



Republic of Namibia  
Annotated Statutes

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## Correctional Service Act 9 of 2012

(GG 5008)

brought into force on 1 January 2014 by GN 330/2013 (GG 5365)

The Combating of Rape Amendment Act 4 of 2022 (GG 7932) amends the Third Schedule. However, that Act has not yet been brought into force, so the amendments made by it are not reflected here.

*Minister of Safety and Security & Others v Kennedy & Another* (SA 69-2020) 2023 NASC (18 July 2023), in an appeal from *Kennedy & Another v Minister of Safety and Security & Others* 2020 (3) NR 731 (HC) held as follows:

(1) The inclusion of awaiting-trial prisoners in the definition of “offender” in section 1 is an unconstitutional violation of Articles 8, 10 and 12(d) of the Namibian Constitution and is therefore struck out.

(2) Section 103 of the Act on solitary confinement is inconsistent with Articles 7 and 11(1) of the Namibian Constitution and therefore invalid, and regulation 257 on solitary confinement in the Namibian Correctional Service Regulations contained in Government Notice 331 of 2013 (GG 5365) is similarly inconsistent with Articles 7 and 11 of the Namibian Constitution and is therefore invalid.

(3) The declarations of unconstitutionality of provisions in the Act and regulations are suspended for 18 months from the date of the order to allow the Legislature and the Executive an opportunity to correct the identified defects.

(4) The blanket denial of contact visits to trial-awaiting inmates without regard to the merits of each individual case is declared to be inconsistent with Articles 8 and 12 of the Namibian Constitution.

(5) The practice of transporting inmates in police vans with their hands handcuffed at the back while the vehicle is moving, where the vehicle lacks safety features to prevent physical harm to the inmates, is inconsistent with Article 8(2)(b) of the Namibian Constitution.

(6) The High Court holding that portions of section 103(3) and the entirety of section 132(1)(t) were unconstitutional and must be severed fall away by agreement between the parties since the High Court did not put these issues to the parties prior to determining them.

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## ACT

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

*(Signed by the President on 20 July 2012)*

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**BE IT ENACTED** by the Parliament of Namibia, as follows:

**Definitions**

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

“Commissioner-General” means the Commissioner-General of Correctional Service appointed under Article 32(4)(c)(cc) of the Namibian Constitution;

“correctional community centre” means a correctional community centre established under section 21, and includes a temporary correctional community centre declared under section 22;

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“correctional facility” means a correctional facility established under section 15, and includes a temporary correctional facility declared as such under section 16 and, for the purpose of sections 65 and 86 of this Act, includes every place used as a police cell or lock-up;

“correctional officer” means a member of the Correctional Service of one of the prescribed ranks of correctional officers and for the purposes of section 11, includes a temporary correctional officer;

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

“Council” means the Correctional Service Council established by section 12;

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

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

“deputy officer in charge”, in relation to a correctional facility, means the correctional officer appointed under section 18(1) as deputy officer in charge of that correctional facility;

“disciplinary board” means a disciplinary board appointed under section 51(1);

“disciplinary inquiry”, in relation to a senior correctional officer, means a disciplinary inquiry referred to in section 51 or, in relation to a junior correctional officer, section 54 or, in relation to an offender, section 88(1)(a);

“disciplinary offence”, in relation to a correctional officer, means an offence referred to in section 50 or, in relation to an offender, sections 85 or 86;

“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;

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

“junior correctional officer” means a correctional officer of one of the prescribed ranks of junior correctional officers;

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

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

**[The word which appears above as “straightjacket” is usually spelt “straitjacket”]**

“medical officer” means the medical practitioner appointed or assigned under section 23 as a medical officer of a correctional facility;

“medical practitioner” means a medical practitioner as defined in section 1 of the Medical and Dental Act, 2004 (Act No. 10 of 2004);

“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 responsible for Correctional Service;

“Ministry” means the Ministry responsible for Correctional Service;

“National Release Board” means the National Release Board established under section 104;

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

**[Minister of Safety and Security & Others v Kennedy & Another (SA 69-2020) 2023 NASC (18 July 2023) finds the definition of “offender” unconstitutional insofar as it includes awaiting-trial prisoners, but suspends this finding of invalidity for 18 months from the date of the order to provide an opportunity to correct the defect.]**

“officer in charge”, in relation to a correctional facility, means the senior correctional officer appointed under section 18(1);

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

“prescribe” means prescribe by regulation;

“presiding officer”, in relation to section 54, means a correctional officer authorised to conduct a disciplinary inquiry referred to in that section or, in relation to section 88(1)(a), the officer in charge or any other correctional officer authorised to conduct a disciplinary inquiry referred to in that section;

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

**[The Children’s Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015.]**

“prohibited article” means an article or object prescribed 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 132;

“scheduled crimes or offences” means crimes or offences referred to in the Third Schedule;

“senior correctional officer” means a correctional officer of one of the prescribed ranks of senior correctional officers;

“staff member” means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);

“temporary correctional officer” means a person appointed as a temporary correctional officer under section 11;

“this Act” includes the regulations made there under;

“visiting justice” means a visiting justice referred to in section 122; and

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

PART I  
ESTABLISHMENT, FUNCTIONS AND ADMINISTRATION  
OF NAMIBIAN CORRECTIONAL SERVICE

**Establishment of Namibian Correctional Service**

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

(2) The Correctional Service consists of -

- (a) the Commissioner-General of the Correctional Service, appointed by the President in accordance with Article 32(4)(c)(cc) of the Namibian Constitution, who is the head of the Correctional Service;
- (b) such correctional officers as may be appointed under section 8; and
- (c) such staff members as may be appointed under the Public Service Act, 1995 (Act No. 13 of 1995) and posted to the Correctional Service.

(3) Any member of the Prison Service appointed under sections 6 and 7 of the Prisons Act, 1998 (Act No. 17 of 1998), and in service at the commencement of this Act, continues, notwithstanding the repeal of that Act by this Act, to serve in the Namibian Correctional Service with due recognition of his or her period of service under the Act so repealed, as if he or she were a correctional officer of comparable rank appointed under this Act.

**Functions of Correctional Service**

3. The functions of the Correctional Service are -

- (a) to ensure that every inmate is secured in safe and humane custody, within a correctional facility, until lawfully discharged or removed therefrom;
- (b) to render health care to inmates;
- (c) as far as practicable, to apply such rehabilitation programmes and other meaningful and constructive activities to sentenced offenders that contribute to their rehabilitation and successful reintegration into community as law abiding citizens;
- (d) to supervise offenders who are on conditional release;
- (e) to perform all work necessary for, arising from, or incidental to, the effective management, administration and control of correctional facilities and community correctional centres; and
- (f) to perform such other functions as the President may from time to time assign to the Correctional Service.

**Principles that guide Correctional Service**

4. The principles that guide the Correctional Service in fulfilling the functions referred to in section 3 are -



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

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

5. (1) The appointment of the Commissioner-General pursuant to Article 122 of the Namibian Constitution is on such terms and conditions as the President may determine.

(2) The Commissioner-General, 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, is responsible for the efficient supervision, administration and control of the Correctional Service.

(3) Subject to the provisions of this Act, the Commissioner-General may, for the efficient supervision, administration and control of the Correctional Service and for observance by offenders and correctional officers, 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-General is accountable and subject to the directions of the Minister.

### **Removal of Commissioner-General**

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6. (1) Subject to subsections (2) and (4), the President may exercise the power conferred by Article 123 of the Namibian Constitution to remove the Commissioner-General from office.

(2) Before acting in terms of subsection (1), the President must consult the Security Commission for its recommendation as to whether or not the Commissioner-General should be removed from office.

(3) Upon the receipt of the request referred to in subsection (2) the Security Commission must, before making a recommendation to the President, -

- (a) notify the Commissioner-General in writing, of the grounds on which it is considered he or she ought to be removed from office;
- (b) provide the Commissioner-General with an opportunity to make representation either orally or in writing or both;
- (c) consider the representations made by the Commissioner-General; and
- (d) make such a recommendation and submit that recommendation together with such written representations, if any, to the President.

(4) The President may after considering the recommendations of the Security Commission and the written representations, if any, accept or reject the recommendation and must inform the Commissioner-General of his or her decision.

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

- (a) on grounds of ill health; or
- (b) for any other reason that the President may consider sufficient,

subject to such conditions as to retirement, as provided for by relevant laws or as the President may determine.

**Commissions by President**

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

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

**Appointment, promotion, demotion, discharge or resignation of correctional officers**

8. (1) Subject to the provisions of this Act and the relevant provisions of the Public Service Act, 1995, (Act No. 13 of 1995), the Commissioner-General may -

- (a) appoint a fit and proper person to be a correctional officer according to the prescribed ranks of correctional officers;
- (b) promote any correctional officer;

- (c) subject to section 57, demote or discharge any correctional officer; or
- (d) appoint or transfer any correctional officer to any post in the Correctional Service other than the post held by such correctional officer.

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

(3) The notice referred to in subsection (2) must be in such form and the resignation is approved and takes effect on such conditions as the Commissioner-General may determine.

### **Correctional officers assigned to any part of Namibia**

9. A correctional officer may at any time be assigned by the Commissioner-General to any part of Namibia to perform any function conferred upon or assigned to correctional officers by or under this Act.

### **Assistance by members of police in emergency**

10. (1) In an emergency or for any other good reason, and for the purpose of securing good order and discipline in a correctional facility, the Inspector-General or any police officer duly authorised thereto by the Inspector-General may, on the request of the Commissioner-General or any senior correctional officer duly authorised thereto by the Commissioner-General, temporarily make available for duty in such correctional facility such number of members of the police as it may be considered necessary to assist in securing good order and discipline in such correctional facility.

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

### **Temporary correctional officers**

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

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

may appoint such number of suitable persons as he or she may consider expedient, to serve as temporary correctional officers on such terms and conditions as may be prescribed.

### **Establishment and constitution of Council and terms of office of members**

12. (1) There is hereby established a council to be known as the Correctional Service Council to perform the functions and duties entrusted to or imposed upon that Council by or under this Act.

- (2) The Council comprises -
  - (a) the Head responsible for human resources management, finance and administration in the Correctional Service; and

- (b) the following persons appointed by the Minister:
- (i) A member of the Public Service Commission, nominated by that Commission, who is 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 correctional officers.

(3) A member of the Council other than the Head responsible for human resources management, finance and administration holds office for a period of three years, but upon expiration of his or her period of office is 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 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 Council.

(5) The Minister may allow a member of the Council referred to in subsection (2)(b) to, at such member's request, vacate his or her office as such member -

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

(6) Any vacancy on the Council arising from any circumstance referred to in subsections (4) and (5), or caused by the death of any member of the Council, must be filled in accordance with the provisions of subsection (2), and such newly appointed member holds 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 Council

**13.** The functions of the Council are, 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 correctional facilities;
  - (ii) the welfare and efficiency of the Correctional Service;
  - (iii) the conditions of service of correctional officers other than conditions of service determined under section 13 of the Public Service Act, 1995 (Act No. 13 of 1995);

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- (b) consider and make recommendations to the Commissioner-General with regard to the promotion of senior correctional officers; and
- (c) perform such other duties and functions as the Minister, without derogating from the functions of the Commissioner-General, may direct.

**Meetings of Council**

14. (1) The Correctional Service Council must meet at least once every twelve 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 Council, the members present must elect one from amongst their number to act as chairperson at that meeting.

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

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

(5) A decision derived at by the majority of the members of the Council present at a meeting thereof constitutes a decision of the Council and, in the event of an equality of votes relating to any matter, the member presiding at the meeting has a casting vote.

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

**PART II****ESTABLISHMENT, ADMINISTRATION AND CONTROL OF CORRECTIONAL FACILITIES AND CORRECTIONAL COMMUNITY CENTRES****Establishment of correctional facilities**

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

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

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

(3) A prison established under the Prisons Act, 1998 (Act No. 17 of 1998), and in operation at the commencement of this Act continues, notwithstanding the repeal of that Act, to be operational as if it was a correctional facility established under this Act.

**Temporary correctional facilities**

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

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

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

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

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

#### **Officer in charge**

18. (1) The Commissioner-General must in respect of every correctional facility appoint a senior correctional officer as the officer in charge, and another correctional officer as the deputy officer in charge of such correctional facility.

(2) The officer in charge of a correctional facility must, subject to the provisions of this Act -

- (a) ensure the implementation of the provisions of this Act, Correctional Service policies and other rules, standing orders and administrative directives made or issued under section 5(3);
- (b) direct, supervise and control all administrative matters relating to such correctional facility;
- (c) in order to ensure compliance with this Act and the safe custody and treatment of offenders and to maintain good order in the correctional facility, make or issue directives or instructions to correctional officers, staff members employed at that correctional facility and offenders, and ensure compliance therewith;
- (d) keep such records in respect of such correctional facility as may be determined by the Commissioner-General or under this Act; and
- (e) perform such other duties or functions as the Commissioner-General may assign to him or her under this Act.

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

(4) The deputy officer in charge must -

- (a) exercise such powers or perform such duties or functions as the Commissioner-General may assign to him or her; or
- (b) exercise or perform such powers, duties or functions delegated to him or her by the officer in charge, under section 130(3); and
- (c) generally assist the officer in charge in the performance of his or her functions under this Act, subject to the direction and control of that officer in charge.

(5) The Commissioner-General may, until such time as he or she appoints an officer in charge for the correctional facility under subsection (1), designate a correctional officer to act as the officer in charge of such correctional facility for a period not exceeding 12 months.

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

### **Inspection of correctional facilities**

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

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

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

### **Security levels**

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

### **Establishment of correctional community centres**

**21.** (1) The Minister may, for the purpose of easing the transition of the offender from life in incarceration to community life, by notice in the Gazette -

- (a) establish correctional community centres throughout Namibia for the reception, training or rehabilitation of offenders released with condition to reside in a correctional community centre;
- (b) declare any place, building or enclosure or part thereof to be a correctional community centre for the purposes of this Act;
- (c) rename such correctional community centre; and
- (d) declare any such correctional community centre or part thereof closed.

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

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

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

### **Temporary correctional community centres**

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

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

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

## PART III HEALTH CARE SERVICES FOR OFFENDERS AND HYGIENE

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

**23.** (1) The Correctional Service must, as far as is practicable and when so required, provide every inmate with -

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

(2) The Correctional Service must take into consideration an inmate's state of health and health care needs -

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



(3) Each correctional facility must have a medical practitioner appointed or assigned to it, to serve as medical officer for such facility.

#### **Functions of medical officer**

- 24.** (1) The medical officer appointed or assigned under section 23(3) -
- (a) is responsible for the health care of all inmates in the correctional facility for which he or she is appointed or assigned and must -
    - (i) where practicable, ensure that every inmate is medically examined on admission to, and discharge from, that correctional facility;
    - (ii) where practicable, ensure that on admission to the correctional facility, every inmate is kept apart from other inmates until such time that such inmate has been examined as contemplated in subparagraph (i);
    - (iii) where practicable, visit the correctional facility daily or at other regular intervals or when so requested by the officer in charge, and inspect the hygiene condition of the correctional facility and medically examine inmates at such times as he or she may consider necessary;
    - (iv) keep a record or cause a record to be kept of the state of health of every inmate; and
    - (v) report to the officer in charge any circumstance or condition regarding the correctional facility, an inmate, or treatment of an inmate which may, in his or her opinion, require consideration on medical or health grounds; and
  - (b) must, for the purpose of safeguarding or restoring the health of any inmate or preventing the spread of or risk of any disease, take such action or direct such action to be taken with regard to such inmate in his or her care, including -
    - (i) force feeding an inmate;
    - (ii) inoculating or vaccinating an inmate against disease;
    - (iii) medically examining and treating an inmate;
    - (iv) isolating an inmate;
    - (v) providing an inmate with other necessary precautionary or prophylactic health measures to curb such spread or risk; or
    - (vi) for security reasons, searching any body cavity of an inmate.

