her control a prohibited article, either on his or her person or in any other place within the premises of the prison; or
- (b) removes from or takes into the premises of the prison a prohibited article,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

(2) A person shall not be guilty of an offence under subsection (1) if such person -

- (a) is a prison member or any other person employed in or about such prison and has come into possession of such article in the course of his or her functions or employment in such prison; or
- (b) has written authorization of the officer in charge concerned to retain that article or to take it into or remove it from the prison.

Unlawful communication with prisoner by persons other than prison members or persons employed in or about prison

69. (1) Any person, other than a prison member or any other person employed in or about a prison, who without the prior authorization of the Commissioner or the officer in charge -

- (a) communicates verbally or otherwise with a prisoner; or
- (b) conveys, dispatches, delivers, or transmits from prison a letter or document on behalf of a prisoner,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.

(2) To the extent that subsection (1) restricts a person's freedom of speech in conflict of Article 21 of the Namibian Constitution, the authorization referred to in that subsection shall not be withheld except on the grounds of, and to the extent necessary for, the maintenance of national security, public order or the prevention of incitement to commit an offence.

Unauthorized entrance into, and loitering near, prison

70. Any person who -

- (a) without the prior permission of the officer in charge or other prison member authorized thereto by the officer in charge, enters upon the premises of a prison;
- (b) is found loitering within one hundred metres of the perimeters of the premises of a prison or of any other place where a prisoner or prisoners may be carrying out prison labour and who fails to depart therefrom upon being ordered to do so by a prison member or member of the police;

- (c) wilfully rides or drives any vehicle or leads any animal through a group of prisoners inside or outside of a prison; or
- (d) in any manner wilfully interferes with the activities of any prisoner or prisoners,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 2 000 or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Unauthorized publications

71. Subject to subsection (2), any person who -

- (a) without the written authorization of the Commissioner -
 - (i) takes a photograph, film, or makes a video recording, drawing or sketch of a prison or part thereof;
 - (ii) publishes or causes to be published in any manner, a photograph, film, video recording, drawing or sketch of a prison or part thereof;
 - (iii) takes a photograph, film, or makes a video recording, drawing or sketch of a prisoner or group of prisoners, whether inside or outside of a prison;
 - (iv) publishes or causes to be published in any manner a photograph, film, video recording, drawing or sketch of a prisoner or prisoners, whether inside or outside of a prison;
- (b) publishes or causes to be published any false information concerning the behaviour or experience in prison of any prisoner or concerning the administration of any prison, knowing the same to be false or without taking reasonable steps to verify such information; or
- (c) offers or receives any gift, remuneration, or other benefit to or from

another person in exchange for the disclosure of information of a prison, prisoner or group of prisoners for the purposes of perpetrating a crime,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 8 000 or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

(2) The Minister may by notice in the *Gazette* exclude from the operation of paragraph (a)(i) of subsection (1) any prison or part thereof as may be specified in such notice.

Assisting prisoner to escape

72. Any person who -

- (a) aids any prisoner in escaping or attempting to escape from any prison, hospital, mental hospital or any other place in which such prisoner is held in custody or while in the course of removal in custody from one place to another; or
- (b) for the purpose of facilitating the escape of any prisoner, supplies or agrees or attempts to supply or aids, incites or encourages any other person in supplying a prisoner with any mask, dress, disguise or any other article, instrument, matter, or thing; or
- (c) conveys or causes to be conveyed into or out of any prison, hospital, mental hospital or any other place in which such prisoner is held in custody or any place where prisoners may come to work, any letter or token encouraging or inciting any prisoner to escape or to contravene a provision of this Act; or
- (d) harbours or conceals or assists in harbouring or concealing an escaped prisoner,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 30 000 or to imprisonment for a period not exceeding seven years, or to both such fine and imprisonment.

Unlawful wearing of uniform, insignia, or decoration

73. Any person who -

- (a) without the authorization of the Commissioner, wears or uses a uniform, insignia, or decoration reserved for use by prison members, or any uniform, insignia, or decoration so nearly resembling that which is reserved for use by prison members; or
- (b) falsely represents himself or herself by word or conduct to be a prison member or a person authorized to wear a uniform, insignia, or decoration reserved for prison members,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.

PART IX
OFFENCES BY PRISONERS

Minor prison offences

74. Any prisoner who -

- (a) disobeys an order of any prison member, or any rule or standing order made or issued by the Commissioner under section 4(3) and applicable to such prisoner;
- (b) treats with disrespect any prison member or person authorized to visit the prison;
- (c) is idle, careless, or negligent at work or without reasonable cause refuses to work;
- (d) uses abusive, threatening, insolent, or other improper language towards any person;

- (e) displays indecent conduct towards any person;
- (f) subject to section 75(1)(c), commits a common assault on any person;
- (g) communicates with another prisoner or person in a manner contrary to the regulations or any rule or standing order made or issued by the Commissioner under section 4(3);
- (h) without the permission of a prison member, leaves his or her cell, ward, place of work, or other appointed place;
- (i) receives or has in his or her possession a prohibited article;
- (j) damages, disfigures, defaces, or in any other way interferes with any part of the prison or any fitting thereof or any property belonging to, or under the control of, the Prison Service;
- (k) malingers or makes repeated and groundless complaints;
- (l) quarrels or fights with another prisoner;
- (m) makes a false accusation against a prison member or another prisoner;
- (n) does an act likely to create unnecessary alarm among prison members or prisoners;
- (o) refuses to wear clothing issued to him or her by the prison authorities or exchanges, loses, discards, damages, or alters, without the permission of a prison member, such clothing;
- (p) in any way disturbs the peace or offends against the good order and discipline of prisoners;
- (q) attempts to commit an offence referred to in paragraph (e), (f), (g), (h), (i), (j), (m) or (n);
- (r) aids or abets the commission of an offence referred to in paragraph (a), (b), (e), (f), (g), (h), (i), (j), (l), (m) or (n),

shall be guilty of a minor prison offence, and shall on conviction be liable to any of the penalties set out in section 78.

Major prison offences

- 75.** (1) A prisoner who -
- (a) mutinies or incites any other prisoner to mutiny;
 - (b) assaults another person with the intent to do such person grievous bodily harm;
 - (c) assaults a prison member;
 - (d) commits a minor prison offence after having twice previously been found guilty of the same minor prison offence;
 - (e) escapes from lawful custody or conspires with another person to procure the escape of a prisoner or assists another prisoner to escape from lawful custody;
 - (f) has in his or her possession an instrument or other thing intended to be used to procure his or her escape or that of another prisoner from lawful custody;
 - (g) refuses when ordered to do so by a prison member, to assist such officer in preventing an escape, attempted escape or attack upon that officer or another person, by a prisoner,
 - (h) attempts to commit an offence referred to in paragraph (a), (b), (c), (e) or (f);
 - (i) aids or abets the commission of an offence referred to in paragraph (a), (b), (c), (e) or (f),

shall be guilty of a major prison offence, and shall on conviction be liable to any of the penalties set out in section 78 or 79, as the case may be.

(2) For the purposes of this section “mutiny” shall have the meaning as assigned by section 33(2).

Isolation of prisoner

76. An officer in charge may, on good grounds for doing so, order a prisoner charged with a minor or major prison offence to be kept apart from other prisoners pending the hearing and determination of the charge.

Inquiry into, or trial of, prison offences

77. (1) A charge against a prisoner for -

- (a) a minor or major prison offence may be heard and determined by inquiry within a prison by the Commissioner or, at the request of the Commissioner, by the officer in charge or a senior prison member authorized thereto by the Commissioner; or
- (b) a major prison offence may be heard and determined by a magistrate’s court where, owing to the gravity of the offence or other sufficient cause, the Commissioner decides to transfer the matter for hearing to such court.

(2) Where a charge for a prison offence is heard and determined by inquiry under paragraph (a) of subsection (1), the prisoner charged shall in writing be informed of the nature and particulars of the charge against him or her, and shall be given an opportunity of hearing the evidence against him or her and of being heard in his or her defence.

(3) A prisoner receiving a notice under subsection (2) may, before the date of the inquiry as set out in that notice, submit a written reply to the Commissioner, the officer in charge or senior prison member referred to in subsection (1), as the case may be, admitting the commission of the prison offence in question, and thereafter the Commissioner, the officer in charge or such senior prison member may, after having heard evidence in mitigation, impose one or more of the penalties referred to in paragraph (a) or (b) of subsection (1) of section 78 upon that prisoner without holding an inquiry in terms of subsection (1) of this section.

(4) Where an inquiry into a major prison offence is held under paragraph (a) of subsection (1) by the officer in charge or a senior prison member authorized by the Commissioner, the Commissioner may limit the power of the officer in charge or that member to impose such of the penalties set out in section 78(1)(b) as the Commissioner may deem fit.

(5) The provisions of sections 42(4), (6) and (7) shall *mutatis mutandis* apply to an inquiry under paragraph (a) of subsection (1) of this section, and such inquiry shall be conducted in accordance with the prescribed rules of procedure and evidence.

Penalties for minor and major prison offences to be imposed at inquiry

78. (1) Subject to subsection (2), where at the conclusion of an inquiry under section 77(1)(a) the Commissioner, officer in charge or senior prison member conducting the inquiry, as the case may be, finds the prisoner guilty of -

- (a) a minor prison offence, he or she may, after having heard evidence in mitigation, impose any one or more of the following penalties upon such prisoner, namely -
 - (i) confinement in a single cell for a period not exceeding fourteen days;
 - (ii) forfeiture of remission of sentence referred to in section 92, but not exceeding thirty days of the total remission earned;
 - (iii) reduction in grouping until such time as the prisoner is considered fit for restoration to his or her original grouping by virtue of good conduct, skill and effort at his or her trade or work, or postponement of promotion in grouping, or forfeiture of prison privileges;
 - (iv) removal from any earnings scheme for a period not exceeding three months, or forfeiture of gratuities referred to in section 84, but not exceeding one half of the amount earned: Provided that removal from the highest earnings scheme shall be subject

to the approval of the Commissioner;

- (b) a major prison offence, he or she may, after having heard evidence in mitigation, impose any one or more of the following penalties upon such prisoner, namely -
- (i) confinement in a single cell for a period not exceeding twenty-five days;
 - (ii) subject to section 92(3), forfeiture of remission of sentence referred to in that section, but not exceeding sixty days of the total remission earned;
 - (iii) reduction in grouping until such time as the prisoner is considered fit for restoration to his or her original grouping by virtue of good conduct, skill and effort at his or her trade or work, or postponement of promotion in grouping, or forfeiture of prison privileges;
 - (iv) removal from any earnings scheme for a period not exceeding six months, or forfeiture of gratuities referred to in section 84, but not exceeding three quarters of the amount earned: Provided that removal from the highest earnings scheme shall be subject to the approval of the Commissioner.

(2) Notwithstanding subsection (1), a prisoner who is serving an earlier sentence of periodic imprisonment and who is found guilty at an inquiry in terms of section 77(1)(a) of a minor or major prison offence, shall be liable to a penalty of further periodic imprisonment of not less than twelve hours and not more than thirty-six hours, which sentence shall commence on the date of expiry of that earlier sentence.

