



## **A Compendium of Comparative Prison Legislation**



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**A Compendium of Comparative Prison Legislation**

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*Cover image: Jaipur women's jail, India, 2003*  
*Credit: Sylvie Fraissard*

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## 1. INTRODUCTION

*'Arbitrariness exists not just in the absence of rules but also in the presence of rules which are out of date. In many countries, prison rules and regulations, as with many other aspects of the prison system, are in dire need of review and updating. To prevent this, prison rules and regulations need to be reviewed and updated periodically in order to harmonise them with current legal standards.'* (Making Standards Work at II, para 38)

### **Root and branch changes are needed which amendments do not address...**

Prison laws do not change frequently; they tend to remain in place for 50 years or more. In some countries of the world, prison legislation dates back as far as the late 1800s. When revising such legislation, the importance of 'getting it right first time' is therefore tantamount. The process of revision does not simply involve dropping out-of-date provisions; it requires a thorough review of current laws in accordance with current international human rights standards. The process should additionally be informed by good legislation that exists elsewhere and draw on the expertise of prison officers and key members of society.

The objective of this Compendium is to provide legislative draftsmen, legislators, line ministries, prison administrations and those concerned with prison and penal reform with examples from around the world of drafting that is 'positive, realistic and contemporary'. The realities facing many low-income countries and the conditions that exist in prisons place a heightened importance on drafting laws that are practicably enforceable. Recognition therefore needs to be given to the socio-economic context whilst at the same time ensuring legislation conforms to international minimum standards.

### **A tool for draftsmen and not a book on prison laws of the world...**

PRI first began to collate and analyse legislation from around the world in 2003. At the outset, we considered legislation from 37 countries in Africa, the Americas, Europe and South Asia.

The initial purpose was to assist parliamentary draftsmen in Malawi who were drawing up new prison legislation. However following the results of the Ouagadougou conference, we realised that we could use this opportunity to inform draftsmen around the continent and further afield, since it was our experience in Africa at least that draftsmen are over-stretched and unable to draw on the rich experience that is at our fingertips – often at a click of the button.

The Compendium is firstly aimed therefore at draftsmen. Secondly, it is aimed at those charged with reforming national laws and is designed to inform their thinking. Thirdly, it is aimed at students, academics and NGOs interested in the field of penal reform.

PRI's approach was firstly to identify 'exemplary' pieces of legislation. We placed reliance on the South African, Canadian and German Acts. Our reasons were as follows: the German Act was and remains a progressive and rights-based piece of legislation. The Canadian Act was preceded by extensive consultation: a copy of the draft bill was pinned up on the Canadian government website and Canadian citizens were invited to contribute their comments. The South African Act took as its point of departure the Constitution of South Africa and reflects the constitutional structure in the composition and thrust of the primary legislation.

Extracts from the prison laws of other countries are included which demonstrate different drafting techniques, approaches, good practices and trends. We have avoided commenting directly on these extracts, apart from in the commentary for each section.

## **STRUCTURE OF THE COMPENDIUM**

The compendium is divided into six sections, which subsequently are divided into sub-sections:

1. Principles of prison administration
2. Custody under conditions of human dignity
  - Accommodation
  - Clothing and bedding
  - Exercise and recreation
  - Food
  - Health care
  - Access to legal advice
  - Complaints and requests
  - Religion and belief
  - Contact with community and access to prisons
  - Work
3. Good order
  - Discipline and punishment
  - Searches
  - Use of force and restraints
4. Sentenced prisoners
  - Classification
  - Special categories
  - Temporary leave
  - Treatment
5. Unsentenced prisoners
6. Administration
  - Admission
  - Death in prison
  - Powers, functions and duties of prison officers
  - Prisoners' files
  - Release
  - Transfer
  - Inspection

Each section is then presented as follows:

### **Commentary**

This section introduces the topic, highlights international standards and points to trends, problems and differences in approach. Extracts are cited from PRI's publication *Making Standards Work (MSW)* (PRI, 2001) and other authoritative texts, including the commentary to the *European Prison Rules* (2006) and *A Human Rights Approach to Prison Management. Handbook for Prison Staff* (ICPS, 2002), which have been widely distributed to prison administrations around the world.

### **International framework**

The major international human rights conventions that have treaty status deal with imprisonment only in general terms. Thus, for example, Article 7 ICCPR outlaws torture and cruel, inhuman or degrading treatment or punishment, while Article 10 provides more positively that:

*(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

*(2) (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;*

*(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*

*(3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.*

These general statements of principle have been supplemented by standards aimed specifically at the treatment of prisoners. The first and still most prominent of these standards is the 1955 *United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR)*. It continues to be the most important international framework for prison legislation and has gradually increased in status as it has been used to interpret the more general propositions on imprisonment in binding human rights conventions. Accordingly, we have referred extensively to the SMRs and to the subsequent guidelines and principles that the United Nations system has developed to deal with specific aspects of imprisonment and special categories of prisoner.

### **Regional framework**

While the United Nations has not developed a comprehensive new set of prison standards since 1955, such general standards have emerged at the regional level in recent years. Of these, the most comprehensive is the *European Prison Rules (EPR)*, which was reformulated in 2006 to reflect the most recent developments in penology. The EPR is therefore of significance beyond Europe and is cited at length throughout this compendium.

In addition to these general standards, there are numerous regional standards dealing with specific issues such as *Kampala Declaration on Prison Conditions in Africa* (1996) and the *Inter American Convention on Forced Disappearances* (1994). We refer to only the most important of these.

### **National legislation**

While international and regional instruments are useful for standard setting, they are not designed for direct national implementation. Indeed, some times the standards simply say that a particular question should be dealt with in national legislation.

There are essentially two approaches for draftsmen to consider. There is the constitutional and rights-based approach which starts by setting out the principles under which prisons shall operate; and there is the institutional approach starting with tasks and roles and set-up of the prison service.

While we do not argue for the one over the other, we note that where the national constitution contains a human rights chapter (as many do) and the constitution makes specific reference to persons in detention, their conditions of detention and

judicial guarantees, then – as the supreme law of the land – it should take precedence and guide the legislation.

It is therefore important that those who draft national legislation have a range of examples of laws that deal directly with the issues that arise in national prison systems.

For this purpose, we have collated extracts from national legislation around the world. The lead 'model' legislation we selected is cited more fully. We include extracts from elsewhere where they differ or suggest another approach.

## **APPENDICES**

All international and regional instruments used in the compendium are listed in Appendix 1, complete with acronyms. Simply clicking on the title of each instrument will link you with the full text of required document.

A list of national legislation referred to in the compendium is divided by region (Africa, America, Asia and Europe). This is also listed in the appendices. As a rule, English texts are referenced in the Compendium, though, in some cases where an official translation into English was unavailable we have provided parts of the legislation in its original language with the brief translation provided in English in *Italics*. Where possible, we have provided hyperlinks to the texts of the national laws in the original language and (or) English translation.

Useful materials for further reading are also listed with the links to different language versions, where applicable.

Finally, a questionnaire is included at the end of the Compendium for users to provide comments and suggestions on how the publication may be improved. We will use the comments to inform the production of a second edition.

## **DISCLAIMER**

There are some glaring examples of national legislation that are not included (e.g. from Asia) in this first edition of the Compendium. This leaves the possibility open for further amendments and updates. Therefore, readers are invited to contribute to the completion of the Compendium by sending legal documents adopted at the national level to be included.

While we have tried to be as accurate as possible, the law that we have quoted is also evolving. We cannot claim that it is always up to date or that all the translations are accurate. Readers are therefore also invited to bring any updates or errors to our attention.



## **2. PRINCIPLES OF PRISON ADMINISTRATION**

### **Commentary**

Prison legislation is normally introduced by a statement of principles. This is useful, as it may anchor the legislation in a wider international or human rights tradition, or it may refer back to the fundamental rights recognised by the national constitution.

The main purpose of the statement of principles is to provide a point of orientation for the readers of the legislation. They can use it both to interpret subsequent provisions of the legislation or, more generally, to inform decisions about prison policy.

Prison administrators may find legislation that sets out principles particularly useful when they need to exercise a discretionary power. Clearly stated principles should remind them that their discretion is not unfettered but should be exercised in accordance with the objectives contained in the principles.

The way the principles are set out may differ according to whether the legislation concerned covers all prisoners or is limited to sentenced prisoners only. If the latter is the case, as with the Canadian and German legislation quoted below, the principles may be stated only at the beginning. If, however, the legislation deals with both sentenced and unsentenced persons, it may be better to have a general statement of principle at the beginning, which applies to all prisoners, and to follow this up with more specific objectives for the different categories of prisoners. This is the approach of the South African legislation quoted below.

It is also followed in the 2006 *European Prison Rules*, which, while of course not national legislation, is a useful example of widely stated general principles. It may also be expected that European Prison Rules, through their increasing impact on European human rights law will have growing national influence as well.

### **International framework**

#### ***BPPP***

See full text

### **Regional framework**

#### ***EPR***

Basic principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.
2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.
4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.
5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.
6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.
7. Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.

8. Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.

9. All prisons shall be subject to regular government inspection and independent monitoring.

Approach regarding untried prisoners

95.1 The regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future.

95.2 The rules in this part provide additional safeguards for untried prisoners.

In dealing with untried prisoners prison authorities shall be guided by the rules that apply to all prisoners and allow untried prisoners to participate in various activities for which these rules provide.

Objective of the regime for sentenced prisoners

102.1 In addition to the rules that apply to all prisoners, the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life.

102.2 Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

4. Approach to safe custody

(1) Every prisoner is required to accept the authority and to obey the lawful instructions of the Commissioner and correctional officials of the Department and custody officials.

(2) (a) The Department must take such steps as are necessary to ensure the safe custody of every prisoner and to maintain security and good order in every prison.

(b) The duties and restrictions imposed on prisoners to ensure safe custody by maintaining security and good order must be applied in a manner that conforms with their purpose and which does not affect the prisoner to a greater degree or for a longer period than necessary.

36. Objective of implementation of sentence of imprisonment

With due regard to the fact that the deprivation of liberty serves the purposes of punishment, the implementation of a sentence of imprisonment has the objective of enabling the sentenced prisoner to lead a socially responsible and crime-free life in the future.

37. General principles (sentenced prisoners)

(1) In addition to the obligations which apply to all prisoners every sentenced prisoner must-

(a) participate in the assessment process and the design and implementation of any development plan or programme aimed at achieving the said objective; and

(b) perform any labour which is related to any development programme or which generally is designed to foster habits of industry, unless the medical officer or psychologist certifies in writing that he or she is physically or mentally unfit to perform such labour.

(2) In addition to providing a regime which meets the minimum requirements of this Act, the Department must seek to provide amenities which will create an environment in which sentenced prisoners will be able to live with dignity and develop the ability to lead a socially responsible and crime-free life.

(3) All such amenities must be prescribed by regulation and as far as possible be available to all sentenced prisoners unless, for economic or other practical reasons,

such amenities can be introduced in some prisons only, in which case, their partial introduction should be on a non-discriminatory basis.

(4) In addition to the general purpose stated in section 22, the disciplinary system for sentenced prisoners shall have the particular aim of promoting self-respect and responsibility on the part of the prisoner.

46. General principles (unsentenced prisoners)

(1) Unsented prisoners may be subjected only to those restrictions necessary for the maintenance of security and good order in the prison and must, where practicable, be allowed all the amenities to which they could have access outside prison.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT**

4. The principles that shall guide the Service in achieving the purpose referred to in section 3 are

(a) that the protection of society be the paramount consideration in the corrections process;

(b) that the sentence be carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, other information from the trial or sentencing process, the release policies of, and any comments from, the National Parole Board, and information obtained from victims and offenders;

(c) that the Service enhance 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 programs to offenders, victims and the public;

(d) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders;

(e) that offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence;

(f) that the Service facilitate the involvement of members of the public in matters relating to the operations of the Service;

(g) that correctional decisions be made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

(h) that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements;

(i) that offenders are expected to obey penitentiary rules and conditions governing temporary absence, work release, parole and statutory release, and to actively participate in programs designed to promote their rehabilitation and reintegration; and

(j) that staff members be properly selected and trained, and be given

(i) appropriate career development opportunities,

(ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and

(iii) opportunities to participate in the development of correctional policies and programs.

## **EUROPE**

### **GERMANY, PRISON ACT**

Principles:

Section 2 Objectives of Execution

By serving his prison sentence the prisoner shall be enabled in future to lead a life in social responsibility without committing criminal offences (objective of treatment). The execution of the prison sentence shall also serve to protect the general public from further criminal offences.

#### Section 3 Prison Regime

Life in penal institutions should be approximated as far as possible to general living conditions.

Any detrimental effects of imprisonment shall be counteracted.

Imprisonment shall be so designed as to help the prisoner reintegrate himself into life at liberty.

#### Section 4 Prisoner's status

The prisoner shall participate in drawing up his treatment programme and in achieving the objective of treatment. His willingness to this effect shall be awakened and encouraged.

The prisoner shall be subject to such restrictions of his liberty as are laid down in this Act. Unless the Act provides for a special regulation, only such restrictions may be imposed on him as are indispensable to maintain security or to avert a serious disturbance of order in the penal institution.

### **3. CUSTODY UNDER CONDITIONS OF HUMAN DIGNITY**

#### **3.1 ACCOMMODATION**

##### **Commentary**

The conditions in which prisoners are held goes to the core function of any prison system, namely to house people in a manner consistent with human dignity and which in the end will 'rehabilitate' and aid the 'reintegration' of the individual back into society. An overcrowded institution threatens the dignity of the individual and defeats the objective – since there is no space to educate or train the person in any way that is meaningful or useful.

The international framework is deliberately vague on the subject and talks for instance of sleeping accommodation meeting 'all requirements of health, due regard being paid to climatic conditions and particularly to cubic contents of air, minimum floor space, lighting, heating and ventilation' (SMR R10 below). The EPR (below) links accommodation with allocation drawing attention to the need to accommodate persons close to their families. The commentary to the EPR specifically draws national governments' attention to 'set specific minimum requirements' governing air, space, lighting etc.

'Conditions of accommodation collectively, and overcrowding in particular, can constitute inhuman or degrading treatment or punishment and thus contravene Article 3 of the ECHR.' (Commentary to EPR, Rule 18)

Rule 18.3 of EPR, is intended to compel governments to declare by way of national law specific standards, which can be enforced. Such standards would have to meet wider considerations of human dignity as well as practical ones of health and hygiene. The European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) by commenting on conditions and space available in prisons in various countries has begun to indicate some minimum standards. These are considered to be 4m<sup>2</sup> for prisoners in shared accommodation and 6m<sup>2</sup> for a prison cell. These minima are, related however, to wider analyses of specific prison systems, including studies of how much time prisoners actually spend in their cells. These minima should not be regarded as the norm. Although the CPT has never laid down such a norm directly, indications are that it would consider 9 to 10m<sup>2</sup> as a desirable size for a cell for one prisoner. This is an area in which the CPT could make an ongoing contribution that would build on what has already been laid down in this regard. What is required is a detailed examination of what size of cell is acceptable for the accommodation of various numbers of persons. Attention needs to be paid to the number of hours that prisoners spend locked in the cells, when determining appropriate sizes. Even for prisoners who spend a large amount of time out of their cells, there must be a clear minimum space, which meets standards of human dignity.

National legislation relates to national building regulations (South Africa), federal health, safety, sanitation and fire laws (Canada), certification by a government inspector (UK).

In Malawi, 'bursting provisions' have been inserted to allow the officer in charge of the prison to take action when it is overcrowded and for the head of the prison service to take action when the system is overcrowded. The commentary to the EPR again offers useful guidance on the subject of overcrowding:

Rule 18.4 of the EPR provides for national strategies enshrined in law to deal with overcrowding. Prison populations are as much a product of the operation of

criminal justice systems as they are of crime rates. This needs to be recognised both in general criminal justice strategies and in specific rules relating to what happens when prisons are threatened with a level of overcrowding that would result in a failure to meet the minimum norms that governments are required to set by Rule 18.3. Rule 18.4 does not stipulate how overcrowding should be reduced. In some countries for instance new admissions are restricted or even stopped when maximum capacity has been reached. Prisoners whose continued liberty does not constitute a serious danger to the public are put on a waiting list. A strategy to deal with overcrowding requires at least the establishment of clear maximum capacity levels for all prisons.

## **International framework**

### ***ICCPR***

#### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;  
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

### ***SMR***

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.  
(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.
10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.
11. In all places where prisoners are required to live or work,  
(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;  
(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.
12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.
13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.
14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

## **Regional framework**

## **EPR**

### Allocation and accommodation

17.1 Prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.

17.2 Allocation shall also take into account the requirements of continuing criminal investigations, safety and security and the need to provide appropriate regimes for all prisoners.

17.3 As far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another.

18.1 The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2 In all buildings where prisoners are required to live, work or congregate:

a.) the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b.) artificial light shall satisfy recognised technical standards; and

c.) there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3 Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

18.4 National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5 Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

18.6 Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

18.7 As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

18.8 In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

a.) untried prisoners separately from sentenced prisoners;

b.) male prisoners separately from females; and

c.) young adult prisoners separately from older prisoners.

18.9 Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

18.10 Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### 7. Accommodation

(1) Prisoners must be held in cells which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions. These requirements must be adequate for detention under conditions of human dignity.

(2) Sentenced prisoners must be kept separate from unsentenced prisoners.

Male prisoners must be kept separate from female prisoners.  
Prisoners who are children must be kept separate from adult prisoners and in accommodation appropriate to their age.

The Commissioner may detain prisoners of specific age, health or security risk categories separately.

(e) The Commissioner may accommodate prisoners in single or communal cells depending on the availability of accommodation.

Where there is a danger of prisoners who are awaiting trial or sentence defeating the ends of justice by their association with other prisoners, the Commissioner must detain them apart.

(3) There may be departures from the provisions of subsection (2) (a) to (c) if such departures are approved by the Head of Prison and effected under supervision of a correctional official and are undertaken for the purpose of providing development or support services or medical treatment, but under no circumstances may there be departures in respect of sleeping accommodation.

### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

#### **3. Accommodation**

(1) In every prison provision must be made for general sleeping and inpatient hospital accommodation, consisting of single or communal cells or both.

(2) (a) All cell accommodation must have sufficient floor and cubic capacity space to enable the prisoner to move freely and sleep comfortably within the confines of the cell.

b) All accommodation must be ventilated in accordance with the National Building Regulations SABS 0400 issued in terms of section 16 of the Standards Act, 1993 (Act No. 29 of 1993).

c) Any cell utilised for the housing of prisoners must be sufficiently lighted by natural and artificial lighting so as to enable a prisoner to read and write and the natural light area must at least be ten percent of the floor area.

d) (i) In every prison there must be sufficient and accessible ablution facilities that must be available to all prisoners at all times.

(ii) Such facilities include access to hot and cold water for washing purposes.

(iii) In communal sleeping accommodation ablution facilities must be partitioned off.

e) (i) Every prisoner must be provided with a separate bed and with bedding which provides adequate warmth for the climatic conditions and which complies with hygienic requirements as prescribed by Order.

(ii) In equipping a prison hospital, provision must be made for a standard range of hospital beds, bedding and clothing that specifically suit the needs for effective patient care.

f) Whenever separate prisons for males and females are established on the same site or on separate sites but in proximity of each other, or whenever separate sections of a prison are available for the reception of male and female prisoners, the following requirements must be observed:

The locks of the doors and gates of the prison or section for males and those of the prison or section for females must not correspond. The keys of a prison or section for females must be

permanently in the possession of a female correctional official.

(iii) Any male person visiting a prison or section for females must be accompanied by a female correctional official during the full period of such visit.

Prisoners of a particular security classification must be detained separately from prisoners with a different security classification

Prisoners between the ages of 18 and 21 years must be detained separately from prisoners who are over the age of 21 years old.

(i) Prisoners suffering from mental or chronic illness or whose health status will be affected detrimentally or whose health status poses a threat to other prisoners if

detained in a communal cell must on request of the medical officer or registered nurse be detained separately.