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

(3) An inmate must present himself or herself, if instructed to do so by the officer in charge or other correctional officer authorised thereto, to the medical officer or any other medical practitioner for the purposes of undergoing a medical examination or medical treatment.

**Observation of inmates in solitary confinement or correctional hospital**

25. The medical officer must, on each day that such medical officer visits the correctional facility or correctional facility hospital, medically examine or check each inmate who is detained in solitary confinement or in a correctional facility hospital, but not less than once per week of such inmate's detention.

**Duty upon death of offender**

26. (1) Upon the death of an offender, the officer in charge must immediately notify -

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

and must ensure that an inquest is conducted in accordance with the Inquests Act, 1993 (Act No. 6 of 1993).

(2) The medical officer must, upon being notified of the death of an offender, issue a certificate whereupon the cause of death in respect of that offender is set out, and must complete the register kept for the purpose of recording an offender's death.

**Observation and transfer of mentally ill inmates**

27. (1) A medical officer must regularly examine the state of mental health of any inmate who is detained in a correctional facility -

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

(2) An inmate 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), must, as soon as he or she is fit for discharge from that institution, be returned to the correctional facility concerned by the authorities of such institution for completion of his or her sentence, if the sentence in respect of which he or she was committed to the correctional facility has not been completed.

(3) Where an inmate, who has been admitted to an institution referred to in subsection (2), is still admitted in such institution for treatment at such time as he or she becomes entitled to his or her release from imprisonment, the officer in charge referred to in section 119(1) must release such offender from the correctional facility in the prescribed manner, and in writing inform such institution of such release.

(4) The period during which an offender was detained in an institution referred to in subsection (2) while serving a term of imprisonment is considered to be part of such term of imprisonment.

### **Transfer of inmate to State hospital**

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

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

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

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

(4) Where an inmate, who has been admitted to a State hospital under subsection (1), is still admitted in hospital for medical treatment at such time as he or she becomes entitled to his or her release from the correctional facility concerned, the officer in charge referred to in section 119(1) must release such inmate from the correctional facility in the prescribed manner, and in writing inform such hospital of such release.

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

### **Custody of inmate in State hospital or mental institution**

**29.** (1) An inmate who, during his or her period of imprisonment, is detained in a State hospital in terms of section 28 or a mental institution referred to in section 27 for the purposes of treatment is, during such period of detainment, considered to be in lawful custody.

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

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

### **Hygiene**

**30.** Every inmate detained in a correctional facility -

- (a) pursuant to a sentence of imprisonment;

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

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

#### PART IV POWERS, DUTIES, FUNCTIONS AND PRIVILEGES OF CORRECTIONAL OFFICERS

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

- 31.** Every correctional officer must -
- (a) be familiar with the provisions of this Act and other rules, standing orders or administrative directives made or issued by the Commissioner-General under section 5(3) or the directives or instructions made or issued by the officer in charge under section 18(2)(c);
  - (b) exercise or perform such powers and duties or functions, by virtue of his or her rank, as are conferred upon or assigned to such correctional officer by or under this Act, or by a correctional officer duly authorised to assign such duties or functions; and
  - (c) obey all lawful orders and directives in respect of the execution of his or her duties or functions as he or she may from time to time receive from correctional officers senior in rank to him or her.

##### **Correctional officers responsible for security and discipline of offenders**

**32.** Subject to section 66, correctional officers employed in a correctional facility are responsible for ensuring -

- (a) as far as is practicable, the security and safe custody of all offenders detained in custody in that correctional facility; and
- (b) that the treatment and discipline of offenders therein is in accordance with the provisions of this Act,

and must in the performance of their functions under this Act be under the direction and control of the officer in charge and act in accordance with this Act and the rules, standing orders and administrative directives made or issued by the Commissioner-General in terms of section 5(3) and the directive or instructions made or issued by the officer in charge in term of section 18(2)(c).

[The phrase “in term of” should be “in terms of” to be grammatically correct.]

##### **Correctional officers to exercise police powers**

**33.** Subject to the provisions of this Act, every correctional officer must, by virtue of his or her office as a correctional officer, 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 offenders under his or her charge and to secure the recapture of any offender who has escaped from lawful custody.

#### **Restriction on sanctions against offenders**

**34.** No correctional officer may impose a sanction upon an offender, except in accordance with the disciplinary procedure provided for under Part X of this Act.

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

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

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

(a) any offender who is -

- (i) escaping or attempting to escape from lawful custody;
- (ii) engaged in forcing or breaking open or attempting to force or break open or is scaling a correctional facility door, wall, fence, gate, or other part of the correctional facility;
- (iii) using or threatening to use violence against a correctional officer or another offender or any other person; or
- (iv) engaged in violently disorderly behaviour; or

(b) any person who -

- (i) assists an offender in escaping or uses or threatens to use violence against a correctional officer, or an offender or any other person; or
- (ii) is engaged in forcing or breaking open or attempting to force or break open or is scaling a correctional facility door, wall, fence, gate, or other part of the correctional facility.

(3) Notwithstanding the provisions of subsection (2), a correctional officer must not use a weapon against any offender or person unless -

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

- (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) Whenever a weapon or force is used in pursuance of this section, the correctional officer must use the minimum force necessary in the circumstances to restrain the act intended, and must, as far as reasonably possible, use such weapon or force to disable and not to kill.

(5) If any correctional officer acting in circumstances contemplated in subsection (1), (2) or (3) kills or wounds any offender or person he or she does not commit an offence.

#### **Power to take photographs, fingerprints, etc.**

**36.** (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 offender to be taken by any correctional officer or other person duly authorised by him or her, and where any offender 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 reasonably necessary to secure compliance.

[The word “footprints” appears with a hyphen in the *Government Gazette*, as reproduced above.]

(2) The photographs, measurements, footprints and casts thereof, palm prints and fingerprints taken under subsection (1) must 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.

#### **Privileges of correctional officers**

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

### **PART V SEARCH AND SEIZURE**

#### **Searching of offenders**

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

(2) Every offender must, on admission to a correctional facility to be detained therein, be searched and all prohibited articles in such offender’s possession must be removed.

#### **Searching of cells**

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

#### **Searching of correctional officers, buildings and residential houses**

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

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

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

**Searching of visitors**

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

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

**Searching of vehicles**

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

**Justification of search**

**43.** To the extent that the provisions of sections 38, 40 and 41 authorise the interference with the privacy of a person in conflict with Article 13 of the Namibian Constitution, such interference is authorised 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.

**Arrest**

**44.** (1) Subject to section 79, where, upon a search made under sections 40, 41 or 42, a person is found to be in the unlawful possession of a prohibited article or any property belonging to, or under the control of, the Correctional Service, the correctional officer having made such search must report the incident to the officer in charge or any other senior correctional officer.

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

### Seizure

45. (1) The correctional officer arresting a person under section 44 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 (Act No. 51 of 1977) applies with the necessary changes in respect of anything so seized.

[The verb "applies" should be "apply" to be grammatically correct.]

(2) Subject to subsection (1), prohibited articles or property seized under subsection (1) or removed from offenders or cells under section 38 and 39 respectively, must be disposed of as the Commissioner-General may prescribe.

### Manner of search

46. Any search of a person under this Part must be conducted in accordance with this Act and any rules, standing orders or administrative directives made or issued by the Commissioner-General under section 5(3).

## PART VI OFFENCES AGAINST THE CORRECTIONAL SERVICE

### Mutiny

47. (1) A correctional officer who, in circumstances not amounting to an offence under any other provision of this Act -

- (a) conspires with another correctional officer to mutiny;
- (b) causes a mutiny;
- (c) joins a mutiny;
- (d) is aware of, or suspects, another correctional officer of conspiring to cause a mutiny, and such first mentioned correctional officer fails to report such fact without delay to the officer in charge or Commissioner-General,

is guilty of an offence, and on conviction liable to a fine not exceeding N\$ 20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment, and such correctional officer may, in addition to such fine or such imprisonment or to both such fine and such imprisonment, be subject to disciplinary proceedings in terms of section 50(c)(iv) or (d)(xiv) in respect of such mutiny.

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

[There should be a word such as "a" or "any" before the phrase "correctional facility".]

### Assault by correctional officer on another correctional officer

48. A correctional officer who assaults or threatens with violence another correctional officer during the course of duty is guilty of an offence, and on conviction 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 such imprisonment, and such correctional officer may, in addition to such fine or such imprisonment or to both such fine and such imprisonment, be subject to disciplinary proceedings in terms of section 50(b)(iii) or (iv) in respect of such assault or threat.

### **Miscellaneous other offences by correctional officers or persons employed in or about Correctional Service**

**49.** (1) A correctional officer or any other person employed in or about the Correctional Service who, outside the ambit of his or her functions under this Act or such employment, as the case may be, and without the prior authorisation of the Commissioner-General or the officer in charge -

- (a) sells or has a direct or indirect interest in any sale of any article to an offender;
- (b) has any direct or indirect interest or advantage in the procurement of Correctional Service supplies;
- (c) conducts any business dealing, other than a business dealing contemplated in paragraph (a), with an offender or with another person acting on behalf of an offender;
- (d) solicits, accepts or receives any fee, gift, gratuity, or reward or any money or any other article, item or thing from an offender or another person acting on behalf of an offender;
- (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 an offender, or conveys any communication or article to or from an offender;
- (f) permits any intoxicating liquor, tobacco, habit-forming drug, opiate, money, clothing, letter, document or any other provision or article to be given or sold to or on behalf of an offender;
- (g) lends or gives to any offender any intoxicating liquor, tobacco, habit-forming drug, opiate, money, clothing, letter, document or other provision or article; or
- (h) conveys or permits any letter, document, or other article to be conveyed out of a correctional facility;
- (i) informs the press or, unless for the purpose of the administration of justice, informs any other person of any confidential matter concerning a correctional facility or an offender or any confidential matter derived from official sources connected with or related to the Correctional Service,

is guilty of an offence, and on conviction 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 such imprisonment, and such correctional officer may, in addition to such fine or such imprisonment or to both such fine and such imprisonment, be subject to disciplinary proceedings in terms of section 50(d)(vii), (e)(iii) or (iv).

## PART VII DISCIPLINE OF CORRECTIONAL OFFICERS

### **Disciplinary offences by correctional officers**

- 50.** A correctional officer commits 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 the Minister, the Commissioner-General, a correctional officer senior in rank to such officer or any other person authorised by the Commissioner-General to give such an order;
  - (b) oppressive conduct, if he or she -
    - (i) is oppressive or tyrannical in conduct towards a correctional officer subordinate in rank to him or her or is oppressive or tyrannical in conduct towards an offender;
    - (ii) uses obscene, abusive, or insulting language towards any other correctional officer or towards an offender;
    - (iii) assaults any other correctional officer or assaults an offender;
    - (iv) threatens or uses unwarranted violence towards another correctional officer, offender or towards any person in his or her custody; or
    - (v) wilfully or negligently makes any false, frivolous, or vexatious complaint against any other correctional officer or against an offender;
  - (c) insubordinate conduct, if he or she -
    - (i) is disrespectful in words, conduct, or demeanour to the Minister, Commissioner-General, Permanent Secretary, a correctional officer senior in rank to him or her, or any other person referred to in paragraph (a);
    - (ii) talks or otherwise misbehaves while on parade;
    - (iii) resists his or her lawful arrest, custody, or escort;
    - (iv) mobilizes other correctional officers or offenders against the authority of the Correctional Service in general or the correctional facility in particular;
  - (d) neglect of duty, if he or she -
    - (i) neglects, or omits without reasonable cause, to promptly or diligently attend to or carry out anything which it is his or her duty or responsibility to carry out, or instructed to attend to or carry out;
    - (ii) idles or gossips or sits or lies down without reasonable cause while on duty;
    - (iii) sleeps while on duty;
    - (iv) leaves his or her post or official duties without reasonable cause or without the explicit permission of the Commissioner-General, the officer in charge, or another correctional officer authorised by the Commissioner-General or officer in charge to grant such permission;
    - (v) by neglect or default, allows or contributes to, the escape of any offender or assists an offender to escape;

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- (vi) fails to make or send a report or return which is his or her duty to make or send or is instructed to make or send;
  - (vii) assists or connives with any offender to obtain or keep any prohibited article;
  - (viii) neglects or refuses to arrest any offender or correctional officer whom he or she is ordered to arrest;
  - (ix) without reasonable cause omits to make any necessary entry in any official document or book;
  - (x) feigns or exaggerates any sickness or injury in order to evade duty;
  - (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 neglects or omits to inform the relevant Correctional Service authority of such sickness;
  - (xii) neglects or refuses to observe any rule, standing order or administrative directive made or issued under section 5(3), or directive or instruction made or issued by the officer in charge under section 18(2)(c), or directive or instruction made or issued by any other correctional officer authorised by the Commissioner-General to make or issue a directive or instruction;
  - (xiii) neglects or omits to promptly inform the management of the correctional facility or Correctional Service of any information that is likely to jeopardize the security, discipline or good order of the correctional facility;
  - (xiv) is aware of or suspects another correctional officer of conduct, speech or any other act that is directed against the authority of the Correctional Service in general or a correctional facility in particular, and he or she fails to promptly report such fact to the officer in charge or Commissioner-General; or
  - (xv) contravenes or fails to comply with any provision of this Act;
- (e) discreditable conduct, if he or she -
- (i) is convicted of a criminal offence;
  - (ii) has an intimate affair or sexual relations with an offender;
  - (iii) outside the ambit of his or her functions under this Act, accepts or receives any fee, gift, or any money or any other article, item or thing from an offender or another person acting on behalf of an offender; or
  - (iv) without the written permission of the Commissioner-General or officer in charge, directly or indirectly requests or demands or accepts or agrees to accept in connection with the execution of his or her duties, any commission, gift, fee, reward or any consideration whatsoever, or fails or neglects to report immediately to the Commissioner-General or his or her officer in charge that any such offer has been made to him or her;

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- (v) directly or indirectly borrows money from or through a correctional officer junior in rank to him or her; or
- (vi) acts in a disorderly manner or in any manner prejudicial to the discipline of a correctional facility or the Correctional Service or which is likely to bring discredit on the good order and reputation of the correctional facility or the Correctional Service;
- (f) absence from duty, if he or she without leave, reasonable cause or permission absents himself or herself from duty;
- (g) being late for duty, if he or she without reasonable cause or without permission is late for any parade, meeting or other duty;
- (h) falsehood if he or she -
  - (i) wilfully or negligently makes any false, misleading, or inaccurate statement or entry regarding his or her official duties or in the performance of his or her official duties;
  - (ii) while under oath, wilfully or negligently makes any false, misleading, or inaccurate statement or representation; or
  - (iii) without good cause, destroys, mutilates or renders illegible any official document or record, or alters or erases any entry therein;
- (i) deception, if he or she -
  - (i) prevaricates, or
  - (ii) wilfully suppresses any material facts, or
  - (iii) when required to testify, refuses or fails without reasonable cause to testify, at any proceedings where a disciplinary inquiry under section 51, 54 or 88 or trial under section 88 or an inquiry under section 57 is being conducted;
- (j) breach of confidence, if he or she, -
  - (i) unless authorised to do so in writing by the Commissioner-General, or unless required -
    - (aa) by any law;
    - (bb) to present evidence in any court of law; or
    - (cc) for the purpose of the administration of justice, divulges or makes known, to any person not authorised thereto, or to any person not being a correctional officer or in the employ of the Correctional Service, any information, document, book or record which is confidential and which concerns the Correctional Service; or
  - (ii) fails or neglects to report the fact that he or she is suffering from a contagious disease; or

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- (k) disorderliness, if he or she is -
  - (i) while on duty, or
  - (ii) while off duty in uniform in a public place,

without reasonable cause, improperly dressed or is dirty or untidy in his or her uniform, clothing or accoutrements;
- (l) damage to property, if he or she wilfully or negligently causes any waste, loss or damage to any uniform, clothing, accoutrements, book, document or any other property belonging to or under the control of the Correctional Service or fails or neglects to report to the officer in charge or head of work place such waste, loss or damage;
- (m) drunkenness or use of habit-forming drugs having a narcotic effect, if he or she -
  - (i) is unfit for duty through the consumption of intoxicating liquor or such drugs;
  - (ii) while on duty -
    - (aa) without a prescription from a medical practitioner, is under the influence of or partakes of such habit-forming drugs; or
    - (bb) is under the influence of or partakes of any intoxicating liquor; or
  - (iii) habitually uses to excess intoxicating liquor or such habit-forming drugs;
- (n) unlawfully entering licensed premises, if, when on duty, he or she enters -
  - (i) any public bar licensed for the sale of intoxicating liquor, except when his or her presence is required in such licensed premises in the execution of duty; or
  - (ii) any shop to buy intoxicating liquor;
- (o) engaging in employment other than his or her correctional duties, if he or she engages in such employment without the prior authorisation referred to in section 17(2)(a) of the Public Service Act, 1995 ( Act No. 13 of 1995);
- (p) using a weapon without authorisation or just cause, if he or she uses a weapon without authorisation or just cause or wilfully or negligently points a firearm at any person or negligently or recklessly discharges a firearm;
- (q) unlawful removal of an offender, if he or she without authority of the officer in charge, or any other correctional officer duly authorised thereto -
  - (i) removes an offender from one part of a correctional facility to another part of such correctional facility, or from the correctional facility precinct;
  - (ii) transports an offender using a private vehicle;

- (iii) uses any offender to perform labour in his or her own service and for his or her own benefit or that of another correctional officer;
- (r) theft, if he or she, outside the ambit of his or her duty, takes or removes money or other property belonging to an offender or the Correctional Service; or
- (s) conniving at, or being an accessory to, any disciplinary offence referred to in paragraphs (a) to (r), if he or she connives at or assists another correctional officer to commit such disciplinary offence.