(3) For the purposes of this section "grouping" or "earnings scheme" means a grouping or earnings scheme as may be prescribed.

Penalties for major prison offences to be imposed at trial

79. (1) Where a trial for a prison offence is conducted under section

77(1)(b) and the prisoner is found guilty of a major prison offence, he or she shall be liable to -

- (a) imprisonment for a period not exceeding two years;
- (b) in addition or alternatively to any period of imprisonment imposed under paragraph (a), any one or more of the penalties set out in section 78(1)(b).

(2) A sentence of imprisonment imposed under subsection (1) shall commence on the date of expiry of any other sentence of imprisonment which the prisoner concerned is liable to serve on the date of commission of the prison offence in question.

Provisions relating to prisoner's confinement in single cell

80. (1) Subject to subsection (2), where more than one penalty of a period of confinement in a single cell have been imposed on a prisoner for a minor or major prison offence, the serving of such periods of confinement shall be separated by a period of not less than the period of the longer of such periods imposed.

(2) No period of a sentence of imprisonment shall on expiry thereof be extended to complete a penalty of confinement in a single cell, unless such penalty has been imposed by a court under section 79(1)(b).

PART X

EMPLOYMENT AND TRAINING OF PRISONERS

General requirement to work

81. (1) Subject to the provisions of this Act, the directives of the Commissioner and any relevant order of the court, every prisoner detained in a prison pursuant to a sentence of imprisonment shall -

- (a) as far as is practicable, be engaged in such work as will promote and nurture the training and industrial skills of such prisoner to equip him or her to manage his or her life in a productive manner after release;

- (b) perform such labour, tasks on public works, and other duties as may be assigned to him or her by a prison member; and
- (c) be required to keep his or her cell, the surroundings thereof and the furniture, clothing and utensils therein, clean.

(2) Notwithstanding the provisions of subsection (1), the medical officer may on medical grounds exempt a prisoner from work or recommend that such prisoner perform light duties.

Tasks to be performed by certain categories of prisoners

82. Where a prisoner is detained in prison -

- (a) pending the determination of criminal proceedings;
- (b) pending the determination of appeal proceedings; or
- (c) pending arrangements for his or her removal from Namibia to another country,

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

Agreements for labour of prisoners

83. (1) Subject to paragraph (a) of subsection (1) of section 81, the Commissioner may enter into a contract with any institution, person, or body of persons for the employment of the labour or services of prisoners who are under a sentence of imprisonment, upon such terms and conditions as may be agreed upon between such parties.

(2) As far as is practicable, all Ministries and Agencies set out in Schedules 2 and 3 of the Public Service Act, 1995 (Act No. 13 of 1995) shall purchase their required articles and supplies from amongst such as the Prison Service may produce or manufacture, at such prices as the Tender Board of Namibia may from time to time determine.

Act No. 17, 1998

PRISONS ACT, 1998

(3) The Minister may authorize specific services necessary or expedient in the public interest or for a charitable purpose to be rendered by prisoners, gratuitously.

Gratuities for prisoners

84. Gratuities may be paid to prisoners according to such conditions and rates as the Commissioner, in consultation with the Minister of Finance, may determine.

PART XI
EXECUTION OF SENTENCES

Admission register

85. The officer in charge shall maintain in respect of his or her prison -

- (a) an admission register, in which he or she shall enter or cause to be entered, a record of -
 - (i) the name and age of each prisoner serving a sentence in that prison;
 - (ii) the nature of the offence in respect of which such prisoner 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 shall be open for inspection by any visiting justice to that prison.

Commencement, computation and termination of sentence

86. (1) Subject to subsection (2) and (3), a sentence of imprisonment upon a conviction at common law or under any statute shall take effect from the day on which that sentence is passed, unless it is suspended under the provisions of any law or unless the offender is released on bail pending the determination of an appeal, in which case the sentence shall take effect from the day on which such offender surrenders himself or herself, or is taken into custody, to serve such sentence.

(2) Where a person sentenced to life imprisonment or who has been declared an habitual criminal is sentenced to any further term of imprisonment, such further term of imprisonment shall be served concurrently with the earlier sentence of life imprisonment or having been declared an habitual criminal, as the case may be.

(3) The date of expiry of any sentence of imprisonment being served by a prisoner who escapes from lawful custody or who is erroneously released shall, subject to the provisions of section 87(3), 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 release.

Re-arrest of prisoner released erroneously

87. (1) If the Commissioner reasonably suspects that a prisoner has been released from a prison erroneously he or she may issue a warrant for the re-arrest of such prisoner, which warrant may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977, and shall serve as authority for the detention of such prisoner in a prison for a period not exceeding 48 hours.

(2) During the period of such prisoner's detention as contemplated in subsection (1), the Commissioner shall submit all relevant documents including those submitted by the prisoner, if any, to a judge in chambers: Provided that if the period of 48 hours referred to in subsection (1) expires on a day on which no such judge is available, the said period shall be deemed to expire at four o' clock in the afternoon of the next succeeding day on which such judge is available.

(3) If the judge referred to in subsection (2) finds that such prisoner was

erroneously released, he or she may order the prisoner to serve the unexpired portion of his or her sentence either in full or partially.

Imprisonment on default of payment of fine

88. (1) Any imprisonment which is imposed by any court in default of payment of a fine shall, prior to the expiration thereof, terminate 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 shall be reduced by a 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) No payment of any sum under this section need be accepted otherwise than during ordinary office hours.

Periodic imprisonment

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

Restraint of a prisoner

90. Where the officer in charge considers it necessary -

(a) to secure or restrain a prisoner 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,

he or she may order that such prisoner be confined in a separate cell for such period, but not exceeding 30 days, as he or she may deem necessary; or

- (b) for the safe custody of a prisoner that such prisoner be confined by means of a mechanical restraint, he or she may cause that prisoner to be so restrained in the prescribed manner, for such period as he or she may deem necessary in the circumstances.

Report on long term prisoners

91. (1) The Commissioner shall annually submit to the Minister a report on every prisoner who -

- (a) is detained as a habitual criminal or is serving a sentence of life imprisonment, and who during that year has completed two years' imprisonment from the date of admission, and thereafter, at intervals of one year from such date;
- (b) is serving a sentence of imprisonment for seven years or more and who during that year has completed four years' imprisonment from the date of admission, and thereafter, at intervals of two years from such date; and
- (c) during that year has completed a period of imprisonment of seven or more years, or has attained or is believed to have attained or is over the age of sixty years.

(2) A report referred to in subsection (1) shall include -

- (a) a statement by the officer in charge of the prison where the prisoner concerned is detained, on the work and conduct of such prisoner;
- (b) a report of the institutional committee in question on the work and conduct of such prisoner; and

- (c) a statement by the medical officer on the mental and physical health of such prisoner, with particular reference to the effect of imprisonment on such health of that prisoner.

PART XII

REMISSION OF SENTENCE AND RELEASE OF PRISONERS

Remission of sentence

92. (1) Subject to subsections (2), (3) and (5), a person sentenced to a period or periods of imprisonment may, by reason of meritorious conduct and industry, during such period of imprisonment earn remission of part of such period, equivalent to one third of the total of the period in question.

(2) Subsection (1) shall not apply to a prisoner who, after the commencement of this Act -

- (a) has been declared by a competent court as an habitual criminal;
- (b) has been sentenced to life imprisonment for an offence committed after that commencement;
- (c) has been sentenced to serve a term of imprisonment for any of the following crimes or offences committed after that commencement:
 - (i) Any offence involving violence against a woman or a child;
 - (ii) treason;
 - (iii) murder;
 - (iv) rape;
 - (v) culpable homicide;
 - (vi) robbery;
 - (vii) stock theft;

- (viii) escaping from lawful custody, conspiring with another person to procure the escape of a prisoner, or assisting another prisoner to escape;
- (ix) an offence under the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971);
- (x) an offence under section 28 of the Diamond Industry Protection Proclamation, 1939 (Proclamation No. 17 of 1939) for the illicit dealing in diamonds or under section 104(1)(a) of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992) for the illicit dealing in any high value mineral;
- (xi) theft of a motor vehicle;
- (xii) housebreaking with intent to commit a crime;
- (xiii) an offence under the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975) for the unlawful hunting of specially protected game;
- (xiv) an offence under the Controlled Game Products Proclamation, 1980 (Proclamation AG. 42 of 1980) for the unlawful dealing in any controlled game product; or
- (xv) attempt to commit any of the offences referred to in this subparagraph,

but such prisoner may be granted a remission of sentence referred to in subsection (1) -

- (aa) by the Minister on the recommendation of the National Release Board, where such prisoner is serving a sentence of imprisonment of three years or more;
- (bb) by the Commissioner on the recommendation of the zonal release

board, where such prisoner is serving a sentence of imprisonment of more than six months but less than three years;

- (cc) by the zonal release board, where such prisoner is serving a sentence of imprisonment of less than six months:

Provided that remission of a sentence for a prisoner referred to in paragraph (a) or (b) shall be in the discretion of the Minister: Provided further that this subsection shall not apply to any juvenile.

(3) A prisoner who is found guilty under section 77(1) of the major prison offence of escaping from lawful custody or conspiring with another person to procure the escape of a prisoner or assisting another prisoner to escape from lawful custody shall not be eligible under this section for remission of the sentence or sentences which he or she was serving while he or she committed that major prison offence.

(4) For the purposes of computing the remission due, every person eligible for remission under this section shall on the commencement of his or her sentence be credited with the full remission period to which he or she would be entitled at the end of such period if no remission was forfeited.

(5) A person shall not earn any remission under subsection (1) in respect of the period during which he or she -

- (a) is hospitalised as a result of his or her own negligence; or
- (b) is undergoing confinement in a single cell as a penalty imposed under section 78 or 79.

(6) Notwithstanding the forfeiture of remission by a prisoner in terms of section 78 or 79, the Commissioner may on the recommendation of the officer in charge that such prisoner has since the forfeiture displayed meritorious conduct and industry, restore the whole or part of the forfeited period of remission to that prisoner.

Pardon or reprieve by President

93. (1) In the exercise of his or her powers to pardon or reprieve

offenders under Sub-article (3)(d) of Article 32 of the Namibian Constitution, the President may call upon the Minister to recommend to him or her any offender for such pardon or reprieve, and may invite the comments of the Minister of Justice thereon.

(2) The Minister shall give notice in the *Gazette* of the names of every offender pardoned or reprieved by the President under Article 32(3)(d) of the Namibian Constitution.

Release on medical grounds

94. A prisoner serving any sentence in a prison -

- (a) who is suffering from a dangerous, infectious, or contagious disease; or
- (b) whose release is expedient on the grounds of his or her physical condition or, in the case of a female prisoner, her advanced pregnancy,

may, on the recommendation of the medical officer, be released from prison by the Minister, either unconditionally or on such conditions as to parole or probation as the Minister may determine.

Parole or probation of prisoners serving imprisonment of three years and more

95. (1) Where -

- (a) a convicted prisoner who has been sentenced to a term of imprisonment of three years or more has served half of such term; and
- (b) the relevant institutional committee is satisfied that such prisoner has displayed meritorious conduct, self discipline, responsibility and industry during the period referred to in paragraph (a),

that institutional committee may submit a report in respect of such prisoner to the National Release Board, in which it recommends that such prisoner be released on parole or probation and the conditions relating to such release as it may deem necessary.