#### ***MALAWI, PRISONS BILL***

7(1) Prisoners shall be held in cells which meet the requirements prescribed by regulation in respect of floor space, lighting, ventilation, sanitary installations and general health conditions. These requirements shall be adequate for detention under conditions of human dignity.

(2)(a) The regulations shall prescribe both a norm and a minimum in respect of cell floor space per prisoner;

(b) Where the floor space in a particular prison does not meet the minimum requirement, the Officer in Charge shall – (i) immediately notify the Chief Commissioner; and

(ii) approach the Chief Resident Magistrate in terms of section 57.

(c) If the Chief Commissioner is notified in terms of subsection (2) (b)(i) he shall take immediate steps to deal with the overcrowding by –

transferring prisoners to a prison where adequate accommodation is available subject to section 44; or notifying the Inspectorate that the prison system is overcrowded and that action may be required in terms of section 56 to deal with it.

(3)(a) Sentenced prisoners shall be kept separate from unsentenced prisoners.

(b) Male prisoners shall be kept separate from female prisoners.

(c) Prisoners who are children shall be kept separate from adult prisoners and in accommodation appropriate to their age.

(d) The Chief Commissioner may order that prisoners of specific age, health or security risk categories be detained separately.

(4) There may be departures from the provisions of subsection (3) (a) to (c) if such departures are approved by the Officer in Charge and undertaken for the purpose of providing development or support services or medical treatment, but under no circumstances may there be departures in respect of sleeping accommodation.

#### ***MALAWI, PRISONS REGULATIONS***

3(1) (a) All cell accommodation shall have sufficient floor and cubic capacity space to enable prisoners to move freely and sleep comfortably within the confines of the cell.

(b) The norm for the floor space shall be four square metres per prisoner and the minimum shall be two square metres per prisoner.

(2) All cell accommodation shall be ventilated in such a way that prisoners have adequate fresh air.

(3) Any cell housing prisoners shall have sufficient natural and artificial lighting to enable a prisoner to read and write.

(4) In every prison there shall be sufficient toilets and washing facilities available to all prisoners at all times.

(5) Such facilities shall include access to water for washing purposes.

(6) Each communal cell shall have a toilet that shall be partitioned from the rest of the cell.

(7) Every prisoner shall as far as practicable be provided with a separate bed and shall be provided with bedding which provides adequate warmth and which complies with hygienic requirements as prescribed by standing orders.

(8) Where a prison has separate sections for male and female prisoners, the following requirements shall be observed:

- There shall be different locks for the doors and gates in the male and female sections.
- The keys of a section for females shall be permanently in the possession of a female prison officer.
- Any male person visiting a section for females shall be accompanied by a female prison officer throughout.

(9) At the request of the medical officer a prisoner who is seriously, mentally or chronically ill or whose condition poses a threat to other prisoners if detained in a communal cell shall be detained separately.

**MOROCCO, LOI RELATIVE A L'ORGANIZATION ET AU FONCTIONNEMENT DES ETABLISSEMENTS PENITENTIARIES, 1999**

IAW RELATING TO THE ORGANISATION AND FUNCTIONING OF PENITENTIARY INSTITUTIONS, 1999

Article 113

La détention doit s'effectuer dans des conditions satisfaisantes d'hygiène et de salubrité, tant en ce qui concerne l'aménagement et l'entretien des bâtiments, le fonctionnement des services économiques et l'organisation du travail, que l'application des règles de la propreté individuelle, la pratique des exercices physique, et l'amélioration équilibrée.

Article 113

*Detention must satisfy minimum standards of hygiene and cleanliness as concerns the upkeep and infrastructure of buildings, operation of economic services, organization of work, personal cleanliness, physical exercise and balanced diet.*

Article 114

Les locaux de détention et en particulier ceux destinés à l'hébergement, doivent répondre aux exigences de l'hygiène et de la salubrité, compte tenu du climat, notamment en ce qui concerne le cubage d'air, la surface minimale réservée à chaque détenu, le chauffage, l'éclairage et l'aération.

Article 114

*Places of detention and particularly those where people are housed must meet the demands of hygiene, and take into account the climate, especially with regard to cubic airspace, the minimum surface reserved for each prisoner, heat, lighting and ventilation*

**AMERICAS**

**CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT**

Living conditions, etc.:

70. The Service shall take all reasonable steps to ensure that penitentiaries, the penitentiary environment, the living and working conditions of inmates and the working conditions of staff members are safe, healthful and free of practices that undermine a person's sense of personal dignity.

**CANADA, CORRECTIONS AND CONDITIONAL RELEASE REGULATIONS**

83. (1) The Service shall, to ensure a safe and healthful penitentiary environment, ensure that all applicable federal health, safety, sanitation and fire laws are complied with in each penitentiary and that every penitentiary is inspected regularly by the persons responsible for enforcing those laws.

(2) The Service shall take all reasonable steps to ensure the safety of every inmate and that every inmate is

(a) adequately clothed and fed;

(b) provided with adequate bedding;

(c) provided with toilet articles and all other articles necessary for personal health and cleanliness; and

(d) given the opportunity to exercise for at least one hour every day outdoors, weather permitting, or indoors where the weather does not permit exercising outdoors.

**EUROPE**

### ***UK, PRISON ACT 1952***

#### 14 Cells

(1) The Secretary of State shall satisfy himself from time to time that in every prison sufficient accommodation is provided for all prisoners.

(2) No cell shall be used for the confinement of a prisoner unless it is certified by an inspector that its size, lighting, heating, ventilation and fittings are adequate for health and that it allows the prisoner to communicate at any time with a prison officer.

(3) A certificate given under this section in respect of any cell may limit the period for which a prisoner may be separately confined in the cell and the number of hours a day during which a prisoner may be employed therein.

(4) The certificate shall identify the cell to which it relates by a number or mark and the cell shall be marked by that number or mark placed in a conspicuous position; and if the number or mark is changed without the consent of an inspector the certificate shall cease to have effect.

(5) An inspector may withdraw a certificate given under this section in respect of any cell if in his opinion the conditions of the cell are no longer as stated in the certificate.

(6) In every prison special cells shall be provided for the temporary confinement of refractory or violent prisoners.

### ***GERMANY, PRISON ACT***

#### 17 – Prisoner's Accommodation and Food

The prisoners shall work all together. The same shall apply to vocational training, further vocational training, re-training for new jobs, as well as to work-therapeutic and other occupation during work hours.

The prisoners may spend their leisure time in community with the others. In view of the conditions in the institution regarding room, staff and organisation the Head of the institution may set up special rules for participation in joint activities.

Joint accommodation during working hours and leisure time may be restricted where bad influence on other prisoners is to be feared; where a prisoner is being examined in accordance with Section 6, but for no longer than two months; where security or good order of the institution so requires; or where the prisoner gives his consent.

#### 18 – Accommodation at Night

During the night the prisoners shall be lodged alone in their cells. Joint accommodation shall be admissible where a prisoner is in need of help or where there is danger to a prisoner's life or health.

In open institutions prisoners may, with their consent, be accommodated jointly during the night where any bad influence is not to be feared. In closed institutions joint accommodation at night shall be admissible, apart from the cases referred to in subsection 1), only temporarily and for compelling reasons.

#### 144 – Size and Lay-out of Rooms

Rooms in which prisoners spend the night and their leisure time as well as community rooms and visiting rooms shall be comfortable or otherwise equipped in a manner meeting their purpose. They shall have a sufficient cubic content of air and for reasons of health, have sufficient heating and ventilation, floor space and size of windows. The Federal Minister of Justice shall have powers to determine, with the Bundesrat's consent, by regulations any details regarding the cubic content or air, ventilation, floor space, size of windows as well as heating and equipment of the rooms.

#### 145 – Determination of Capacity

The controlling authority shall determine the capacity of each institution in such a way that adequate accommodation during the night (section 18) is guaranteed. Account shall be taken of the fact that a sufficient number of places for work,

training and further education as well as a sufficient number of rooms for religious welfare, leisure activities, sports, therapeutic measures and visits are available.

#### 146 – Prohibition of Overcrowding

Detention rooms shall not be occupied by more persons than is admissible.

Exceptions to this rule shall be admissible only temporarily and with the controlling authority's consent.

### ***CZECH REPUBLIC, IMPRISONMENT ACT***

Article 16: Social conditions of convicts and health care

(2) Each convict has to have a bed and space where to store his or her personal belongings.

## 3.2 CLOTHING AND BEDDING

### Commentary

It appears from the international framework that clothing and bedding should 'in no manner' be degrading or humiliating and that they should be: a) suitable/appropriate to the prevailing climatic conditions and norms; b) adequate for health; and c) meet the requirements of hygiene.

Convicted prisoners will be provided with prison uniform. While those awaiting trial or remand prisoners may wear their own clothing but if provided with prison uniform, it should be different from convicted prisoners (because those awaiting trial are presumed innocent). The EPR commentary to R20 underscores this point:

*'Protection of prisoners' dignity also underlies the requirement that prisoners who go outside the prison should not wear clothes that identify them as prisoners. It is particularly important that when they appear in court they are provided with clothing appropriate for the occasion.'*

Bedding will vary according to local tradition (whether the bed is raised off the ground or a mat on the floor), 'the essential point is that all prisoners should have their own bed or bed mat, clean bedding and their own sleeping space.' (Coyle, p.46)

### International framework

#### SMR

Clothing and bedding

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

### Regional framework

#### EPR

Clothing and bedding

20.1 Prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate.

20.2 Such clothing shall not be degrading or humiliating.

20.3 All clothing shall be maintained in good condition and replaced when necessary.

20.4 Prisoners who obtain permission to go outside prison shall not be required to wear clothing that identifies them as prisoners.

21. Every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

97.1 Untried prisoners shall be allowed to wear their own clothing if it is suitable for wearing in prison.

97.2 Untried prisoners who do not have suitable clothing of their own shall be provided with clothing that shall not be the same as any uniforms that may be worn by sentenced prisoners.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

10. Clothing and bedding

(1) The Department must provide every prisoner with clothing and bedding sufficient to meet the requirements of hygiene and climatic conditions.

(2) Despite the provisions of subsection (1), unsentenced prisoners may be allowed to retain or acquire appropriate clothing or bedding.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

5. Clothing and bedding

On admission to a prison, a sentenced prisoner must be provided with a complete outfit of clothing and bedding as prescribed by Order and only the clothing issued may be worn, except when otherwise determined by the Commissioner.

When an unsentenced prisoner is issued with prison clothing, such clothing must be different from that issued to sentenced prisoners.

(3) A prisoner may be allowed to wear for religious or cultural purposes such attire as prescribed by Order.

#### ***MALAWI, PRISONS BILL***

12.(1) The Service shall provide every prisoner with clothing and bedding and bedding sufficient to meet the requirements of hygiene and climatic conditions.

(2) The clothing provided to prisoners shall in no manner be degrading or humiliating.

### **AMERICAS**

#### ***PERU, CODIGO DE EJECUCION PENAL 1991***

#### ***PERU, PENITENTIARY CODE 1991***

Artículo 16<sup>o</sup>.- Vestimenta

El interno tiene derecho a vestir sus propias prendas, siempre que sean adecuadas, o preferir las que le facilite la Administración Penitenciaria. Estas prendas deberán estar desprovistas de todo distintivo que pueda afectar su dignidad.

Cuando el interno sale del Establecimiento Penitenciario, usa prendas de vestir que no destaquen su condición de tal.

*Article 16. Clothing*

*A detainee has the right to wear his own clothes once they are suitable, or he can use those provided by the institution. The latter should bear no feature that affects the dignity of the individual.*

*When a detainee leaves the prison, he should wear clothes that do not indicate his prisoner status*

## **EUROPE**

### **GERMANY, PRISON ACT**

#### 20 – Clothing

The prisoner shall wear prison dress. For leisure time he shall be given special overclothes.

The Head of the Institution shall allow the prisoner to wear his own clothing when he is taken out under escort, unless it is to be feared that he might abscond. The Head may give such permission also on other occasions, provided the prisoner sees to cleaning, repairs and regular change at his own expense.

#### 132 – Clothing

The detainee shall be allowed to use his own clothing, underclothing and bedding, unless this is barred for reasons of security, and provided that the detainee sees to the cleaning, repair and regular change of such clothing at his own expense.

### **CZECH REPUBLIC, IMPRISONMENT ACT**

Article 16(3) Clothing of convicts must be in harmony with climatic conditions and must sufficiently protect their health.

### **3.3 EXERCISE AND RECREATION**

#### **Commentary**

All prisoners need exercise and recreation, although such activities should not be compulsory according to the SMR and EPR. The one-hour a day period for exercise is considered a minimum requirement for all prisoners – even those subject to disciplinary punishment – who do not get sufficient exercise through their work.

However R25 EPR goes further when it considers the 'overall prison regime': 'Rule 25 underlines that the prison authorities should not concentrate only on specific rules, such as those relating to work, education and exercise, but should review the overall prison regime of all prisoners to see that it meets basic requirements of human dignity. Such activities should cover the period of a normal working day. It is unacceptable to keep prisoners in their cells for 23 hours out of 24, for example. The CPT has emphasised that the aim shall be that the various activities undertaken by prisoners should take them out of their cells for at least eight hours a day.' (Commentary to EPR, Rule 25)

Recreational activities should also be provided or permitted in the spirit of 'normalising' prison life as far as possible. Particular attention is paid in the commentary to the EPR that people past retirement are kept active in other ways. Facilities for outdoor activities should be provided.

Sport and recreation also provide opportunities for prisoners to develop their social and inter-personal skills, establish closer links with the community outside and enable them to exercise their right to free association.

#### **International framework**

##### ***SMR***

Exercise and sport

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

#### **Regional framework**

##### ***EPR***

## Prison regime

25.1 The regime provided for all prisoners shall offer a balanced programme of activities.

25.2 This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

25.3 This regime shall also provide for the welfare needs of prisoners.

25.4 Particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse.

## Exercise and recreation

27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2 When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.

27.3 Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4 Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5 Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6 Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

27.7 Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities.

## National legislation

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### 11. Exercise

Every prisoner must be given the opportunity to exercise sufficiently in order to remain healthy and is entitled to at least one hour of exercise daily. If the weather permits, this exercise must take place in the open air.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

##### 6. Exercise

(1) The medical officer must certify whether the following categories of prisoners are fit to exercise:

a prisoner who is injured, ill or complains that he or she is injured or ill;

a prisoner who receives any prescribed medicines and or medical treatment;

prisoner who receives continued or additional medical treatment; and a prisoner who is pregnant.

(2) In respect of each prisoner other than a prisoner mentioned in sub regulation (1), a medical officer or registered nurse must issue a certificate stating whether or not the prisoner is fit for exercise.

(3) If a registered nurse in considering whether a prisoner is fit for exercise, is of the opinion that the prisoner is subject to any condition which should be evaluated by a medical officer, the registered nurse must refer the prisoner to the medical officer for a decision as to whether the prisoner concerned is fit for exercise.

##### 11. Recreation

Recreational activities as prescribed by Order must be provided in all prisons for the benefit of the mental and physical health of prisoners.

### ***MALAWI, PRISONS BILL***

10(1) Every prisoner shall be given the opportunity to exercise sufficiently to remain healthy and is entitled to at least one hour of exercise daily.

(2) If weather permits exercise shall take place in the open air.

## ***AMERICAS***

### ***CANADA, CORRECTIONS AND CONDITIONAL RELEASE REGULATION***

83. (2) The Service shall take all reasonable steps to ensure the safety of every inmate and that every inmate is

(d) given the opportunity to exercise for at least one hour every day outdoors, weather permitting, or indoors where the weather does not permit exercising outdoors.

## ***EUROPE***

### ***NETHERLANDS, PENITENTIARY PRINCIPLES ACT***

Article 48

2. The prisoner shall be entitled to physical exercise and practice of sports for a minimum period of twice three quarters of an hour per week if his health permits this.

Article 49

1. The prisoner shall be entitled to recreation and a daily stay in the open air if his health permits this.

2. The governor shall provide that the prisoner is given the opportunity to participate in recreational activities for at least six hours a week.

3. The governor shall provide that the prisoner is given the opportunity to stay in the open air daily for at least one hour.

### ***GERMANY, PRISON ACT***

64 – Outdoor Exercise

A prisoner who does not work in the open air shall be given an opportunity to stay in the open air for at least one hour per day, weather permitting at the fixed time.

67 – General

The prisoner shall be given an opportunity to engage in leisure activities. He should be given an opportunity to attend classes, including sports, to watch television lessons, to attend courses and to take part in other activities of further education, in hobby groups, discussion groups and sports activities, and to make use of a library.

69 – Radio and Television

The prisoner shall be allowed to listen to the institution's radio programme and watch television jointly with others. The programmes should be selected in such a way that wishes and needs for political information, education and entertainment will reasonably be taken account of. Radio and television programmes may temporarily be switched off, or individual prisoners may be forbidden to listen or watch, if this is indispensable to maintain the security or good order of the institution.

A prisoner may be allowed to have his own radio set only on the conditions set out in Section 70, to have his own television set only in justified exceptional cases.

70 – Possession of Articles for Recreational Purposes

The prisoner shall, within reason, be permitted to be in possession of books and other articles on further education or for recreational purposes.

This shall not apply where the possession, surrender or use of such articles would be subject to penalty or a non-criminal fine; or would jeopardise the objective of treatment, security or good order of the institution.

The permission may be suspended where the prerequisites of subsection (2) exist.

***CZECH REPUBLIC, IMPRISONMENT ACT***

Article 16(4) Every day convicts must have ensured eight hours to sleep, time necessary for personal hygiene and cleaning, catering, at least one hour for outdoor activities and reasonable personal free time.

## 3.4 FOOD

### Commentary

The provision of food is another area where the authorities exercise complete power over deciding what prisoners shall eat each day. In many prisons the main complaint of prisoners is concerned with the monotony of the diet. While the international framework is understandably silent as to menus to be served it stresses that food shall be served at regular intervals, be fit for human consumption, nutritious and take account of special dietary requirements.

A dilemma may face prison administrations in countries where the general population suffers from hunger. It is sometimes argued that where law-abiding citizens go without, prisoners cannot be preferred. International standards and case law in the regional fora and treaty bodies refute this argument. Where the state deprives people of their liberty, it takes on an obligation to care for them and feed them 'adequately': 'This is an absolute obligation which cannot be overruled.' (Coyle, p 46)

The EPR (2006) changed the heading from 'Food' to 'Nutrition' to reflect the duty on the prison authorities to supply 'nutritious meals' as 'an essential function of prison authorities' (Commentary to EPR, Rule 22). Under the EPR (R22), the requirements for a 'nutritious meal' must be set down in national law – see South Africa, Correction and services Regulations (No 4) below.

*'These requirements would have to reflect the nutritional needs of different groups of prisoners. Once such specific standards are in place, internal inspection systems as well as national and international oversight bodies will have a basis for determining whether the nutritional needs of prisoners are being met in the way that the law demands.'*

### International framework

#### SMR

Food

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. (2) Drinking water shall be available to every prisoner whenever he needs it.

### Regional framework

#### EPR

Nutrition

22.1 Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

22.2 The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.

22.3 Food shall be prepared and served hygienically.

22.4 There shall be three meals a day with reasonable intervals between them.

22.5 Clean drinking water shall be available to prisoners at all times.

22.6 The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### 8. Nutrition

- (1) Each prisoner must be provided with an adequate diet to promote good health, as prescribed in the regulations.
- (2) Such diet must make provision for the nutritional requirements of children, pregnant women and any other category of prisoners whose physical condition requires a special diet.
- (3) Where reasonably practicable, dietary regulations must take into account religious requirements and cultural preferences.
- (4) The medical officer may order a variation in the prescribed diet for a prisoner and the intervals at which the food is served, when such a variation is required for medical reasons.
- (5) Food must be well prepared and served at intervals of not less than four and a half hours and not more than six and a half hours, except that there may be an interval of not more than 14 hours between the evening meal and breakfast.
- (6) Clean drinking water must be available to every prisoner.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

##### 4. Nutrition

Each prisoner must be provided with a diet consisting of a minimum protein and energy content of:

- (a) 2 000 kilo calories per day for adult females;
- 2 500 kilo calories per day for adult males; and
- 2 800 kilo calories per day for children, between the ages of 13 and 18 years of which at least 0.8 grams per kilogram of body weight per day must be from the protein group.