### **Disciplinary inquiries into conduct of senior correctional officers**

**51.** (1) For the purposes of disciplinary control over senior correctional officers, the Commissioner-General may appoint as needed an ad hoc disciplinary board to inquire into the conduct of any senior correctional officer to ascertain whether such officer has committed a disciplinary offence, and to report its findings and make recommendations to the Commissioner-General as to the disciplinary measures, if any, to be taken against such senior correctional officer.

(2) A disciplinary board may consist of one or more persons, and where a senior correctional officer is appointed as member of such board, he or she must be of a rank not lower than that of the senior correctional officer into whose conduct the board is to inquire.

(3) Where the disciplinary board consists of -

(a) more than one person -

- (i) the Commissioner-General must designate one of the members of the board as chairperson of that board; and
- (ii) the chairperson and one member of that board constitute the quorum of the board; or

(b) one person, such person must be designated as chairperson of that board.

(4) The disciplinary board must hold its inquiry on such date and at such time and place as the chairperson of that board may determine.

(5) Prior to commencing a disciplinary inquiry under this section, the disciplinary board must ensure that the senior correctional officer, in whose conduct the board is to inquire, is given at least 14 days written notice of such inquiry, and that notice must set out the nature and particulars of the charge against such officer and state that such officer is summoned to appear before that board at the date, time and place specified therein to answer to the charge.

(6) A senior correctional officer receiving a notice under subsection (5) may, prior to 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 must, subject to subsection (13), report such fact to the Commissioner-General, and may recommend to the Commissioner-General that any one or more of the disciplinary measures referred to in subsection (13) be imposed upon that senior correctional officer.

(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 board, likely to form the subject of criminal proceedings in a court of law.

(8) The disciplinary board may, for the purposes of a disciplinary inquiry referred to in subsection (1), -

- (a) in writing summon, or cause to be summoned, any person who, in the opinion of the board, is able to furnish information of material importance to the disciplinary 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 disciplinary 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 disciplinary inquiry, and examine him or her or cause him or her to be examined by a person appointed to adduce the evidence at the disciplinary 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 must be in accordance with such rules of procedure and evidence as may be prescribed.

(10) A senior correctional officer charged with a disciplinary offence and appearing before a disciplinary board is at such disciplinary inquiry 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 disciplinary board must keep a record or cause a record to be kept of the proceedings at its disciplinary inquiry and of all the evidence given.

(12) 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,

is guilty of an offence and on conviction 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 such imprisonment, and if such person is a correctional officer, he or she may, in addition to such fine or such imprisonment or to both such fine and such imprisonment, be subjected to disciplinary proceedings in terms of section 50(h) or (i).

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

- (a) a verbal warning;
- (b) a written warning;
- (c) a fine not exceeding one month's salary;
- (d) reduction in rank;
- (e) dismissal from the Correctional Service.

(14) Where the disciplinary board advises the Commissioner-General that the senior correctional officer concerned is -

- (a) not guilty of the disciplinary offence, the Commissioner-General may, subject to subsection (15), confirm the finding and dismiss the charge against such officer; or
- (b) guilty of the disciplinary offence, the Commissioner-General may impose such of the disciplinary measures referred to in subsection (13) and make any order as he or she may consider necessary,

and the Commissioner-General must, in writing, inform that senior correctional officer of the finding of guilty or not guilty, as the case may be, of the disciplinary offence in question and of the disciplinary measure, if any, which is imposed upon such officer in terms of paragraph (b), or of any order made under that paragraph.

(15) Where the Commissioner-General is of the opinion that the senior correctional officer was found not guilty, or where the Commissioner-General sets aside the finding of guilty on the ground that -

- (a) the board was not competent to do so;
- (b) the charge sheet on which the senior correctional officer was found guilty was invalid or defective in any respect; or
- (c) there has been any technical irregularity or defect in the procedure,

he or she may direct that a disciplinary inquiry under subsection (1) in respect of the same disciplinary offence again be instituted either on the original charge, suitably amended where necessary, or upon any other charge as if a disciplinary inquiry has not previously been instituted against such senior correctional officer: Provided that, a senior correctional officer



who was a member of the disciplinary board that conducted the original disciplinary inquiry, must not be appointed as a member of the board to be appointed to conduct disciplinary inquiry so directed by the Commissioner-General.

(16) No disciplinary measure imposed upon a senior correctional officer under subsection (14) may be effected -

- (a) until the time prescribed for lodgement of an appeal under section 52 has expired, and the senior correctional officer concerned has not lodged an appeal; or
- (b) where an appeal has been lodged under section 52, until the appeal has been dismissed or withdrawn.

(17) Where the Commissioner-General imposes a disciplinary measure against a senior correctional officer for a disciplinary offence, he or she may order that such measure or part thereof be suspended for a period not exceeding 24 months, during which period -

- (a) if the senior correctional officer commits no further disciplinary offence, the suspended measure or part thereof lapses at the end of such period; or
- (b) if the senior correctional officer commits any other disciplinary offence, the suspended measure or part thereof must immediately be put into effect.

(18) The provisions of this section must also apply, with the necessary changes, where the senior correctional officer committed the disciplinary offence while he or she was a junior correctional officer and in case of a junior correctional officer who commits a disciplinary offence together with a senior correctional officer and the disciplinary inquiry on them cannot be separated.

### **Appeals by senior correctional officers**

**52.** (1) Subject to subsection (2), a senior correctional officer who is aggrieved by a decision of the disciplinary board or the Commissioner-General at the conclusion of a disciplinary inquiry against such senior correctional officer in terms of section 51, or by a disciplinary measure imposed upon such senior correctional officer under that section, may, within 14 days of receiving the notice referred to in subsection (14) of that section, appeal in writing to the Minister against -

- (a) the findings of that board or any of its recommendations;
- (b) the finding of the Commissioner-General or his or her order, or part thereof; or
- (c) the disciplinary measure in question.

(2) The appeal period referred to in subsection (1) must not be considered if within the prescribed period of 14 days, there is proof that the senior correctional officer -

- (a) became hospitalised;
- (b) is granted compassionate leave;
- (c) became detained in lawful custody; or
- (d) is sent on local or foreign official mission.

(3) The senior correctional officer referred to in subsection (2) must lodge his or her appeal within 14 days from the date of resuming duty.

(4) The appeal referred to in subsection (1) and (3) must be lodged in such form and manner as the Commissioner-General may determine.

(5) The Minister may, in respect of an appeal lodged in terms of subsection (1) or (3), and on consideration of the disciplinary board's report to the Commissioner-General under section 51(13), the grounds of appeal and the replies by the disciplinary board and the Commissioner-General on the grounds of appeal -

- (a) confirm or set aside the findings and recommendations of the disciplinary board;
- (b) confirm or set aside the findings and order of the Commissioner-General;
- (c) confirm, set aside or alter the disciplinary measure in question; or
- (d) take any other measure that he or she may consider appropriate.

#### **Disciplinary proceedings against senior correctional officer not to prejudice civil or criminal liability**

**53.** (1) The institution of a disciplinary inquiry against a senior correctional officer under section 51 does not prejudice the right of any person to institute civil proceedings or of the Prosecutor-General to institute criminal proceedings against that officer based on the same facts.

(2) Nothing in this section prevents the disciplinary board from conducting a disciplinary inquiry and imposing a penalty upon such senior correctional officer for a disciplinary offence arising from the same facts.

(3) Any information obtained or evidence derived from questioning in a disciplinary inquiry may, subject to the law of evidence applicable to a court of law, be admissible as evidence against the person concerned in criminal or civil proceedings in a court of law.

#### **Disciplinary inquiries into conduct of junior correctional officers**

**54.** (1) For the purpose of disciplinary control over junior correctional officers, the Commissioner-General may authorise a correctional officer to be a presiding officer and to inquire into the conduct of a junior correctional officer for the purposes of ascertaining whether such correctional officer has committed a disciplinary offence: Provided that such authorised correctional officer must be of a rank not lower than that of the junior correctional officer whose conduct is to be inquired into.

(2) Prior to commencing a disciplinary inquiry under this section, the presiding officer must ensure that the junior correctional officer, in whose conduct he or she is to inquire, is given at least 14 days written notice of such inquiry, and that notice must set out the nature and particulars of the charge against such officer and state that such officer is summoned to appear before the presiding officer at the date, time and place specified therein to answer the charge.

(3) A junior correctional officer receiving a notice under subsection (2) may, prior to the date of the disciplinary inquiry set out in that notice, submit a written reply to the presiding officer admitting the commission of the disciplinary offence in question, and thereafter the presiding officer may, subject to subsection (10), impose one or more of the disciplinary measures referred to in subsection (10) upon that junior correctional officer.

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(4) A presiding officer may conduct a disciplinary inquiry notwithstanding the fact that the alleged disciplinary offence forms or is, in the opinion of the presiding officer, likely to form the subject of criminal proceedings in a court of law.

(5) The presiding officer conducting a disciplinary inquiry in terms of subsection (1), may for the purposes of such inquiry -

- (a) in writing summon, or cause to be summoned, 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; and
- (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.

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

(7) A junior correctional officer charged with a disciplinary offence and appearing before a presiding officer is at such inquiry 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.

(8) The presiding officer must keep a written record or cause a written record to be kept of the proceedings at such inquiry and of all the evidence given.

(9) A person who, having been summoned to appear before the presiding officer 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 presiding officer at the specified time and place;
- (b) having appeared before the presiding officer, 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 presiding officer; or

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- (d) refuses or fails to produce or surrender any book, document, thing, record or other evidence in his or her possession, to such presiding officer,

is guilty of an offence and on conviction 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 such imprisonment, and if such person is a correctional officer, he or she may, in addition to such fine or such imprisonment or to both such fine and imprisonment, be subjected to disciplinary proceedings in terms of section 50(h) or (i).

(10) Where a junior correctional officer 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 presiding officer finds the junior correctional officer concerned guilty of a disciplinary offence, such presiding officer may after having heard evidence in mitigation, make any appropriate order and impose any one or more of the following disciplinary measures upon that correctional officer namely -

- (a) a verbal warning;
- (b) a written warning;
- (c) a fine not exceeding one month's salary;
- (d) reduction in rank;
- (e) dismissal from the Correctional Service.

(11) The presiding officer must in writing notify the junior correctional officer concerned of any decision taken or disciplinary measure imposed on such junior correctional officer under subsection (10).

(12) A disciplinary measure imposed under subsection (10) is subject to the written confirmation by the Commissioner-General or a senior correctional officer authorised thereto by the Commissioner-General.

(13) On confirming the disciplinary measure imposed upon the junior correctional officer the Commissioner-General or if applicable the senior correctional officer authorised thereto by the Commissioner-General may, on consideration of the report of the disciplinary inquiry in question -

- (a) subject to subsection (14), confirm, alter or quash the finding by the presiding officer;
- (b) reduce, increase, alter or set aside the disciplinary measure or any order imposed or made by the presiding officer; or
- (c) give such finding or impose such disciplinary measure or make such order as the presiding officer might have given, imposed or made on any matter which was before him or her at the disciplinary inquiry in question:

Provided that, where the Commissioner-General, or the senior correctional officer authorised thereto by the Commissioner-General, as the case may be, intends to change the finding of not guilty to that of guilty or to impose a more severe disciplinary measure than that imposed during the disciplinary inquiry, he or she must notify in writing the accused correctional officer of such intention, and such accused correctional officer must make his or her representation, if any, on the intention within seven working days from the date of receiving such notice.

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(14) Where the Commissioner-General, or the senior correctional officer authorised thereto by the Commissioner-General, is of the opinion that, the junior correctional officer was found not guilty, or where the Commissioner-General, or the senior correctional officer authorised thereto by the Commissioner-General, sets aside the finding of guilty, on the ground that -

- (a) the presiding officer was not competent to do so;
- (b) the charge sheet on which the junior correctional officer was found guilty was invalid or defective in any respect; or
- (c) there has been any technical irregularity or defect in the procedure,

he or she may direct that a disciplinary inquiry under subsection (1) in respect of the same disciplinary offence again be instituted either on the original charge, suitably amended where necessary, or upon any other charge as if a disciplinary inquiry has not previously been instituted against such junior correctional officer: Provided that, the presiding officer who conducted the original disciplinary inquiry, must not be appointed to conduct the disciplinary inquiry so directed by the Commissioner-General or the senior correctional officer.

(15) Subject to subsection (12), a disciplinary measure imposed under subsection (10) is not effected -

- (a) until the time prescribed for lodgement of an appeal under section 55 has expired, and the junior correctional officer concerned has not lodged an appeal; or
- (b) where an appeal has been lodged under section 55, until the appeal has been dismissed or withdrawn.

(16) Where the presiding officer imposes a disciplinary measure against a junior correctional officer for a disciplinary offence, he or she may order that such measure or part thereof be suspended for a period not exceeding 24 months, during which period -

- (a) if the junior correctional officer commits no further disciplinary offence, the suspended measure or part thereof lapses at the end of such 24 months; or
- (b) if the junior correctional officer commits a further disciplinary offence, the suspended measure or part thereof must immediately be put into effect.

(17) The provisions of this section also apply where the junior correctional officer committed the disciplinary offence while he or she was a senior correctional officer.

**Appeals by junior correctional officers**

**55.** (1) Subject to subsection (2), a junior correctional officer who is aggrieved by a decision of the presiding officer at the conclusion of a disciplinary inquiry against him or her in terms of section 54, or by a disciplinary measure imposed upon him or her under that section, may, within 14 days of receiving or being informed of the written confirmation referred to in subsection (12) of that section, appeal in writing to the Minister against -

- (a) the findings or order of the presiding officer, or part thereof;
- (b) the findings or order, or part thereof, of the Commissioner-General or the senior correctional officer authorised thereto by the Commissioner-General; or

(c) the disciplinary measure in question.

(2) The appeal period referred to in subsection (1) must not be considered if within the prescribed period of 14 days, there is proof that the junior correctional officer -

- (a) became hospitalised;
- (b) is granted compassionate leave;
- (c) became detained in lawful custody; or
- (d) is sent on local or foreign mission.