(2) The National Release Board may, after considering the report and recommendations referred to in subsection (1) submit a report to the Minister recommending the release on parole or probation of the prisoner concerned and the conditions relating to such release as the National Release Board may deem necessary.

Parole or probation of prisoners serving imprisonment of less than three years

96. (1) Subject to subsection (2), where -

- (a) a convicted prisoner who has been sentenced to a term of imprisonment of less than three years has served half of such term; and
- (b) the relevant prison management committee is satisfied that such prisoner has displayed meritorious conduct, self discipline, responsibility and industry during the period referred to in paragraph (a),

that prison management committee may submit a report in respect of such prisoner to the relevant zonal release board, in which it recommends that such prisoner be released on parole or probation and the conditions relating to such release as it may deem necessary.

(2) The zonal release board in question may, after considering the report and recommendations referred to in subsection (1), submit a report to the Commissioner recommending the release on parole or probation of the prisoner concerned and the conditions relating to such release as that zonal release board may deem necessary: Provided that in the case of a prisoner who has been sentenced to a term of imprisonment of six months or less and who has served half of such term, the zonal release board itself may authorize the release on parole or probation of the prisoner concerned upon such conditions as it may determine and specify or cause to be specified in the warrant of release in question.

Further matters pertaining to parole or probation

97. (1) After considering the report and recommendation referred to in -

- (a) section 95(2), the Minister; or

- (b) section 96(2), the Commissioner,

may authorise the release on parole or probation of the prisoner concerned upon such conditions as the Minister or Commissioner, as the case may be, may determine and specify or cause to be specified in the warrant of release in question.

- (2) (a) A release of a prisoner on probation or parole in terms of subsection (1) or the proviso to section 96(2) shall extend 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 a prisoner referred to in paragraph (a) shall be as prescribed.

- (3) (a) Where a prisoner has been released on parole or probation in terms of this Act, the Commissioner may at any time, after consultation with the National Release Board or the relevant zonal release board which recommended or authorized such release, as the case may be, cancel or amend any condition of such prisoner's parole or probation or add new conditions if it is in the interest of such prisoner's treatment, rehabilitation, or integration into the community or in the interest of the community.

- (b) Before acting in terms of paragraph (a) the Commissioner shall make the reasons for the proposed action known to the prisoner and shall afford such prisoner an opportunity to be heard in regard thereto by himself or herself or such other prison member as he or she may authorize thereto.

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

- (5) (a) Where the Commissioner is satisfied that a prisoner released on parole or probation in terms of this Act has, during the period of parole or probation, contravened or failed to observe any of the

conditions of release, he or she may issue a warrant for the arrest of that prisoner, which may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977, and which shall serve as authority for the prisoner to be detained in prison until the Commissioner has heard the prisoner and has had sufficient opportunity to hear evidence in this regard, which detention shall not exceed 48 hours.

(b) If, after he or she has ascertained all the relevant facts, the Commissioner is still satisfied that the prisoner has contravened a condition of his or her parole or probation, the Commissioner -

(i) may, in the case of a prisoner released in terms of paragraph (b) of subsection (1) of this section or the proviso to section 96(2), order that such prisoner's placement on parole or probation be withdrawn, either partially or completely, and that the prisoner be detained for a period not exceeding the unexpired portion of his or her sentence of imprisonment, calculated as from the date on which he or she contravened the conditions.

(ii) shall, in the case of a prisoner released in terms of paragraph (a) of subsection (1) of this section, recommend to the Minister that such prisoner's placement on parole or probation be withdrawn.

(6) The Minister may, after consideration of the report referred to in subsection (5)(b)(ii), order that such prisoner's placement on parole or probation be withdrawn either partially or completely, and that the prisoner be detained for a period not exceeding the unexpired portion of his or her sentence of imprisonment, calculated from the date on which he or she contravened the conditions.

(7) The Commissioner shall inform -

(a) the zonal release board which recommended or authorized the release on parole or probation of a prisoner referred to in subsection (5)(b)(i) of an order issued in terms of that subsection; and

- (b) the National Release Board of an order issued in terms of subsection (6).

(8) Notwithstanding the provisions of this section, but subject to section 98, a prisoner who after the commencement of the Act has been sentenced as contemplated in paragraph (a) or (b) of subsection (2) of section 92, or who has after the said commencement committed and has been sentenced to a term of imprisonment for any of the crimes or offences referred to in paragraph (c) of that subsection shall not be eligible for release on parole or probation under this section: Provided that this subsection shall not apply to juveniles.

Release of habitual criminals

98. (1) Notwithstanding the provisions of this Act, no prisoner who has been declared a habitual criminal under the provisions of any law shall be eligible for release on parole or probation, unless he or she has served at least 7 years of his or her sentence and the National Release Board -

- (a) is satisfied that -

- (i) there is a reasonable probability that such prisoner will abstain from crime and is likely to lead a useful, responsible and industrious life;
- (ii) such prisoner has displayed meritorious conduct during his or her term of imprisonment and no longer has a tendency to engage in crime; or
- (iii) it is desirable for any other reason to release such prisoner on parole or probation; and

- (b) submits a report to the Commissioner, in which it recommends such prisoner's release on parole or probation and the conditions relating to such release as it deems necessary.

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

(3) On consideration of the report and comments referred to in subsection (2) the Minister may authorize the release on parole or probation, as the case may be, of the prisoner in question on the date and conditions recommended by the National Release Board or on such date or other conditions as he or she may determine.

Officer in charge responsible for release of prisoners

99. (1) Subject to subsections (2) and (3), the officer in charge of every prison shall be responsible for the due release from that prison of a prisoner in his or her lawful custody, immediately upon his or her becoming entitled thereto.

(2) Where a prisoner due for release is undergoing medical treatment in a prison, he or she shall not be released from that prison unless -

- (a) the medical officer certifies that such prisoner can be released without endangering his or her health; or
- (b) the prisoner himself or herself requests in writing for his or her release.

(3) Where a prisoner becomes entitled under this Act or any other law to be released from prison otherwise than by the expiration of his or her sentence, the officer in charge shall not release such prisoner otherwise than in accordance with the terms of an order, warrant, or instruction issued in writing and signed by the person authorized to do so under such law.

Day of release of prisoner

100. A prisoner shall be released from prison 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.

Travel expenses of released prisoner

101. A prisoner, excluding foreign nationals, shall on release from prison be entitled to a travel allowance of the prescribed amount, to such place as the Commissioner may determine.

Compulsory after care order

102. (1) Where a prisoner is to be released from prison, the Commissioner -

- (a) shall in the case of a prisoner who has served a sentence of imprisonment for a period of or exceeding three years and who has been sentenced to imprisonment on not less than two previous occasions; or
- (b) may where he or she considers it expedient for the rehabilitation of that prisoner to do so,

issue an order, to be known as a compulsory after care order, in respect of such prisoner, providing for the compulsory care of that prisoner for a period not exceeding one year after release.

(2) A compulsory after care order shall be issued by the Commissioner on or before the date of release of the prisoner in respect of whom it is made, and shall be in such form as may be prescribed and subject to such terms and conditions as the Commissioner may determine on the recommendation of the relevant institutional committee.

Breach of compulsory after care order

103. (1) Where a person released under a compulsory after care order in terms of section 102 is during the tenure of that order -

- (a) convicted of an offence; or
- (b) contravenes or fails to comply with any term or condition of the order, he or she shall be guilty of an offence, and on conviction be liable to imprisonment for a period of three months or to a period equivalent to the period of remission of sentence earned by that person under section 92 immediately prior to his or her release from prison, whichever period is the longer.

(2) For the purposes of subsection (1), a certificate issued by the Commissioner stating the period of remission of sentence earned by a prisoner under section 92 immediately before his or her release from prison shall be *prima facie* evidence of its contents.

(3) A sentence of imprisonment imposed on a person under subsection (1) shall commence on the expiration of any other sentence of imprisonment which that person is liable to serve on the date on which such sentence is imposed.

(4) Where a person is convicted of an offence under subsection (1), the compulsory after care order made in respect of him or her shall cease to have effect.

(5) Notwithstanding the provisions of this section, the Commissioner may at any time make a further compulsory after care order in respect of a person convicted of an offence under subsection (1).

PART XIII

INSTITUTIONAL COMMITTEES, PRISON MANAGEMENT COMMITTEES, NATIONAL RELEASE BOARD AND ZONAL RELEASE BOARDS

Institutional committees

104. (1) The Commissioner shall appoint one or more committees, to be known as institutional committees, to perform the functions and duties entrusted to or imposed upon an institutional committee by or under this Act.

(2) An institutional committee shall comprise such number of prison members as the Commissioner may appoint, one of whom shall be designated by the Commissioner as chairperson of that committee.

(3) A member of an institutional committee shall hold office for a period of three years, but shall at the expiration of his or her period of office as member of the institutional committee be eligible for re-appointment as such a member.

(4) The Commissioner may, after affording such member an opportunity to be heard, remove a member of an institutional committee from his or her office, if he or she is of the opinion that there are sufficient reasons for doing so.

(5) The Commissioner may allow a member of an institutional committee to vacate at his or her request his or her office as such member -

(a) on account of continued ill-health; or

(b) for any other reason which the Commissioner may deem sufficient.

Functions of institutional committee

105. An institutional committee shall meet at such times as its chairperson, the Commissioner, or National Release Board may request, but not less than once every six months, and -

(a) submit reports in the prescribed manner to the Commissioner or National Release Board, as the case may be, on the conduct, training, aptitude, industry and physical and mental health, and the possibility of relapse into crime of every prisoner -

(i) who is serving a sentence of imprisonment; or

(ii) in respect of whom such report is requested by the Commissioner or National Release Board;

(b) make recommendations as to the training and treatment of a prisoner referred to in paragraph (a);

(c) make recommendations to the Commissioner as to the conditions upon which a prisoner may be released under a compulsory after care order;

(d) prepare reports referred to in section 91(2)(b); and

(e) perform such other duties and functions as the Commissioner may from time to time assign to such institutional committee.

Prison management committee

106. (1) The officer in charge shall appoint a committee, to be known as a prison management committee, to perform the functions and duties entrusted to or imposed upon a prison management committee by or under this Act.

(2) The prison management committee shall comprise such number of prison members as the officer in charge may appoint, and the officer in charge shall be the chairperson of that committee.

(3) A member of a prison management committee other than the officer in charge, shall hold office for a period of three years, but shall at the expiration of his or her period of office as member of the prison management committee be eligible for re-appointment as such member.

(4) The officer in charge may, after affording such member an opportunity to be heard, remove a member of the prison management committee from his or her office, if he or she is of the opinion that there are sufficient reasons for doing so.

(5) The officer in charge may allow a member of the prison management committee to vacate at his or her request his or her office as such member -

(a) on account of continued ill-health; or

(b) for any other reason which the officer in charge may deem sufficient.