The diet must provide for a balanced spread of food items amongst the five major food groups, namely:

- food items rich in calcium;
- food items rich in protein;
- vegetables and fruits;
- cereals; and
- food items rich in fats and oils.

- (3) Food must be stored, prepared, cooked and served in compliance with the provisions of the Foodstuffs, Cosmetics and Disinfectants Act, 1977 (Act No. 63 of 1977) and the principles of good hygiene.

### **EUROPE**

#### ***GERMANY, PRISON ACT***

##### 21 – Food in the Institution

Composition and nutrition value of food in the institution shall be controlled by medical officers. On orders from a medical officer special food shall be provided. The possibility is to be provided to obey religious instructions in regard to the consumption of food.

### 3.5 HEALTH CARE

#### Commentary

##### **ALL PRISONERS**

Where so many people are confined in close proximity, prisons should be viewed as 'reservoirs of infection'. Higher rates of transmissible diseases such as tuberculosis, hepatitis and HIV/AIDS are recorded in prisons. They constitute a major risk to health not just of the prisoners but of the staff, their families and the public at large. Prison health should therefore be a priority.

Accordingly 'Health policy in custody should be integrated into, and compatible with, national health policy'. (Commentary to EPR, Rule 40)

It is an important principle that prisoners should have access to health care free of charge (BPPP, Principle 24). Even if governments experience difficulty in providing healthcare of a high standard to the population at large, prisoners are entitled to the best possible healthcare arrangements and without charge.

*'The CPT has stated that even in times of grave economic difficulty nothing can relieve the State of its responsibility to provide the necessities of life to those whom it has deprived of liberty. It has made clear that the necessities of life include sufficient and appropriate medical supplies.'* (Commentary to EPR, Rule 40)

Accordingly, health care in prisons should form part of national health policy and fall under the responsibility of the national health authority and not the prison service.

The courts have elaborated useful guidance in the application of international and regional standards. It has been stated repeatedly by the courts that prisoners retain all basic rights not temporarily taken away or necessarily inconsistent with being prisoners. The contention on behalf of the prison authorities that a prisoner may only claim such rights as the prison regulations confer is rejected in favour of 'a substantial residuum of basic rights which he cannot be denied' (Justice Brand in *Van Biljon v Minister of Correctional Services 1997 SACR 50*).

The international standards (below) refer to a standard of health care that is 'adequate'. The definition of what is 'adequate' has vexed courts in the USA and South Africa where the AIDS pandemic has run rampant. Two central arguments have emerged the first social and the second economic.

##### Prevailing social conditions

The argument that what is good enough for people outside prison, must be good enough for prisoners has been rejected by the courts as a general principle:

'What is true for medical treatment must also be true, for example, for accommodation...[it]... would, therefore, mean that the State is not obliged...to provide better accommodation for prisoners than that which is provided for people outside. It is an unfortunate fact of life, however, that there are many people in this country whose accommodation cannot be described as adequate by any standard. What is provided for people outside can therefore be no absolute standard for what is adequate for prisoners' (Justice Brand in *Van Biljon v Minister of Correctional Services 1997 SACR 50*).

##### Prevailing economic conditions

In the Van Biljoen case, a South African Constitutional court ruled that the state had a higher duty of care towards prisoners because of the conditions that obtained and because prisoners were powerless to improve their medical condition by themselves.

In this case Justice Brand went on to consider the argument that since the right to adequate medical treatment is guaranteed to prisoners in terms of the Constitution, prison authorities can never be heard to say that they are unable to provide such treatment as a result of budgetary constraints or lack of funds.

In this regard he considered the decision of the United States Court of Appeal 17 in *Harris v Thigpen* 941 F 2d 1495 (11th Circuit, 1991) where the Court was not prepared to accept that 'financial considerations could ever be used by so called "poor states" to deny a prisoner the minimally adequate care to which he or she is entitled.'

On this basis Justice Brand explained, 'once it is established that anything less than a particular form of medical treatment would not be adequate, the prisoner has a constitutional right to that form of medical treatment and it would be no defence for the prison authorities that they cannot afford to provide that form of medical treatment.'

However he did not agree that financial conditions or budgetary constraints are 'irrelevant' or that what is 'adequate medical treatment' can be determined in isolation. There must, in his view, be consideration of what the State can afford.

'If the prison authorities should...make out a case that as a result of budgetary constraints they cannot afford a particular form of medical treatment or that the provision of such medical treatment would place an unwarranted burden on the State, the Court may very well decide that the less effective medical treatment which is affordable to the State must in the circumstances be accepted as 'sufficient' or 'adequate medical treatment'.

What was required was not 'optimal medical treatment' or 'the best available medical treatment', but only 'adequate medical treatment'.

### **MENTALLY ILL PRISONERS**

Prison conditions may have a serious impact on the mental well-being of prisoners. Therefore, precautions need to be taken to identify those prisoners who might be at risk of self-harm or suicide. Staff needs to be properly trained in recognising the indicators of potential self-harm.

International and regional standards state that the insane and seriously mentally ill should not be held in prison and should be transferred to a suitably equipped psychiatric facility. Failing suitable referral:

*'Appropriate therapeutic options should be available for persons with mental disorder detained in penal institutions... An independent system should monitor the treatment and care of persons with mental disorder in penal institutions.'*(Commentary to EPR, Rule 47)

### **International framework**

#### **UDHR**

Article 25

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical

care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

#### **BPTP**

4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

#### **PMERHP**

##### Principle 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standards as is afforded to those who are not imprisoned or detained.

#### **SMR**

##### Medical services

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. (1) The medical officer shall regularly inspect and advise the director upon:

- (a) The quantity, quality, preparation and service of food;
- (b) The hygiene and cleanliness of the institution and the prisoners;
- (c) The sanitation, heating, lighting and ventilation of the institution;
- (d) The suitability and cleanliness of the prisoners' clothing and bedding;
- (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or its immediate vicinity.

(2) In other institutions, the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

### **BPPP**

#### Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

#### Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

### **PMERHP**

See all principles

### **CCLEO**

#### Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

## **Regional framework**

### ***EPR***

PART III: Health

Health care

39. Prison authorities shall safeguard the health of all prisoners in their care.

Organisation of prison health care

40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

Medical and health care personnel

41.1 Every prison shall have the services of at least one qualified general medical practitioner.

41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

41.3 Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly.

41.4 Every prison shall have personnel suitably trained in health care.

41.5 The services of qualified dentists and opticians shall be available to every prisoner.

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

42.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.

42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

- a) observing the normal rules of medical confidentiality;
- b) diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;
- c) recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;
- d) dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol;

- e) identifying any psychological or other stress brought on by the fact of deprivation of liberty;
- f) isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;
- g) ensuring that prisoners carrying the HIV virus are not isolated for that reason alone;
- h) noting physical or mental defects that might impede resettlement after release;
- i) determining the fitness of each prisoner to work and to exercise; and
- j) making arrangements with community agencies for the continuation of any necessary medical and psychiatric treatment after release, if prisoners give their consent to such arrangements.

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

43.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

44. The medical practitioner or other competent authority shall regularly inspect, collect information by other means if appropriate, and advise the director upon:

- 1) the quantity, quality, preparation and serving of food and water;
- 2) the hygiene and cleanliness of the institution and prisoners;
- 3) the sanitation, heating, lighting and ventilation of the institution; and
- 4) the suitability and cleanliness of the prisoners' clothing and bedding.

45.1. The director shall consider the reports and advice that the medical practitioner or other competent authority submits according to Rules 43 and 44 and, when in agreement with the recommendations made, shall take immediate steps to implement them.

45.2. If the recommendations of the medical practitioner are not within the director's competence or if the director does not agree with them, the director shall immediately submit the advice of the medical practitioner and a personal report to higher authority.

#### Health care provision

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment.

#### Mental health

47.1 Specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality who do not necessarily fall under the provisions of Rule 12.

47.2 The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention.

#### Other matters

48.1 Prisoners shall not be subjected to any experiments without their consent.

48.2 Experiments involving prisoners that may result in physical injury, mental distress or other damage to health shall be prohibited.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### 12. Health care

(1) The Department must provide, within its available resources, adequate health care services, based on the principles of primary health care, in order to allow every prisoner to lead a healthy life.

(2) (a) Every prisoner has the right to adequate medical treatment but no prisoner is entitled to cosmetic medical treatment at State expense.

(b) Medical treatment must be provided by a medical officer, medical practitioners or by a specialist or health care institution or person or institution identified by such medical officer except where the medical treatment is provided by a medical practitioner in terms of subsection (3).

(3) Every prisoner may be visited and examined by a medical practitioner of his or her choice and, subject to the permission of the Head of Prison, may be treated by such practitioner, in which event the prisoner is personally liable for the costs of any such consultation, examination, service or treatment.

(4) (a) Every prisoner should be encouraged to undergo medical treatment necessary for the maintenance or recovery of his or her health.

(b) No prisoner may be compelled to undergo medical intervention or treatment without informed consent unless failure to submit to such medical intervention or treatment will pose a threat to the health of other persons.

(c) Except as provided in paragraph (d), no surgery may be performed on a prisoner without his or her informed consent, or, in the case of a minor, with the written consent of his or her legal guardian.

(d) Consent to surgery is not required if, in the opinion of the medical practitioner who is treating the prisoner, the intervention is in the interests of the prisoner's health and the prisoner is unable to give such consent, or, in the case of a minor, if it is not possible or practical to delay it in order to obtain the consent of his or her legal guardian.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICE REGULATIONS***

##### 7. Health care

(a) Primary health care must be available in prison at least on the same level as that rendered by the State to members of the community.

When a prison is built, specifications must have been set for that part of the facility which will be utilised for the purposes of health care. The services of a medical officer and dental practitioners must be available at every prison.

The prison's medical officer is responsible for the general medical treatment of prisoners and must treat a prisoner referred to him or her as often as may be necessary. A registered nurse must attend to a sick prisoner as often as is necessary, but at least once a day.

(5) If a prisoner is attended to by his or her own medical practitioner of choice such medical practitioner must provide written reports to the medical officer made pursuant to the findings of any special examination, diagnoses, proposed treatment interventions and treatment regimes that may be prescribed by the medical practitioner. Upon the illness of or injury to a prisoner, resulting in the prisoner's hospitalisation or his or her removal to an institution for treatment of a mental affliction, the Head of Prison must inform the prisoner's spouse, partner or next of kin accordingly.

(7) (a) A prisoner may not be subjected to any medical or scientific experimentation. Consent thereto given by a prisoner will have no legal force or effect.

(b) A prisoner may not participate in clinical trials except with the Commissioner's approval given on application made by the prisoner.

(8) (a) A request from a prisoner to donate or receive an organ or tissue by donation, in accordance with the provisions of the Human Tissue Act, 1983 (Act No. 65 of 1993) must be approved by the Commissioner.

(b) A request from a person to receive any form of artificial fertilization in terms of the provisions of the Human Tissue Act, 1983 (Act No. 65 of 1983) from a prisoner must be approved by the Commissioner. A prisoner may not receive any form of artificial fertilization.

(9) (a) A prisoner may not be sterilised at State expense unless the procedure is required for medical reasons as certified by the medical officer.

(b) The Commissioner may approve an abortion at State expense only in the circumstances contemplated in sections 2(1)(b)(i), (ii) or (iii) and 2(1)(c) of the Termination of Pregnancy Act, 1996 (Act No. 92 of 1996).

(10) (a) The provision of medical assistance devices, but not including surgical implants, to prisoners at State expense must be prescribed by Order.

(b) All medical assistance devices issued to or received by a prisoner from outside the prison must be recorded.

(11) The medical officer, environmental health officer or registered nurse must inspect the prison at least once a month and report as prescribed by Order to the Commissioner on problems concerning environmental health conditions and health related issues.

(12) (a) After release or placement under community corrections an injured prisoner is entitled to medical treatment at departmental expense for an injury sustained in prison until the injury is healed.

(b) Such a person may be required to report to a prison for further treatment after release or placement under community corrections.

(c) A person injured after release or placement under community corrections is not entitled to treatment at Departmental expense.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT**

Health Care:

Obligations of Service

86. (1) The Service shall provide every inmate with (a) essential health care; and (b) reasonable access to non-essential mental health care that will contribute to the inmate's rehabilitation and successful reintegration into the community.

Standards

(2) The provision of health care under subsection (1) shall conform to professionally accepted standards.

Service to consider health factors

87. The Service shall take into consideration an offender's state of health and health care needs (a) in all decisions affecting the offender, including decisions relating to placement, transfer, administrative segregation and disciplinary matters; and (b) in the preparation of the offender for release and the supervision of the offender.

When treatment permitted

88. (1) Except as provided by subsection (5), (a) treatment shall not be given to an inmate, or continued once started, unless the inmate voluntarily gives an informed consent thereto; and (b) an inmate has the right to refuse treatment or withdraw from treatment at any time.

Meaning of "informed consent"

(2) For the purpose of paragraph (1)(a), an inmate's consent to treatment is informed consent only if the inmate has been advised of, and has the capacity to understand,

(a) the likelihood and degree of improvement, remission, control or cure as a result of the treatment;

(b) any significant risk, and the degree thereof, associated with the treatment;

(c) any reasonable alternatives to the treatment;

(d) the likely effects of refusing the treatment; and

(e) the inmate's right to refuse the treatment or withdraw from the treatment at any time.

Special case

(3) For the purpose of paragraph (1)(a), an inmate's consent to treatment shall not be considered involuntary merely because the treatment is a requirement for a temporary absence, work release or parole.

Treatment demonstration programs

(4) Treatment under a treatment demonstration program shall not be given to an inmate unless a committee that is independent of the Service and constituted as prescribed has (a) approved the treatment demonstration program as clinically sound and in conformity with accepted ethical standards; and (b) reviewed the inmate's consent to the treatment and determined that it was given in accordance with this section.

Where provincial law applies

(5) Where an inmate does not have the capacity to understand all the matters described in paragraphs (2)(a) to (e), the giving of treatment to an inmate shall be governed by the applicable provincial law.

Force-feeding

89. The Service shall not direct the force-feeding, by any method, of an inmate who had the capacity to understand the consequences of fasting at the time the inmate made the decision to fast.

### **COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO COLOMBIA, PENITENTIARY CODE**

Artículo 105. Servicio Medico Penitenciario Y Carcelario

El servicio médico penitenciario y carcelario estará integrado por médicos, psicólogos, odontólogos, psiquiatras, terapeutas, enfermeros y auxiliares de enfermería.

*Article 105. Prison Health Service*

*The prison health service will consist of doctors, psychologists, dental surgeons, psychiatrists, therapists, nurses and infirmary assistants.*

Artículo 106. Asistencia Medica

Todo interno en un establecimiento de reclusión debe recibir asistencia médica en la forma y condiciones previstas por el reglamento. Se podrá permitir la atención por médicos particulares en casos excepcionales y cuando el establecimiento no esté en capacidad de prestar el servicio.

*Article 106. Medical Assistance*

*All prisoners must receive medical care as established in the regulations. Private doctors are permitted in exceptional cases and when the prison is unable to offer this service.*

Artículo 107. Casos De Enajenacion Mental

Si un interno presentare signos de enajenación mental y el médico del centro de reclusión dictamina que el recluso padece enfermedad psíquica, el director del respectivo centro, pedirá el concepto médico legal, el cual si es afirmativo, procederá a solicitar su ingreso a un establecimiento psiquiátrico, clínica adecuada, casa de estudio o de trabajo, según el caso, dando aviso al Juez de ejecución de penas y medidas de seguridad.

*Article 107. Mental Illness*

*Should a prisoner show signs of mental illness, and this be confirmed by the doctor, the prison governor will ask for his transference to an appropriate institution, giving due notice to the judge.*

### **3.6 ACCESS TO LEGAL ADVICE**

#### **Commentary**

On entry into prison, every prisoner should be informed of his/her rights and duties, including access to legal advice and representation.

Legislation around the world makes provision for access to legal advice and assistance. In Latin America it is 'free' while in Africa it may be free where it is available; or is provided at the prisoner's own expense; or where the interests of justice so require. In Latin America use is made of students in their last two years of study to provide legal advice to prisoners (Peru below); in Malawi, specific reference is made to paralegals (i.e trained non-lawyers).

Some legislation puts a positive obligation on the prison authorities to provide legal aid (Peru) while the majority adopt a more passive stance 'granting' the prisoner the right – without more. The EPR 'explicitly' require prison authorities to inform detainees of this right (R98) and provide them with the means of contacting their legal representatives.

The legislation reviewed conforms to international standards in expressly making provision for the privileges of confidentiality and non-interference in all forms of communication with lawyers (correspondence, telephone, visits etc). Prison officers may not open lawyers' letters, listen in on lawyers conversations' with their clients (though they may observe them) - unless there are compelling grounds for so doing and then they may open mail in the presence of the prisoner to check that it contains no prohibited article or substance. In no circumstances should the correspondence be read by the prison authorities.

Legal advice and assistance need not always mean that provided by a lawyer. In many countries, the number of lawyers is limited and restricted to the urban centres and usually civil work. The international trend is towards an 'inclusive' approach to legal aid to encourage legal aid providers from civil society and not only from the legal establishment: 'precisely what is regarded as legal advice and who may be regarded as a legal adviser (...) is best regulated by national law.' (Commentary to EPR, Rule 23)

#### **International framework**

##### ***UDHR***

##### **Article 11**

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

##### ***ICCPR***

##### **Article 14**

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

### **SMR**

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

### **BPPP**

#### Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

#### Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

#### Principle 12

1. There shall be duly recorded:

(a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

#### Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

#### Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

#### Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

#### Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

#### Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

#### Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

#### Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

#### Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate

means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

#### Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.
2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.
4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

#### **BPRL**

##### Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

##### Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

## **Regional framework**

### ***ACHPR***

#### Article 7

1. Every individual shall have the right to have his cause heard. This comprises:
  - c) The right to defence, including the right to be defended by counsel of his choice;

### ***EPR***

#### Legal advice

23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.

23.3 Where there is a recognised scheme of free legal aid the authorities shall bring it to the attention of all prisoners.

23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential.

23.5 A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security.

23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings.

98.1 Untried prisoners shall be informed explicitly of their right to legal advice.

98.2 All necessary facilities shall be provided to assist untried prisoners to prepare their defence and to meet with their legal representatives.

## **National legislation**

### ***AFRICA***

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### 17. Access to legal advice

(1) Every prisoner is entitled to consult on any legal matter with a legal practitioner of his or her choice at his or her own expense.

(2) The Minister may, by regulation, impose restrictions on the manner in which such consultations are conducted if such restrictions are necessary for the safe custody of prisoners, but legal confidentiality must be respected.

(3) The Head of Prison must take reasonable steps to enable prisoners to exercise the substantive rights referred to in section 6 (3).

(4) Prisoners facing trial or sentence must be provided with the opportunities and facilities to prepare their defence.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

##### 12 Access to legal advice

A prisoner may consult with his or her legal practitioner in connection with legal matters subject to the conditions determined by the Commissioner.

A consultation contemplated in sub regulation (1) is subject to the following:

(a) A legal practitioner must lodge proof of his or her identity and status as legal practitioner at the request of the Head of Prison;

(b) Such a consultation must take place only between 8h00 and 15h30 unless the Head of Prison, due to the existence of urgent or exceptional circumstances has given his or her prior permission;

(c) The consultation must take place in sight but out of earshot of a correctional official;

- (d) The legal practitioner may be allowed to utilise his or her own interpreter, secretary or typist;
- (e) If a particular legal practitioner is refused access to the prisoner the prisoner may request to consult with another legal practitioner.