(3) The junior correctional officer referred to in subsection (2) must lodge his or her appeal within 14 days from the date of resuming duty.

(4) The appeal referred to in subsection (1) and (3) must be lodged in such form and manner as the Commissioner-General may determine.

**[The word "subsection" should be plural to be grammatically correct.]**

(5) The Minister may in respect of an appeal lodged in terms of subsection (1) or (3), and on consideration of a report on the disciplinary inquiry in question, to be submitted to the Minister by the Commissioner-General, the grounds of appeal and the replies by the presiding officer and the Commissioner-General, or the senior correctional officer authorised thereto by the Commissioner-General, on grounds of appeal -

- (a) confirm or set aside the finding or order against the junior correctional officer;
- (b) confirm, set aside or alter the disciplinary measure in question; or
- (c) take any other measure that he or she may consider appropriate.

#### **Disciplinary proceedings against junior correctional officer not to prejudice civil or criminal liability**

**56.** The provisions of section 53 apply with the necessary changes to a disciplinary inquiry against a junior correctional officer under section 54.

#### **Inefficiency and unsuitability of correctional officers**

**57.** (1) Subject to subsection (17), the Commissioner-General may appoint an ad hoc board of inquiry to inquire into the efficiency and suitability of a correctional officer to remain in the Correctional Service or to retain his or her rank when such correctional officer is unfit for his or her duties or is incapable of performing them efficiently, is convicted of a criminal offence or is, within a period of three years, convicted of five or more disciplinary offences.

(2) The board of inquiry, referred to in subsection (1), comprises not less than three persons, and where a correctional officer is appointed as a member of such board, he or she must be of a rank not lower than that of the correctional officer into whose conduct the board is to inquire.

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(3) The Commissioner-General must designate a member of the board of inquiry as the chairperson of that board.

(4) (a) The board of inquiry must hold its inquiry on such a date and at such times and places as the chairperson of that board may determine.

(b) The chairperson and one member of the board constitute a quorum of the board.

(5) Prior to commencing an inquiry under this section, the board of inquiry must ensure that a correctional officer, in whose efficiency and suitability the board is to inquire, is given at least 14 days written notice of such inquiry, and that notice must set out the nature and particulars for the grounds of the inquiry against such officer and state that such officer is summoned to appear before that board at the date, time and place specified therein to answer to the grounds of inquiry.

(6) The board of inquiry may for the purposes of an inquiry referred to in subsection (1) -

(a) in writing summon, or cause to be summoned, 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 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.

(7) An inquiry in terms of this section must be in accordance with such rules of procedure and evidence as may be prescribed.

(8) A correctional officer appearing before the board of inquiry is, at such inquiry, 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 grounds of the inquiry;

(d) to examine any book, document, thing, record or other evidence produced in evidence; and

(e) to give evidence himself or herself.

(9) The chairperson of the board of inquiry must keep a record, or cause a record to be kept, of the proceedings at its inquiry and of all the evidence given.

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(10) A person who, having been summoned to appear before the board of inquiry 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 board of inquiry at the specified time and place;
- (b) having appeared before the board of inquiry, 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 board of inquiry; or
- (d) refuses or fails to produce or surrender any book, document, thing, record or other evidence in his or her possession, to the board of inquiry,

is 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 such imprisonment, and if such person is a correctional officer, he or she may, in addition to such fine or such imprisonment or to both such fine and imprisonment, be subjected to disciplinary proceedings in terms of section 50(h) or (i).

(11) The board of inquiry referred to under subsection (1) must, at the conclusion of the inquiry, pronounce its finding and submit the record of proceedings to the Commissioner-General.

(12) Where the Commissioner-General, on consideration of the record of proceedings referred to in subsection (11), is of the opinion that the correctional officer concerned is incapable of performing his or her duties efficiently or is unsuitable to remain in the Correctional Service, may reduce in rank or discharge such officer from the Correctional Service and must in writing notify him or her of such a decision.

(13) The reduction in rank or discharge under subsection (12) must not be effected -

- (a) until the time prescribed for lodgement of an appeal under subsection (14) has expired, and the correctional officer concerned has not lodged an appeal; or
- (b) where an appeal has been lodged under subsection (14), until the appeal has been dismissed or withdrawn.

(14) The correctional officer who is aggrieved by the decision of the Commissioner-General under subsection (12), may within 14 days of receiving the written notice informing him or her of such a decision, appeal to the Minister against such decision.

(15) The Minister may, in respect of an appeal lodged in terms of subsection (14), on consideration of the record of proceedings, to be submitted to the Minister by the Commissioner-General, the grounds of appeal and the comments of the board of inquiry or the Commissioner-General on the grounds of appeal -

- (a) confirm or set aside the decision taken against the correctional officer; or
- (b) take any other measure that he or she may consider expedient.

(16) The inquiry, by reason of being convicted of a criminal offence, can be conducted notwithstanding the fact that the correctional officer is being charged or was acquitted of a disciplinary offence under section 50(e)(i).



(17) A person who was a member of the disciplinary board referred to in section 51(1) or a presiding officer referred to in section 54(1) must not be appointed as member of the board of inquiry under this section where such disciplinary board or such presiding officer, as the case may be, conducted a disciplinary inquiry against the correctional officer whose efficiency and suitability is to be inquired into, for any of the five or more offences referred to in subsection (1).

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

**58.** (1) The Commissioner-General, or any other senior correctional officer duly authorised thereto by the Commissioner-General, may suspend any correctional officer who is suspected to commit or is charged with an offence under this Act or any other law from the performance of his or her functions as a correctional officer -

- (a) pending his or her trial for the offence;
- (b) pending the institution of a disciplinary inquiry against him or her;
- (c) pending the outcome of the court or disciplinary inquiry against him or her;
- (d) pending the institution on an inquiry into his or her efficiency and suitability to remain in the Correctional Service or to retain his or her rank; or
- (e) after his or her conviction of the offence.

(2) Subject to subsection (8), the Commissioner-General must, where a correctional officer is under arrest or detention, or is serving a term of imprisonment for a period of 30 days or less, suspend such correctional officer from the performance of his or her functions for such period of detention or imprisonment.

(3) Except in a case contemplated in subsection (2), or where it is in the interest of the Correctional Service that the correctional officer be immediately suspended, the Commissioner-General must, at least seven days before suspension of a correctional officer, conduct a hearing or cause a hearing to be conducted at which the correctional officer concerned must be given an opportunity to make presentations as to why he or she should not be suspended.

(4) During his or her suspension, the correctional officer must not wear a Correctional Service uniform and the powers, functions and authority vested in him or her as a correctional officer are suspended, but he or she continues to be subject to the same discipline and penalties as if he or she had not been suspended.

(5) A correctional officer suspended in terms of subsection (1) or (2) is, in respect of the period of his or her suspension, not entitled to any salary to which he or she would otherwise have been entitled, as a correctional officer, if he or she had not been suspended, except to the extent as the Minister may, at the request of such correctional officer, direct otherwise.

(6) The Commissioner-General, in relation to a correctional officer who has been suspended in terms of subsection (1) -

- (a) may at any time permit such correctional officer to reassume duty before the outcome of the court's decision or disciplinary inquiry against that officer as the Commissioner-General may consider appropriate, but such permission does not affect the court proceedings or the disciplinary inquiry;

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- (b) must forthwith permit such correctional officer to reassume his or her duty if -
- (i) after the investigation, he or she is not charged of the offence for which he or she was suspected to commit;
  - (ii) he or she is found not guilty;
  - (iii) he or she successfully appeals under this Act or any other law against his or her conviction of such charge or the disciplinary measure of dismissal from the Correctional Service; or
  - (iv) the charge, in respect of which he or she was suspended, does not result in such officer's dismissal from the Correctional Service.

(7) Subject to section 52 or section 55, as the case may be, if a correctional officer who was suspended is, pursuant to disciplinary inquiry, reduced in rank, he or she must be paid the salary applicable to the rank to which he or she is reduced from the date when the disciplinary measure of reduction in rank became effective.

(8) A correctional officer who is under arrest or detention or who is serving a term of imprisonment, for a period exceeding 30 days, is considered to have been dismissed from the Correctional Service with effect from the date immediately following the expiry of the period of 30 days.

(9) A correctional officer who is dismissed from the Correctional Service under subsection (8), may, within seven days from the day of his or her dismissal, apply to the Minister, through the Commissioner-General, for reinstatement giving reasons thereof.

(10) The Minister may, on consideration of the application and the recommendation of the Commissioner-General, reinstate the dismissed correctional officer in the post or employment previously held by him or her or in any other post or employment on such conditions as may be approved by the Minister, but with a salary or scale of salary or grade not higher than the salary or scale of salary or grade previously applicable to him or her, and in such a case the period of his or her absence from his or her office or official duties is considered to have been absence on leave without remuneration.

**Absenteeism, desertion and dismissal**

**59.** (1) A correctional officer must not absent himself or herself from his or her post or official duties without reasonable cause or without the prior written permission of the Commissioner-General, the officer in charge, or another correctional officer authorised by the Commissioner-General or officer in charge, to grant such permission.

(2) A correctional officer who, without reasonable cause or the explicit permission of the Commissioner-General, the officer in charge, or another correctional officer authorised by the Commissioner-General or officer in charge to grant such permission, absents himself or herself from duty for a period of 30 days or longer, is considered to have deserted the Correctional Service.

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

(4) A correctional officer who has deserted the Correctional Service as contemplated in subsection (2) is considered to have been dismissed from the Correctional Service with effect from the date immediately succeeding the day he or she became a deserter.

#### **Emoluments not to accrue during absence without leave or imprisonment**

**60.** A correctional officer is not 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-General or a senior correctional officer, duly authorised thereto by the Commissioner-General, authorises the payment of such emoluments equal to not more than one half of the correctional officer's salary for that period, as he or she may consider appropriate.

### PART VIII ADMISSION AND CUSTODY OF OFFENDERS

#### **Admission of offenders into correctional facility**

**61.** (1) A person may not be received into a correctional facility for the purposes of 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 is valid only for such period as is necessary to obtain a warrant or order referred to in paragraph (a).

(2) The officer in charge, or any other correctional officer on duty, must satisfy himself or herself before the admission of any person into the correctional facility for 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 or any other correctional officer on duty, must not refuse to admit a person into a correctional facility for custody only by reason of an error on the face of the warrant or order referred to in subsection (1), but must take steps, as soon as is practicable, to have the error rectified.

(4) When a convicted person is admitted into a correctional facility, the officer in charge must ensure, as soon as practicable, that all reasonable steps are taken to obtain -

- (a) relevant information about the offence;
- (b) relevant information about the offender, including his or her social, economic, criminal and young-offender history;

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- (c) any reasons and recommendations relating to sentencing or committal that are given by the court during conviction, sentencing or committal or during appeal;
- (d) any reports relevant to conviction, sentence or committal that were submitted to court; and
- (e) any other information relevant to administering the sentence or committal, including existing information from the police or victim, the victim impact statement and the transcript of any comments made by the court regarding parole eligibility.

(5) The court, police and any other relevant body or person must provide to the officer in charge the information referred to in subsection (4).

(6) Where access to the information obtained under subsection (4) is requested in writing by the concerned offender, the offender must be provided access to such information in the manner determined by the Commissioner-General.

(7) Where the offender who has been given access to information under subsection (6) believes that, there is an error or omission to the information -

- (a) he or she may inform the officer in charge, in writing, and such written information must be attached to the information claimed to be having an error or omission, and
- (b) the officer in charge must take the necessary measures to establish the correctness of the information supplied by the offender.

(8) Except as provided in any other law, the officer in charge or any correctional officer duly authorised thereto by the officer in charge, must be allowed access to the information referred to in subsection (4) and may give such information or any other information the officer in charge or the correctional officer possesses and that is relevant to decision making relating to the offender or the supervision of the offender, to the National Release Board, police or person authorised by the Commissioner-General, or under any law, to supervise offenders.

**Admission of female offenders with infants and admission of pregnant offenders**

**62.** (1) A female offender may be admitted into a correctional facility for custody with her infant.

(2) An infant referred to in subsection (1) must 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 must, on the recommendation of the medical officer and on considering the best interests of the infant -

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

(3) A female offender, who is pregnant, must be admitted into a female correctional facility or into a section of a correctional facility kept apart for female offenders.

(4) In a female correctional facility or in a section of a correctional facility kept apart for female offenders, there must, as far as is practicable, be special accommodation for all necessary pre-natal and post-natal care and treatment: Provided that, arrangements must be made for children to be born in a hospital outside the correctional facility, but where a child is born in a correctional facility the fact that he or she was born in such facility must not be mentioned in that child's birth certificate.

### **Disposal of offender's personal effects**

63. (1) On admission of a person to a correctional facility for purposes of detainment therein, all money, clothes and personal effects belonging to such person which he or she is not permitted by or under this Act or standing orders or administrative directives issued by the Commissioner-General under section 5(3) to retain, must, subject to subsection (4), be placed into the custody of the officer in charge, and which must, subject to subsection (3), be returned to such person on his or her release from such correctional facility.

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

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

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

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

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

**[The word "magistrates" should be "magistrate's" to be grammatically correct.]**

(7) Where an inventory of a prisoner's property is submitted to a magistrate's court under subsection (6), the court must -

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

(8) If within 14 days of the notice mentioned in subsection (7) no bona fide claim to the property is laid before the court, the court must order the property to be sold in accordance with the Court's prescribed procedure, and the proceeds from that sale and any unclaimed money specified in the inventory referred to in that subsection must be paid into the State Revenue Fund.

### **Separation and security classification and re-classification of offenders**

**64.** (1) Offenders must, on admission to a correctional facility, be separated by the officer in charge into one or more of the following groups, namely -

- (a) convicted offenders;
- (b) unconvicted offenders;
- (c) juvenile offenders;
- (d) female offenders
- (e) offenders who are suffering from a mental illness; and
- (f) such other groups as the Commissioner-General may determine,

and so far as the correctional facility accommodation renders it practicable, each group must be detained separately.

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

### **Offenders in custody of officer in charge**

**65.** (1) Subject to subsection (3), every person committed to a correctional facility is in the lawful custody of the officer in charge during the whole period of imprisonment, and is subject to the corrections discipline and, applicable to such person, the provisions of this Act and any administrative directive, standing order or rule made or issued under section 5(3) of this Act.

(2) The officer in charge must ensure that every person committed to the correctional facility under a warrant or order, is detained therein in accordance with the provisions of that warrant or order, until such person is lawfully released from that correctional facility.

- (3) (a) An offender who is being transferred or conveyed from one correctional facility to another correctional facility or place by a correctional officer, member of the police, or probation officer or any other person authorised under this Act or any other law to transfer or convey such offender is, while outside the correctional facility, considered to be in the lawful custody of the officer in charge of the correctional facility from which he or she is being transferred or conveyed.
- (b) An offender who escapes from the custody of a correctional officer, member of the police or probation officer or any other person referred to in paragraph (a), as the case may be, escapes from lawful custody for the purposes of any law.

### **Custody of female offenders**

66. Female offenders must at all times, during their detention or imprisonment, be under the care, custody and supervision of female correctional officers, who are responsible for their discipline.

#### **Custody of person under arrest**

67. A person arrested in pursuance of any warrant or order of court or under the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), providing for an arrest without a warrant, may be handed over to a correctional facility for custody and detention, and the officer in charge of that correctional facility must 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 offenders**

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

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

as the terms of the warrant in question may specify.

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

69. (1) A juvenile who is awaiting trial or awaiting the conclusion of his or her trial must not be detained in a correctional facility, unless, in the opinion of the court, 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.

**[The Children's Act 33 of 1960 has been replaced  
by the Child Care and Protection Act 3 of 2015.]**

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

- (a) the juvenile's age, sex and character; and
- (b) the nature of the offence with which he or she is charged.