Functions of prison management committee

107. A prison management committee shall meet at such times as the officer in charge or zonal release board may request, but not less than once every month, and -

(a) submit reports in the prescribed manner to the officer in charge or zonal release board, as the case may be, on the conduct, training, aptitude, industry, physical and mental health, and the possibility of relapse into crime of every prisoner who is serving a sentence of imprisonment of less than three years;

- (b) receive from outside of the prison such food, unfermented drink, bedding, clothing, literature and other necessities of life as may be permitted under strict examination; and
- (c) receive letters, subject to censorship by the officer in charge or other prison member authorized thereto by the officer in charge.

(2) The Commissioner may grant other privileges or indulgences as he or she may deem fit to any prisoner, and may, after having given such prisoner an opportunity to be heard, withdraw or amend any such privilege or indulgence.

(3) To the extent that the provisions of paragraph (c) of subsection (1) authorise interference with the privacy of a person's correspondence in conflict with Article 13 of the Namibian Constitution, such interference shall be authorised in terms of that Article only on the grounds of, and to the extent necessary for, the prevention of disorder or crime or the protection of the rights and freedoms of others.

Letters and documents written by or on behalf of prisoner

67. (1) Subject to subsection (2), every letter or document written in a prison by or on behalf of a prisoner shall, before being dispatched from prison, 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 prison member censoring such letter or document shall endorse on such letter or document -

- (a) the name of such prison;
- (b) a statement authorising the dispatch of the letter or document; and
- (c) his or her signature.

(2) The provisions of subsection (1) shall not apply to a letter or document addressed to -

- (a) the Ombudsman under section 3(3) of the Ombudsman Act, 1990 (Act No. 7 of 1990); or

- (b) the legal representative of such prisoner.

(3) To the extent that the provisions of subsection (1) authorize interference with the privacy of a person's correspondence in conflict with Article 13 of the Namibian Constitution, such interference shall be authorized in terms of that Article only on the grounds of, and to the extent necessary for, the prevention of disorder or crime or the protection of the rights and freedoms of others.

PART VIII

PENALTIES FOR CERTAIN OFFENCES

Possession of prohibited article

68. (1) Subject to subsection (2), any person other than a prisoner who -

- (a) has in his or her possession or under his or her control a prohibited article, either on his or her person or in any other place within the premises of the prison; or
- (b) removes from or takes into the premises of the prison a prohibited article,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

(2) A person shall not be guilty of an offence under subsection (1) if such person -

- (a) is a prison member or any other person employed in or about such prison and has come into possession of such article in the course of his or her functions or employment in such prison; or
- (b) has written authorization of the officer in charge concerned to retain that article or to take it into or remove it from the prison.

Unlawful communication with prisoner by persons other than prison members or persons employed in or about prison

69. (1) Any person, other than a prison member or any other person employed in or about a prison, who without the prior authorization of the Commissioner or the officer in charge -

- (a) communicates verbally or otherwise with a prisoner; or
- (b) conveys, dispatches, delivers, or transmits from prison a letter or document on behalf of a prisoner,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.

(2) To the extent that subsection (1) restricts a person's freedom of speech in conflict of Article 21 of the Namibian Constitution, the authorization referred to in that subsection shall not be withheld except on the grounds of, and to the extent necessary for, the maintenance of national security, public order or the prevention of incitement to commit an offence.

Unauthorized entrance into, and loitering near, prison

70. Any person who -

- (a) without the prior permission of the officer in charge or other prison member authorized thereto by the officer in charge, enters upon the premises of a prison;
- (b) is found loitering within one hundred metres of the perimeters of the premises of a prison or of any other place where a prisoner or prisoners may be carrying out prison labour and who fails to depart therefrom upon being ordered to do so by a prison member or member of the police;

- (c) wilfully rides or drives any vehicle or leads any animal through a group of prisoners inside or outside of a prison; or
- (d) in any manner wilfully interferes with the activities of any prisoner or prisoners,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 2 000 or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Unauthorized publications

71. Subject to subsection (2), any person who -

- (a) without the written authorization of the Commissioner -
 - (i) takes a photograph, film, or makes a video recording, drawing or sketch of a prison or part thereof;
 - (ii) publishes or causes to be published in any manner, a photograph, film, video recording, drawing or sketch of a prison or part thereof;
 - (iii) takes a photograph, film, or makes a video recording, drawing or sketch of a prisoner or group of prisoners, whether inside or outside of a prison;
 - (iv) publishes or causes to be published in any manner a photograph, film, video recording, drawing or sketch of a prisoner or prisoners, whether inside or outside of a prison;
- (b) publishes or causes to be published any false information concerning the behaviour or experience in prison of any prisoner or concerning the administration of any prison, knowing the same to be false or without taking reasonable steps to verify such information; or
- (c) offers or receives any gift, remuneration, or other benefit to or from

another person in exchange for the disclosure of information of a prison, prisoner or group of prisoners for the purposes of perpetrating a crime,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 8 000 or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

(2) The Minister may by notice in the *Gazette* exclude from the operation of paragraph (a)(i) of subsection (1) any prison or part thereof as may be specified in such notice.

Assisting prisoner to escape

72. Any person who -

- (a) aids any prisoner in escaping or attempting to escape from any prison, hospital, mental hospital or any other place in which such prisoner is held in custody or while in the course of removal in custody from one place to another; or
- (b) for the purpose of facilitating the escape of any prisoner, supplies or agrees or attempts to supply or aids, incites or encourages any other person in supplying a prisoner with any mask, dress, disguise or any other article, instrument, matter, or thing; or
- (c) conveys or causes to be conveyed into or out of any prison, hospital, mental hospital or any other place in which such prisoner is held in custody or any place where prisoners may come to work, any letter or token encouraging or inciting any prisoner to escape or to contravene a provision of this Act; or
- (d) harbours or conceals or assists in harbouring or concealing an escaped prisoner,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 30 000 or to imprisonment for a period not exceeding seven years, or to both such fine and imprisonment.

Unlawful wearing of uniform, insignia, or decoration

73. Any person who -

- (a) without the authorization of the Commissioner, wears or uses a uniform, insignia, or decoration reserved for use by prison members, or any uniform, insignia, or decoration so nearly resembling that which is reserved for use by prison members; or
- (b) falsely represents himself or herself by word or conduct to be a prison member or a person authorized to wear a uniform, insignia, or decoration reserved for prison members,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$ 4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.

PART IX
OFFENCES BY PRISONERS

Minor prison offences

74. Any prisoner who -

- (a) disobeys an order of any prison member, or any rule or standing order made or issued by the Commissioner under section 4(3) and applicable to such prisoner;
- (b) treats with disrespect any prison member or person authorized to visit the prison;
- (c) is idle, careless, or negligent at work or without reasonable cause refuses to work;
- (d) uses abusive, threatening, insolent, or other improper language towards any person;

- (e) displays indecent conduct towards any person;
- (f) subject to section 75(1)(c), commits a common assault on any person;
- (g) communicates with another prisoner or person in a manner contrary to the regulations or any rule or standing order made or issued by the Commissioner under section 4(3);
- (h) without the permission of a prison member, leaves his or her cell, ward, place of work, or other appointed place;
- (i) receives or has in his or her possession a prohibited article;
- (j) damages, disfigures, defaces, or in any other way interferes with any part of the prison or any fitting thereof or any property belonging to, or under the control of, the Prison Service;
- (k) malingers or makes repeated and groundless complaints;
- (l) quarrels or fights with another prisoner;
- (m) makes a false accusation against a prison member or another prisoner;
- (n) does an act likely to create unnecessary alarm among prison members or prisoners;
- (o) refuses to wear clothing issued to him or her by the prison authorities or exchanges, loses, discards, damages, or alters, without the permission of a prison member, such clothing;
- (p) in any way disturbs the peace or offends against the good order and discipline of prisoners;
- (q) attempts to commit an offence referred to in paragraph (e), (f), (g), (h), (i), (j), (m) or (n);
- (r) aids or abets the commission of an offence referred to in paragraph (a), (b), (e), (f), (g), (h), (i), (j), (l), (m) or (n),

shall be guilty of a minor prison offence, and shall on conviction be liable to any of the penalties set out in section 78.

Major prison offences

- 75.** (1) A prisoner who -
- (a) mutinies or incites any other prisoner to mutiny;
 - (b) assaults another person with the intent to do such person grievous bodily harm;
 - (c) assaults a prison member;
 - (d) commits a minor prison offence after having twice previously been found guilty of the same minor prison offence;
 - (e) escapes from lawful custody or conspires with another person to procure the escape of a prisoner or assists another prisoner to escape from lawful custody;
 - (f) has in his or her possession an instrument or other thing intended to be used to procure his or her escape or that of another prisoner from lawful custody;
 - (g) refuses when ordered to do so by a prison member, to assist such officer in preventing an escape, attempted escape or attack upon that officer or another person, by a prisoner,
 - (h) attempts to commit an offence referred to in paragraph (a), (b), (c), (e) or (f);
 - (i) aids or abets the commission of an offence referred to in paragraph (a), (b), (c), (e) or (f),

shall be guilty of a major prison offence, and shall on conviction be liable to any of the penalties set out in section 78 or 79, as the case may be.

(2) For the purposes of this section “mutiny” shall have the meaning as assigned by section 33(2).

Isolation of prisoner

76. An officer in charge may, on good grounds for doing so, order a prisoner charged with a minor or major prison offence to be kept apart from other prisoners pending the hearing and determination of the charge.

Inquiry into, or trial of, prison offences

77. (1) A charge against a prisoner for -

- (a) a minor or major prison offence may be heard and determined by inquiry within a prison by the Commissioner or, at the request of the Commissioner, by the officer in charge or a senior prison member authorized thereto by the Commissioner; or
- (b) a major prison offence may be heard and determined by a magistrate’s court where, owing to the gravity of the offence or other sufficient cause, the Commissioner decides to transfer the matter for hearing to such court.

(2) Where a charge for a prison offence is heard and determined by inquiry under paragraph (a) of subsection (1), the prisoner charged shall in writing be informed of the nature and particulars of the charge against him or her, and shall be given an opportunity of hearing the evidence against him or her and of being heard in his or her defence.

(3) A prisoner receiving a notice under subsection (2) may, before the date of the inquiry as set out in that notice, submit a written reply to the Commissioner, the officer in charge or senior prison member referred to in subsection (1), as the case may be, admitting the commission of the prison offence in question, and thereafter the Commissioner, the officer in charge or such senior prison member may, after having heard evidence in mitigation, impose one or more of the penalties referred to in paragraph (a) or (b) of subsection (1) of section 78 upon that prisoner without holding an inquiry in terms of subsection (1) of this section.

(4) Where an inquiry into a major prison offence is held under paragraph (a) of subsection (1) by the officer in charge or a senior prison member authorized by the Commissioner, the Commissioner may limit the power of the officer in charge or that member to impose such of the penalties set out in section 78(1)(b) as the Commissioner may deem fit.

(5) The provisions of sections 42(4), (6) and (7) shall *mutatis mutandis* apply to an inquiry under paragraph (a) of subsection (1) of this section, and such inquiry shall be conducted in accordance with the prescribed rules of procedure and evidence.