**MOROCCO, LOI RELATIVE A L'ORGANIZATION ET AU FONCTIONNEMENT DES ETABLISSEMENTS PENITENTIARIES, 1999**  
**LAW RELATING TO THE ORGANISATION AND FUNCTIONING OF PENITENTIARY INSTITUTIONS, 1999**

**Article 81**

La faculté de communiquer librement avec l'avocat ne peut être restreinte ou supprimée ni par l'interdiction de communiquer prononcée par le magistrat saisi du dossier de l'information, ni par des mesures disciplinaires de quelque nature qu'elles soient.

**Article 81**

*The ability to communicate freely with a lawyer cannot be restricted or suppressed by a magistrate or withdrawn as a means of disciplinary sanction.*

**MALAWI, PRISONS BILL**

16. (1) Every prisoner may consult on any legal matter with a legal practitioner of his choice at his own expense, and shall be provided with the services of a legal practitioner by the State where the interests of justice so require.

(2) Every prisoner shall, as far as practicable, have access to paralegal services.

(3) The manner in which consultations are conducted may be subject to regulation but legal confidentiality shall be respected.

**EUROPE**

**GERMANY, PRISON ACT**

**26 – Visits from Defence Counsel, Attorneys and Notaries**

Visits from defence counsel as well as from attorneys or notaries in a legal matter concerning the prisoner shall be permitted. Section 24(3) shall apply mutatis mutandis. Inspection of the contents of the documents and other records brought along by defence counsel shall not be admissible. Section 29(1), second and third sentences, shall not be affected.

**27 – Supervision of visits**

Visits may be supervised for reasons of treatment or of security or good order of the institution. The conversation shall be monitored only if this is necessary for any of the above reasons.

A visit may be terminated if, in spite of some warning, visitors or prisoners infringe any of the provisions of this Act or any orders made in pursuance of this Act. A warning shall not be given, when it is imperative to terminate the visit immediately. Visits from defence counsel shall not be supervised.

Articles may be handed over in the course of a visit only if permission has been given. This shall not apply to any documents and other records handed over in the course of defence counsel's visit, or to any documents and other records handed over in the course of a visit from an attorney or notary to deal with a legal matter concerning the prisoner; on the occasion of a visit from an attorney to notary such handing over may be made subject to permission for reasons of security of good of the institution. Section 29(1), second and third sentences shall not be affected.

**73 – Assistance During Imprisonment**

The prisoner shall be supported in his endeavours to exercise his rights and duties, in particular to exercise his voting right, to see to the maintenance of persons entitled thereto, and to settle any damage caused by his offence.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE REGULATIONS**

Access to Legal Counsel and Legal and Non-Legal Materials:

97. (1) The Service shall ensure that each inmate is given, on arrest, an opportunity to retain and instruct legal counsel without delay and that every inmate is informed of their right thereto.

(2) The Service shall ensure that every inmate is given a reasonable opportunity to retain and instruct legal counsel without delay and that every inmate is informed of the inmate's right to legal counsel where the inmate is placed in administrative segregation; or is the subject of a proposed involuntary transfer pursuant to section 12 or has been the subject of an emergency transfer pursuant to section 13.

(3) The Service shall ensure that every inmate has reasonable access to legal counsel and legal reading materials; non-legal materials, including Commissioner's Directives and regional instructions and institutional standing orders, except those relating to security matters; and (c) a commissioner for taking oaths and affidavits.

### **PERU, CODIGO DE EJECUCION PENAL 1991**

#### **PERU, PENITENTIARY CODE 1991**

Artículo 87º - Asistencia Legal gratuita

En cada Establecimiento Penitenciario funciona un servicio encargado de prestar asistencia legal ... gratuita al interno y asesorar técnicamente a la administración de aquél.

*Article 87. Legal Assistance*

*In every prison there operates a free legal aid service. It is responsible for giving legal aid to the prisoner and technical legal advice to the prison management.*

Artículo 88º.- Conformación de la Asistencia Legal.

La asistencia legal está conformada por abogados del Establecimiento Penitenciario y por estudiantes de los dos últimos años de las Facultades de Derecho, en número proporcional a la población penitenciaria. Los estudiantes que participen de este programa pueden hacer valer el trabajo como práctica pre-profesional.

*Article 88 Make-up of Legal Assistance*

*The legal assistance is made up of lawyers based within the institution and students in their last two years of studying law who undertake this work as 'pre-professional' practice. The number of lawyers and students is in proportion to the prison population.*

### **COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO**

#### **COLOMBIA, PENITENTIARY CODE**

Artículo 154. Asistencia Jurídica

La Defensoría del Pueblo de acuerdo con la Dirección del Instituto Nacional Penitenciario y Carcelario fijará y controlará los defensores en cada establecimiento para la atención jurídica de los internos insolventes. El director del establecimiento respectivo informará periódicamente sobre el comportamiento de estos profesionales al Defensor del Pueblo, quien debe tomar las medidas del caso cuando dichos defensores incumplan sus deberes....

*Article 154. Legal Assistance*

*The Institute of Public Defenders in agreement with the National Institute of Prisons will establish and monitor legal assistance provided by defense lawyers for insolvent prisoners. The director of each prison will report regularly to the Institute of Public Defenders on the conduct of these professionals. The institute must take measures in the event the aforementioned defense lawyers breach their duties.*

### 3.7 COMPLAINTS AND REQUESTS

#### Commentary

Complaints mechanisms should be accessible, simple, fair and swift. They act as safety valves. 'The utility of healthy communication in any human institution cannot be over-emphasised'" (MSW II.14). Prompt settlement of minor grievances may prevent them turning into major prison disturbances.

The SMR and BPPP encourage prison authorities to make available confidential avenues for making a complaint and so mitigate the risk of staff reprisals. The prison rules or disciplinary code of the institution should not contain any regulations which state, or imply, that a person will be disciplined for making allegations against a member of staff that turn out to be unfounded.

*'In the first instance prisoners should be able to raise any issue which concerns them with the staff who are their immediate supervisors. If the matter cannot be resolved at that level, there should be an opportunity to raise the request or complaint with the authorities who are in charge of the prison. If the matter still cannot be resolved, the prisoner should have the right of access to a superior authority outside the prison.'*  
(Coyle, p.105)

The commentary to R70 EPR goes into some length in discussing the importance of effective procedures governing complaints and requests: the need to deal with them promptly and fairly; the wisdom in applying procedures that avoid or reduce the possibility of antagonism or conflict; the requirement of confidentiality; and the sense in standardising these procedures across the prison system and admitting third parties to make requests or register complaints on behalf of prisoners:

*'Prisoners must have ample opportunity to make requests and must have avenues of complaint open to them both within and outside the prison system. The prison authorities shall not obstruct or punish the making of requests or complaints but shall facilitate the effective exercise of the rights embedded in this rule.'*

*Requests of prisoners concern favours or facilities that they are not entitled to by right, but which may be granted by the prison management or other competent authorities. For instance, in some penitentiary systems extra visits may be allowed, though prisoners have no right to them. The same applies to requests for permission to leave the prison to attend the funeral of a relative and requests for transfer to a specific prison or prison unit. In most cases the director will be entitled to decide, but in some jurisdictions specific requests can only be granted by judicial authorities or must be decided at ministerial level.'*

*Complaints are formal objections against decisions, actions or lack of action of the prison administration or other competent authorities (...)*

*This Rule does not require that requests or complaints should be submitted in writing. Given the illiteracy of quite a number of prisoners, a prisoner should be able to ask to meet the civil servant or the competent agency in order to transmit the request or the complaint orally and the authorities have the obligation to put it in a written form.'*

*The competent authorities should deal promptly with requests and complaints and should accompany this with reasons making it clear*

*whether action will be taken and if so, what action. This also applies to requests or complaints from prisoners' relatives or organisations referred to in Rule 70.6.*

*Complaints can lead to antagonistic attitudes of the parties involved, which can harm the relations between prisoners and staff. Therefore it seems sensible to try mediation first. This calls for a mediation mechanism to be inserted in the penitentiary legislation. This task could be entrusted for example to a member of a local supervisory committee or a judicial authority. If the conflict cannot be resolved by mediation, the prisoner must still have the right to lodge a formal complaint. National law can state that complaints about trivial matters can be declared inadmissible...*

*Complainants shall be allowed to communicate on a confidential basis with the independent authorities entrusted with the handling of complaints and appeals. Decisions of these authorities shall be made accessible to prisoners.*

*Requests and complaints should be registered for the benefit of the prison administration itself and for inspection by visiting bodies. Analysis of the substance of requests and complaints can contribute to a better management of the institution.*

*The right to make requests and complaints is primarily granted to prisoners but national law may allow third parties to act on behalf of a prisoner, for instance when a prisoner's mental or physical condition prevents him from acting himself and he does not have a lawyer to act on his behalf. Relatives of a prisoner are entitled to complain where the prisoner's rights may be infringed while organisations that have the interests of prisoners at heart may also be allowed by the director to bring such complaints...*

*When, after an internal appeal has failed, a complaint is successfully made to an independent authority complainants must have confidence that the decision of that authority will be executed fully and promptly by the prison administration...*

*Authorities involved in handling complaints should exchange views and experiences on a regular basis, the aim being to harmonise as far as possible their practice.' (Commentary to EPR, Rule 70)*

## **International framework**

### **ICCPR**

#### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

### **SMR**

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.
- (2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.
- (3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.
- (4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

### **BPPP**

#### Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.
2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.
4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

## **Regional framework**

### **EPR**

#### General approach to good order

50. Subject to the needs of good order, safety and security, prisoners shall be allowed to discuss matters relating to the general conditions of imprisonment and shall be encouraged to communicate with the prison authorities about these matters.

#### Requests and complaints

70.1 Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.

70.2 If mediation seems appropriate this should be tried first.

70.3 If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority.

70.4 Prisoners shall not be punished because of having made a request or lodged a complaint.

70.5 The competent authority shall take into account any written complaints from relatives of a prisoner when they have reason to believe that a prisoner's rights have been violated.

70.6 No complaint by a legal representative or organisation concerned with the welfare of prisoners may be brought on behalf of a prisoner if the prisoner concerned does not consent to it being brought.

70.7 Prisoners are entitled to seek legal advice about complaints and appeals procedures and to legal assistance when the interests of justice require.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### **21. Complaints and requests**

(1) Every prisoner must, on admission and on a daily basis, be given the opportunity of making complaints or requests to the Head of Prison or a correctional official authorised to represent such Head of Prison.

(2) The official referred to in subsection (1) must-

(a) record all such complaints and requests and any steps taken in dealing with them;

(b) deal with complaints and requests promptly and inform the prisoner of the outcome; and

(c) if the complaint concerns an alleged assault, ensure that the prisoner undergoes an immediate medical examination and receives the treatment prescribed by the medical officer.

(3) If a prisoner is not satisfied with the response to his or her complaint or request, the prisoner may indicate this together with the reasons for the dissatisfaction to the Head of Prison, who must refer the matter to the Area Manager.

(4) The response of the Area Manager must be conveyed to the prisoner.

(5) If not satisfied with the response of the Area Manager, the prisoner may refer the matter to the Independent Prison Visitor, who must deal with it in terms of the procedures laid down in section 93.

#### ***MALAWI, PRISONS BILL***

20 (1) Every prisoner shall on admission and on a daily basis be given the opportunity of making complaints or requests to the Officer in Charge or prison officer authorised to represent the Officer in Charge.

(2) Such officer shall

(a) record all such complaints and requests and any steps taken in dealing with them;

(b) deal with the complaints and requests promptly and inform the prisoner of the outcome; and

(c) if the complaint concerns an alleged assault, ensure that the prisoner undergoes an immediate medical examination and receive the prescribed treatment.

(3) If a prisoner is not satisfied with the response to his complaint or request, he may ask that the matter be referred to the Independent Prison Visitor or if the Independent Prison Visitor is not available to the Chief Resident Magistrate.

(4) The Officer in Charge shall refer the matter immediately if so requested and convey the response of the Independent Prison Visitor or Chief Resident Magistrate to the prisoner.

(5) The Independent Prison Visitor or Chief Resident Magistrate shall interview the prisoner who is making the complaint or request; and attempt to resolve the complaint or request by mediation with the Officer in Charge.

(6) If the Independent Prison Visitor or Chief Resident Magistrate is unable to resolve the complaint or request he shall inform the prisoner and refer the matter to the Inspectorate.

## **AMERICAS**

### **PERU, CODIGO DE EJECUCION PENAL 1991**

#### **PERU, PENITENTIARY CODE 1991**

Artículo 14º.- Derecho de queja y petición

El interno tiene derecho a formular quejas y peticiones ante el Director del Establecimiento Penitenciario (...)

En caso de no ser atendido, el interno puede recurrir, por cualquier medio, al representante del Ministerio Público.

*Article 14. Right of complaint and petition*

*The detainee has the right to make complaints and petitions to the Director of the Prison In the event their complaint is not dealt with the prisoner may appeal, by whatever means, to a representative from the Public Ministry.*

## **EUROPE**

### **GERMANY, PRISON ACT**

108 – Right to Complain

The prisoner shall be given an opportunity to apply to the Head of the Institution with requests, suggestions and complaints on matters concerning himself. Regular consulting hours should be held.

When a representative of the controlling authority inspects the institution it shall be ensured that a prisoner can apply to him in matters concerning the prisoner himself. The option of lodging a disciplinary complaint shall not be prejudiced thereby.

### **3.8 RELIGION AND BELIEF**

#### **Commentary**

Most legislation makes provision for freedom of religion and belief. Religion includes 'belief', 'aboriginal spirituality' (Canada) or 'ideology' (Netherlands).

In South Africa, places of worship are made available 'where practicable' while in Canada the Service 'shall take all reasonable steps' and in the Netherlands 'as much as possible'.

The point is that the opportunity should be made available for those to pursue their own religion or belief, voluntarily and without prejudice to security and safety.

#### **International framework**

##### ***UDHR***

###### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

###### Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

##### ***ICCPR***

###### Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

##### ***BPPP***

###### Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

##### ***SMR***

###### Basic principle

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

###### Religion

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. (2) Prisoners who are nationals of States without diplomatic or

consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

## **Regional framework**

### ***EPR***

22.1 Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

Freedom of thought, conscience and religion

29.1 Prisoners' freedom of thought, conscience and religion shall be respected.

29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.

29.3 Prisoners may not be compelled to practise a religion or belief, to attend religious services or meetings, to take part in religious practices or to accept a visit from a representative of any religion or belief.

## **National legislation**

### ***AFRICA***

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

14. Religion, belief and opinion

(1) A prisoner must be allowed freedom of conscience, religion, thought, belief and opinion.

(2) A prisoner may attend religious services and meetings held in the prison freely and voluntarily and may have in his or her possession religious literature.

(3) Where practicable, places of worship must be provided at every prison for prisoners of all religious denominations.

(4) No prisoner may be compelled to attend religious services or meetings or to take part in religious practices.

### ***AMERICAS***

#### ***CANADA, CORRECTIONS AND CONSITIONAL RELEASE ACT***

Religion:

75. An inmate is entitled to reasonable opportunities to freely and openly participate in, and express, religion or spirituality, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons.

83. (1) For greater certainty, aboriginal spirituality and aboriginal spiritual leaders and elders have the same status as other religions and other religious leaders.

(2) The Service shall take all reasonable steps to make available to aboriginal inmates the services of an aboriginal spiritual leader or elder after consultation with (a) the National Aboriginal Advisory Committee (...); and (b) the appropriate regional and local aboriginal advisory committees, if such committees have been established pursuant to that section.

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE REGULATIONS**

#### Religion and Spirituality

100. (1) Every inmate shall be entitled to express the inmate's religion or spirituality in accordance with section 75 of the Act to the extent that the expression of the inmate's religion or spirituality does not

(a) jeopardize the security of the penitentiary or the safety of any person; or (b) involve contraband.

101. The Service shall ensure that, where practicable, the necessities that are not contraband and that are reasonably required by an inmate for the inmate's religion or spirituality are made available to the inmate, including

(a) interfaith chaplaincy services; (b) facilities for the expression of the religion or spirituality; (c) a special diet as required by the inmate's religious or spiritual tenets; and (d) the necessities related to special religious or spiritual rites of the inmate.

### **PERU, CODIGO DE EJECUCION PENAL 1991**

PERU, PENITENTIARY CODE 1991 Artículo 94º.-Libertad de culto

Ningún interno será obligado a asistir a los actos de culto ni impedido de asistir a los mismos.

*Article 94. Freedom of worship*

*No prisoner shall be obliged to take part in religious worship nor prevented from so doing.*

### **COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO COLOMBIA, PENITENTIARY CODE**

Artículo 152. Facilidades Para El Ejercicio y la Practica Del Culto Religioso

Los internos de los centros de reclusión gozarán de libertad para la práctica del culto religioso, sin perjuicio de las debidas medidas de seguridad.

*Article 152. Favourable Conditions for the Exercise and Practice of Religious Worship*

*All prisoners shall enjoy the freedom to practise their own religion but not to the detriment of necessary security measures.*

### **EUROPE**

#### **NETHERLANDS, PENITENTIARY PRINCIPLES ACT**

Article 41

1. The prisoner shall have a right to freely profess and practice his religion or ideology individually or in association with others.

2. The governor shall provide that sufficient spiritual care, as much as possible in accordance with the prisoner's religion or ideology, is available in the institution.

3. The governor shall give the prisoner the opportunity at the times and places laid down in the prison rules to:

- a. have personal contact with the spiritual counsellor of the religion or ideology of his choice connected with the institution;
- b. have contact with persons other than the spiritual counsellors referred to in 3a pursuant to Article 38;
- c. attend the religious or ideological meetings of his choice held in the institution.

#### ***GERMANY, PRISON ACT***

##### 53 – Spiritual Welfare

The prisoner shall not be denied religious welfare by a qualified representative of his religion. At his request he shall be helped to get into contact with a qualified representative of his religion.

The prisoner shall be allowed to have fundamental religious writings in his possession. He may be deprived of them only in the event of gross abuse.

The prisoner shall be allowed, to a reasonable extent, to keep articles for religious use.

##### 54 – Religious Activities

The prisoner shall have the right to attend Divine Service and other religious activities of his denomination.

The prisoner shall be admitted to Divine Service or to religious activities of another religion if the qualified representative of that religion agrees thereto.

The prisoner may be excluded from attending Divine Service or other religious activities where this is required by overriding reasons of security or good order; prior to this the qualified representative of the religion shall be heard.

##### 55 – Ideological Communities

For members of ideological communities Section 53 and 54 shall apply mutatis mutandis.

##### 157 – Religious Welfare

Chaplains shall be appointed on a full-time basis or engaged by contract in agreement with the representative religious community.

Where the small number of members belonging to a religious community does not justify such religious welfare as is laid down in subsection (1) religious welfare shall be permitted in some other way.

With the consent of the Head of the Institution the prison chaplains may avail themselves of the services of free religious assistants and engage chaplains from outside the institution for Divine Service and for other religious activities.

### 3.9 CONTACT WITH COMMUNITY AND ACCESS TO PRISONS

#### Commentary

Close contact with family and community is seen as vital in the 'rehabilitation' of the offender and reintegration back into society. Therefore, the institution to which a person is committed should be as close as possible to where the person is ordinarily resident. The role of the family is emphasised in both the UDHR and ICCPR.

Conditions in prison should strive to mirror conditions outside so far as possible. This extends to family life which prison so drastically interrupts. Visits from family members are not a privilege but a basic human right (as per the UDHR 12, ICCPR 10, 23 and SMR 37). 'The presumption should be to maximise visiting and to allow the most favourable conditions possible' (Coyle, p. 96). The minimum appears to be at least one visit per month for one hour for convicted prisoners.

In the commentary to R24.5 EPR, a 'positive duty' is placed on the prison authorities

*'to facilitate links with the outside world. One way in which this can be done is to consider allowing all prisoners leave from prison in terms of Rule 24.7 for humanitarian purposes. The ECtHR has held that this must be done for the funeral of a close relative, where there is no risk of the prisoner absconding. Humanitarian reasons for leave may include family matters such as the birth of a child.'*

Visiting areas should allow contact (particularly between children and their parents) and as much privacy as possible. Conjugal visits are increasingly available in more countries. The only conditionality imposed by Peruvian legislation concerns hygiene and family planning. The Canadian legislation specifically prohibits any 'physical barrier to personal contact' (below) except in certain circumstances that are specified.