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

#### **Escort of offenders to courts and offenders under police escort**

70. (1) Subject to section 71, where a sentenced offender or an offender on remand or awaiting trial is required to attend court, he or she must be taken from the correctional facility to the court in the custody of a correctional officer, and remains under the supervision and guard of such correctional officer until he or she is returned to the correctional facility or discharged by the court, as the case may be.

(2) Subject to sections 65(3) and 66, where an offender is being conveyed from a correctional facility to another place and the number of correctional officers required to escort such offender is insufficient to secure his or her safe custody, the officer in charge of the correctional facility from which the offender is to be conveyed may, with the general or special permission of the Inspector-General, commit such offender into the custody of such number of members of the police, detailed for such duty, as he or she considers appropriate.

### **Offender required at court**

71. (1) Where an offender 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 correctional facility where that offender is detained requiring him or her to produce the offender at the time and place specified in the order, and the officer in charge must comply with such order.

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

### **Preparation of defence by offender**

72. An offender must before commencement of, and during his or her trial, be afforded adequate facilities in the correctional facility or other place of detention for the preparation and presentation of his or her defence, and for that purpose the officer in charge must ensure that -

- (a) the offender's legal representative has adequate facilities to privately interview the offender; and
- (b) where the offender is unable to communicate with his or her legal representative in the official language, a suitable interpreter is provided.

### **Questioning of offender by member of police**

73. (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 correctional officer,

question within the correctional facility, any offender for the purposes of any criminal investigation.

(2) Where an offender 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 -

- (a) of, or above, the rank of warrant officer, in respect of an unconvicted offender; or
- (b) of, or above, the rank of chief inspector, in respect of a convicted offender,

order that such offender be temporarily removed from the correctional facility and be handed over to the custody of a probation officer or a member of the police for that purpose and the offender is considered to be serving his or her sentence as if he or she was not so removed.



(3) An offender who escapes from the custody of a probation officer or a member of the police, referred to in subsection (1), is considered to have escaped from lawful custody for the purposes of any law.

### **Transfer of offender from one correctional facility to another**

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

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

- (a) the degree and kind of custody and control necessary for -
  - (i) the safety of the public;
  - (ii) the safety of the offender and other persons in a correctional facility, and

[Subparagraph (ii) should have a semicolon after the word "facility" instead of a comma.]

- (iii) the security of the correctional facility applicable;
- (b) the availability of appropriate programmes and services and the offender's willingness to participate in those programmes or services; and
- (c) whenever possible, the accessibility to the offender's family.

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

### **Offenders to be informed of provisions of Act and applicable rules, orders and directives**

75. (1) Subject to subsection (3), the provisions of this Act and any rule, standing order, or administrative directive made or issued under section 5(3), relating to the treatment and conduct of offenders must be printed in the official language and in any other languages that the Commissioner-General may determine, and must be made available to every offender immediately on admission to a correctional facility, or if an offender is unable to read and understand any of the languages in which the said provisions have been printed, the officer in charge must ensure that the contents of those provisions are orally explained to such offender.

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

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

### **Offenders' input into decisions**

76. The Correctional Service must, in such manner and to such extent as determined by the Commissioner-General, provide offenders with the opportunity to contribute to decisions of the Correctional Service affecting the offenders, except decisions relating to security matters.

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

77. (1) Subject to this Act and any applicable rule, standing order, or administrative directive made or issued under section 5(3), the officer in charge of a correctional facility may, for the purpose of promoting and maintaining a relationship between the offender, family and community and facilitating the successful reintegration of the offender into the community, permit any offender to -

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

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

(3) The Commissioner-General may, after having given an offender an opportunity to be heard, withdraw or amend any permission to receive visitors, letters or any other privileges or indulgences, for such period of time as the Commissioner-General may consider appropriate.

(4) To the extent that the provisions of paragraph (b) of subsection (1) authorise interference with the privacy of a person's correspondence in conflict with Article 13 of the Namibian Constitution, such interference is 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 offender**

78. (1) Subject to subsection (2), every letter or document written in a correctional facility by or on behalf of an offender must, before being dispatched from the correctional facility, be delivered to the officer in charge who may censor such letter or document or cause such letter or document to be censored and the correctional officer censoring such letter or document must endorse on such letter or document -

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

(2) The provisions of subsection (1) do 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 offender:

Provided that, such letter or document must, before being dispatched and in the presence of the offender, be sealed, registered in the prescribed register and put in the relevant dispatch bag.

(3) To the extent that the provisions of subsection (1) authorise interference with the privacy of a person's correspondence in conflict with Article 13 of the Namibian Constitution, such interference is 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.

## PART IX PENALTIES FOR CERTAIN OFFENCES

### Possession of prohibited article

- 79.** (1) Subject to subsection (2), any person other than an offender 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 correctional facility; or
  - (b) removes from or takes into the premises of the correctional facility a prohibited article,

is guilty of an offence, and on conviction 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 is not guilty of an offence under subsection (1) if such person -
- (a) is a correctional officer or any other person employed in or about such correctional facility or the Correctional Service and has come into possession of such article in the course of his or her functions or employment in such correctional facility or in the Correctional Service; or
  - (b) has written authorisation of the officer in charge concerned or the Commissioner-General to retain that article or to take it into or remove it from the correctional facility.

### Unlawful conveyance, dispatch, delivery or transmission

**80.** Any person, other than a correctional officer or any other person employed in or about a correctional facility or the Correctional Service, who, without the prior authorisation of the Commissioner-General or the officer in charge -

- (a) conveys, dispatches, delivers, or transmits from a correctional facility a letter or document on behalf of an offender;
- (b) conveys, dispatches, delivers, transmits to, or gives, an offender a letter, document, intoxicating liquor, habit forming drug having a narcotic effect, opiate, money, clothing, or other provision or article;

is guilty of an offence, and on conviction 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.

**Unauthorised entrance into, and loitering near, correctional facility**

- 81.** Any person who -
- (a) without the prior permission of the officer in charge or other correctional officer authorised thereto by the officer in charge, enters upon the premises of a correctional facility;
  - (b) is found loitering within one hundred metres of the perimeters of the premises of a correctional facility or of any other place where an offender or offenders may be carrying out corrections activities and who fails to depart therefrom upon being ordered to do so by a correctional officer or member of the police;
  - (c) wilfully rides or drives any vehicle or leads any animal through a group of offenders inside or outside of a correctional facility; or
  - (d) in any manner wilfully interferes with the activities of any correctional officer or offender,

is guilty of an offence, and on conviction liable to a fine not exceeding N\$ 2000 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

**Unauthorised publications**

- 82.** (1) Subject to subsection (2), any person who -
- (a) without the written authorisation of the Commissioner-General -
    - (i) takes a photograph, film, or makes a recording, drawing or sketch of a correctional facility or part thereof;
    - (ii) publishes or causes to be published in any manner, a photograph, film, recording, drawing or sketch of a correctional facility or part thereof;
    - (iii) takes a photograph, film, or makes a recording, drawing or sketch of an offender or group of offenders, whether inside or outside of a correctional facility;
    - (iv) publishes or causes to be published in any manner a photograph, film, recording, drawing or sketch of an offender or offenders, whether inside or outside of a correctional facility;
  - (b) publishes or causes to be published any false information concerning the behaviour or experience in a correctional facility of any offender or concerning the administration of any correctional facility, 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 correctional facility, offender or group of offenders for the purposes of perpetrating a crime,

is guilty of an offence, and on conviction 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 such imprisonment.

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

### **Assisting offender to escape**

**83.** Any person who -

- (a) aids any offender in escaping or attempting to escape from any correctional facility, hospital, mental hospital or any other place in which such offender is held in custody or at which such offender is working 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 offender, supplies or agrees or attempts to supply or aids, incites or encourages any other person in supplying an offender 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 correctional facility, hospital, mental hospital or any other place in which such offender is held in custody or any place where offenders may come to work, any letter or token encouraging or inciting any offender to escape or to contravene a provision of this Act; or
- (d) harbours or conceals or assists in harbouring or concealing an escaped offender,

is guilty of an offence, and on conviction 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 such imprisonment and if such person is a correctional officer, he or she may, in addition to such fine or such imprisonment or to both such fine and such imprisonment, be subject to disciplinary proceedings in terms of section 50(d)(v).

### **Unlawful wearing of uniform, insignia or decoration**

**84.** Any person who -

- (a) without the authorisation of the Commissioner-General, wears or uses a uniform, insignia or decoration reserved for use by correctional officers, or any uniform, insignia, or decoration so nearly resembling that which is reserved for use by correctional officers; or
- (b) falsely represents himself or herself by word or conduct to be a correctional officer or a person authorised to wear a uniform, insignia, or decoration reserved for correctional officers,

is guilty of an offence, and on conviction liable to a fine not exceeding N\$ 4000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

## **PART X DISCIPLINE OF OFFENDERS**

### **Minor disciplinary offences by offenders**

**85.** Any offender who -

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- (a) disobeys a justifiable order of any correctional officer or staff member employed in the Correctional Service, or any rule or standing order made or issued by the Commissioner-General under section 5(3) or any directive or instruction issued by the officer in charge under section 18(2)(c) and applicable to such offender;
  - (b) is disrespectful toward any correctional officer or staff member employed within the Correctional Service or person authorised to visit the correctional facility;
  - (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) without the permission of a correctional officer, leaves his or her cell, ward, place of work, or other assigned place;
  - (g) malingers or makes repeated and groundless complaints;
  - (h) quarrels with another offender;
  - (i) makes a false accusation against a correctional officer, staff member employed in the Correctional Service or another offender;
  - (j) refuses to wear clothing issued to him or her by the correctional facility authorities or exchanges, loses, discards, damages, or alters, without the permission of a correctional officer, such clothing;
  - (k) is, without permission, in area prohibited to offenders;
- [The word "area" should be "an area" or "areas" to be grammatically correct.]**
- (l) takes another offender's property without the consent of that offender;
  - (m) attempts to commit an offence referred to in paragraph (e), (f), (i), (j), or (l); or
  - (n) aids or abets the commission of an offence referred to in paragraph (a), (b), (c), (e), (f), (g), (h), (i), (j), (k), or (l);

commits a minor disciplinary offence, and must be dealt with in such manner as the Commissioner-General may determine.

**Major disciplinary offences by offenders**

- 86.** (1) Any offender who -
- (a) fights with, assaults or threatens to assault, a correctional officer, a staff member employed in the Correctional Service or a member of police;
  - (b) receives or has in his or her possession a prohibited article;
  - (c) damages, disfigures, defaces, or in any other way interferes with any part of the correctional facility or any fitting thereof or any property belonging to, or under the control of, the Correctional Service;

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- (d) fights with another offender;
- (e) does an act likely to create unnecessary alarm among correctional officers, staff members employed in the Correctional Service or offenders;
- (f) in any way disturbs the peace or offends against the good order and discipline of offenders or the correctional facility;
- (g) mutinies or incites any other offender to mutiny;
- (h) assaults or threatens to assault another person;
- (i) creates or participates in a disturbance or any activity that is likely to jeopardize the security or good order of the correctional facility;
- (j) escapes from lawful custody or conspires with another person to procure the escape of an offender or assists another offender to escape from lawful custody;
- (k) 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 offender from lawful custody;
- (l) in terms of the Combating of Rape Act, 2000 (Act No. 8 of 2000), rapes another offender;
- (m) commits the same minor disciplinary offence for the third time;
- (n) attempts to commit an offence referred to in paragraphs (a) to (l); or
- (o) aids or abets the commission of an offence referred to in paragraphs (a) to (l),

is guilty of a major disciplinary offence, and on conviction liable to any of the sanctions set out in section 89 or 91.

(2) For the purposes of this section “mutiny” means mutiny as defined in section 47(2).

**Isolation of offender**

**87.** The officer in charge or a correctional officer duly authorised thereto by the officer in charge may order an offender suspected of committing a disciplinary offence to be kept apart from other offenders, pending the hearing and determination of the charge, if the officer in charge or such correctional officer duly authorised thereto believes on reasonable grounds that the continued contact of the offender with other offenders -

- (a) will interfere with an investigation on the offence; or
- (b) will jeopardize the offender’s own safety or the safety of any other person.

**Disciplinary inquiry for, or trial of, offenders**

**88.** (1) A charge against an offender for a major disciplinary offence may be heard and determined by -

- (a) a presiding officer at a disciplinary inquiry within a correctional facility; or

- (b) a magistrates court where, owing to the gravity of the offence or for other sufficient cause, the officer in charge decides to transfer the matter for trial to such court.

[The phrase “a magistrates court” should be “a magistrate’s court”.]

(2) Prior to commencing a disciplinary inquiry under this section, the officer presiding at such disciplinary inquiry must ensure that the offender, in whose conduct he or she is to inquire, is given at least seven days written notice of such inquiry, and that notice must set out the nature and particulars of the charge against such offender and state that such offender is summoned to appear before the presiding officer at the date, time and place specified therein to answer to the charge.

(3) An offender 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 presiding officer admitting the commission of the disciplinary offence in question, and thereafter the presiding officer may, after having heard evidence in mitigation, impose one or more of the sanctions referred to in section 89 upon that offender without holding a full disciplinary inquiry in terms of subsection (1)(a) of this section.

(4) The provisions of section 54(4), (6) and (7) apply with the necessary changes to a disciplinary inquiry under subsection (1)(a) of this section.

#### **Sanctions for major disciplinary offences to be imposed at disciplinary inquiry**

**89.** (1) Subject to subsection (2), where an offender admits under section 88(3) to have committed the major disciplinary offence in question or where at the conclusion of a disciplinary inquiry under section 88(1)(a) the presiding officer finds the offender guilty of a major disciplinary offence he or she may, after having heard evidence in mitigation, impose any one or more of the following sanctions upon such offender, namely -

- (a) verbal warning;
- (b) written warning;
- (c) removal from any earnings scheme;
- (d) forfeiture of gratuities referred to in section 97, but not exceeding one half of the amount earned;
- (e) increase in security level;
- (f) forfeiture of one or more privileges for a determined period;
- (g) confinement in a single cell for a period not exceeding 25 days.

(2) Notwithstanding subsection (1), an offender who is serving an earlier sentence of periodic imprisonment and who is found guilty at a disciplinary inquiry in terms of section 88(1)(a) of a disciplinary offence, is liable to a sanction of further periodic imprisonment of not less than twelve hours and not more than thirty-six hours, which sentence commences on the date of expiry of that earlier sentence.

- (3) A sanction imposed under subsection (1) is not effected -
- (a) until the time prescribed for lodgement of an appeal under section 90 has expired, and the offender 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.

(4) Where the presiding officer imposes a sanction against an offender for a major disciplinary offence, he or she may order that such sanction or part thereof be suspended for a period not exceeding 24 months, during which period -

- (a) if the offender commits no further major disciplinary offence, such sanction or part thereof lapses at the end of such period; or
- (b) if the offender commits any other major disciplinary offence, the suspended sanction or part thereof is immediately put into effect.

(5) For the purposes of this section “earnings scheme” means earnings scheme as may be prescribed.

#### **Appeals by offenders**

**90.** (1) Any offender who after the conclusion of the disciplinary inquiry under section 88 and 89, is aggrieved by the finding against him or her or by the sanction imposed upon him or her, may, within seven days from the date when the disciplinary inquiry was conducted, appeal in writing to the Commissioner-General or his or her delegate, as the Commissioner-General may generally or specifically determine, against -

- (a) the finding by the presiding officer; or
- (b) the sanction in question.

(2) The Commissioner-General or his or her delegate may, in respect of the appeal lodged in terms of subsection (1), on consideration of the report on the disciplinary inquiry in question, to be submitted to the Commissioner-General or his or her delegate by the presiding officer, and the grounds of appeal -

- (a) confirm or alter the sanction imposed upon the offender;
- (b) set aside the conviction and order further investigation; or
- (c) take any other measure that he or she may consider expedient.