Penalties for minor and major prison offences to be imposed at inquiry

78. (1) Subject to subsection (2), where at the conclusion of an inquiry under section 77(1)(a) the Commissioner, officer in charge or senior prison member conducting the inquiry, as the case may be, finds the prisoner guilty of -

- (a) a minor prison offence, he or she may, after having heard evidence in mitigation, impose any one or more of the following penalties upon such prisoner, namely -
 - (i) confinement in a single cell for a period not exceeding fourteen days;
 - (ii) forfeiture of remission of sentence referred to in section 92, but not exceeding thirty days of the total remission earned;
 - (iii) reduction in grouping until such time as the prisoner is considered fit for restoration to his or her original grouping by virtue of good conduct, skill and effort at his or her trade or work, or postponement of promotion in grouping, or forfeiture of prison privileges;
 - (iv) removal from any earnings scheme for a period not exceeding three months, or forfeiture of gratuities referred to in section 84, but not exceeding one half of the amount earned: Provided that removal from the highest earnings scheme shall be subject

to the approval of the Commissioner;

(b) a major prison offence, he or she may, after having heard evidence in mitigation, impose any one or more of the following penalties upon such prisoner, namely -

- (i) confinement in a single cell for a period not exceeding twenty-five days;
- (ii) subject to section 92(3), forfeiture of remission of sentence referred to in that section, but not exceeding sixty days of the total remission earned;
- (iii) reduction in grouping until such time as the prisoner is considered fit for restoration to his or her original grouping by virtue of good conduct, skill and effort at his or her trade or work, or postponement of promotion in grouping, or forfeiture of prison privileges;
- (iv) removal from any earnings scheme for a period not exceeding six months, or forfeiture of gratuities referred to in section 84, but not exceeding three quarters of the amount earned: Provided that removal from the highest earnings scheme shall be subject to the approval of the Commissioner.

(2) Notwithstanding subsection (1), a prisoner who is serving an earlier sentence of periodic imprisonment and who is found guilty at an inquiry in terms of section 77(1)(a) of a minor or major prison offence, shall be liable to a penalty of further periodic imprisonment of not less than twelve hours and not more than thirty-six hours, which sentence shall commence on the date of expiry of that earlier sentence.

(3) For the purposes of this section "grouping" or "earnings scheme" means a grouping or earnings scheme as may be prescribed.

Penalties for major prison offences to be imposed at trial

79. (1) Where a trial for a prison offence is conducted under section

77(1)(b) and the prisoner is found guilty of a major prison offence, he or she shall be liable to -

- (a) imprisonment for a period not exceeding two years;
- (b) in addition or alternatively to any period of imprisonment imposed under paragraph (a), any one or more of the penalties set out in section 78(1)(b).

(2) A sentence of imprisonment imposed under subsection (1) shall commence on the date of expiry of any other sentence of imprisonment which the prisoner concerned is liable to serve on the date of commission of the prison offence in question.

Provisions relating to prisoner's confinement in single cell

80. (1) Subject to subsection (2), where more than one penalty of a period of confinement in a single cell have been imposed on a prisoner for a minor or major prison offence, the serving of such periods of confinement shall be separated by a period of not less than the period of the longer of such periods imposed.

(2) No period of a sentence of imprisonment shall on expiry thereof be extended to complete a penalty of confinement in a single cell, unless such penalty has been imposed by a court under section 79(1)(b).

PART X

EMPLOYMENT AND TRAINING OF PRISONERS

General requirement to work

81. (1) Subject to the provisions of this Act, the directives of the Commissioner and any relevant order of the court, every prisoner detained in a prison pursuant to a sentence of imprisonment shall -

- (a) as far as is practicable, be engaged in such work as will promote and nurture the training and industrial skills of such prisoner to equip him or her to manage his or her life in a productive manner after release;

- (b) perform such labour, tasks on public works, and other duties as may be assigned to him or her by a prison member; and
- (c) be required to keep his or her cell, the surroundings thereof and the furniture, clothing and utensils therein, clean.

(2) Notwithstanding the provisions of subsection (1), the medical officer may on medical grounds exempt a prisoner from work or recommend that such prisoner perform light duties.

Tasks to be performed by certain categories of prisoners

82. Where a prisoner is detained in prison -

- (a) pending the determination of criminal proceedings;
- (b) pending the determination of appeal proceedings; or
- (c) pending arrangements for his or her removal from Namibia to another country,

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

Agreements for labour of prisoners

83. (1) Subject to paragraph (a) of subsection (1) of section 81, the Commissioner may enter into a contract with any institution, person, or body of persons for the employment of the labour or services of prisoners who are under a sentence of imprisonment, upon such terms and conditions as may be agreed upon between such parties.

(2) As far as is practicable, all Ministries and Agencies set out in Schedules 2 and 3 of the Public Service Act, 1995 (Act No. 13 of 1995) shall purchase their required articles and supplies from amongst such as the Prison Service may produce or manufacture, at such prices as the Tender Board of Namibia may from time to time determine.

(3) The Minister may authorize specific services necessary or expedient in the public interest or for a charitable purpose to be rendered by prisoners, gratuitously.

Gratuities for prisoners

84. Gratuities may be paid to prisoners according to such conditions and rates as the Commissioner, in consultation with the Minister of Finance, may determine.

PART XI EXECUTION OF SENTENCES

Admission register

85. The officer in charge shall maintain in respect of his or her prison -

- (a) an admission register, in which he or she shall enter or cause to be entered, a record of -
 - (i) the name and age of each prisoner serving a sentence in that prison;
 - (ii) the nature of the offence in respect of which such prisoner 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 shall be open for inspection by any visiting justice to that prison.

Commencement, computation and termination of sentence

86. (1) Subject to subsection (2) and (3), a sentence of imprisonment upon a conviction at common law or under any statute shall take effect from the day on which that sentence is passed, unless it is suspended under the provisions of any law or unless the offender is released on bail pending the determination of an appeal, in which case the sentence shall take effect from the day on which such offender surrenders himself or herself, or is taken into custody, to serve such sentence.

(2) Where a person sentenced to life imprisonment or who has been declared an habitual criminal is sentenced to any further term of imprisonment, such further term of imprisonment shall be served concurrently with the earlier sentence of life imprisonment or having been declared an habitual criminal, as the case may be.

(3) The date of expiry of any sentence of imprisonment being served by a prisoner who escapes from lawful custody or who is erroneously released shall, subject to the provisions of section 87(3), 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 release.

Re-arrest of prisoner released erroneously

87. (1) If the Commissioner reasonably suspects that a prisoner has been released from a prison erroneously he or she may issue a warrant for the re-arrest of such prisoner, which warrant may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977, and shall serve as authority for the detention of such prisoner in a prison for a period not exceeding 48 hours.

(2) During the period of such prisoner's detention as contemplated in subsection (1), the Commissioner shall submit all relevant documents including those submitted by the prisoner, if any, to a judge in chambers: Provided that if the period of 48 hours referred to in subsection (1) expires on a day on which no such judge is available, the said period shall be deemed to expire at four o' clock in the afternoon of the next succeeding day on which such judge is available.

(3) If the judge referred to in subsection (2) finds that such prisoner was

erroneously released, he or she may order the prisoner to serve the unexpired portion of his or her sentence either in full or partially.

Imprisonment on default of payment of fine

88. (1) Any imprisonment which is imposed by any court in default of payment of a fine shall, prior to the expiration thereof, terminate 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 shall be reduced by a 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) No payment of any sum under this section need be accepted otherwise than during ordinary office hours.

Periodic imprisonment

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

Restraint of a prisoner

90. Where the officer in charge considers it necessary -

(a) to secure or restrain a prisoner 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,

he or she may order that such prisoner be confined in a separate cell for such period, but not exceeding 30 days, as he or she may deem necessary; or

- (b) for the safe custody of a prisoner that such prisoner be confined by means of a mechanical restraint, he or she may cause that prisoner to be so restrained in the prescribed manner, for such period as he or she may deem necessary in the circumstances.

Report on long term prisoners

91. (1) The Commissioner shall annually submit to the Minister a report on every prisoner who -

- (a) is detained as a habitual criminal or is serving a sentence of life imprisonment, and who during that year has completed two years' imprisonment from the date of admission, and thereafter, at intervals of one year from such date;
- (b) is serving a sentence of imprisonment for seven years or more and who during that year has completed four years' imprisonment from the date of admission, and thereafter, at intervals of two years from such date; and
- (c) during that year has completed a period of imprisonment of seven or more years, or has attained or is believed to have attained or is over the age of sixty years.

(2) A report referred to in subsection (1) shall include -

- (a) a statement by the officer in charge of the prison where the prisoner concerned is detained, on the work and conduct of such prisoner;
- (b) a report of the institutional committee in question on the work and conduct of such prisoner; and

- (c) a statement by the medical officer on the mental and physical health of such prisoner, with particular reference to the effect of imprisonment on such health of that prisoner.

PART XII

REMISSION OF SENTENCE AND RELEASE OF PRISONERS

Remission of sentence

92. (1) Subject to subsections (2), (3) and (5), a person sentenced to a period or periods of imprisonment may, by reason of meritorious conduct and industry, during such period of imprisonment earn remission of part of such period, equivalent to one third of the total of the period in question.

(2) Subsection (1) shall not apply to a prisoner who, after the commencement of this Act -

- (a) has been declared by a competent court as an habitual criminal;
- (b) has been sentenced to life imprisonment for an offence committed after that commencement;
- (c) has been sentenced to serve a term of imprisonment for any of the following crimes or offences committed after that commencement:
 - (i) Any offence involving violence against a woman or a child;
 - (ii) treason;
 - (iii) murder;
 - (iv) rape;
 - (v) culpable homicide;
 - (vi) robbery;
 - (vii) stock theft;

- (viii) escaping from lawful custody, conspiring with another person to procure the escape of a prisoner, or assisting another prisoner to escape;
- (ix) an offence under the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971);
- (x) an offence under section 28 of the Diamond Industry Protection Proclamation, 1939 (Proclamation No. 17 of 1939) for the illicit dealing in diamonds or under section 104(1)(a) of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992) for the illicit dealing in any high value mineral;
- (xi) theft of a motor vehicle;
- (xii) housebreaking with intent to commit a crime;
- (xiii) an offence under the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975) for the unlawful hunting of specially protected game;
- (xiv) an offence under the Controlled Game Products Proclamation, 1980 (Proclamation AG. 42 of 1980) for the unlawful dealing in any controlled game product; or
- (xv) attempt to commit any of the offences referred to in this subparagraph,

but such prisoner may be granted a remission of sentence referred to in subsection (1) -

- (aa) by the Minister on the recommendation of the National Release Board, where such prisoner is serving a sentence of imprisonment of three years or more;
- (bb) by the Commissioner on the recommendation of the zonal release

board, where such prisoner is serving a sentence of imprisonment of more than six months but less than three years;

- (cc) by the zonal release board, where such prisoner is serving a sentence of imprisonment of less than six months:

Provided that remission of a sentence for a prisoner referred to in paragraph (a) or (b) shall be in the discretion of the Minister: Provided further that this subsection shall not apply to any juvenile.