The commentary to R24 EPR emphasizes:

*'where possible intimate family visits should extend over a long period, 72 hours for example as is the case in many Eastern European countries. Such long visits allow inmates to have intimate relations with their partners. Shorter "conjugal visits" for this purpose can be demeaning to both partners.'*

Prisoners also have the right to information. This includes access to newspapers, radio and television. This also, increasingly, includes voting rights. The only rights that can be restricted are those necessarily imposed by reason of incarceration – e.g: freedom of movement.

Censorship is time consuming and ineffectual in the majority of cases.

*'It is now generally held that there is no operational justification on security grounds for censoring all mail... For those prisoners who have been assessed as a high security risk it may be necessary to censor incoming and outgoing correspondence and also to have a list of approved correspondents. For other prisoners ...random or sample reading is likely to be sufficient.'* (Coyle, p.100)

The Canadian regulations (below) allow a prison officer to check envelopes and packages 'for contraband' but prohibit the officer from reading the contents.

Foreign nationals are a particularly vulnerable group as they are far from home in a country that may not share language, culture, diet, or custom. It may be this category will need 'special attention'.

Many institutions are, subject to security classification of prisoners, adopting an 'open door' policy and allowing access not only to health workers, environmental officers and others with statutory powers (South Africa), but also to NGOs with an interest in prisoners rights and welfare, non-lawyers such as paralegals (Malawi) and journalists (Colombia).

## **International framework**

### **UDHR**

#### Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

### **ICCPR**

#### Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

#### Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

### **VCCR**

#### Article 36

Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

### **BPPP**

Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

### **SMR**

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. (2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all

desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

Social relations and after-care

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.

## **Regional framework**

### ***EPR***

Contact with the outside world

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

24.6 Any information received of the death or serious illness of any near relative shall be promptly communicated to the prisoner.

24.7 Whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral or for other humanitarian reasons.

24.8 Prisoners shall be allowed to inform their families immediately of their imprisonment or transfer to another institution and of any serious illness or injury they may suffer.

24.9 Upon the admission of a prisoner to prison, the death or serious illness of, or serious injury to a prisoner, or the transfer of a prisoner to a hospital, the authorities shall, unless the prisoner has requested them not to do so, immediately inform the spouse or partner of the prisoner, or, if the prisoner is single, the nearest relative and any other person previously designated by the prisoner.

24.10 Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

24.11 Prison authorities shall ensure that prisoners are able to participate in elections, referenda and in other aspects of public life, in so far as their right to do so is not restricted by national law.

24.12 Prisoners shall be allowed to communicate with the media unless there are compelling reasons to forbid this for the maintenance of safety and security, in the public interest or in order to protect the integrity of victims, other prisoners or staff.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### **13. Contact with community**

(1) The Department must encourage prisoners to maintain contact with the community and enable them to stay abreast of current affairs.

(2) The Department must give prisoners the opportunity, under such supervision as may be necessary, of communicating with and being visited by at least their spouses or partners, next of kin, chosen religious counsellors and chosen medical practitioners.

(3) In all circumstances, a minimum of one hour must be allowed for visits each month.

(4) If a prisoner is not able to receive visits from his or her spouse, partner or next of kin, the prisoner is entitled to be visited by any other person each month.

(5) A prisoner who is a foreign national must be allowed to communicate with the appropriate diplomatic or consular representative or, where there is no such representative, with a diplomatic representative of the state or international organisation whose task it is to protect the interests of such prisoner.

(6) (a) On admission to a prison and after transfer to another prison, a prisoner must notify his or her next of kin that he or she is being detained in a particular prison, and if-

(i) the next of kin are unknown, the prisoner may notify any other relative;

(ii) the prisoner does not wish to notify his or her next of kin, the prisoner must indicate this to the Head of Prison.

(b) The Commissioner must ensure that all reasonable steps are taken to enable a prisoner to notify his or her next of kin in terms of paragraph (a) and, if necessary, steps must be taken to notify his or her next of kin on his or her behalf.

(c) (i) In the case of a prisoner who is a child, the Commissioner must notify the appropriate state authorities who have statutory responsibility for the education and welfare of children as well as the parents of the prisoner when this is required in terms of paragraph (a).

(ii) If no parent is available, the Commissioner must notify the legal guardian and if the legal guardian is not available the next of kin or other relative must be notified.

(iii) A prisoner who is a child may not refuse to allow notification.

(d) If requested by the spouse, partner or next of kin, the Commissioner must as soon as practicable, with the written consent of the prisoner, give particulars of the place where the prisoner is detained.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

##### **8. Contact with Community**

(1) The Head of Prison must give special attention to the development and maintenance of good family relationships between prisoners and their family members and other relatives.

(2) The Head of Prison must convey any important information regarding a prisoner's family, relatives or friends that may come to his or her attention, to the prisoner as soon as practicable.

(3) On admission to a prison or when a prisoner is transferred, subject to the provision of Regulation 25(1)(b), the Head of Prison must, allow the prisoner to notify his or her spouse, partner or next of kin in the manner prescribed by Order, unless otherwise requested in writing by the prisoner.

(4) The Head of Prison may authorise a correctional official, in writing, that communications between a prisoner and a member of the public, including letters, telephone conversations and communications in the course of a visit, be opened, read, listened to or otherwise intercepted if not a subject of a legal privilege, by a correctional official or mechanical device, where the Head of Prison believes on reasonable grounds:

that the communications contain or will contain evidence of:

(i) an act that will jeopardise the security of the prison or the safety of any person; or a criminal offence or a plan to commit a criminal offence; and

(b) that the interception of the communications is the least restrictive measure available in the circumstances.

Where a communication is intercepted under sub-regulation (4)

the Head of Prison or the correctional official designated by him or her must as soon as reasonably practicable inform the prisoner, in writing of the reasons for the interception and give the prisoner an opportunity to make representations with respect thereto, unless the information would adversely affect an ongoing investigation, in which case the prisoner will be informed of the reasons and given an opportunity to make representations with respect thereto on completion of the investigation.

#### 42. Access to prisons

The Head of Prison must allow the following persons access to the prison under conditions as prescribed by Order: healthcare workers and their support staff; environmental health officers; and any person with a statutory inspecting authority. Any person who is allowed access to a prison in terms of the Act or the Regulations is required to sign the official visitors register of such prison and subject to satisfactory confirmation of identity, such signature will be sufficient authority for admission to such prison.

### ***MALAWI, PRISON BILL***

13. (1) Every prisoner has the right of access to books, newspapers and magazines, and to information through other media.

(2) The degree of access may be determined by regulation but such regulation may not restrict access unreasonably.

(3) Access to reading matter may be restricted by regulation for prisoners subject to solitary confinement.

(4) The Service shall provide reading and writing materials for prisoners.

14. (1) The Service shall encourage prisoners to maintain contact with the community and take steps to ensure appropriate community involvement in prison matters.

(2) The Service shall give prisoners the opportunity, under such supervision as may be necessary, to communicate with spouses or partners, next of kin, chosen religious counsellors and medical practitioners.

(3) In all circumstances, a minimum of one hour shall be allowed for visits each month; but provision for further visits shall be made by regulation.

(4) (a) Visiting areas that allow for contact and a degree of privacy shall be established. (b) Restrictions on the conduct of the visit which may be required on grounds of security shall be specified by regulation.

(5) If a person is not able to receive a visit from his spouse, partner or next of kin, the prisoner may be visited by any other person each month.

(6) A prisoner who is a foreign national shall be allowed to communicate with the appropriate diplomatic or consular representative or, where there is no such representative, with a representative of the State or international organisation whose task it is to protect the interests of such prisoner.

(7) (a) On admission to a prison and after transfer to another prison, a prisoner shall notify his next of kin that he is being detained in a particular prison, and if - the next of kin are unknown, the prisoner may notify another relative; and if the prisoner does not wish to notify his next of kin he shall indicate this to the Officer in Charge.

(b) The Officer in Charge shall take the necessary steps to enable the prisoner to notify his next of kin and if necessary notify the next of kin or other relative on his behalf unless the prisoner has indicated that he does not wish the next of kin to be notified.

(c) (i) Where the prisoner is a child, the Officer in Charge shall notify the parents and social services.

(ii) If no parent is available, the Office in Charge shall notify the legal guardian and if the legal guardian is not available, the next of kin or other relative must be notified.

The prisoner who is a child may not refuse to allow notification.

(d) Where a prisoner is seriously ill or suffers a serious accident, is admitted to hospital, or dies, the Officer in Charge shall promptly notify the spouse, partner, next of kin or other relative where the next of kin of the prisoner are unknown.

(e) If requested by the spouse, partner, next of kin or other relative of the prisoner, the Chief Commissioner, or Regional Prison Officer or Officer in Charge who is approached shall give particulars of where the prisoner is detained, unless the prisoner indicates in writing that he does not wish this information to be conveyed.

(a) Every prisoner may send and receive letters and communicate in other ways including by telephone.

(b) Such communications are subject to restriction and control by regulation, except that each prisoner may send and receive at least one letter each month.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT**

Contacts and visits:

71. (1) In order to promote relationships between inmates and the community, an inmate is entitled to have reasonable contact, including visits and correspondence, with family, friends and other persons from outside the penitentiary, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons.

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE REGULATIONS**

Visits:

90. (1) Every inmate shall have a reasonable opportunity to meet with a visitor without a physical barrier to personal contact unless

(a) the institutional head or a staff member designated by the institutional head believes on reasonable grounds that the barrier is necessary for the security of the penitentiary or the safety of any person; and

(b) no less restrictive measure is available.

(2) The institutional head or a staff member designated by the institutional head may, for the purpose of protecting the security of the penitentiary or the safety of any person, authorize the visual supervision of a visiting area by a staff member or a mechanical device, and the supervision shall be carried out in the least obtrusive manner necessary in the circumstances.

(3) The Service shall ensure that every inmate can meet with the inmate's legal counsel in private interview facilities.

91. (1) Subject to section 93, the institutional head or a staff member designated by the institutional head may authorize the refusal or suspension of a visit to an inmate where the institutional head or staff member believes on reasonable grounds

(a) that, during the course of the visit, the inmate or visitor would

(i) jeopardize the security of the penitentiary or the safety of any person, or

(ii) plan or commit a criminal offence; and

(b) that restrictions on the manner in which the visit takes place would not be adequate to control the risk.

(2) Where a refusal or suspension is authorized under subsection (1),

(a) the refusal or suspension may continue for as long as the risk referred to in that subsection continues; and

(b) the institutional head or staff member shall promptly inform the inmate and the visitor of the reasons for the refusal or suspension and shall give the inmate and the visitor an opportunity to make representations with respect thereto.

92. (1) Subject to section 93, the institutional head or a staff member designated by the institutional head may authorize a complete suspension of the visiting rights of all inmates in a penitentiary where the security of the penitentiary is significantly jeopardized and no less restrictive measure is available.

(2) Every complete suspension of visiting rights under subsection (1), shall be reviewed by

(a) the head of the region on or before the fifth day of the suspension; and

(b) by the Commissioner on or before the fourteenth day of the suspension.

#### Intercepting Communications:

94. (1) Subject to subsection (2), the institutional head or a staff member designated by the institutional head may authorize, in writing, that communications between an inmate and a member of the public, including letters, telephone conversations and communications in the course of a visit, be opened, read, listened to or otherwise intercepted by a staff member or a mechanical device, where the institutional head or staff member believes on reasonable grounds

(a) that the communications contain or will contain evidence of

(i) an act that would jeopardize the security of the penitentiary or the safety of any person, or

(ii) a criminal offence or a plan to commit a criminal offence; and

(b) that interception of the communications is the least restrictive measure available in the circumstances.

(2) No institutional head or staff member designated by the institutional head shall authorize the opening of, reading of, listening to or otherwise intercepting of communications between an inmate and a person set out in the schedule, by a staff member or a mechanical device, unless the institutional head or staff member believes on reasonable grounds

(a) that the grounds referred to in subsection (1) exist; and

(b) that the communications are not or will not be the subject of a privilege.

(3) Where a communication is intercepted under subsection (1) or (2), the institutional head or staff member designated by the institutional head shall promptly inform the inmate, in writing, of the reasons for the interception and shall give the inmate an opportunity to make representations with respect thereto, unless the information would adversely affect an ongoing investigation, in which case the inmate shall be informed of the reasons and given an opportunity to make representations with respect thereto on completion of the investigation.

95. (1) The institutional head or a staff member designated by the institutional head may prevent an inmate from communicating with a person by mail or telephone if

(a) the institutional head or staff member believes on reasonable grounds that the safety of any person would be jeopardized; or

(b) the intended recipient of the communication, or the parent or guardian of the intended recipient where the intended recipient is a minor, submits a request in writing to the institutional head or staff member that the intended recipient not receive any communication from the inmate.

(2) Where an inmate is prevented under subsection (1) from communicating with a person, the institutional head or staff member designated by the institutional head, as the case may be, shall promptly inform the inmate, in writing, of the reasons and shall give the inmate an opportunity to make representations with respect thereto.

#### **PERU, CODIGO DE EJECUCION PENAL 1991**

#### **PERU, PENITENTIARY CODE 1991**

Artículo 58º.- Visita íntima

La visita íntima tiene por objeto el mantenimiento de la relación del interno con su cónyuge o concubino, bajo las recomendaciones de higiene y planificación familiar y profilaxia médica. Es concedido por el Director del Establecimiento Penitenciario, conforme al Reglamento.

*Article 58. Intimate visits*

*The purpose of the intimate visit is to enable the detainee to maintain relations with his partner/spouse, taking into account hygiene recommendations, family planning and protection. The visit is granted by the Director of the prison in line with regulations.*

#### **COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO**

#### **COLOMBIA, PENITENTIARY CODE**

Article 110. Información Externa

Los reclusos gozan de libertad de información, salvo grave amenaza de alteración del orden, caso en el cual la restricción deberá ser motivada.

En todos los establecimientos de reclusión, se establecerá para los reclusos, un sistema diario de informaciones o noticias que incluya los acontecimientos más importantes de la vida nacional o internacional, ya sea por boletines emitidos por la dirección o por cualquier otro medio que llegue a todos los reclusos y que no se preste para alterar la disciplina.

*Article 110. External Information*

*Detainees enjoy freedom of information, except where there is a serious threat of a disturbance of order and in which case the restriction must be justified. In every institution, detainees shall have access on a daily basis to information or news including the most important events on a national and international level, whether through bulletins issued by the administration or whichever other medium reaches all prisoners and does not cause an upset to order.*

Artículo 115. Visitas De Los Medios De Comunicación

Los medios de comunicación tendrán acceso a los centros de reclusión siempre y cuando cumplan con los requisitos exigidos por el reglamento general del Instituto Nacional Penitenciario y Carcelario. Tratándose de entrevista relacionada con un interno deberá mediar consentimiento de éste, previa autorización de la autoridad judicial competente. En caso de un condenado esta autorización debe ser concedida por el Director General del Instituto Nacional Penitenciario y Carcelario.

*Article 115. Visits by the Media*

*The media shall have access to prisons when they have satisfied the conditions laid down in the general regulations of the National Institute for Prisons. Any interview with a detainee requires the consent of the person and competent legal authorisation. In the case of a convicted person this authorisation must be sought from the Director General of the National Institute for Prisons .*

## **EUROPE**

### **NETHERLANDS, PENITENTIARY PRINCIPLES ACT**

#### Article 36

1. Save for the restrictions to be established under paragraphs 2, 3 and 4, the prisoner shall have a right to send and receive letters and items by post. The costs involved shall be for the prisoners account unless the governor determines otherwise.
2. The governor shall have the authority to examine envelopes or other postal items sent by or intended for prisoners for the presence of enclosed objects and to open them for that purpose. If the envelopes or other postal items are sent by or are intended for the persons or bodies referred to in Article 37, paragraph 1 or 2, this examination shall be carried out in the presence of the prisoner involved.
3. The governor shall have the authority to exercise supervision of the letters and postal items sent by or intended for prisoners. This supervision may comprise the copying of letters or other postal items. The prisoners shall be notified beforehand of the way in which supervision will be exercised.
4. The governor may refuse to distribute certain letters or other postal items as well as enclosed objects if this is necessary with a view to the following interests:
  - a. the maintenance of order or safety in the institution;
  - b. the prevention or investigation of criminal offences;
  - c. the protection of victims of, or those involved otherwise in criminal offences.
5. The governor shall provide that the letters or other postal items or enclosed objects that are not distributed are either returned to the prisoner or sent at his expense to the sender or to an address given by the prisoner, or placed in safekeeping for the prisoner with issue of a receipt, or destroyed with the prisoner's consent, or handed to a police-officer with a view to the prevention or investigation of criminal offences.

#### Article 38

1. The prisoner shall have a right to receive visitors for at least one hour per week at the times and places laid down in the prison rules. The prison rules shall contain rules concerning visit requests.
2. The governor may limit the number of persons simultaneously admitted to the prisoner if this is necessary in the interest of maintaining order or safety in the institution.
3. The governor may refuse the admission of a certain person or certain persons to the prisoner if this is necessary with a view to an interest referred to in Article 36, paragraph 4. The refusal shall be valid for a maximum period of three months.
4. The governor may determine that supervision is exercised during the visit if this is necessary with a view to an interest referred to in Article 36, paragraph 4. This supervision may comprise listening in to or recording the conversation between the visitor and the prisoner. The person involved shall be notified beforehand of the character of and reason for the supervision.
5. Every visitor should identify himself properly upon entering the institution. The governor may determine that a visitor's clothes is examined for the presence of objects that may be a risk to order or safety in the institution. This examination may also concern the objects he brings with him. The governor shall have the authority to hold on to such objects for the duration of the visit with issue of a receipt or to hand them to a police-officer with a view to the prevention or investigation of criminal offences.
6. The governor may terminate the visit within the time allotted to it and have the visitor removed from the institution if this is necessary with a view to an interest referred to in Article 36, paragraph 4.
7. The persons and bodies referred to in Article 37, paragraph 1 g and h, shall have access to the prisoner at any time. The other persons and bodies referred to in that paragraph shall have access to the prisoner at the times and places laid down in

the prison rules. During this visit they can freely converse with the prisoner, except when the governor is of the opinion, following consultation with the visitor in question, that the prisoner poses a serious risk to the visitor's safety. In that case, the governor shall reveal before the visit which supervisory measures will be taken, so that the conversation can take place as undisturbed as possible. The supervisory measures may not result in confidential statements made in the conversation between the prisoner and his legal aid provider becoming known to third parties.

#### Article 39

1. Save for the restrictions to be established under paragraphs 2 to 4, the prisoner shall have a right to conduct one or more phone conversations with persons outside the institution for ten minutes at least once a week at the times and places laid down in the prison rules and with the aid of a telephone designated for that purpose. The costs involved shall be for the prisoner's account, unless the governor determines otherwise.

2. The governor may determine that supervision is exercised on the phone conversations conducted by or with the prisoner if this is necessary to establish the identity of the person with which the prisoner conducts a conversation or with a view to an interest as referred to in Article 36, paragraph 4. This supervision may comprise listening in to or recording the phone conversation. The person involved shall be notified beforehand of the character of and reason for the supervision.

3. The governor may deny the prisoner the opportunity to conduct a certain phone conversation or certain phone conversations, or terminate a certain phone conversation within the time allotted to it if this is necessary with a view to an interest as referred to in Article 36, paragraph 4. The decision to forbid a certain phone conversation or certain phone conversations shall remain in force for a maximum period of three months.

4. The prisoner may have phone contact with the persons and bodies referred to in Article 37, paragraph 1, if the necessity and opportunity exist for this. No other supervision shall be exercised on these conversations than that necessary to establish the identity of the persons or bodies with which the prisoner conducts or desires to conduct a phone conversation.