#### **Sanctions for major disciplinary offences to be imposed at trial**

**91.** (1) Where a trial for a major disciplinary offence is conducted under section 88(1)(b) and the offender is found guilty of the offence, he or she is 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 sanctions set out in section 89(1).

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

#### **Provisions relating to inmate’s confinement in single cell**

**92.** (1) Subject to subsection (2), where more than one sanction of a period of confinement in a single cell have been imposed on an inmate for a disciplinary offence, the serving of such periods of confinement must 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 is, on expiry thereof, to be extended to complete a sanction of confinement in a single cell, unless such sanction has been imposed by a court under section 91(1)(b).

#### **Disciplinary proceedings against offender not to prejudice civil or criminal liability**

**93.** (1) The institution of a disciplinary inquiry against an offender under section 88(1)(a) does not prejudice the right of any person to institute civil proceedings or the Prosecutor General to institute criminal proceedings against the offender based on the same facts.

(2) Nothing in this section prevents the officer in charge or a senior correctional officer authorised by the Commissioner-General to do so, from conducting a disciplinary inquiry and imposing a penalty upon an offender for a disciplinary offence arising from the same facts.

(3) Any information obtained or evidence directly or indirectly derived from a questioning in a disciplinary inquiry may, subject to the law of evidence applicable to a court of law, be admissible as evidence against the person concerned in criminal or civil proceedings in a court of law.

### PART XI

#### REHABILITATION PROGRAMMES FOR OFFENDERS

##### **Purpose of rehabilitation programmes**

**94.** The Correctional Service must provide a range of rehabilitation programmes designed to address the needs of offenders and contribute to their successful reintegration into society.

##### **Work programmes and requirement to work**

**95.** (1) Every offender detained in a correctional facility pursuant to a sentence of imprisonment must, subject to the provisions of this Act, the directives of the Commissioner-General and any relevant order of the court -

- (a) as far as is practicable, be engaged in such work programmes as will promote and nurture the training and industrial skills of such offender to equip him or her to manage his or her life in a productive manner after release; and
- (b) perform such tasks on public works and other duties as may be assigned to him or her by a correctional officer.

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

##### **Agreements for employment and training of offenders**

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**96.** (1) Subject to section 95(1)(a), the Commissioner-General may enter into a contract with any institution, person, or body of persons for the employment and training of offenders who are under a sentence of imprisonment, upon such terms and such conditions as may be determined, generally or specifically, by the Commissioner-General.

(2) As far as is practicable, all Ministries and Agencies set out in Schedules 2 and 3 of the Public Service Act, 1995 (Act No. 13 of 1995) must purchase their required articles and supplies from amongst such as the Correctional Service may produce or manufacture.

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

**Gratuities for offenders**

**97.** (1) For the purpose of -

- (a) encouraging offenders to participate in rehabilitation programmes offered by the Correctional Service; or
- (b) providing financial assistance to offenders to facilitate their reintegration into society,

the Commissioner-General may, subject to subsection (2), authorise the payment of gratuities to offenders.

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

PART XII  
EXECUTION OF SENTENCES

**Admission register**

**98.** The officer in charge must maintain, in respect of his or her correctional facility -

- (a) an admission register, in which he or she must enter or cause to be entered, a record of -
  - (i) the name and age of each offender serving a sentence in that correctional facility;
  - (ii) the nature of the offence in respect of which such offender was convicted and sentenced;
  - (iii) the sentence imposed in respect of each offence; and
  - (iv) any other prescribed matter; and
- (b) such other registers as may be prescribed,

and any such register is open for inspection by the Commissioner-General, the correctional officer or staff member referred to in section 19 and any visiting justice to that correctional facility or any other person as may be authorised thereto by law or by the Commissioner-General.

### Commencement, computation and expiry of sentence

**99.** (1) Subject to subsection (2), (3) and (4), a sentence of imprisonment upon a conviction takes 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 takes effect from the day on which such offender surrenders himself or herself, or is taken into custody, to serve such sentence.

[The word “subsection” should be plural to be grammatically correct.]

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

(3) Where a person receives more than one sentence of imprisonment or receives additional sentences while serving a term of imprisonment, each such sentence must be served the one after the expiration, setting aside or remission of the other, unless the court specifically directs otherwise or unless the court directs that such sentences must run concurrently.

(4) The date of expiry of any sentence of imprisonment being served by an offender who -

- (a) escapes from lawful custody must, upon his or her recapture; or
- (b) is erroneously released must, subject to the provisions of section 100(3), upon his or her re-arrest

be postponed for a period equal to the period by which such sentence was interrupted by reason of such escape or erroneous release.

### Re-arrest of offender released erroneously

**100.** (1) Where it comes to the knowledge of the officer in charge that an offender has been released from a correctional facility erroneously, the officer in charge or a correctional officer authorised thereto, must issue a warrant for the re-arrest of such offender, which warrant may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and which warrant serves as authority for the detention of such offender in a correctional facility for a period, subject to subsection (2), not exceeding 48 hours, and the officer in charge must within that period hear the offender and any evidence in this regard.

(2) During the period of such offender’s detention as contemplated in subsection (1), the officer in charge must submit all relevant documents, including those documents submitted by the offender, if any, to a 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, such period is considered to expire at 16:00 hours on the next succeeding day on which such Judge is available.

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

### Imprisonment on default of payment of fine

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

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

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

### **Periodic imprisonment**

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

### **Confinement and restraint of offender**

**103.** (1) Where the officer in charge considers it necessary -

(a) to secure or restrain an offender who has -

(i) displayed or threatened violence;

(ii) been recaptured after escape from custody or in respect of whom there is good reason to believe that he or she is contemplating to escape from custody; or

(iii) been recommended on medical grounds for confinement in a separate cell by a medical officer;

(b) for the safe custody of an offender, that such offender be confined; or

(c) for any other security reason,

such officer in charge may order that such offender be confined, with or without mechanical restraint, in a separate cell and in the prescribed manner, for such period not exceeding 30 days as such officer in charge considers necessary in the circumstances.

(2) If it is considered necessary to continue with the confinement referred to in subsection (1) for a period exceeding 30 days, the officer in charge must report to the Commissioner-General stating the facts and making his or her recommendations.

(3) Upon the receipt of the report and recommendation referred to in subsection (2), the Commissioner-General may order the extension of the period of confinement, with or without mechanical restraint, for an additional 60 days, but the total period of such confinement may not exceed 90 days, unless with the explicit consent of the Minister.

**[Minister of Safety and Security & Others v Kennedy & Another (SA 69-2020) 2023 NASC (18 July 2023) finds section 103 unconstitutional, but suspends this finding of invalidity for 18 months from the date of the order to provide an opportunity to correct the defect.]**

## RELEASE OF OFFENDERS

**Establishment of National Release Board**

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

(2) (a) The National Release Board consists of -

(i) the Chairperson;

(ii) such number of Vice-Chairpersons; and

(iii) such number of members, who may include persons who are not members of the services or staff members,

as the Commissioner-General may appoint.

(b) The Commissioner-General must assign each member of the National Release Board to a section of that Board as specified in the instrument of appointment.

(3) A member of the National Release Board appointed under subsection (2)(a)(iii) and who is not a correctional officer -

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

(b) and not being a staff member or member of the services, is paid such remuneration as the Commissioner-General, with consultation with Treasury, may determine;

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

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

(5) Such other staff as are necessary to enable the National Release Board to perform its functions and duties under this Act may be employed in accordance with this Act or the Public Service Act, 1995 (Act No. 13 of 1995).

**Functions of National Release Board**

**105.** (1) Subject to section 112(10), the National Release Board must, whenever necessary, -

(a) make recommendations to the Commissioner-General as to -

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

- (ii) subject to section 116 or 117, the release on full parole or probation of an offender who has been declared a habitual criminal or sentenced to life imprisonment;
- (iii) the conditions upon which the offenders referred to in subparagraph (i) and (ii) may be released on full parole or probation; and

[The word “subparagraph” should be plural to be grammatically correct.]

- (iv) the names of offenders to be recommended for pardon or reprieve under section 108;
- (b) authorise, under section 110, the release of an offender on day parole;
  - (c) authorise, under section 112(2) or under the proviso to section 114(1)(b), the release on full parole or probation of an offender serving a sentence of imprisonment; or
  - (d) perform such other duties and functions as the Commissioner-General may from time to time assign to it.

(2) The manner and procedure for the National Release Board to submit the recommendations to the Commissioner-General is as determined by the Commissioner-General.

### **Principles that guide National Release Board**

**106.** (1) The principles that guide the National Release Board in fulfilling its functions referred to in subsection (1) of section 105 are -

- (a) that the protection of the society is the paramount consideration in the determination of any case;
- (b) that the National Release Board conducts proper and thorough risk assessment of each offender, taking into consideration all available information relevant in each case, including the stated reasons and recommendations of the sentencing court, other information from the trial or sentencing process, information and assessments provided by correctional authorities and information obtained from victims and the offender;
- (c) that the National Release Board enhances its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of its policies and programmes to offenders, victims and the general public;
- (d) that the National Release Board makes the least restrictive determination consistent with the protection of society;
- (e) that the National Release Board adopts and is guided by appropriate policies and that its members are provided with the necessary training to implement such policies;
- (f) that offenders are provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable release process.

(2) The National Release Board may recommend or authorise, as the case may be, the release on day parole, full parole or probation or the pardon or reprieve of an offender if, in its opinion -

- (a) the offender will not, by re-offending, present an undue risk to society before the expiration of the sentence the offender is serving; and
- (b) the release of the offender will contribute to the reintegration of the offender into society as a law abiding citizen.

### **Remission of sentence**

**107.** (1) Subject to subsections (2) and (4), an offender sentenced to a term or terms of imprisonment may, by reason of meritorious conduct and industry, during such period of imprisonment earn remission of part of such term, equivalent to one third of the total of the term of imprisonment in question.

(2) Subsection (1) does not apply to an offender who -

- (a) has been declared by a competent court as a habitual criminal;
- (b) has been sentenced to life imprisonment; or
- (c) after the commencement of this Act, has been sentenced to serve a term of imprisonment for committing, after that commencement, any of the scheduled crimes or offences, but this paragraph does not apply to any juvenile offender.

(3) The manner and procedure for an offender to earn remission of sentence is determined by the Commissioner-General.

(4) An offender does not earn any remission under subsection (1) in respect of the term of imprisonment during which he or she -

- (a) is at large following his or her escape from lawful custody;
- (b) is hospitalised as a result of his or her own negligence; or
- (c) is undergoing confinement in a single cell as a sanction imposed under section 89 or 91.

(5) An offender who earns the one third remission referred to in subsection (1) must be released from the correctional facility and such offender continues, while outside the correctional facility, to serve his or her term of imprisonment until its expiration on such conditions of release as the Commissioner-General may, on the recommendation of the officer in charge, decide, and such offender must remain under supervision as determined by the Commissioner-General.

(6) When an offender who is released under subsection (5) contravenes any condition of release or when the Commissioner-General is satisfied that it is necessary and reasonable to suspend the offender's release in order to prevent the contravention of any condition thereof or to protect society, the Commissioner-General may, by warrant, -

- (a) suspend the offender's release;



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- (b) order the offender's arrest, which warrant can be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and
- (c) order the offender's re-admission into a correctional facility to serve the unexpired portion of sentence or until the Commissioner-General cancels the suspension.

(7) Where an offender who is released under subsection (5) is re-admitted into a correctional facility as a result of additional sentence for committing an offence under the provisions of any law, his or her release is considered revoked from the day on which he or she is re-admitted into a correctional facility as a result of the additional sentence: Provided that, this subsection does not apply where the additional sentence is ordered to run concurrent with, and is in respect of an offence committed before the commencement of, the sentence to which the release under subsection (5) applies.

(8) For the purpose of this section, remission of sentence means the part of the term of imprisonment which, when earned under subsection (1), the offender will not serve in a correctional facility, but will serve as provided for under subsection (5).

**Pardon or reprieve by President**

**108.** (1) Without derogating from the generality of the powers of the President to pardon or reprieve offenders under Article 32(3)(d) of the Namibian Constitution, the Minister may, on the recommendation by the National Release Board and the Commissioner-General, recommend to the President the names, or categories, of offenders to be pardoned or reprieved where the Minister is satisfied that -

- (a) such offenders have displayed meritorious conduct, self discipline, responsibility and industry during the term of imprisonment so far served;

**["Self-discipline" appears as two words in the Government Gazette.]**

- (b) such offenders will not, by re-offending, present an undue risk to society upon their release following the pardon or reprieve; and
- (c) the release of the offenders following the pardon or reprieve will contribute to the reintegration of the offenders into society as law abiding citizens.

(2) The manner and procedure of assessing and identifying the offenders to be recommended for pardon or reprieve is as prescribed.

(3) The Minister must give notice in the Gazette of the names of every offender pardoned or reprieved by the President.

**Release on medical grounds**

**109.** The Minister may, on the recommendation of the medical officer and after consultation with the Commissioner-General, authorise the release from the correctional facility of an offender serving any sentence in a correctional facility and -

- (a) who is suffering from a dangerous, infectious or contagious disease; or
- (b) whose continued incarceration is detrimental to his or her health on the grounds of his or her physical condition,

either unconditionally or on such conditions as to parole or probation or as to special treatment as the Minister may determine.

### Release of offender on day parole

**110.** (1) Notwithstanding the provisions of section 112, but subject to subsections (3) and (4), the National Release Board may authorise the release on day parole of a convicted offender who has served one third of the term of his or her sentence of imprisonment, where in the opinion of the National Release Board -

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

**["Self-discipline" appears as two words in the Government Gazette.]**

- (b) such offender will not, by re-offending, present an undue risk to society when on day parole; and
- (c) the release of the offender will contribute to the reintegration of the offender into society as a law abiding citizen.

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

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

(4) Subsection (1) does not apply to an offender who has been sentenced as contemplated in section 107(2)(a) or (b), or who has been sentenced to a term of imprisonment for any of the scheduled crimes or offences or who has been classified as a maximum security offender, but this subsection does not apply to juvenile offenders.

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

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

### Temporary absence of offender

**111.** (1) Subject to subsections (2), (3) and (4), the officer in charge may authorise the temporary absence of an offender, whether escorted or unescorted, where, in his or her opinion -

- (a) the offender will not, by re-offending, present an undue risk to society during the authorised absence;
- (b) it is desirable for the offender to be absent from the correctional facility for medical, administrative, community service, family contact, personal development for rehabilitative purposes or compassionate reasons;

- (c) the offender's behaviour while under sentence does not preclude authorising the absence; and
  - (d) a structured plan for the absence has been prepared.
- (2) An offender who -
- (a) has been sentenced as contemplated in section 107(2)(a) or (b), or who has been sentenced to a term of imprisonment for any of the scheduled crimes or offences;
  - (b) according to the security classification or re-classification under section 64(2), still presents undue risk to society if released; or
  - (c) is a foreign national

is not eligible for unescorted temporary absence.

(3) The temporary absence authorised under subsection (1) applies only within the boundaries of Namibia and is, whenever practicable, on the expense of the State.

(4) The period of temporary absence, the circumstances and manner in which, and the time at which, an application for temporary absence can be made is as determined by the Commissioner-General.

(5) The officer in charge may cancel the authorised temporary absence, either before or after its commencement -

- (a) where the cancellation is considered necessary and reasonable to prevent contravention of a condition of the absence or where such a contravention has occurred;
- (b) where the grounds for authorising the absence have changed or no longer exist; or
- (c) after a review of the offender's case, based on information that could not reasonably have been provided when the absence was authorised.

(6) Where unescorted temporary absence is cancelled under subsection (5), the offender must be readmitted to the correctional facility to continue serving his or her sentence.