(3) A prisoner who is found guilty under section 77(1) of the major prison offence of escaping from lawful custody or conspiring with another person to procure the escape of a prisoner or assisting another prisoner to escape from lawful custody shall not be eligible under this section for remission of the sentence or sentences which he or she was serving while he or she committed that major prison offence.

(4) For the purposes of computing the remission due, every person eligible for remission under this section shall on the commencement of his or her sentence be credited with the full remission period to which he or she would be entitled at the end of such period if no remission was forfeited.

(5) A person shall not earn any remission under subsection (1) in respect of the period during which he or she -

- (a) is hospitalised as a result of his or her own negligence; or
- (b) is undergoing confinement in a single cell as a penalty imposed under section 78 or 79.

(6) Notwithstanding the forfeiture of remission by a prisoner in terms of section 78 or 79, the Commissioner may on the recommendation of the officer in charge that such prisoner has since the forfeiture displayed meritorious conduct and industry, restore the whole or part of the forfeited period of remission to that prisoner.

Pardon or reprieve by President

93. (1) In the exercise of his or her powers to pardon or reprieve

offenders under Sub-article (3)(d) of Article 32 of the Namibian Constitution, the President may call upon the Minister to recommend to him or her any offender for such pardon or reprieve, and may invite the comments of the Minister of Justice thereon.

(2) The Minister shall give notice in the *Gazette* of the names of every offender pardoned or reprieved by the President under Article 32(3)(d) of the Namibian Constitution.

Release on medical grounds

94. A prisoner serving any sentence in a prison -

- (a) who is suffering from a dangerous, infectious, or contagious disease; or
- (b) whose release is expedient on the grounds of his or her physical condition or, in the case of a female prisoner, her advanced pregnancy,

may, on the recommendation of the medical officer, be released from prison by the Minister, either unconditionally or on such conditions as to parole or probation as the Minister may determine.

Parole or probation of prisoners serving imprisonment of three years and more

95. (1) Where -

- (a) a convicted prisoner who has been sentenced to a term of imprisonment of three years or more has served half of such term; and
- (b) the relevant institutional committee is satisfied that such prisoner has displayed meritorious conduct, self discipline, responsibility and industry during the period referred to in paragraph (a),

that institutional committee may submit a report in respect of such prisoner to the National Release Board, in which it recommends that such prisoner be released on parole or probation and the conditions relating to such release as it may deem necessary.

(2) The National Release Board may, after considering the report and recommendations referred to in subsection (1) submit a report to the Minister recommending the release on parole or probation of the prisoner concerned and the conditions relating to such release as the National Release Board may deem necessary.

Parole or probation of prisoners serving imprisonment of less than three years

96. (1) Subject to subsection (2), where -

- (a) a convicted prisoner who has been sentenced to a term of imprisonment of less than three years has served half of such term; and
- (b) the relevant prison management committee is satisfied that such prisoner has displayed meritorious conduct, self discipline, responsibility and industry during the period referred to in paragraph (a),

that prison management committee may submit a report in respect of such prisoner to the relevant zonal release board, in which it recommends that such prisoner be released on parole or probation and the conditions relating to such release as it may deem necessary.

(2) The zonal release board in question may, after considering the report and recommendations referred to in subsection (1), submit a report to the Commissioner recommending the release on parole or probation of the prisoner concerned and the conditions relating to such release as that zonal release board may deem necessary: Provided that in the case of a prisoner who has been sentenced to a term of imprisonment of six months or less and who has served half of such term, the zonal release board itself may authorize the release on parole or probation of the prisoner concerned upon such conditions as it may determine and specify or cause to be specified in the warrant of release in question.

Further matters pertaining to parole or probation

97. (1) After considering the report and recommendation referred to in -

- (a) section 95(2), the Minister; or

- (b) section 96(2), the Commissioner,

may authorise the release on parole or probation of the prisoner concerned upon such conditions as the Minister or Commissioner, as the case may be, may determine and specify or cause to be specified in the warrant of release in question.

- (2) (a) A release of a prisoner on probation or parole in terms of subsection (1) or the proviso to section 96(2) shall extend 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 a prisoner referred to in paragraph (a) shall be as prescribed.

- (3) (a) Where a prisoner has been released on parole or probation in terms of this Act, the Commissioner may at any time, after consultation with the National Release Board or the relevant zonal release board which recommended or authorized such release, as the case may be, cancel or amend any condition of such prisoner's parole or probation or add new conditions if it is in the interest of such prisoner's treatment, rehabilitation, or integration into the community or in the interest of the community.

- (b) Before acting in terms of paragraph (a) the Commissioner shall make the reasons for the proposed action known to the prisoner and shall afford such prisoner an opportunity to be heard in regard thereto by himself or herself or such other prison member as he or she may authorize thereto.

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

- (5) (a) Where the Commissioner is satisfied that a prisoner released on parole or probation in terms of this Act has, during the period of parole or probation, contravened or failed to observe any of the

conditions of release, he or she may issue a warrant for the arrest of that prisoner, which may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977, and which shall serve as authority for the prisoner to be detained in prison until the Commissioner has heard the prisoner and has had sufficient opportunity to hear evidence in this regard, which detention shall not exceed 48 hours.

(b) If, after he or she has ascertained all the relevant facts, the Commissioner is still satisfied that the prisoner has contravened a condition of his or her parole or probation, the Commissioner -

(i) may, in the case of a prisoner released in terms of paragraph (b) of subsection (1) of this section or the proviso to section 96(2), order that such prisoner's placement on parole or probation be withdrawn, either partially or completely, and that the prisoner be detained for a period not exceeding the unexpired portion of his or her sentence of imprisonment, calculated as from the date on which he or she contravened the conditions.

(ii) shall, in the case of a prisoner released in terms of paragraph (a) of subsection (1) of this section, recommend to the Minister that such prisoner's placement on parole or probation be withdrawn.

(6) The Minister may, after consideration of the report referred to in subsection (5)(b)(ii), order that such prisoner's placement on parole or probation be withdrawn either partially or completely, and that the prisoner be detained for a period not exceeding the unexpired portion of his or her sentence of imprisonment, calculated from the date on which he or she contravened the conditions.

(7) The Commissioner shall inform -

(a) the zonal release board which recommended or authorized the release on parole or probation of a prisoner referred to in subsection (5)(b)(i) of an order issued in terms of that subsection; and

- (b) the National Release Board of an order issued in terms of subsection (6).

(8) Notwithstanding the provisions of this section, but subject to section 98, a prisoner who after the commencement of the Act has been sentenced as contemplated in paragraph (a) or (b) of subsection (2) of section 92, or who has after the said commencement committed and has been sentenced to a term of imprisonment for any of the crimes or offences referred to in paragraph (c) of that subsection shall not be eligible for release on parole or probation under this section: Provided that this subsection shall not apply to juveniles.

Release of habitual criminals

98. (1) Notwithstanding the provisions of this Act, no prisoner who has been declared a habitual criminal under the provisions of any law shall be eligible for release on parole or probation, unless he or she has served at least 7 years of his or her sentence and the National Release Board -

- (a) is satisfied that -

- (i) there is a reasonable probability that such prisoner will abstain from crime and is likely to lead a useful, responsible and industrious life;
- (ii) such prisoner has displayed meritorious conduct during his or her term of imprisonment and no longer has a tendency to engage in crime; or
- (iii) it is desirable for any other reason to release such prisoner on parole or probation; and

- (b) submits a report to the Commissioner, in which it recommends such prisoner's release on parole or probation and the conditions relating to such release as it deems necessary.

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

(3) On consideration of the report and comments referred to in subsection (2) the Minister may authorize the release on parole or probation, as the case may be, of the prisoner in question on the date and conditions recommended by the National Release Board or on such date or other conditions as he or she may determine.

Officer in charge responsible for release of prisoners

99. (1) Subject to subsections (2) and (3), the officer in charge of every prison shall be responsible for the due release from that prison of a prisoner in his or her lawful custody, immediately upon his or her becoming entitled thereto.

(2) Where a prisoner due for release is undergoing medical treatment in a prison, he or she shall not be released from that prison unless -

- (a) the medical officer certifies that such prisoner can be released without endangering his or her health; or
- (b) the prisoner himself or herself requests in writing for his or her release.

(3) Where a prisoner becomes entitled under this Act or any other law to be released from prison otherwise than by the expiration of his or her sentence, the officer in charge shall not release such prisoner otherwise than in accordance with the terms of an order, warrant, or instruction issued in writing and signed by the person authorized to do so under such law.

Day of release of prisoner

100. A prisoner shall be released from prison 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.

Travel expenses of released prisoner

101. A prisoner, excluding foreign nationals, shall on release from prison be entitled to a travel allowance of the prescribed amount, to such place as the Commissioner may determine.

Compulsory after care order

102. (1) Where a prisoner is to be released from prison, the Commissioner -

- (a) shall in the case of a prisoner who has served a sentence of imprisonment for a period of or exceeding three years and who has been sentenced to imprisonment on not less than two previous occasions; or
- (b) may where he or she considers it expedient for the rehabilitation of that prisoner to do so,

issue an order, to be known as a compulsory after care order, in respect of such prisoner, providing for the compulsory care of that prisoner for a period not exceeding one year after release.

(2) A compulsory after care order shall be issued by the Commissioner on or before the date of release of the prisoner in respect of whom it is made, and shall be in such form as may be prescribed and subject to such terms and conditions as the Commissioner may determine on the recommendation of the relevant institutional committee.

Breach of compulsory after care order

103. (1) Where a person released under a compulsory after care order in terms of section 102 is during the tenure of that order -

- (a) convicted of an offence; or
- (b) contravenes or fails to comply with any term or condition of the order, he or she shall be guilty of an offence, and on conviction be liable to imprisonment for a period of three months or to a period equivalent to the period of remission of sentence earned by that person under section 92 immediately prior to his or her release from prison, whichever period is the longer.

(2) For the purposes of subsection (1), a certificate issued by the Commissioner stating the period of remission of sentence earned by a prisoner under section 92 immediately before his or her release from prison shall be *prima facie* evidence of its contents.

(3) A sentence of imprisonment imposed on a person under subsection (1) shall commence on the expiration of any other sentence of imprisonment which that person is liable to serve on the date on which such sentence is imposed.

(4) Where a person is convicted of an offence under subsection (1), the compulsory after care order made in respect of him or her shall cease to have effect.

(5) Notwithstanding the provisions of this section, the Commissioner may at any time make a further compulsory after care order in respect of a person convicted of an offence under subsection (1).

PART XIII

INSTITUTIONAL COMMITTEES, PRISON MANAGEMENT COMMITTEES, NATIONAL RELEASE BOARD AND ZONAL RELEASE BOARDS

Institutional committees

104. (1) The Commissioner shall appoint one or more committees, to be known as institutional committees, to perform the functions and duties entrusted to or imposed upon an institutional committee by or under this Act.

(2) An institutional committee shall comprise such number of prison members as the Commissioner may appoint, one of whom shall be designated by the Commissioner as chairperson of that committee.

(3) A member of an institutional committee shall hold office for a period of three years, but shall at the expiration of his or her period of office as member of the institutional committee be eligible for re-appointment as such a member.