#### Article 40

1. The governor may give the prisoner permission to conduct a conversation with a media representative if this has no adverse effect on to the following interests:

- a. the maintenance of order or safety in the institution;
- b. the protection of the public order and common decency;
- c. the protection of the rights and liberties of persons other than the prisoner;
- d. the prevention or investigation of criminal offences;

2. With a view to the protection of the interests referred to in paragraph 1, the governor may attach conditions to a media representative's access to the institution. The governor shall have the authority to have a media representative removed from the institution if he fails to comply with the conditions imposed on him.

3. The governor may exercise supervision on the contact with a media representative if this is necessary in view of an interest as referred to in paragraph 1. Article 38, paragraph 4, second and third sentence, and paragraph 5, shall apply *mutatis mutandis*.

#### Article 48

1. The prisoner shall be entitled to take cognizance of news at his own expense and to use a library facility once a week. The prisoner shall be entitled to follow educational courses and to participate in other educational activities in so far as these are compatible with the nature and duration of the detention and the character of the prisoner.

## **GERMANY, PRISON ACT**

### 23 – Basic Principle

The prisoner shall have the right to communicate with persons outside the institution within the scope of the provisions of this Act. Communication with persons outside the institution shall be encouraged.

### 24 – Rights to Have Visitors

The prisoner shall be allowed to have visitors at regular intervals. The total length shall be at least one hour per month. Everything else in regard thereto shall be regulated by the Institution.

Over and beyond this, Visits should be permitted if they promote the prisoner's treatment or social integration or if they serve to deal with personal, legal or business matters that cannot be dealt with by the prisoner in writing, be looked after by third persons, or be postponed until the time of the prisoner's release.

For reasons of security a visit may be made subject to the visitor being searched.

### 25 – Prohibition of Visits

The Head of the Institution may prohibit visits if security or good order of the institution would be jeopardised; of visitors who are not relatives of the prisoner's within the meaning of the Criminal Code, if it is to be feared that they might have some bad influence on the prisoner or hamper his social integration.

### 27 – Supervision of visits

Visits may be supervised for reasons of treatment or of security or good order of the institution. The conversation shall be monitored only if this is necessary for any of the above reasons.

A visit may be terminated if, in spite of some warning, visitors or prisoners infringe any of the provisions of this Act or any orders made in pursuance of this Act. A warning shall not be given, when it is imperative to terminate the visit immediately. Visits from defence counsel shall not be supervised.

Articles may be handed over in the course of a visit only if permission has been given. This shall not apply to any documents and other records handed over in the course of defence counsel's visit, or to any documents and other records handed over in the course of a visit from an attorney or notary to deal with a legal matter concerning the prisoner; on the occasion of a visit from an attorney to notary such handing over may be made subject to permission for reasons of security of good of the institution. Section 29(1), second and third sentences shall not be affected.

### 3.10 WORK

#### Commentary

The international standards state clearly that all convicted prisoners may be required to work so long as that work is not of an 'afflictive' nature and conforms to international labour laws (normal working hours in conditions similar to prevailing norms outside and which satisfy health and safety requirements); that it is purposeful and leads to the acquisition of skills which will be useful outside, rather than a provision of cheap labour for profit; and that prisoners are paid for the work done.

It is increasingly recognised that unsentenced prisoners should be given the option of working or not; and that women should have the opportunity of working (EPR 26.4). As far as possible, the work regime should closely resemble conditions outside,

*'The principle of normalisation...underpins much of the detail on work in Rule 26. Thus, for example, provisions for health and safety, working hours and even involvement in national social security systems should mirror that for workers on the outside...All prisoners should ideally be paid wages, which are related to those in society as a whole.'*  
(Commentary to EPR, Rule 26)

The SMR below guard against abuse of prisoner labour by contracting it out to private contractors. ILO Convention 29 ('Forced Labour Convention') expressly bans prison work unless it is supervised and controlled by a public authority. In all events, the prisoner should have the choice of whether or not to work for a private company.

#### International framework

##### **ICCPR**

Article 8

3. (a) No one shall be required to perform forced or compulsory labour;
- (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
- (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
  - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
  - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
  - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
  - (iv) Any work or service which forms part of normal civil obligations.

##### **SMR**

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.
- (2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

## Work

71. (1) Prison labour must not be of an afflictive nature.  
(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.  
(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.  
(4) So far as possible the work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release.  
(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.  
(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.
72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.  
(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.
73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.  
(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.
74. (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.  
(2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.
75. (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.  
(2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.
76. (1) There shall be a system of equitable remuneration of the work of prisoners.  
(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.  
(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

## Regional framework

### *EPR*

## Work

- 26.1 Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.
- 26.2 Prison authorities shall strive to provide sufficient work of a useful nature.
- 26.3 As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release.
- 26.4 In conformity with Rule 13 there shall be no discrimination on the basis of gender in the type of work provided.

26.5 Work that encompasses vocational training shall be provided for prisoners able to benefit from it and especially for young prisoners.

26.6 Prisoners may choose the type of employment in which they wish to participate, within the limits of what is available, proper vocational selection and the requirements of good order and discipline.

26.7 The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in the community in order to prepare prisoners for the conditions of normal occupational life.

26.8 Although the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be subordinated to that purpose.

26.9 Work for prisoners shall be provided by the prison authorities, either on their own or in co-operation with private contractors, inside or outside prison.

26.10 In all instances there shall be equitable remuneration of the work of prisoners.

26.11 Prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to allocate a part of their earnings to their families.

26.12 Prisoners may be encouraged to save part of their earnings, which shall be handed over to them on release or be used for other approved purposes.

26.13 Health and safety precautions for prisoners shall protect them adequately and shall not be less rigorous than those that apply to workers outside.

26.14 Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by national law to workers outside.

26.15 The maximum daily and weekly working hours of the prisoners shall be fixed in conformity with local rules or custom regulating the employment of free workers.

26.16 Prisoners shall have at least one rest day a week and sufficient time for education and other activities.

As far as possible, prisoners who work shall be included in national social security systems.

Access to the regime for sentenced prisoners.

101. If an untried prisoner requests to be allowed to follow the regime for sentenced prisoners, the prison authorities shall as far as possible accede to this request.

Work by sentenced prisoners

105.1 A systematic programme of work shall seek to contribute to meeting the objective of the regime for sentenced prisoners.

105.2 Sentenced prisoners who have not reached the normal retirement age may be required to work, subject to their physical and mental fitness as determined by the medical practitioner.

105.3 If sentenced prisoners are required to work, the conditions of such work shall conform to the standards and controls which apply in the outside community.

105.4 When sentenced prisoners take part in education or other programmes during working hours as part of their planned regime they shall be remunerated as if they had been working.

105.5 In the case of sentenced prisoners part of their remuneration or savings from this may be used for reparative purposes if ordered by a court or if the prisoner concerned consents.

## **National legislation**

### **AFRICA**

### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

#### 40. Labour of sentenced prisoners

(1) Sufficient work must as far as is practicable be provided to keep prisoners active for a normal working day and a prisoner may be compelled to do such work.

(2) A sentenced prisoner may not work or conduct any business on his or her own account.

(3) (a) A sentenced prisoner may elect the type of work he or she prefers to perform, if such choice is practicable and in accordance with an appropriate vocational programme.

(b) A child who is a prisoner may only do work for the purposes of training aimed at obtaining skills for his or her development.

(c) A child who is a prisoner may not be subjected to work if the work that is to be performed is inappropriate for the age of the child or if the work places the child's educational, physical, mental, moral or social well-being at risk.

(4) (a) Subject to paragraph (b), the amount of the gratuity that sentenced prisoners receive for their labour, the administration of the gratuity and the prisoners' conditions of work must be prescribed by regulation.

(b) The amount of the gratuity contemplated in paragraph (a) must be determined by the Commissioner with the concurrence of the Minister of Finance.

(5) A prisoner may never be instructed or compelled to work as a form of punishment or disciplinary measure.

(6) Work performed by a prisoner must be in accordance with the principles contained in section 37 (1) (b) and the performance thereof will not constitute an employment relationship with the Department.

#### 133. Agreements for articles, supplies and services

(1) All State departments must, as far as practicable, purchase articles and supplies manufactured by prisoner labour from the Department at fair and reasonable prices as may be determined by the Minister of Finance.

(2) The Commissioner may authorise specific services necessary or expedient and in the public interest or in the interest of any deserving charity to be rendered gratuitously.

### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATION***

#### 23. Labour of sentenced prisoners

Prisoners must, in accordance with the prevailing conditions, at the workplace, at all times be issued with the necessary protective clothing, footwear and other items that may be necessary to protect their health and safety.

(2) (a) The Commissioner may contract with any institution or person for the utilisation of the labour or service of prisoners upon such terms and conditions as may be agreed between the parties.

(b) The products of the labour or service in a prison may be sold to any person on such conditions as may be determined by the Commissioner.

24. (...)

(3) (a) Every sentenced prisoner must, subject to the provisions of the Act, and also subject to any order of the court, be utilised and trained in such manner as the Commissioner may determine.

(b) Such a prisoner must at all times perform labour, tasks and other duties as may be assigned to him or her for the purpose of such utilisation or training or for any other purpose connected with such prison.

(4) A sentenced prisoner may not work more than 8 hours a day, unless the Commissioner, in terms of a classification scheme or course of treatment or otherwise, order that a prisoner be exempted from work on any day during any period.

(5) A prisoner may not perform work for another prisoner, a correctional official or a private person or body without the approval of the Commissioner.

(6) (a) On Sundays a prisoner may only perform that work which is prescribed by Order and which is essential for cleanliness and hygiene in and around the prison where he or she is detained, and work which is essential to provide for the basic needs of the prison population and for the purposes of animal production.

(b) Paragraph (a) also applies to religious days of rest, other than Sundays, with reference to the faith to which a prisoner adheres, and to other non-religious public holidays determined by the Commissioner.

(c) A prisoner may on the days referred to in paragraph (a) and (b) be allowed to perform other work as prescribed by Order.

25. (...)

(d) A prisoner must be exempted from one day of compulsory work for each day's work as described in paragraph (a), (b) and (c) above or be compensated in such other way as prescribed by Order.

(7) If the nature of a specific place of work is in conflict with the religion or culture of a prisoner an alternative workplace must be allocated to the prisoner.

### ***MALAWI, PRISONS BILL***

41. (1) Work performed by prisoners shall be non-afflictive and designed to form part of a development plan or programme and generally to encourage prisoners to work a normal day.

(2) Sufficient work shall as far as is practicable be provided to keep prisoners active for a normal working day and a prisoner may be compelled to do such work. A sentenced prisoner may not work or conduct any business on his own account. Sentenced prisoners shall receive a reward or other incentive for their work. Conditions of work for prisoners shall be prescribed by regulation. A prisoner may never be instructed or compelled to work as a form of punishment or disciplinary measure.

50. (1) An unsentenced prisoner shall be offered the opportunity to do prison work or work on his own account.

(2) Where an unsentenced prisoner does prison work he shall receive a reward or other incentive in the same way as a sentenced prisoner.

An unsentenced prisoner may not be compelled to work except to meet the requirements of hygiene set in section 10.

## ***AMERICAS***

### ***CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT***

Work Releases

18. (1) In this section, "work release" means a structured program of release of specified duration for work or community service outside the penitentiary, under the supervision of a staff member or other person or organization authorized by the institutional head.

(2) Where an inmate is eligible for unescorted temporary absences under Part II or pursuant to section 746.1 of the Criminal Code, subsection 140.3(2) of the National Defence Act or subsection 15(2) of the Crimes Against Humanity and War Crimes Act, and, in the opinion of the institutional head,

(a) the inmate will not, by reoffending, present an undue risk to society during a work release,

(b) it is desirable for the inmate to participate in a structured program of work or community service in the community,

(c) the inmate's behaviour while under sentence does not preclude authorizing the work release, and

(d) a structured plan for the work release has been prepared,  
the institutional head may authorize a work release, for such duration as is fixed by the institutional head, subject to the approval of the Commissioner if the duration is to exceed sixty days.

(3) The institutional head may impose, in relation to a work release, any conditions that the institutional head considers reasonable and necessary in order to protect society.

(4) The institutional head may suspend or cancel a work release either before or after its commencement.

(5) The institutional head shall give the inmate written reasons for the authorizing, refusal, suspension or cancellation of a work release.

(6) Where a work release is suspended or cancelled after its commencement, the institutional head may cause a warrant in writing to be issued authorizing the apprehension and recommitment to custody of the inmate.

## **EUROPE**

### **NETHERLANDS, PENITENTIARY PRINCIPLES ACT**

#### Article 47

1. The prisoner shall be entitled to participate in the work available in the institution.

2. The governor shall provide that work is available for the prisoners in so far as the nature of the detention does not oppose this.

3. Prisoners with a custodial sentence shall be obligated to perform the work assigned to them by the governor both inside and outside the institution or wing.

4. The working hours established in the prison rules shall be set within the limits generally used outside the institution.

5. Our Minister shall establish rules concerning the composition and level of wages. The governor shall be charged with the fixing and payment of wages.

### **GERMANY, PRISON ACT**

#### 11 – Relaxation of Conditions of Imprisonment

In order to relax the conditions of imprisonment the following measures may, in particular, be ordered: that the prisoner may regularly perform work outside the institution under the supervision of a prison officer (outside work) or without such supervision (work release); or that the prisoner may go outside the institution for a certain period of the day under the supervision of a prison officer (short leave under escort) or without such supervision (short leave). Such relaxation may be ordered with the prisoner's consent if it is not to be feared that he might evade serving his prison sentence or abuse the relaxation of imprisonment to commit criminal offences.

#### 37 – Allocation

The main aim of work, work-therapeutic occupation, vocational training and further education shall serve to furnish the prisoner with skill and knowledge to make him capable of earning a livelihood after his release, or to preserve or promote such skill and knowledge.

The prison authority should allocate to the prisoner some economically productive work, taking into account his abilities, skill and inclinations.

Prisoners with an aptitude should be given an opportunity for vocational training, further vocational training, retraining for a new job, or participation in other activities of vocational training or further education.

Where a prisoner who is fit for work cannot be given any economically productive work or an opportunity to participate in any of the activities referred to in subsection (3) he shall be given some other reasonable form of occupation.

If a prisoner is not fit to perform some economically productive work he shall be given some occupation of a therapeutic nature.

#### 39 – Free Employment, Self-Occupation

The prisoner should be allowed to take up employment, vocational training, further vocational training or re-training for a new job outside the institution on the basis

of a free employment if this serves, within the scope of the treatment programme, the aim of teaching, preserving or promoting skill and knowledge for earning a livelihood after release and if this and knowledge for earning a livelihood after release and if this is not barred by any overriding reasons of prison organisation. Section 11 (1) No. 1 and (2) and Section 14 shall not be affected.

The prisoner may be permitted to occupy himself.

The prison authority may demand that any remuneration to be credited to the prisoner's account be remitted to it.

#### 40 – Final Certificate

A document certifying the complete of a measure of vocational training or further education shall not disclose the participant's imprisonment.

#### 41 – Duty to work

The prisoner shall be obliged to perform the work allocated to him and in keeping with his physical abilities, or work-therapeutic or other occupation which he is able to perform owing to his physical state. For up to three months a year he may be obliged to perform some auxiliary work in the institution, and if he consents also for a longer period. The first and second sentences shall not apply to prisoners who are older than 65 years, nor to expectant mothers or mothers nursing a baby, as far as there are statutory provisions prohibiting employment in order to protect mothers who are gainfully employed.

Participation in any of the measures referred to in Section 37(3) shall require the prisoner's consent. Such consent shall not be withdrawn at an inopportune time.

Employment in an enterprise run by a private contractor (section 149(4)) shall require the prisoner's consent. Withdrawal of such consent shall not become effective until the time when the job can be taken over by another prisoner, or after six weeks at the latest.

#### 42 – Exemption from Duty to Work

Where a prisoner has been engaged in any of the activities allocated in accordance with Section 37 or has performed some auxiliary work in accordance with the second sentence of Section 41(1) for a period of one year he shall be entitled to claim exemption from the duty to work for eighteen working days. Credit shall be made for any periods during which the prisoner was prevented from working owing to some illness, but not exceeding six weeks a year. Any leave from prison (Section 13 and 35), to the extent to which it falls within working hours and except where it is granted on account of a critical illness or the death of a relative, shall be taken into account in the period of exemption. During the period of exemption payment of the earnings last paid to the prisoner shall be continued. Any leave regulations applying to any employment outside the institution shall not be prejudiced.

#### 133 – Self-occupation. Pocket Money

The detainee shall be allowed to occupy himself against remuneration if this serves the objective of giving maintaining or promoting qualifications for employment after release.

Pocket money (Section 46) shall not be less than thirty Deutsche Marks a month.

#### 148 – Procurement of Work

##### Facilities for Vocational Training

The prison authority, in co-operation with the associations and agencies of industrial and economic life, shall take care that each prisoner who is fit for work can do some economically profitable work, and endeavour a job with some employer.

The prison authority shall ensure by outside organisational measures that the Federal Labour Institute can execute its functions such as vocational guidance, work guidance and procurement of work.

#### 149 – Workshops,

##### Facilities for Vocational Training

In these institutions provisions shall be made for the necessary workshops for the work to be allocated in accordance with Section 37(2), as well as for the necessary facilities for vocational training (section 37(3)) and for work-therapeutic occupation (Section 37 (5)).

The workshops and other facilities referred to in subsection (1) shall be adjusted to the conditions outside the institutions. The provisions on occupational protection and prevention of accidents shall be observed.

Vocational training and work-therapeutic occupation may also take place in suitable establishments belonging to private enterprises.

In the workshops and other establishments run by private enterprises the technical and industrial control may be transferred to members of such enterprises.

#### 175 – Work

The prisoner shall not be obliged to perform any work occupation or auxiliary work.

#### 176 – Juvenile Penal Institutions

Where a prisoner in a juvenile penal institution performs some work allocated to him he shall be paid remuneration for work to be assessed in accordance with section 43(1) and (2), notwithstanding the provisions of the Youth Labour Protection Act concerning piece-work and assembly line work. Where he performs some other occupation or auxiliary work allocated to him he shall be paid remuneration in accordance with the first sentence if this is appropriate to the type of his occupation and his output.

Prisoners who are fit for work and who cannot, for any reasons not inherent in their person, be allocated any work, sick prisoners in respect of whom the prerequisites of section 45 (2) are present, expectant mothers who do not carry out any work, shall be paid compensation for loss of earnings. The amount of such compensation and the time for which it is to be paid shall be determined in accordance with Section 45(3) to (6).

Prisoners who, on account of infirmity do not work or who are not or no longer paid compensation for loss of earnings shall be paid a reasonable amount of pocket money if they are indigent. The same shall apply to prisoners who are not paid any remuneration for an occupation or auxiliary work in accordance with the second sentence of subsection (1).

In the other respects Section 44 and 49 to 52 shall apply mutatis mutandis.

#### 177 – Remand Custody

Where an untried prisoner performs some work, occupation or auxiliary work allocated to him he shall be paid remuneration to be assessed in accordance with Section 43.

## **4. GOOD ORDER**

### **4.1 DISCIPLINE AND PUNISHMENT**

#### **Commentary**

Any punishment inflicted in prison (as elsewhere) should be preceded by proper disciplinary process. It should also be proportionate to the offence charged. A review process is necessary to ensure that the process is not subject to abuse by prison staff and to rectify any abuses that do occur.

*'It is essential that the rules and processes by which discipline is maintained in prison are not arbitrary. This prohibition against arbitrariness extends not only to the content of the applicable rules but also to the process by which they are enforced' (MSW II.para 32)*

The extensive rules and principles devoted to this area of prison law emphasise that all rules governing discipline and punishment should be written down including the authorities competent to impose punishment and that prisoners should be acquainted with them. The process should be transparent, minuted and open to appeal or review – satisfying the rules of natural justice.

Only prison staff can exercise disciplinary powers over prisoners. The SMR prohibit certain categories or prisoner from exercising them.

SMR (Rules 31-32) list the types of punishment prohibited under international law (as amounting to torture, cruel, inhuman or degrading punishment) and the conditions surrounding their imposition.

The form and duration of the punishment should also be written down in law or regulations (SMR 29, BPPP 30).