### **Release on full parole or probation of offenders serving terms of imprisonment**

**112.** (1) Where a convicted offender who has been sentenced to a term of imprisonment has served in a correctional facility half of such term and the officer in charge is satisfied that -

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

**["Self-discipline" appears as two words in the Government Gazette.]**

- (b) such offender will not, by re-offending, present an undue risk to society before the expiration of the sentence he or she is serving; and
- (c) the release of the offender will contribute to the reintegration of the offender into society as a law abiding citizen,

that officer in charge must submit or cause to be submitted a report in respect of such offender to the National Release Board, in which he or she recommends that such offender be released on full parole or probation and the conditions relating to such release as he or she may consider necessary.

(2) After considering the report and recommendation referred to in subsection (1) and conducting a hearing, the National Release Board may, subject to the provisions of sections 114, 115, 116 and 117, authorise the release on full parole or probation of the offender concerned upon such conditions as it may determine and specify or cause to be specified in the warrant of release in question.

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

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

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

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

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

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

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

(8) (a) Where it comes to the knowledge of the National Release Board that an offender released on full parole or probation in terms of this section or section 114 was released erroneously, or has, during the period of full parole or probation, contravened or failed to observe any of the conditions of release, the National Release Board must report such erroneous release or contravention to the Commissioner-General.

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(b) The Commissioner-General, upon being informed as provided for in paragraph (a), may issue a warrant for the arrest of that offender, which warrant may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and which warrant serves as authority for the offender to be detained in a correctional facility until a member of the National Release Board has heard the offender and has had sufficient opportunity to hear evidence in this regard.

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

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

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

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

(10) Notwithstanding the provisions of this section, but subject to sections 114, 115, 116 and 117, an offender who has been sentenced as contemplated in section 107(2)(a) or (b), or who has been sentenced to a term of imprisonment for any of the scheduled crimes or offences is not eligible for release on parole or probation under this section, but this subsection does not apply to juvenile offenders.

**Appeals by offenders**

**113.** (1) An offender who is aggrieved by the decision of the National Release Board, the Commissioner-General or the Minister regarding his or her release on full parole or probation may appeal against such decision -

(a) in case of the decision of the National Release Board, to the Commissioner-General;

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

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

on the grounds that, the National Release Board, the Commissioner-General or the Minister, as the case may be -

(aa) made an error of law;

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

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

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

- (a) confirm the decision;
- (b) confirm the decision but order a further hearing of the case by the National Release Board on a date earlier than the date otherwise provided for, for the next hearing;
- (c) order a new hearing of the case by the National Release Board and order the continuation of the decision pending the hearing; or
- (d) reverse, cancel or vary the decision.

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

- (a) the decision appealed from cannot reasonably be supported in law, under the prescribed guidelines, or on the basis of information available to the National Release Board in its hearing of the case; and
- (b) a delay in releasing the offender would be unfair.

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

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

- (a) the appeal is frivolous or vexatious;
- (b) the relief sought is beyond the jurisdiction of the National Release Board, the Commissioner-General or the Minister, as the case may be;
- (c) the appeal is based on information or on a new release plan that was not before the National Release Board, Commissioner-General or the Minister when the decision being appealed was made; or
- (d) at the time the notice of appeal is received by the Commissioner-General, the Minister or the President, as the case may be, the offender has 90 days or less to serve in a correctional facility before being released.

(6) A decision of the President, in terms of this section or section 117, may not be appealed against.

### **Release on full parole or probation of offenders serving imprisonment of less than twenty years for scheduled crimes or offences**

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

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- (a) is satisfied that -
- (i) such offender has displayed meritorious conduct, self discipline, responsibility and industry during the period served in correctional facility;

**["Self-discipline" appears as two words in the Government Gazette. There should be a word such as "the" or "such" before the phrase "correctional facility".]**

- (ii) such offender will not, by re-offending, present an undue risk to society before the expiration of the sentence he or she is serving; and
- (iii) the release of the offender will contribute to the reintegration of the offender into society as a law abiding citizen; and
- (b) submits a report to the Commissioner-General in which the National Release Board recommends such offender's release on full parole or probation and the conditions relating to such release as it considers necessary: Provided that, in the case of an offender who has been sentenced to a term of imprisonment of less than five years and who has served two thirds of such term, the National Release Board itself may authorise the release on full parole or probation of the offender concerned upon such conditions as it may determine and specify or cause to be specified in the warrant of release in question.

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

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

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

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

- (6) (a) A release of an offender on full parole or probation in terms of this section extends for the period between the date of such release and the expiration of the term of imprisonment in question.
- (b) The monitoring and supervision of an offender referred to in paragraph (a) are as prescribed.
- (7) (a) Where an offender has been released on full parole or probation in terms of this section, the Commissioner-General may at any time, after consultation with the National Release Board, cancel or amend any condition of such offender's full parole or probation or add new conditions if it is in the interest of such offender's treatment, rehabilitation or reintegration into society or in the interest of society.

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

(8) Section 112(8) and (9) apply to this section where it comes to the knowledge of the National Release Board that an offender released on full parole or probation in terms of this section was released erroneously, or has, during the period of full parole or probation, contravened or failed to observe any of the conditions of his or her full parole or probation, as the case may be.

### **Release on full parole or probation of offenders serving imprisonment of twenty years or more for scheduled crimes or offences**

**115.** (1) Notwithstanding the provisions of this Act, no offender who has been sentenced to a term of imprisonment of twenty years or more for any of the scheduled crimes or offences is eligible for release on full parole or probation, unless he or she has served, in a correctional facility, two thirds of his or her term of imprisonment and the National Release Board, after conducting a hearing -

- (a) is satisfied that -
- (i) such offender has displayed meritorious conduct, self discipline, responsibility and industry during the period served in correctional facility;

[“Self-discipline” appears as two words in the *Government Gazette*.  
There should be a word such as “the” or “such” before the phrase “correctional facility”.]

- (ii) such offender will not, by re-offending, present an undue risk to society before the expiration of the sentence he or she is serving; and
- (iii) the release of the offender will contribute to the reintegration of the offender into society as a law abiding citizen; and
- (b) submits a report to the Commissioner-General in which the National Release Board recommends such offender’s release on full parole or probation and the conditions relating to such release as it considers necessary.

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

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

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



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

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

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

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

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

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

(10) (a) Where an offender has been released on full parole or probation in terms of this section, the Minister may at any time, after consultation with the National Release Board and the Commissioner-General, cancel or amend any condition of such offender's full parole or probation, as the case may be, or add new conditions if it is in the interest of such offender's treatment, rehabilitation or reintegration into society or in the interest of society.

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

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

(b) The Commissioner-General, upon being informed as provided for in paragraph (a), may issue a warrant for the arrest of that offender, which warrant may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and which warrant serves as authority for the offender to be detained in a correctional facility until a member of the National Release Board has heard the offender and has had sufficient opportunity to hear evidence in this regard.

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

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

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

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

### **Release of habitual criminals**

**116.** (1) An offender who has been declared a habitual criminal can be released from the correctional facility only on such conditions as to full parole or probation.

(2) Notwithstanding subsection (1), no offender who has been declared a habitual criminal is eligible for release on full parole or probation, unless he or she has served the prescribed minimum term of imprisonment and the National Release Board after conducting a hearing -

- (a) is satisfied that -
  - (i) there is a reasonable probability that such offender will abstain from crime and is likely to lead a useful, responsible and industrious life;
  - (ii) such offender has displayed a meritorious conduct during the prescribed minimum term of imprisonment and no longer has a tendency to engage in crime; and
  - (iii) the release of the offender will contribute to the reintegration of the offender into society as law abiding citizen; or
  - (iv) it is desirable for any other reason to release such offender on full parole or probation; and
- (b) submits a report to the Commissioner-General in which it recommends such offender's release on full parole or probation and the conditions relating to such release, as it considers necessary.

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

(4) On consideration of the report and comments referred to in subsection (3), the Minister may authorise the release on full parole or probation of such offender on such date and conditions and for such a period as he or she may determine.

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

**[There is a problem with the sentence structure in subsection (5); the word "of" following the phrase "officer in charge" appears to be superfluous, and the verb "indicate" should be "indicates". The provision should possibly read as follows:**

**"(5) If, after the approval of the offender's release on full parole or probation, but before the offender's release, it comes to the knowledge of the officer in charge information that indicates the probability of the offender to present a risk to society, which information was not available during the consideration of the offender's release, the officer in charge must not release such offender, but must submit a report to the National Release Board on such information."**

**However, this sentence would still be somewhat unclear. The provision was possibly intended to read as follows:**

**"(5) If, after the approval of the offender's release on full parole or probation, but before the offender's release, information comes to the knowledge of the officer in charge that indicates the probability of the offender to present a risk to society, which information was not available during the consideration of the offender's release, the officer in charge must not release such offender, but must submit a report to the National Release Board on such information."**]

(6) Upon the receipt of the report referred to in subsection (5), the National Release Board must forward it, together with its comments, to the Commissioner-General.

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

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

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

(10) The monitoring and supervision of an offender released on full parole or probation in terms of subsection (4) are as prescribed.

(11) (a) Where an offender has been released on full parole or probation in terms of this section, the Minister may at any time, on the recommendation of the National Release Board and the Commissioner-General, cancel or amend any condition of such offender's full parole or probation or add new conditions if it is in the interest of such offender's treatment, rehabilitation or reintegration into society or in the interest of society.

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

(12) Where an offender released on full parole or probation in terms of this section completes the period determined by the Minister under subsection (4) without contravening any

condition of release, he or she is considered to have duly served his or her term of imprisonment and must be discharged in respect of that sentence, unless the Minister determines otherwise.

- (13) (a) Where it comes to the knowledge of the National Release Board that an offender released on full parole or probation in terms of this section was released erroneously, or has, during the period of full parole or probation, contravened or failed to observe any of the conditions of release, the National Release Board must report to the Commissioner-General of such erroneous release or contravention.
- (b) The Commissioner-General, upon being informed as provided for in paragraph (a), may issue a warrant for the arrest of that offender, which warrant may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and which warrant serves as authority for the offender to be detained in a correctional facility until a member of the National Release Board has heard the offender and has had sufficient opportunity to hear evidence in this regard.
- (c) If, after ascertaining all the relevant facts, the National Release Board is still satisfied that the offender was released erroneously or has contravened a condition of his or her full parole or probation, the National Release Board must recommend to the Commissioner-General that such offender's placement on full parole or probation be withdrawn.

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

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

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

### **Release of offenders sentenced to life imprisonment**

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

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

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

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- (ii) such offender has displayed a meritorious conduct during such minimum term of imprisonment and no longer has a tendency to engage in crime; and
  - (iii) the release of the offender will contribute to reintegration of the offender into society as law abiding citizen; or
  - (iv) it is desirable for any other reason to release such offender on full parole; and
- (b) submits a report to the Commissioner-General in which it recommends such offender's release on full parole or probation and the conditions relating to such release, as it considers necessary.
- (3) Upon the receipt of the report referred to in subsection (2), the Commissioner-General must forward it, together with his or her comments, to the Minister.
- (4) On consideration of the report and comments referred to in subsection (3), the Minister must forward the report, together with his or her comments, to the President.
- (5) The President, on consideration of the report and comments referred to in subsection (4), may authorise the release on full parole or probation of the offender on the date and conditions recommended by the Minister or on such date and conditions as the President may determine.
- (6) An offender released on full parole or probation in terms of subsection (5), is on full parole or probation for life, unless the President determines otherwise.
- (7) If, after the approval of the offender's release on full parole or probation, but before the offender's release, it comes to the knowledge of the officer in charge of information that indicates the probability of the offender to present a risk to society, which information was not available during the consideration of the offender's release, the officer in charge must not release such offender, but must submit a report to the National Release Board on such information.
- (8) Upon the receipt of the report referred to in subsection (7), the National Release Board must forward it, together with its comments, to the Commissioner-General.
- (9) Upon the receipt of the report referred to in subsection (8), the Commissioner-General must forward it, together with his or her comments, to the Minister.
- (10) Upon the receipt of the report referred to in subsection (9), the Minister must forward it, together with his or her comments, to the President.
- (11) The President may, after consideration of the report and recommendation referred to in subsection (10), cancel such offender's authorisation for release on full parole or probation, as the case may be, and inform the Minister of his or her decision.
- (12) The Minister must inform the Commissioner-General, who in turn must inform the officer in charge, of the decision of the President made under subsection (11).
- (13) The monitoring and supervision of an offender released on full parole or probation in terms of this section are as prescribed.
- (14) (a) Where an offender has been released on full parole or probation in terms of this section, the President may at any time, on the recommendation of the Minister,

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cancel or amend any condition of such offender's full parole or probation or add new conditions if it is in the interest of such offender's treatment, rehabilitation or reintegration into society or in the interest of society.

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

(15) Where an offender released on full parole or probation in terms of this section completes the period otherwise determined by the President under subsection (6) without contravening any condition of release, he or she may be considered to have duly served his or her term of imprisonment and must be discharged in respect of that sentence, unless the President determines otherwise.

- (16) (a) Where it comes to the knowledge of the National Release Board that an offender released on full parole or probation in terms of this section was released erroneously, or has, during the period of full parole or probation, contravened or failed to observe any of the conditions of release, the National Release Board must report to the Commissioner-General such erroneous release or contravention.
- (b) The Commissioner-General, upon being informed as provided for in paragraph (a), may issue a warrant for the arrest of that offender, which warrant may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and which warrant serves as authority for the offender to be detained in a correctional facility until a member of the National Release Board has heard the offender and has had sufficient opportunity to hear evidence in this regard.
- (c) If, after ascertaining all the relevant facts, the National Release Board is still satisfied that the offender was released erroneously or has contravened a condition of his or her full parole or probation, the National Release Board must recommend to the Commissioner-General that such offender's placement on full parole or probation be withdrawn.

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

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

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

- (a) in case of erroneous release, be withdrawn and that the offender be readmitted to the correctional facility to continue serving his or her sentence;
- (b) in case of contravention of conditions, be withdrawn either partially or completely, and that the offender be readmitted to the correctional facility to continue serving

his or her sentence for such a period as the President may determine, before such offender is again considered to be released on full parole or probation, as the case may be.

### **Review of cases when release on full parole or probation is not authorised**

**118.** Where the President, the Minister, the Commissioner-General or National Release Board, as the case may be, decides not to authorise the release on full parole or probation of an offender, subsequent recommendation for review may be submitted at any time when the officer in charge is satisfied that the offender is again eligible for consideration for release on full parole or probation or that the offender has fulfilled the conditions, if any, imposed by the President, the Minister, the Commissioner-General or the National Release Board, as the case may be.

### **Officer in charge responsible for release of offenders**

**119.** (1) Subject to subsections (2) and (3), the officer in charge of every correctional facility is responsible for the due release from that correctional facility of an offender in his or her lawful custody, immediately upon his or her becoming entitled thereto.

(2) Where an offender due for release is undergoing medical treatment in a correctional facility hospital, he or she must not be released from that correctional facility unless -

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

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

[There should be a word such as “a” before the phrase “correctional facility”.]

### **Day of release of offender**

**120.** An offender must be released from correctional facility by noon on the day on which he or she is entitled to be released, but where that day falls on a Saturday, Sunday or public holiday, he or she must be released by noon on the preceding day not being a Saturday, Sunday or public holiday.

[There should be a word such as “a” before the phrase “correctional facility”.]

### **Travel expenses of released offender**

**121.** An offender, excluding a foreign national, released from a correctional facility is entitled, upon such release, to a travel allowance of the prescribed amount for purposes of travelling to such released offender’s place of origin or to such place as the Commissioner-General may determine or approve.

### Visiting justices

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

- (a) a Judge of the Supreme Court of Namibia or Judge of the High Court of Namibia, in respect of all correctional facilities in Namibia;
- (b) a Minister of the Government of Namibia, in respect of all correctional facilities in Namibia;
- (c) a member of the National Assembly or the National Council, in respect of all correctional facilities in Namibia;
- (d) the Permanent Secretary, in respect of all correctional facilities in Namibia
- (e) a Governor referred to in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992), in respect of all correctional facilities within the region of the Regional Council for which he or she has been elected as Governor;
- (f) a member of a Regional Council, in respect of all correctional facilities within his or her constituency; and
- (g) a magistrate, in respect of all correctional facilities within his or her area of magisterial jurisdiction.