(4) The Commissioner may, after affording such member an opportunity to be heard, remove a member of an institutional committee from his or her office, if he or she is of the opinion that there are sufficient reasons for doing so.

(5) The Commissioner may allow a member of an institutional committee to vacate at his or her request his or her office as such member -

(a) on account of continued ill-health; or

(b) for any other reason which the Commissioner may deem sufficient.

Functions of institutional committee

105. An institutional committee shall meet at such times as its chairperson, the Commissioner, or National Release Board may request, but not less than once every six months, and -

(a) submit reports in the prescribed manner to the Commissioner or National Release Board, as the case may be, on the conduct, training, aptitude, industry and physical and mental health, and the possibility of relapse into crime of every prisoner -

(i) who is serving a sentence of imprisonment; or

(ii) in respect of whom such report is requested by the Commissioner or National Release Board;

(b) make recommendations as to the training and treatment of a prisoner referred to in paragraph (a);

(c) make recommendations to the Commissioner as to the conditions upon which a prisoner may be released under a compulsory after care order;

(d) prepare reports referred to in section 91(2)(b); and

(e) perform such other duties and functions as the Commissioner may from time to time assign to such institutional committee.

Prison management committee

106. (1) The officer in charge shall appoint a committee, to be known as a prison management committee, to perform the functions and duties entrusted to or imposed upon a prison management committee by or under this Act.

(2) The prison management committee shall comprise such number of prison members as the officer in charge may appoint, and the officer in charge shall be the chairperson of that committee.

(3) A member of a prison management committee other than the officer in charge, shall hold office for a period of three years, but shall at the expiration of his or her period of office as member of the prison management committee be eligible for re-appointment as such member.

(4) The officer in charge may, after affording such member an opportunity to be heard, remove a member of the prison management committee from his or her office, if he or she is of the opinion that there are sufficient reasons for doing so.

(5) The officer in charge may allow a member of the prison management committee to vacate at his or her request his or her office as such member -

(a) on account of continued ill-health; or

(b) for any other reason which the officer in charge may deem sufficient.

Functions of prison management committee

107. A prison management committee shall meet at such times as the officer in charge or zonal release board may request, but not less than once every month, and -

(a) submit reports in the prescribed manner to the officer in charge or zonal release board, as the case may be, on the conduct, training, aptitude, industry, physical and mental health, and the possibility of relapse into crime of every prisoner who is serving a sentence of imprisonment of less than three years;

- (b) make recommendations as to the training and treatment of a prisoner referred to in paragraph (a); and
- (c) perform such other duties and functions as the officer in charge may from time to time assign to such prison management committee.

National Release Board

108. (1) The Minister shall appoint a National Release Board to perform the powers, duties and functions conferred or imposed upon such Board by or under this Act.

(2) The National Release Board shall comprise such number of persons, who may include persons who are not members of the services or staff members as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995), as the Minister may appoint, and one of whom he or she shall designate as chairperson of that Board on account of such person's knowledge of law.

(3) A member of the National Release Board shall hold office for a period of three years, but shall at the expiration of his or her period of office as member of such Board be eligible for re-appointment as such a member.

(4) A member of the National Release Board who is not a member of the services or staff member as contemplated in subsection (2) -

- (a) shall be paid such remuneration as the Minister may determine, with the concurrence of the Minister of Finance;
- (b) may vacate his or her office as member of such Board by giving one month's notice in writing of his or her resignation to the Minister.

(5) The Minister may allow a member of the National Release Board who is a member of the services or a staff member as contemplated in subsection (2) to vacate at his or her request his or her office as such member -

- (a) on account of continued ill-health; or
- (b) for any other reason which the Minister may deem sufficient.

(6) The Minister may, after affording such member an opportunity to be heard, remove a member of the National Release Board from his or her office, if the Minister is of the opinion that there are sufficient reasons for doing so.

Functions of National Release Board

109. (1) Subject to section 97(12), the National Release Board shall, whenever necessary or at the request of the Commissioner -

- (a) make recommendations to the Minister as to -
 - (i) the release on parole or probation, or the remission of the sentence, of a prisoner serving a sentence of imprisonment of three years or more;
 - (ii) subject to section 98, the release on parole or probation of a prisoner who has been declared a habitual criminal; and
 - (iii) the conditions upon which a prisoner may be released on parole or probation; or
- (b) perform such other duties and functions as the Minister may from time to time assign to it.

(2) A copy of every recommendation made under paragraph (a) of subsection (1) shall be forwarded to the Commissioner within a period of 30 days after such recommendation was made.

Zonal release boards

110. (1) The Minister shall appoint one or more boards to be known as zonal release boards, to perform the powers, duties and functions conferred or imposed upon such board by or under this Act.

- (2) (a) The Minister shall determine the region or regions for which a zonal release board has been appointed.

- (b) For the purposes of paragraph (a) "region" means a region as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992).

(3) A zonal release board shall comprise such number of persons, who may include persons who are not members of the services or staff members as defined in section (1) of the Public Service Act, 1995, as the Minister may appoint on the recommendation of the Governors of the Regional Councils of the regions for which such zonal release board has been appointed.

(4) The Minister shall designate one of the members referred to in subsection (3) as chairperson of the zonal release board on account of such member's knowledge of law.

(5) A member of a zonal release board shall hold office for a period of three years, but shall at the expiration of his or her period of office as member of such board be eligible for re-appointment as such a member.

(6) A member of a zonal release board who is not a member of the services or staff member as contemplated in subsection (3) -

- (a) shall be paid such remuneration as the Minister may determine, with the concurrence of the Minister of Finance;
- (b) may vacate his or her office as member of such board by giving one month's notice in writing of his or her resignation to the Minister.

(7) The Minister may allow a member of a zonal release board who is a member of the services or a staff member as contemplated in subsection (3) to vacate at his or her request his or her office as such member -

- (a) on account of continued ill-health; or
- (b) for any other reason which the Minister may deem sufficient.

(8) The Minister may, after affording such member an opportunity to be heard, remove a member of a zonal release board from his or her office, if the Minister is of the opinion that there are sufficient reasons for doing so.

Functions of zonal release board

111. (1) A zonal release board may, whenever necessary or at the request of an officer in charge of a prison situated within the region for which such board has been appointed -

- (a) authorise under section 96(2), upon such conditions as it may deem necessary, the release on parole or probation of a prisoner serving a sentence of imprisonment of six months or less in such prison or grant under section 92(2) remission of such sentence of such prisoner;
- (b) make recommendations to the Commissioner as to -
 - (i) the release on parole or probation, or the remission of the sentence, of a prisoner serving a sentence of imprisonment of more than six months but less than three years in such prison; and
 - (ii) the conditions upon which a prisoner may be released on parole or probation; and
- (c) perform such other duties and functions as the Minister may from time to time assign to it.

(2) A copy of every authorization given under paragraph (a) of subsection (1) shall be forwarded to the Commissioner within a period of 30 days after such authorization was given.

PART XIV
VISITING JUSTICES, OFFICIAL VISITORS
AND MINISTERS OF RELIGION

Visiting justices

112. (1) For the purposes of this Act, the following persons shall be visiting justices *ex-officio*, namely -

- (a) a judge of the Supreme Court or judge of the High Court, in respect of all prisons in Namibia;
- (b) a Minister of the Government of Namibia, in respect of all prisons in Namibia;
- (c) the Permanent Secretary: Prisons and Correctional Services in respect of all prisons in Namibia;
- (d) a Governor, in respect of all prisons within the region of the Regional Council for which he or she has been elected the Governor;
- (e) a magistrate, in respect of all prisons within his or her area of jurisdiction;
- (f) a member of a Regional Council, in respect of all prisons within his or her constituency; and
- (g) a member of the National Assembly or the National Council, in respect of all prisons in Namibia.

(2) In addition to the persons referred to in subsection (1) the Minister may, on the recommendation of the Governor of a Regional Council, from time to time appoint by notice in the *Gazette* fit and proper persons within the region of such Regional Council to serve as visiting justices within that region.

Functions of visiting justices

113. (1) A visiting justice may at any time visit a prison in respect of which he or she is a visiting justice, and may -

- (a) inspect every part of the prison and visit every prisoner in solitary confinement or in a separate cell: Provided that a female visiting justice shall not visit a part of the prison set aside for the detention of male prisoners, unless she is at all times escorted by a male prison member;

- (b) inspect and test the quality and quantity of food ordinarily served to prisoners;
- (c) inquire into any complaint or request made by a prisoner;
- (d) ascertain as far as possible, whether the rules, standing orders and administrative directives issued under section 4(3) for such prison are being observed;
- (e) inspect any book, document, or record relating to the management, discipline and treatment of prisoners; 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 deem necessary for the attention of the Commissioner.

(3) The officer in charge shall as soon as is practicable notify the Commissioner of all remarks, suggestions and recommendations entered into the visiting justices' book by a visiting justice.

Appointment and duties of official visitors

114. (1) The Minister may appoint any staff member in the Public Service, other than a prison member, to serve as an official visitor to any prison for such period as the Minister may determine.

(2) The provisions of section 113 shall *mutatis mutandis* apply to an official visitor appointed under subsection (1).

Ministers of religion

115. Ministers of religion, or representatives of any religious body who have been accredited by the body in question and recognized as such representative by the Minister in writing, may with the prior written authorization of the

Commissioner, and at such times and in such place as may be prescribed or be authorized by the officer in charge -

- (a) visit prisoners who may require their services; and
- (b) hold religious services for the benefit of prisoners.

Visits by probation officers and representatives of prisoners' aid societies

116. A probation officer or a representative of a prisoners' aid society may, with the prior written authorization of the Commissioner, be permitted by the officer in charge to visit prisoners or a particular prisoner, at such times and in such place as may be authorized by the officer in charge.

PART XV MISCELLANEOUS PROVISIONS

List of prisoners to be filed in High Court

117. The officer in charge of a prison shall before the commencement of a session of the High Court file in that Court a list of prisoners within that prison awaiting trial in that Court, specifying for every prisoner the date of his or her admission into prison and the authority for his or her detention.

Reward for apprehension of escaped prisoner

118. (1) Where a prisoner escapes from lawful custody, the Commissioner may offer a monetary reward to any person who -

- (a) gives information leading to the apprehension of such prisoner; or
- (b) apprehends, secures and hands over such prisoner to the officer in charge of a prison or police station,

and may, whether or not a reward has previously been offered, pay to such person a refund of any reasonable expenses incurred as a result of the apprehension as the Commissioner may determine.

(2) Notwithstanding the provisions of subsection (1), no prison member or member of the police shall be entitled to any reward under subsection (1) for the apprehension of an escaped prisoner, unless the Commissioner is of the opinion that exceptional circumstances exist to justify such reward being paid.

Rewards or gratuities for prison members

119. (1) The Commissioner may in his or her discretion or on the recommendation of a judge or magistrate, grant a monetary reward or gratuity to a prison member who in the course of duty has -

- (a) suffered bodily injuries;
- (b) performed special acts of bravery such as saving or attempting to save life or 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) shall be subject to the prior approval of the Minister after consultation with the Minister of Finance, and shall be paid from moneys appropriated by Parliament for that purpose.