The SMR do not expressly prohibit solitary confinement but make it clear that it should be used only in exceptional circumstances. Solitary confinement that is 'prolonged', 'indeterminate', 'repeated' or combined with another punishment is not lawful (MSW II.paras 65-71).

While the SMR are silent with regard to review procedures, the need is set down in the UDHR and reinforced in the ICCPR (Art 2(3)) and CAT. Regional instruments also require functional review mechanisms (ACHPR, I-ACHR).

In the first instance, the head of the prison should be responsible for administering and monitoring the review process. A central review structure within the national prison system reduces the 'fear and intimidation factor which prisoners may feel in questioning (through review) a decision taken within the same prison in which they are held' (MSW II, para 91). Any such mechanism should keep undue bureaucracy and delay to a minimum. Reasons should be given for decisions rendered.

#### **International framework**

##### **UDHR**

###### **Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

###### **Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

### **ICCPR**

Article 2

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

### **CAT**

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

#### Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

#### Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

#### **BPTP**

7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

#### **BPPP**

##### Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

##### Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.
2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

#### **JDLS**

##### L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of

promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

- (a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;
- (b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;
- (c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;
- (d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;
- (e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;
- (f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

### **SMR**

Discipline and punishment

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or

responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of punishment which may be inflicted;
- (c) The authority competent to impose such punishment.

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Instruments of restraint

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- (b) On medical grounds by direction of the medical officer;
- (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

Information to and complaints by prisoners

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

## **Regional framework**

### **ACHPR**

Article 1

The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

#### Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

#### Article 7

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

### **EPR**

#### Discipline and punishment

56.1 Disciplinary procedures shall be mechanisms of last resort.

56.2 Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.

57.1 Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence.

57.2 National law shall determine:

- a. the acts or omissions by prisoners that constitute disciplinary offences;
- b. the procedures to be followed at disciplinary hearings;
- c. the types and duration of punishment that may be imposed;
- d. the authority competent to impose such punishment; and
- e. access to and the authority of the appellate process.

58. Any allegation of infringement of the disciplinary rules by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.

59. Prisoners charged with disciplinary offences shall:

- a. be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them;
- b. have adequate time and facilities for the preparation of their defence;
- c. be allowed to defend themselves in person or through legal assistance when the interests of justice so require;
- d. be allowed to request the attendance of witnesses and to examine them or to have them examined on their behalf; and
- e. have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing.

60.1 Any punishment imposed after conviction of a disciplinary offence shall be in accordance with national law.

60.2 The severity of any punishment shall be proportionate to the offence.

60.3 Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.

60.4 Punishment shall not include a total prohibition on family contact.

60.5 Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible.

60.6 Instruments of restraint shall never be applied as a punishment.

61. A prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority. No prisoner shall be employed or given authority in the prison in any disciplinary capacity.

#### Double jeopardy

63. A prisoner shall never be punished twice for the same act or conduct.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### 22. General

- (1) Discipline and order must be maintained with firmness but in no greater measure than is necessary for security purposes and good order in prison.
- (2) In case of any conviction in a court of law for an offence committed by a person whilst a prisoner, the Department, on the strength of such conviction, may without any further inquiry take disciplinary action in terms of this Act.
- (3) Disciplinary action may be taken against any prisoner, even though criminal proceedings may be pending or in progress against such prisoner.
- (4) No prisoner must in any way be involved in the implementation of any disciplinary measures.

##### 23. Disciplinary infringements

- (1) A prisoner commits a disciplinary infringement if he or she-
  - a) replies dishonestly to legitimate questions put by a correctional official or other person employed in a prison;
  - b) disobeys a lawful command or order by a correctional official or fails to comply with any regulation or order;
  - c) is abusive to any person;
  - d) fails or refuses to perform any labour or other duty imposed or authorised by this Act;
  - e) is careless or negligent with regard to any labour or duty imposed or authorised by this Act;
  - f) uses insulting, obscene or threatening language;
  - g) conducts himself or herself indecently by word, act or gesture;
  - h) commits an assault;
  - i) communicates with any person at a time when or a place where it is prohibited;
  - j) makes unnecessary noise or causes a nuisance;
  - k) without permission leaves the cell or other assigned place;
  - l) in any manner defaces or damages any part of the prison or any article therein or any state property;
  - m) possesses an unauthorised article;
  - n) commits theft;
  - o) creates or participates in a disturbance or foments a mutiny or engages in any other activity that is likely to jeopardise the security or order of a prison;
  - p) professes to be a member of a gang or takes part in gang activities;
  - q) makes a dishonest accusation against a correctional official or fellow prisoner;
  - r) conceals, destroys, alters, defaces or disposes of an identification card, document or any issued article;
  - s) commits an act with the intention of endangering his or her life, injuring his or her health or impairing his or her ability to work; or
  - t) attempts to do anything referred to in this section.

- (2) A prisoner who assists, conspires with or incites another person to contravene a provision of subsection (1) commits a disciplinary infringement.

##### 24. Procedures and penalties

- (1) Disciplinary hearings must be fair and may be conducted either by a disciplinary official, a Head of Prison or an authorised official.
- (2) (a) A hearing before a Head of Prison or the authorised official must be conducted informally and without representation.
- (b) At such hearing the prisoner must be informed of the allegation against him or her, whereupon the prisoner has the right to refute the allegation.
- (c) The proceedings of a hearing contemplated in paragraph (a) must be recorded in writing by a correctional official.

- (3) Where the hearing takes place before the Head of Prison or the authorised official, the following penalties may be imposed severally or in the alternative:
- (a) A reprimand;
  - (b) a loss of gratuity for a period not exceeding one month;
  - (c) restriction of amenities for a period not exceeding seven days.
- (4) At a hearing before a disciplinary official a prisoner-
- (a) must be informed of the allegation in writing;
  - (b) has the right to be present throughout the hearing, but the disciplinary official may order that the accused prisoner be removed and that the hearing continue in his or her absence if, during the hearing, the accused prisoner acts in such a way as to make the continuation of the hearing in his or her presence impracticable;
  - (c) has the right to be heard, to cross-examine and to call witnesses;
  - (d) has the right to be represented by a legal practitioner of his or her choice at his or her own expense, unless a request to be represented by a particular legal practitioner would cause an unreasonable delay in the finalisation of the hearing in which case the prisoner may be instructed to obtain the services of another legal practitioner; and
  - (e) has the right to be given reasons for the decision.
- (5) Where the hearing takes place before a disciplinary official, the following penalties may be imposed severally or in the alternative:
- (a) a reprimand;
  - (b) a loss of gratuity for a period not exceeding two months;
  - (c) restriction of amenities not exceeding 42 days;
  - (d) in the case of serious or repeated infringements, solitary confinement for a period not exceeding 30 days.
- (6) The penalties referred to in subsections (3) and (5) may be suspended for such period and on such conditions as the presiding official deems fit.
- (7) (a) At the request of the offender proceedings resulting in any penalty other than solitary confinement must be referred for review to the Commissioner.
- (b) The Commissioner may confirm or set aside the decision or penalty and substitute an appropriate order for it.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

##### 14. Discipline

- (1) (a) The disciplinary hearing must be conducted as soon as possible, and if practicable within 14 days from the date the accused prisoner was informed of the charge against him or her, such notification may not be less than 7 days before the hearing.
- (b) At every disciplinary hearing conducted by a disciplinary official, a correctional official, herein called the case presenter, will be appointed to arrange and co-ordinate the proceedings.
- (c) At such a hearing the rules of the law of evidence will apply and evidence to prove or disprove any fact in issue, may be submitted in writing or orally.
- (d) The disciplinary official must keep a full record of the proceedings, and it must be signed by him or her on conclusion of the proceedings.
- (e) Every person testifying in such a hearing must take the prescribed oath or affirmation.
- (f) The case presenter and the accused prisoner or the legal practitioner representing the accused prisoner, if any, may address the disciplinary official on the merits of the case.
- (g) The disciplinary official must make a finding of guilty or not guilty on a balance of probabilities.
- (h) If the disciplinary official makes a finding of guilty, the case presenter and the accused prisoner or the legal practitioner, if any, may address him or her on the appropriate penalty.
- (2) (a) The disciplinary official may decide who will be allowed to attend the hearing.
- (b) If a disciplinary official is of the opinion that the accused

prisoner is not mentally capable of understanding the proceedings he or she must refer the accused prisoner to a psychologist who must report on the ability of the prisoner to stand the hearing.

(c) (i) The case presenter must make arrangements for the attendance at the disciplinary hearing of the witnesses and the accused prisoner, including witnesses the accused prisoner may request to give evidence.

(ii) The case presenter may issue a subpoena, in the prescribed form to any person to attend the hearing, to give evidence or produce any document or article whether in support of the charge or in defence of the accused prisoner.

(d) A subpoena served on a person required to give evidence or to produce any book, record, document or thing at the hearing must be signed by the disciplinary official and the service thereof will be subject to the rules of court applicable to the service of such process in a summary trial on a criminal charge in a magistrates court.

(e) Any person summoned as a witness at a disciplinary hearing to give evidence or to produce any document or article, who fails to attend such hearing or to produce any document or article or to answer any question put to him or her is guilty of an offence and is liable for a period of imprisonment not exceeding 6 months or to such imprisonment without the option of a fine or both.

(f) i a witness makes a false statement under oath or affirmation knowing the same to be false, he or she is guilty of an offence and is liable on conviction for a period of imprisonment not exceeding 6 months or to such imprisonment without the option of a fine or both.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT**

38. The purpose of the disciplinary system established by sections 40 to 44 and the regulations is to encourage inmates to conduct themselves in a manner that promotes the good order of the penitentiary, through a process that contributes to the inmates' rehabilitation and successful reintegration into the community.

39. Inmates shall not be disciplined otherwise than in accordance with sections 40 to 44 and the regulations.

#### Disciplinary offences

40. An inmate commits a disciplinary offence who

- a) disobeys a justifiable order of a staff member;
- b) is, without authorization, in an area prohibited to inmates;
- c) willfully or recklessly damages or destroys property that is not the inmate's;
- d) commits theft;
- e) is in possession of stolen property;
- f) is disrespectful or abusive toward a staff member in a manner that could undermine a staff member's authority;
- g) is disrespectful or abusive toward any person in a manner that is likely to provoke a person to be violent;
- h) fights with, assaults or threatens to assault another person;
- i) is in possession of, or deals in, contraband;
- j) without prior authorization, is in possession of, or deals in, an item that is not authorized by a Commissioner's Directive or by a written order of the institutional head;
- k) takes an intoxicant into the inmate's body;
- l) fails or refuses to provide a urine sample when demanded pursuant to section 54 or 55;
- m) creates or participates in
- n) a disturbance, or
- o) any other activity
- p) that is likely to jeopardize the security of the penitentiary;

- q) does anything for the purpose of escaping or assisting another inmate to escape;
- r) offers, gives or accepts a bribe or reward;
- s) without reasonable excuse, refuses to work or leaves work;
- t) engages in gambling;
- u) willfully disobeys a written rule governing the conduct of inmates; or
- v) attempts to do, or assists another person to do, anything referred to in paragraphs (a) to (r).

#### Informal resolution

41. (1) Where a staff member believes on reasonable grounds that an inmate has committed or is committing a disciplinary offence, the staff member shall take all reasonable steps to resolve the matter informally, where possible.

#### Charge may be issued

(2) Where an informal resolution is not achieved, the institutional head may, depending on the seriousness of the alleged conduct and any aggravating or mitigating factors, issue a charge of a minor disciplinary offence or a serious disciplinary offence.

#### Notice of charge

42. An inmate charged with a disciplinary offence shall be given a written notice of the charge in accordance with the regulations, and the notice must state whether the charge is minor or serious.

#### Hearing

43. (1) A charge of a disciplinary offence shall be dealt with in accordance with the prescribed procedure, including a hearing conducted in the prescribed manner.

#### Presence of inmate

(2) A hearing mentioned in subsection (1) shall be conducted with the inmate present unless

- a) the inmate is voluntarily absent;
- b) the person conducting the hearing believes on reasonable grounds that the inmate's presence would jeopardize the safety of any person present at the hearing; or
- c) the inmate seriously disrupts the hearing.

#### Decision

(3) The person conducting the hearing shall not find the inmate guilty unless satisfied beyond a reasonable doubt, based on the evidence presented at the hearing, that the inmate committed the disciplinary offence in question.

#### Disciplinary sanctions

44. (1) An inmate who is found guilty of a disciplinary offence is liable, in accordance with the regulations made under paragraphs 96(i) and (j), to one or more of the following:

- a) a warning or reprimand;
- b) a loss of privileges;
- c) an order to make restitution;
- d) a fine;
- e) performance of extra duties; and
- f) in the case of a serious disciplinary offence, segregation from other inmates for a maximum of thirty days.

#### Collection of fine or restitution

(2) A fine or restitution imposed pursuant to subsection (1) may be collected in the prescribed manner.

#### Summary conviction offences

45. Every person commits a summary conviction offence who

- a) is in possession of contraband beyond the visitor control point in a penitentiary;
- b) is in possession of anything referred to in paragraph (b) or (c) of the definition "contraband" in section 2 before the visitor control point at a penitentiary;

- c)delivers contraband to, or receives contraband from, an inmate;
- d)without prior authorization, delivers jewellery to, or receives jewellery from, an inmate; or
- e)trespasses at a penitentiary.

69. No person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of an offender.

191. Every person who

- a)without lawful justification or excuse, willfully obstructs, hinders or resists the Correctional Investigator or any other person in the exercise or performance of the function, powers or duties of the Correctional Investigator,
- b)without lawful justification or excuse, refuses or willfully fails to comply with any lawful requirement of the Correctional Investigator or any other person under this Part, or
- c)willfully makes any false statement to or misleads or attempts to mislead the Correctional Investigator or any other person in the exercise or performance of the function, powers or duties of the Correctional Investigator
- d)is guilty of an offence punishable on summary conviction and liable to a fine not exceeding two thousand dollars.

**PERU, CODIGO DE EJECUCION PENAL 1991**

**PERU, PENITENTIARY CODE 1991**

Artículo 21º.- Objeto del régimen disciplinario

El régimen disciplinario tiene por objeto la convivencia pacífica de los internos y mantener el orden en los Establecimientos Penitenciarios.

*Article 21. Purpose of disciplinary regime*

*The purpose of the disciplinary regime is the peaceful co-existence of inmates and maintenance of order in prisons.*

Artículo 22º.- Caracteres del régimen disciplinarios

El régimen disciplinario es riguroso en los Establecimientos Penitenciarios cerrados y se atenúa en los Establecimientos Penitenciarios semi-abiertos y abiertos, tendiendo hacia la autodisciplina del interno.

*Article 22. Features of disciplinary regime*

*Discipline is strictly enforced in closed prisons and is relaxed in semi-open and open institutions where it tends to focus on self-discipline of the prisoner.*

Artículo 28º.- Sanción de aislamiento

La sanción de aislamiento es de aplicación sólo en los casos en que el interno manifiesta agresividad o violencia y cuando reiterada y gravemente altera la normal convivencia en el Establecimiento Penitenciario.

*Article 28. Isolation*

*The punishment of Isolation is restricted to cases where the prisoner shows aggression or violence which seriously and repeatedly disturbs the normal co-existence within the prison.*

Artículo 29º.- Informe médico previo al aislamiento

La sanción de aislamiento se cumple previo informe médico al Director del Establecimiento Penitenciario, el mismo que puede suspender o modificar la sanción de acuerdo al estado de salud del interno.

*Article 29. Medical report prior to confinement*

*The punishment of Isolation is subject to a medical report issued to the director of the prison which can suspend or modify the punishment according to the state of health of the inmate.*

Artículo 30º.- Exentos a la sanción de aislamiento

No se aplica la sanción de aislamiento:

- 1.- A la mujer gestante.
- 2.- A la madre que tuviera hijos consigo; y
- 3.- Al interno mayor de sesenta años.

*Article 30. Exemptions from the punishment of isolation*

1. *a pregnant women*
2. *a woman accompanied by her children, and*
3. *any inmate over 60 years old.*

Artículo 31º.- Lugar de aislamiento

El aislamiento se cumple en el ambiente que habitualmente ocupa el interno o en el que determina la Administración Penitenciaria.

*Article 31. Place of isolation*

*The isolation shall take place in the area normally occupied by the inmate or any other to be determined by the administration.*

Artículo 32º.- Aislamiento no exonera de trabajo

El interno sancionado con aislamiento no es exonerado del trabajo, siempre que le sea posible efectuarlo dentro del ambiente que ocupa. Se le permite tener material de lectura.

*Article 32. Isolation does not exonerate work*

*The inmate is not excused from work during isolation, where it is possible it will be carried out in the occupied place. Reading materials are permitted.*

Artículo 33º.- Duración del aislamiento

La sanción de aislamiento será no mayor de cuarenticinco días cuando la falta disciplinaria se comete dentro de la vigencia de una sanción anterior de aislamiento.

*Article 33. Duration of isolation*

*The punishment of isolation will be no more than 45 days when there is a lack of disciplinary one commits inside of the term of a previous punishment of Isolation*

Artículo 34º.- Información de falta cometida El interno es informado de la falta que se le atribuye permitiéndosele ejercitar su defensa.

*Article 34. Information on any breach committed*

*The inmate is informed of the alleged breach and allowed to defend himself.*

Artículo 35º.- Prohibición de función disciplinaria El interno no debe ejercer función disciplinaria alguna.

*Article 35. Prohibition against disciplinary measures by inmates*

*No inmate may exercise a disciplinary function over another.*

Artículo 36º.- Finalidad de las medidas coercitivas

Sólo con autorización del Director del Establecimiento Penitenciario podrá utilizarse los medios coercitivos que se establecen en el Reglamento, para impedir actos de evasión, violencia de los internos o alteraciones del orden, que afecten la seguridad del Establecimiento Penitenciario.

El uso de las medidas coercitivas está dirigido exclusivamente al restablecimiento de la normalidad y subsistirá sólo el tiempo estrictamente necesario.

*Article 36. Purpose of coercive measures*

*Coercive measures, which have been established in the regulations, may only be taken when authorized by the director of the prison. These measures are used to prevent escape, violence among the inmates or a disturbance to order that would affect prison security. The use of coercive measures is established exclusively for resortation of normality and will apply only when strictly necessary*

## **COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO**

### COLOMBIA, PENITENTIARY CODE

#### Artículo 117. Legalidad De Las Sanciones

Las sanciones disciplinarias y los estímulos estarán contenidos en la presente ley y en los reglamentos general e interno. Ningún recluso podrá ser sancionado por una conducta que no esté previamente enunciada en esta ley o en los reglamentos, ni podrá serlo dos veces por el mismo hecho.

Las sanciones serán impuestas por el respectivo Consejo de Disciplina o por el director del centro de reclusión, garantizando siempre el debido proceso.

#### *Article 117. Legality of Sanctions*

*Disciplinary sanctions and the reasons for sanctions will be laid out in the general and internal regulations. No prisoner can be sanctioned for an offence which has not been previously stated within in these regulations, nor will a prisoner be able to be punished twice for the same offence.*

*The sanctions shall be imposed by the respective Dicipinary council or by the director of the Prison, always guaranteeing the correct process.*

#### Artículo 118. Consejo De Disciplina

En cada establecimiento de reclusión funcionará un Consejo de Disciplina. El reglamento general determinará su composición y funcionamiento. En todo caso, de él hará parte el personero municipal o su delegado y un interno con su respectivo suplente de lista presentada por los reclusos al director del establecimiento para su autorización, previa consideración del delito y de la conducta observada por los candidatos. La elección se organizará de acuerdo con las normas internas.

#### *Article 118. Disciplinary Council*

*There shall be a diciplinary council in every prison. General regulations shall determine its function and composition. The council will include a municipal representative or delegate and a prisoner with their substitute list presented by the prisoners to the director of the prison for his authorisation, previous consideration of the crime and the behaviour observed by the candidates . The election will be organised in line with internal rules.*

#### Artículo 123. Sanciones

Las faltas leves tendrán las siguientes sanciones:

1. Amonestación con anotación en su prontuario, si es un detenido o en su cartilla biográfica si es un condenado.
2. Privación del derecho a participar en actividades de recreación hasta por ocho días.
3. Supresión hasta de cinco visitas sucesivas.
4. Suspensión parcial o total de alguno de los estímulos, por tiempo determinado.