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

### Functions of visiting justices

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

- (a) subject to being at all times escorted by an appropriate correctional officer, inspect every part of the correctional facility and visit every offender in solitary confinement or in a separate cell;
- (b) inspect and test the quality and quantity of food ordinarily served to offenders;
- (c) inquire into any complaint or request made by an offender;
- (d) ascertain as far as possible, whether the rules, standing orders and administrative directives issued under section 5(3) for such correctional facility are being observed;
- (e) inspect any book, document, or record relating to the management, discipline and treatment of offenders; and
- (f) perform such other functions as may be prescribed.

(2) On the completion of each visit, a visiting justice must enter in the visiting justices' book, to be kept by the officer in charge for that purpose, such remarks, suggestions and



recommendations about his or her findings, as he or she may consider necessary for the attention of the Commissioner-General.

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

### **Ministers of religion**

**124.** Ministers of religion, or representatives of any religious body who have been accredited by the body in question and recognised, in writing, as such representative by the Minister, may with the prior written authorisation of the Commissioner-General, and at such times, in such place and under such appropriate supervision as may be prescribed or as may be authorised by the officer in charge -

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

### **Visits by probation officers and representatives of offenders' aid societies**

**125.** A probation officer or a representative of an offenders' aid society may, with the prior written authorisation of the Commissioner-General, be permitted by the officer in charge to visit offenders or a particular offender, at such times, in such place and under such supervision as may be prescribed or as may be authorised by the officer in charge.

## **PART XV MISCELLANEOUS PROVISIONS**

### **Reward for apprehension of escaped offender**

**126.** (1) Where an offender escapes from lawful custody, the Commissioner-General may offer a monetary reward to any person who -

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

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

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

### **Rewards or gratuities for correctional officers**

**127.** (1) The Commissioner-General may in his or her discretion or on the recommendation of a Judge or magistrate, grant a monetary reward or gratuity to a correctional officer who in the course of duty has -

- (a) suffered bodily injuries;

- (b) performed special acts of bravery such as saving or attempting to save a life or saving or attempting to save property from loss or danger;
- (c) rendered valuable information acquired by personal risk, hardship, or unusual skill; or
- (d) rendered any other special or meritorious service.

(2) Every reward or gratuity granted under subsection (1) is subject to the prior approval of the Minister and must be paid from moneys appropriated by Parliament for that purpose.

### **Detention of offenders sentenced abroad**

**128.** (1) Subject to subsection (2), a Namibian citizen who has been duly sentenced to a term of imprisonment by a competent court of law within a foreign country and is transferred to a correctional facility in Namibia to serve the whole or the unexpired portion of that sentence, must 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 transfer of an offender referred to in subsection (1) must be done in accordance with the provisions of the relevant law of Namibia dealing with the transfer of convicted offenders or any agreement with the foreign State on transfer of sentenced offenders to which Namibia is a party.

### **Transfer of offenders to other countries**

**129.** 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 relevant law of Namibia on the transfer of convicted offenders and the provisions of the agreement with the foreign State on the transfer of sentenced offenders, be transferred from Namibia to that foreign State.

### **Delegation of powers, functions or duties**

**130.** (1) The Minister may in writing delegate to a staff member in the Ministry or the Commissioner-General any power, function or duty conferred upon him or her by this Act, excluding any power referred to in sections 12, 15, 21, 122(2) and 132, but is not divested of any power, function or duty so delegated and may amend or withdraw any decision made by such staff member or the Commissioner-General in the exercise of any power, function or duty so delegated.

- (2) The Commissioner-General may -
  - (a) in writing delegate to any senior correctional officer any power conferred upon him or her by or under the provisions of this Act, excluding the power to -
    - (i) make or issue rules, standing orders or administrative directives in terms of section 5;
    - (ii) appoint, promote, demote or discharge or transfer a correctional officer in terms of section 8;

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- (iii) appoint officers in charge or deputy officers in charge, in terms of section 18(1),

but is not divested of any power so delegated and may amend or withdraw any decision made by the senior correctional officer 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 any senior correctional officer.
- (3) The officer in charge may -
- (a) in writing delegate any power conferred upon him or her by or under this Act to the deputy officer in charge or any other senior correctional officer employed in his or her correctional facility, but is not divested of any power so delegated and may amend or withdraw any decision made by such deputy correctional officer or such senior correctional officer 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 officer in charge or any other senior correctional officer employed in his or her correctional facility.

(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-General or officer in charge, as the case may be, and may be withdrawn or amended by him or her.

**Exemption of Correctional Service clubs from certain taxes, duties and fees**

**131.** (1) No licence money, tax, duty or fee, other than customs, excise or sales duties leviable by law, is payable by any person under any law or bye-law in respect of any certified club for correctional officers or in respect of any item on sale at such a club.

(2) For the purposes of subsection (1), the production of an official document bearing the signature of the Minister or of a person authorised by the Minister to sign any such document and indicating that he or she has certified the club, is sufficient evidence that it is a certified club falling under this section.

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

**Regulations**

- 132.** (1) The Minister may make regulations as to -
- (a) the manner, including contracts of employment, of appointment, training, promotion, 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 correctional officers;
- (b) the retention of rank by a correctional officer on retirement or resignation and the award of honorary ranks;

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- (c) the supply of uniforms to correctional officers;
- (d) the conduct, discipline and efficiency of correctional officers, including temporary correctional officers;
- (e) the occupation of official quarters by correctional officers and staff members employed in the Correctional Service;
- (f) the classification of correctional facilities, the general supervision and management thereof, the maintenance of good order and discipline therein and the treatment and conduct of offenders;
- (g) the quorum, acting chairperson, procedure at meetings, form of minutes, reports or recommendation of the National Release Board;
- (h) the mode of supplying food and the scales of diet and the quantity and quality of clothing and necessaries for offenders;
- (i) the safe custody of offenders when performing work or otherwise;
- (j) the receipt and safe custody at correctional facilities of money, valuables, or other articles belonging to any offender, and the conditions and circumstances under which payment, deposit, or delivery of such money, valuables or other articles must be made during the period of detention of any offender;
- (k) the introduction into, or conveyance out of, any correctional facility of any food, drink, bedding, clothing, books, newspapers, letters, documents or any other articles;
- (l) the searching of offenders and of correctional officers and of all quarters and other places within any correctional facility occupied or frequented by such offenders or correctional officers and, subject to Article 13 of the Namibian Constitution, the seizure and examination of any letter or communication addressed to or received by any offender or correctional officer;
- (m) the articles or objects which are prohibited articles for purposes of this Act, the confiscation or disposal of all articles unlawfully introduced into or being taken out of any correctional facility or found in or near any correctional facility and of all clothing belonging to offenders which by reason of its condition or for any other valid cause it is undesirable to keep;
- (n) the admission to any correctional facility of any person other than correctional officers, persons employed in or about a correctional facility and persons who are to be detained therein;
- (o) the procedure for release of offenders, the obtaining and recording of information regarding behaviour of offenders on release and the supply of money, food, clothing or travelling allowance to offenders on their release;
- (p) the days and hours during which work by offenders may be suspended;
- (q) the medical examination, measurement, photographing and taking of fingerprints and of particulars of persons confined in any correctional facility or otherwise detained in custody, including the obtaining of personal statistics and records;

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- (r) the provision and equipment of workshops for the training of offenders and the supply of machinery, tools, or materials necessary for the purpose;
- (s) the manner in which sentences of imprisonment or any other sentences are to be carried out;
- (t) the forms of mechanical restraint that may be used and the conditions and application of a mechanical restraint to any offender;
- (u) the earning of remission of sentence by offenders serving sentences of imprisonment;
- (v) the procedures and inquiry relating to the death of an offender, and the disposal of the body of any such offender;
- (w) the disposal by sale or otherwise of the personal effects of any offender who has escaped or of the personal effects of any correctional officer who has deserted the Correctional 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;
- (x) the temporary detention of any sick offender 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;
- (y) the care and maintenance of indigents or destitute persons temporarily received into a correctional facility;
- (z) the subsidising and support of institutions, societies and individuals approved by the Minister as furthering the objects of this Act;
- (aa) the charging of a correctional officer or offender with a disciplinary offence and the procedure at disciplinary inquiries; the appearing of a correctional officer for an inquiry and the procedure thereof;
- (ab) the attendance of witnesses at an inquiry, including a disciplinary inquiry, and the payment of witness fees and travelling expenses;
- (ac) the implements that may be used by correctional officers or persons employed in a correctional facility as weapons for purposes of this Act;
- (ad) the payment of monetary compensation to offenders whose earning capacity is affected as a result of an accident or injury received in a correctional facility;
- (ae) the effective administration and implementation of community service orders, as contemplated in terms of section 276 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and
- (af) 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) Any regulation made under subsection (1) may provide for such penalties, not exceeding N\$2000 or imprisonment not exceeding six months, for a contravention or act of

non-compliance with those regulations, or both such amount and such imprisonment, and different penalties may be imposed for second or subsequent contraventions or acts of non-compliance.

### **Indemnity and limitation of actions**

**133.** (1) The State, the Minister, the Commissioner-General, an officer in charge, a deputy officer in charge, a correctional officer, a staff member in the Ministry or a person referred to in section 12(2), 51(2), 57(2) or 104(2) is not liable in respect of anything done in good faith under this Act.

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

(3) No civil action against the State or any person for anything done or omitted in pursuance of any provision of this Act may be entered into after the expiration of six months immediately succeeding the act or omission in question, or in the case of an offender, after the expiration of six months immediately succeeding the date of his or her release from correctional facility, but in no case may any such action be entered into after the expiration of one year from the date of the act or omission in question.

[There should be a word such as “a” or “any” before the phrase “correctional facility”.]

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

### **Repeal of laws and savings**

**134.** (1) The laws specified in the First Schedule are repealed to the extent specified in the third column thereof.

(2) The laws specified in the Second Schedule are amended to the extent specified in the third column thereof.

(3) Anything done under any provision of any law repealed by subsection (1) and which could be done under a provision of this Act is deemed to have been done under this Act.

### **Short title and commencement**

**135.** (1) This Act is called the Correctional Service Act, 2012 and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

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

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

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**FIRST SCHEDULE**  
(section 134)

| <b>Number and year of law</b> | <b>Short title</b>          | <b>Extent of repeal</b> |
|-------------------------------|-----------------------------|-------------------------|
| No. 17 of 1998                | Prisons Act, 1998           | The whole               |
| No. 5 of 1999                 | Prisons Amendment Act, 1999 | The whole               |
| No. 2 of 2010                 | Prisons Amendment Act, 2010 | The whole               |

**SECOND SCHEDULE**  
(section 134)

| <b>Number and year of law</b> | <b>Short title</b>                        | <b>Extent of amendment</b>  |
|-------------------------------|---|---|
| No. 9 of 2005                 | Transfer of Convicted Offenders Act, 2005 | <p>In sections 1, 11(1)(a) and 12(1) and (2), substitution for the words “prisons” and “prison” of the words “correctional facilities” and “correctional facility” respectively.</p> <p>In section 21(1), substitution for the term “Commissioner of Prisons” of the term “Commissioner-General of Correctional Service”</p> <p>Subsection (4) of section 21 is amended by the substitution for that subsection of the following subsection:</p> <p style="padding-left: 40px;">“(4) For the purpose of this section, “staff member” in the management cadre includes “senior correctional officer” as defined in section 1 of the Correctional Service Act, 2012 (Act No. 9 of 2012).”.</p>  |
| No. 51 of 1977                | Criminal Procedure Act, 1977              | <p>In the definition of “peace officer” substitution for the words “member of the prisons service as defined in section 1 of the Prisons Act, 1959 (Act No. 8 of 1959)” of the words “correctional officer as defined in section 1 of the Correctional Service Act, 2012 (Act No. 9 of 2012)”</p> <p>In section 51, 68, 73, 78, 182, 285, 286, 299, 303, 339 and 340, substitution for the words “prison” and “prisons” of the words “correctional facility” and “correctional facilities” respectively.</p> <p>In section 51(1), substitution for the words “section 48 of the Prisons Act, 1959 (Act No. 8 of 1959)” of the words “section 91 of the Correctional Service Act, 2012 (Act No. 9 of 2012)”.</p> <p>In section 51(2), substitution for the words “section 43 of the Prisons Act, 1959 (Act No. 8 of 1959)” of the words “section 83 of the Correctional Service Act, 2012 (Act No. 9 of 2012)”.</p> <p>In section 60 and 307, substitution for the words “a member</p> |

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|                       |                                 |   |
|-----------------------|---------------------------------|---|
|                       |                                 | <p>of the prison service at the prison” of the words “the officer in charge of the correctional facility”.</p> <p style="text-align: center;"><b>[The word “section” should be plural to be grammatically correct.]</b></p> <p>In section 182, substitution for the word “prisoner” of the word “inmate”.</p> <p>Subsection (2) of section 280 is amended by the substitution for that subsection of the following subsection:</p> <p style="padding-left: 40px;">“(2) Subject to section 99 (2) of the Correctional Service Act, 2012 (Act No. 9 of 2012) punishments referred to in subsection (1), when consisting of imprisonment, commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment must run concurrently.”.</p> <p>In section 321 and 340, substitution for the words “prisoner” and “prisoners” of the word “offender” and “offenders” respectively.</p> <p>In section 340, substitution for the words “head of a prison” of the words “officer in charge of a correctional facility”.</p> |
| <p>No. 15 of 2004</p> | <p>Labour Act, 2004</p>         | <p>Subsection (2) of section 2 is amended by the substitution for paragraph (d) of the following paragraph:</p> <p style="padding-left: 40px;">“(d) subject to the Correctional Service Act, 2012 (Act No. 9 of 2012), the Correctional Service.”.</p>  |
| <p>No. 13 of 1995</p> | <p>Public Service Act, 1995</p> | <p>Paragraph (c) of section 1 is amended by the substitution for the definition of “member of the service” of the following paragraph:</p> <p style="padding-left: 40px;">“(c) of the Correctional Service established under section 2(1) of the Correctional Service Act, 2012 (Act No. 9 of 2012);”.</p>  |
| <p>No. 1 of 2001</p>  | <p>Defence Act, 2002</p>        | <p>Schedule 1 is amended by -</p> <ul style="list-style-type: none"> <li>(a) the deletion in section 1 of the definition of “Prisons Act”;</li> <li>(b) the insertion in section 1, immediately after the definition of “convening authority”, of the following definition: <p style="padding-left: 40px;">““Correctional Service Act” means the Correctional Service Act, 2012 (Act No. 9 of 2012);”;</p> </li> <li>(c) the substitution in paragraph (b) of section 118(1) for the words “prison” and “Prisons Act” of the words “correctional facility” and “Correctional Service Act” respectively.</li> </ul>  |



### THIRD SCHEDULE

#### SCHEDULED CRIMES OR OFFENCES

1. Assault, when a dangerous wound is inflicted.
2. Treason
3. Murder
4. Rape
5. Robbery
6. Offence relating to illicit possession, conveyance or supply of dependence-producing drugs.
7. An offence under the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975) for unlawful hunting of specially protected game where the value involved in the offence exceeds N\$ 5000-00.
8. An offence under the Controlled Game Products Proclamation, 1980 (Proclamation No. 42 of 1980) for the unlawful dealing in any controlled game where the value involved in the offence exceeds N\$ 5000-00.  

**[The Controlled Game Products Proclamation AG. 42 of 1980 was repealed by the Controlled Wildlife Products and Trade Act 9 of 2008.]**
9. An offence relating to money laundering.
10. An offence relating to illicit dealing in or smuggling of ammunition, firearms, explosive or armament.