Detention of prisoners sentenced abroad

120. (1) A Namibian citizen who has been duly sentenced to a term of imprisonment by a competent court of law within a foreign country, may be transferred to a prison in Namibia to serve the whole or the unexpired portion of the sentence, and 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 Namibia.

(2) The Minister may by notice in the *Gazette* specify the countries to which subsection (1) shall apply.

∴ (3) A certificate under the hand of the Minister certifying that from the

documents laid before him or her it appears that the person named in the certificate has been sentenced to the period of imprisonment specified in the certificate, shall be accepted as proof during the continuance of such period, that such person is lawfully detained in accordance with the provisions of this section.

Transfer of prisoners to other countries

121. (1) Where a person who is not a citizen of Namibia is sentenced to a period of imprisonment by a competent court of law in Namibia, such person may, subject to the provisions of the Immigration Control Act, 1993 (Act No. 7 of 1993), be removed from Namibia.

(2) A person who is being transferred in accordance with the provisions of subsection (1) shall, while in Namibia, be deemed to be in lawful custody for the purposes of any law, including the common law.

(3) The transfer of a person to another country under this section shall not affect that person's right under any law to appeal against his or her conviction or sentence in a court of law in Namibia.

Delegation of powers

122. (1) The Minister may in writing delegate to a staff member in the Ministry or the Commissioner any power conferred upon him or her by this Act, excluding any power referred to in sections 6, 10, 13, 108, 120, 121 and 124, but shall not be divested of any power so delegated and may amend or withdraw any decision made by such staff member or the Commissioner in the exercise of any power so delegated.

(2) The Commissioner may -

(a) in writing delegate any power conferred upon him or her by or under the provisions of this Act, excluding the power to make or issue rules, standing orders or administrative directives in terms of section 4, to the Deputy Commissioner, but shall not be divested of any power so delegated and may amend or withdraw any decision made by the Deputy Commissioner in the exercise of any power so delegated; or

- (b) assign the performance of any function or duty entrusted to him or her by or under this Act to the Deputy Commissioner.
- (3) The officer in charge may -
 - (a) in writing delegate any power conferred upon him or her by or under this Act to the assistant officer in charge or any other senior prison member employed in his or her prison, but shall not be divested of any power so delegated and may amend or withdraw any decision made by such senior prison member in the exercise of any power so delegated; or
 - (b) assign the performance of any function or duty entrusted to him or her by or under this Act to the assistant officer in charge or any other senior prison member employed in his or her prison.
- (4) A delegation or assignment under subsection (1), (2) or (3) may be made subject to such conditions and restrictions as may be determined by the Minister, Commissioner or officer in charge, as the case may be, and may be withdrawn or amended by him or her.

Canteens

123. (1) No licence money, tax, duty or fee (other than customs, excise or sales duties leviable by law) shall be payable by any person under any law or bye-law in respect of any certified canteen for prison members or in respect of any article on sale at such a canteen.

(2) The production of an official document bearing the signature of the Minister or of a person authorized by the Minister to sign any such document and indicating that he or she has certified the canteen, shall be sufficient evidence that it is a canteen falling under this section.

(3) For the purposes of this section "canteen" includes any mess for prison members or any premises temporarily or permanently used to provide recreation, refreshment, or necessities solely for prison members or retired prison members or employees of the Prison Service or for the families of such prison members, retired

prison members or employees or for persons employed in any work in or in connection with any such mess or premises.

Regulations

- 124.** (1) The Minister may make regulations as to -
- (a) the manner, including contracts of employment, of appointment, training, promotion, reduction of rank, posting, retirement, resignation, discharge on account of ill health or otherwise, transfer and, subject to section 13 of the Public Service Act, 1995 (Act No. 13 of 1995), the conditions of service of prison members;
 - (b) the retention of rank by a prison member on retirement or resignation, and the award of honorary ranks;
 - (c) the supply of uniforms to prison members;
 - (d) the conduct, discipline and efficiency of prison members, including temporary prison members;
 - (e) the occupation of official quarters by -
 - (i) members of the National Release Board or a zonal release board who are not members of the services or staff members in the Public Service;
 - (ii) medical officers of such category as may be prescribed;
 - (iii) ministers of religion of such category as may be prescribed;
 - (f) the establishment, management and control of a staff welfare fund into which may be paid such moneys as are voluntarily contributed or collected for that purpose by prison members or other persons or as may accrue to such fund from any other source, and the purposes for which any moneys in such fund may be utilized or the manner in which such purposes may be determined;

- (g) the classification of prisons, the general supervision and management thereof, the maintenance of good order and discipline therein and the treatment and conduct of prisoners;
- (h) the quorum, acting chairperson, procedure at meetings, form of minutes, reports or recommendation of institutional committees, prison management committees, National Release Board and zonal release boards;
- (i) the mode of supplying food and the scales of diet and the quantity and quality of clothing and necessities for prisoners;
- (j) the safe custody of prisoners when performing labour or otherwise;
- (k) the receipt and safe custody at prisons of money, valuables, or other articles belonging to any prisoner, and the conditions and circumstances under which payment, deposit, or delivery of such money, valuables or other articles shall be made during the period of detention of any prisoner;
- (l) the introduction into, or conveyance out of, any prison of any food, drink, bedding, clothing, books, newspapers, letters, documents or any other articles;
- (m) the searching of prisoners and of prison members and of all quarters and other places within any prison occupied or frequented by such prisoners or prison members and, subject to Article 13 of the Namibian Constitution, the seizure and examination of any letter or communication addressed to or received by any prisoner or prison member;
- (n) the articles or objects which are prohibited articles for purposes of this Act, the confiscation or destruction of all articles unlawfully introduced into any prison or found in or near any prison and of all clothing belonging to prisoners which by reason of its condition or for any other valid cause it is undesirable to keep;

- (o) the admission to any prison of any person other than prison members, person employed in or about a prison and persons who are to be detained therein;
- (p) the procedure for release of prisoners on parole, probation, the obtaining and recording of information regarding behaviour of prisoners on release and the supply of money, food, clothing or travelling allowance to prisoners on their release;
- (q) the days and hours during which work or labour by prisoners may be suspended;
- (r) the medical examination, measurement, photographing and taking of fingerprints and of particulars of persons confined in any prison or otherwise detained in custody, including the obtaining of personal statistics and records;
- (s) the provision and equipment of workshops for the training of prisoners and the supply of machinery, tools, or materials necessary for the purpose;
- (t) the manner in which sentences of imprisonment or any other sentences are to be carried out;
- (u) the forms of mechanical restraint that may be used and the conditions and application of a mechanical restraint to any prisoner;
- (v) the release of persons serving sentences of imprisonment;
- (w) the procedures relating to the death of a prisoner, inquiries and the disposal of the body of any such prisoner;
- (x) the disposal by sale or otherwise of the personal effects of any prisoner who has escaped or of the personal effects of any prison member who has deserted the Prison Service, and the payment into the State Revenue Fund of any proceeds of any such sale to the extent of any debt owing to the State;

- (y) the temporary detention of any sick prisoner whose sentence has expired but whose release is certified by the medical officer to be likely to result in his or her death or in serious injury to his or her health or to be a source of infection to others;
- (z) the care and maintenance of indigents or destitute persons temporarily received into a prison;
- (aa) the subsidizing and support of institutions, societies and individuals approved by the Minister as furthering the objects of this Act;
- (bb) the charging of a prison member with a disciplinary offence and the procedure at disciplinary inquiries by disciplinary boards, the Commissioner or other prison members into such charges;
- (cc) the attendance of witnesses at disciplinary inquiries and the payment of witness fees and travelling expenses;
- (dd) the implements that may be used by prison members or persons employed in a prison as weapons for purposes of this Act;
- (ee) the payment of monetary compensation to prisoners whose earning capacity is affected as a result of an accident or injury received in prison; and
- (ff) generally any other matter which is required by this Act to be prescribed or which the Minister considers necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) A regulation may provide penalties for any contravention thereof or failure to comply therewith, and different penalties may be prescribed in case of any second or subsequent contravention or non-compliance thereof, but no such penalty shall exceed a fine of N\$2 000 or a period of imprisonment of six months, or both such fine and imprisonment.

Jurisdiction of magistrates' courts

125. Notwithstanding anything to the contrary in any other law contained, magistrates' courts shall have the jurisdiction to impose any penalty provided for under this Act.

Limitation of actions

126. (1) No civil action against the State or any person for anything done or omitted in pursuance of any provision of this Act shall be commenced after the expiration of six months immediately succeeding the act or omission complained of, or in the case of a prisoner, after the expiration of six months immediately succeeding the date of his or her release from prison, but in no case shall any such action be commenced after the expiration of one year from the date of the act or omission complained of.

(2) Notice in writing of every such action, stating the cause thereof and the details of the claim, shall be given to the defendant at least one month before the commencement of the action.

Repeal of laws and savings

127. (1) The laws specified in the Second Schedule are repealed to the extent specified in the third column thereof.

(2) Anything done under any provision of any law repealed by subsection (1) and which could be done under a provision of this Act shall be deemed to have been done under the last-mentioned provision.

Short title and commencement

128. This Act shall be called the Prisons Act, 1998, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*. *Date: 24/8/98 by Gov. N. 206/98*

Act No. 17, 1998

PRISONS ACT, 1998**FIRST SCHEDULE****Senior Prison Members:**

Deputy Commissioner of Prisons

Assistant Commissioner

Chief Superintendent

Senior Superintendent

Superintendent

Junior Prison Members:

Chief Prison Officer

Senior Prison Officer

Prison Officer

SECOND SCHEDULE

(Laws repealed under section 127)

No. and year of law	Short title	Extent of repeal
Act 8 of 1959	Prisons Act, 1959	The whole
Act 33 of 1960	Children's Act 1960	Section 104
Act 80 of 1964	General Law Amendment Act, 1964	Section 37
Act 75 of 1965	Prisons Amendment Act, 1965	The whole
Act 62 of 1966	General Law Amendment Act, 1966	Sections 10, 11, 12, 13 and 14
Act 70 of 1968	General Law Amendment Act, 1968	Sections 46-52, inclusive
Proclamation R. 130 of 1969	-	The whole
Act 101 of 1969	General Law Amendment Act, 1969	Sections 13, 14, 15, 16 and 17
Act 92 of 1970	General Law Further Amendment Act, 1970	Section 8
Act 9 of 1971	Prisons Amendment Act, 1971	The whole
Act 4 of 1972	Prisons Amendment Act, 1972	The whole
Act 62 of 1973	General Law Amendment Act, 1973	Sections 14, 15, 16 and 17
Act 6 of 1975	Prisons Amendment Act, 1975	The whole
Proclamation AG. 6 of 1977	Executive Powers (Prisons) Transfer Proclamation, 1977	The whole
Act 88 of 1977	Prisons Amendment Act, 1977	The whole
Proclamation R.211 of 1977	-	The whole
Proclamation AG. 10 of 1978	Executive Powers Transfer Amendment Proclamation, 1978	Section 2
Act 58 of 1978	Prisons Amendment Act, 1978	The whole
Act 13 of 1981	Prisons Amendment Act, 1981	The whole