Para las faltas graves las sanciones serán las siguientes:

1. Pérdida del derecho de redención de la pena hasta por sesenta días.
2. Suspensión hasta de diez visitas sucesivas.
3. Aislamiento en celda hasta por sesenta días. En este caso tendrá derecho a dos horas de sol diarias y no podrá recibir visitas; será controlado el aislamiento por el médico del establecimiento.

#### *Article 123. Punishments*

*Minor offences will carry the following punishments:*

1. *Warning for both detainees and sentenced prisoners noted down in personal records book*
2. *Removal of the right to participate in recreational activities for up to eight days.*
- 3 *Cancellation of up to five successive visits.*
4. *Total or partial cancellation of incentives for a predetermined amount of time.*

*For serious offences punishment shall be as follows.*

1. *Loss of the right to redeem the sentence for up to sixty days.*
2. *Cancellation of up to ten successive visits.*

3. Cell isolation for up to sixty days. This being the case there will be a right to two hours of sun a day, no visits; Isolation will be monitored by the prison doctor.

## **EUROPE**

### **GERMANY, PRISON ACT**

#### 102 – Conditions

Where a prisoner culpably violates any of the obligations imposed on him by or in pursuance of this Act the Head of the Institution may order that disciplinary action be taken against him.

Disciplinary action shall be dispensed with if it is sufficient to give the prisoner a caution.

Disciplinary action shall also be admissible where, on account of the same misconduct, criminal proceedings or proceedings concerning a non-criminal fine are instituted.

#### 103 – Types of Disciplinary Action

The following types of disciplinary action shall be admissible:

Reprimand

Restriction or forfeiture of the right of disposal over the house money and of the privilege to buy, for a period not exceeding three months;

Restriction or forfeiture of the privilege to reading material, for a period not exceeding two weeks and of the privilege to listen to the radio or to watch television, for a period not exceeding three months; simultaneous forfeiture, however, only for a period not exceeding two weeks;

Restriction or deprivation of articles to be used for some occupation during leisure time, or of the privilege to participate in joint activities, for a period not exceeding three months;

Segregation during leisure time, for a period not exceeding four weeks

Forfeiture of the right to daily outdoor exercise, for a period not exceeding one week

Deprivation of the allocated work or occupation, for a period not exceeding four weeks, combined with loss of the earnings regulated in this Act

Restriction of communication with persons outside the institution to urgent cases, for a period not exceeding three months;

Disciplinary detention, for a period not exceeding four weeks.

(2) Disciplinary detention shall be imposed only for serious or repeated misconduct.

Several disciplinary measures may be combined with each other.

The measures under subsection (1) Nos. 3 to 8 should, as far as possible, be ordered only where the misconduct has some connection to the privileges to be restricted or forfeited. This shall not apply where they are combined with disciplinary detention.

#### 104 – Executed of Disciplinary Action.

Suspension on Probation

Disciplinary action shall, as a rule, be executed immediately.

Disciplinary action may, wholly or in part, be suspended on probation for a period not exceeding six months.

Where the right of disposal over the house money is restricted or forfeited the house money accruing during such period shall be reedited to the tide-over money.

Where the prisoner's communication with persons outside the institution is restricted he shall be given an opportunity to communicate this to a person with whom he corresponds or who usually visits him. Correspondence with the recipients referred to in Section 29(1) and (2), with courts and judicial and prison authorities in the Federal Republic and with attorneys and notaries in a legal matter concerning the prisoner shall not be restricted.

Disciplinary detention shall be executed in solitary confinement. The prisoner may be detained in a special detention room which shall meet the requirements of a cell

destined for occupation during daytime and at night. Subject to orders to the contrary the prisoner's privileges under sections 19,20,22,37,38, and 68 to 70 shall be suspended.

#### 105 – Disciplinary Powers

Disciplinary action shall be ordered by the Head of the Institution. Where the misconduct is committed en route to another institution for the purpose of transfer the Head of such other Institution shall be competent.

The controlling authority shall decide in cases where the prisoner's misconduct was directed against the Head of the Institution.

Disciplinary action against a prisoner ordered while he was in another penal institution or in remand custody shall be executed on request. Section 104(2) shall not be affected.

#### 106 – Procedure

The facts shall be elucidated. The prisoner shall be heard. The findings shall be recorded in writing; the prisoner's defence shall be noted down.

In case of serious disciplinary offences the Head of the Institution should, before making a decision, discuss the matters in consultation with other persons who participate in the prisoner's treatment. Before an order is made for disciplinary action to be taken against a prisoner who is under medical treatment, or against a pregnant woman or a mother

feeding a baby, the medical officer of the institution shall be consulted.

The decision shall be disclosed to the prisoner verbally by the Head of the Institution and be recorded in writing together with the reasons in brief.

#### 107 – Medical Officer's Participation

Before disciplinary detention is executed the medical officer shall be consulted. During such detention the prisoner shall be under medical supervision. Disciplinary detention shall not be executed or shall be interrupted where the prisoner's health would be endangered.

## 4.2 SEARCHES

This section is in two parts covering the laws governing 'body' searches and those governing 'cell' searches.

### Commentary

Searches are invasive and undermine human dignity. They are also necessary to maintain law and order in the prison setting.

They therefore need to be conducted according to a set of clear procedures which are designed to achieve the objective while preserving so far as possible the dignity of the prisoner. These procedures should include the following: a definition of the circumstances under which a search is permitted; the avoidance of humiliating postures or acts (for example keeping a subject completely naked); the injunction that searches shall be conducted by staff of the same sex; and a prohibition on security staff conducting intimate searches of the prisoner's body.

The international framework of laws is silent in this specific area. However, the general principles pertaining to respect for and dignity of the individual continue to apply.

*'It is now generally acknowledged that prisons run safely and positively with the co-operation of prisoners. External security (freedom from escapes) and internal safety (freedom from disorder) are best ensured by building positive relationships between prisoners and staff.'* (MSW VI.para 6)

*A prisoner's property is a way of holding on to his/her identity: 'In prison having personal things, is an important way of retaining some connection with the outside world, of holding on to some personal identity.'* (MSW V.30)

The EPR emphasise the need for staff training: 'Staff who are to carry out searches need to be specially trained to achieve a balance between ensuring that they can detect and prevent any escape attempt or secretion of contraband while at the same time respecting the dignity of prisoners and respect for their personal possessions.' The EPR go on to recommend that when a prisoner's personal living space or possessions are being searched, he should normally be present.

### International framework

None

### Regional framework

#### **EPR**

Searching and controls

54.1 There shall be detailed procedures which staff have to follow when searching:

- a) all places where prisoners live, work and congregate;
- b) prisoners;
- c) visitors and their possessions; and
- d) staff.

54.2 The situations in which such searches are necessary and their nature shall be defined by national law.

54.3 Staff shall be trained to carry out these searches in such a way as to detect and prevent any attempt to escape or to hide contraband, while at the same time respecting the dignity of those being searched and their personal possessions.

54.4 Persons being searched shall not be humiliated by the searching process.

54.5 Persons shall only be searched by staff of the same gender.

54.6 There shall be no internal physical searches of prisoners' bodies by prison staff.

54.7 An intimate examination related to a search may be conducted by a medical practitioner only.

54.8 Prisoners shall be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibit this.

54.9 The obligation to protect security and safety shall be balanced against the privacy of visitors.

54.10 Procedures for controlling professional visitors, such as legal representatives, social workers and medical practitioners, etc., shall be the subject of consultation with their professional bodies to ensure a balance between security and safety, and the right of confidential professional access.

## **BODY SEARCHES**

### **National legislation**

#### **AFRICA**

##### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

#### 27. Searches

(1) The person of a prisoner may be searched by a manual search, or search by technical means, of the clothed body.

(2) Upon reasonable grounds, the person of a prisoner may be searched in the following ways:

a) A search by visual inspection of the naked body;

b) search by the physical probing of any bodily orifice;

c) a search by taking a body tissue or body excretion sample for analysis;

d) a search by the use of an X-ray machine or technical device, by a qualified technician, if there are reasonable grounds for believing that a prisoner has swallowed or excreted any object or substance that may be needed as an exhibit in a hearing or may pose a danger to himself or herself or to correctional officials or to the security of the prison; and

e) by detaining a prisoner for the recovery by the normal excretory process of an object that may pose a danger to that prisoner, to any correctional official, to any other person or to the security of the prison.

(3) A search of the person of a prisoner contemplated in subsection (2) is subject to the following restrictions:

a) the search must be conducted in a manner which invades the privacy and undermines the dignity of the prisoner as little as possible;

b) a correctional official of the same gender as the prisoner must conduct the search and correctional officials of the other gender must not be present;

c) all searches must be conducted in private;

d) searches contemplated in subsections (1) and (2) must be authorised by the Head of Prison but searches in terms of subsection (2, (c), (d) and (e) must be executed or supervised by a registered nurse, medical officer or medical practitioner, depending on the procedure necessary to effect the search.

(4) A correctional official or person conducting a search in terms of this section may seize anything found.

##### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

#### 16. Searches

A search contemplated in section 27(2) (b), (c), (d) and (e) of the Act: must be undertaken in the prison hospital, clinic or public hospital depending on the procedure necessary to conduct the search; will not include the administering of vomitories or enemas; and must at all times be witnessed by a correctional official of the same gender as the prisoner, who must record the outcome of the search.

(2) a) Any prisoner detained for the purposes of a search contemplated in terms of section 27(2)(e) of the Act must be detained in a single cell. Every such prisoner must be visited at least once a day by the Head of Prison, and his or her health status assessed at least once every four hours by a registered nurse.

#### ***MALAWI, PRISONS BILL***

22. - (1) A clothed prisoner may be searched manually.

(2) Upon reasonable grounds, a prisoner may be searched in the following ways -

- a) a search by visual inspection of the naked body;
- b) a search by the physical probing of any bodily orifice;
- c) a search by taking a body tissue or body excretion sample for analysis; and
- d) by detaining a prisoner for the recovery by the normal excretory process of an object that may pose a danger to himself, to any prison officer to any other person or to the security of the prison.

(3) A search of the person of a prisoner is subject to the following restrictions -

- a) the search shall be conducted in a manner which invades the privacy and undermines the dignity of the prisoner as little as possible;
- b) male prisoners shall be searched by male prison officers and female prisoners shall be searched by female prison officers without the presence of prison officers of the other gender in each instance;
- c) all searches must be conducted in private; and
- d) searches under subsections (1) and (2) shall be authorised by the Officer in Charge; and searches in terms of subsection (2)(b) to (d) shall be executed or supervised by a medical officer.

#### ***AMERICAS***

##### ***CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT***

Routine non-intrusive or frisk searches

47. (1) A staff member may conduct routine non-intrusive searches or routine frisk searches of inmates, without individualized suspicion, in the prescribed circumstances, which circumstances must be limited to what is reasonably required for security purposes.

(2) A person providing services of a prescribed class to the Service under a contract has the power to search that a staff member is authorized to conduct under subsection (1) if

- (a) the conducting of such searches is provided for in the contract but does not constitute the person's principal services under the contract;
- (b) the searches are reasonably related to the person's principal services under the contract; and
- (c) the person has received the prescribed training to conduct such searches.

Routine strip search of inmates

48. A staff member of the same sex as the inmate may conduct a routine strip search of an inmate, without individualized suspicion,

- (a) in the prescribed circumstances, which circumstances must be limited to situations in which the inmate has been in a place where there was a likelihood of access to contraband that is capable of being hidden on or in the body; or
- (b) when the inmate is entering or leaving a segregation area.

Frisk search of inmate

49. (1) Where a staff member suspects on reasonable grounds that an inmate is carrying contraband or carrying evidence relating to a disciplinary or criminal offence, the staff member may conduct a frisk search of the inmate.

(2) A person providing services of a prescribed class to the Service under a contract has the powers of search of a staff member under subsection (1) if

(a) the conducting of such searches is provided for in the contract but does not constitute the person's principal services under the contract;

(b) the searches are reasonably related to the person's principal services under the contract; and

(c) the person has received the prescribed training to conduct such searches.

Strip search of inmate

(3) Where a staff member

(a) believes on reasonable grounds that an inmate is carrying contraband or carrying evidence relating to a disciplinary or criminal offence, and that a strip search is necessary to find the contraband or evidence, and

(b) satisfies the institutional head that there are reasonable grounds to so believe, a staff member of the same sex as the inmate may conduct a strip search of the inmate.

Emergency search

(4) Where a staff member

(a) satisfies the requirements of paragraph (3)(a), and

(b) believes on reasonable grounds that the delay that would be necessary in order to comply with paragraph (3)(b) or with the gender requirement of subsection (3) would result in danger to human life or safety or in loss or destruction of the evidence,

the staff member may conduct the strip search without complying with paragraph (3)(b) or the gender requirement of subsection (3).

Staff member to inform institutional head

50. Where a staff member believes on reasonable grounds that an inmate is carrying contraband in a body cavity, the staff member may not seize or attempt to seize that contraband, but shall inform the institutional head.

Use of X-ray, "dry cell"

51. Where the institutional head is satisfied that there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in a body cavity, the institutional head may authorize in writing one or both of the following:

(a) the use of an X-ray machine by a qualified X-ray technician to find the contraband, if the consent of the inmate and of a qualified medical practitioner is obtained; and

(b) the detention of the inmate in a cell without plumbing fixtures, with notice to the penitentiary's medical staff, on the expectation that the contraband will be expelled.

Body cavity search

52. Where the institutional head is satisfied that there are reasonable grounds to believe that an inmate is carrying contraband in a body cavity and that a body cavity search is necessary in order to find or seize the contraband, the institutional head may authorize in writing a body cavity search to be conducted by a qualified medical practitioner, if the inmate's consent is obtained.

Exceptional power of search

53. (1) Where the institutional head is satisfied that there are reasonable grounds to believe that

(a) there exists, because of contraband, a clear and substantial danger to human life or safety or to the security of the penitentiary, and

(b) a frisk search or strip search of all the inmates in the penitentiary or any part thereof is necessary in order to seize the contraband and avert the danger,

the institutional head may authorize in writing such a search, subject to subsection (2).

Gender requirement

(2) A strip search authorized under subsection (1) shall be conducted in each case by a staff member of the same sex as the inmate.

#### Searches of Visitors

##### Routine non-intrusive or frisk searches

59. A staff member may conduct routine non-intrusive searches or routine frisk searches of visitors, without individualized suspicion, in the prescribed circumstances, which circumstances must be limited to what is reasonably required for security purposes.

##### Frisk search

60. (1) A staff member may conduct a frisk search of a visitor where the staff member suspects on reasonable grounds that the visitor is carrying contraband or carrying other evidence relating to an offence under section 45.

##### Strip search

(2) Where a staff member

(a) suspects on reasonable grounds that a visitor is carrying contraband or carrying other evidence relating to an offence under section 45 and believes that a strip search is necessary to find the contraband or evidence, and

(b) satisfies the institutional head that there are reasonable grounds

(i) to suspect that the visitor is carrying contraband or carrying other evidence relating to an offence under section 45, and

(ii) to believe that a strip search is necessary to find the contraband or evidence, a staff member of the same sex as the visitor may, after giving the visitor the option of voluntarily leaving the penitentiary forthwith, conduct a strip search of the visitor.

(3) Where a staff member believes on reasonable grounds that a visitor is carrying contraband or carrying other evidence relating to an offence under section 45 and that a strip search is necessary to find the contraband or evidence,

(a) the staff member may detain the visitor in order to

(i) obtain the authorization of the institutional head to conduct a strip search, or

(ii) obtain the services of the police; and

(b) where the staff member satisfies the institutional head that there are reasonable grounds to believe

(i) that the visitor is carrying contraband or carrying other evidence relating to an offence under section 45, and

(ii) that a strip search is necessary to find the contraband or evidence,

the institutional head may authorize a staff member of the same sex as the visitor to conduct a strip search of the visitor.

##### Rights of detained visitor

(4) A visitor who is detained pursuant to subsection (3) shall

(a) be informed promptly of the reasons for the detention; and

(b) before being searched, be given a reasonable opportunity to retain and instruct counsel without delay and be informed of that right.

#### Warnings about searches

62. At each penitentiary, a conspicuous warning shall be posted at the entrance to the lands and at the visitor control point, stating that all visitors and vehicles at the penitentiary are subject to being searched in accordance with this Part and the regulations.

#### Searches of Staff Members

63. A staff member may conduct routine non-intrusive searches or routine frisk searches of other staff members, without individualized suspicion, in the prescribed circumstances, which circumstances must be limited to what is reasonably required for security purposes.

#### Frisk search or strip search

64. (1) Where a staff member believes on reasonable grounds that another staff member is carrying contraband or carrying evidence relating to a criminal offence and that a frisk search or strip search is necessary to find the contraband or evidence,

(a) the staff member may detain the other staff member in order to

(i) obtain the authorization of the institutional head to conduct a frisk search or strip search, or

(ii) obtain the services of the police; and

(b) where the staff member satisfies the institutional head that there are reasonable grounds to believe that the other staff member is carrying contraband or carrying evidence relating to a criminal offence and that a frisk search or strip search is necessary to find the contraband or evidence, the institutional head may

(i) authorize a staff member to conduct a frisk search of the other staff member, or

(ii) authorize a staff member of the same sex as the other staff member to conduct a strip search of that other staff member.

Rights of detained staff member

(2) A staff member who is detained pursuant to subsection (1) shall

(a) be informed promptly of the reasons for the detention; and

(b) before being searched, be given a reasonable opportunity to retain and instruct counsel without delay and be informed of that right.

Power to seize

65. (1) Subject to section 50, a staff member may seize contraband, or evidence relating to a disciplinary or criminal offence, found in the course of a search conducted pursuant to sections 47 to 64, except a body cavity search or a search described in paragraph 51(a).

(2) A medical practitioner conducting a body cavity search may seize contraband or evidence relating to a disciplinary or criminal offence found in the course of that search.

(3) A person conducting a search pursuant to subsection 47(2) or 49(2) may seize contraband found in the course of that search.

Searches in Community-based Residential Facilities

Frisk search, room search

66. (1) An employee of a community-based residential facility who is so authorized by the Service may

(a) conduct a frisk search of an offender in that facility, and

(b) search an offender's room and its contents,

where the employee suspects on reasonable grounds that the offender is violating or has violated a condition of the offender's parole, statutory release or temporary absence and that such a search is necessary to confirm the suspected violation.

Power to seize

(2) An employee who conducts a search pursuant to subsection (1) may seize any evidence of a violation of the offender's conditions of release found in the course of the search.

Reports to be submitted

67. Reports in respect of searches conducted pursuant to sections 47 to 66, and in respect of the seizure of items in the course of those searches, must be submitted where required by regulations made under paragraph 96(o) and in accordance with those regulations.

## ***COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO*** ***COLOMBIA, PENITENTIARY CODE***

Artículo 55. Requisay Porte De Armas

Toda persona que ingrese a un centro de reclusión o salga de él, por cualquier motivo, deberá ser razonablemente requisada y sometida a los procedimientos de ingreso y egreso. Nadie sin excepción, en situación normal podrá entrar armado a un centro de reclusión. Ningún vehículo podrá ingresar o abandonar el

establecimiento, ni paquete o documento alguno ni volumen de carga, saldrá de él, sin constatación y; requisada. Los internos deben ser requisados rigurosamente después de cada visita.

*Article 55. Search and carriage of weapons*

*Every person who enters or exits a prison for whatever reason must be reasonably searched on entry and exit and informed of entry and exit procedures. Under normal circumstances nobody may enter the prison armed. No vehicle may enter or leave the prison and no packet or document nor any volume of goods may be taken out without verification and search. The prisoners must be thoroughly searched after every visit.*

**Artículo 60. Deposito De Objetos Personales y Valores**

Los capturados, detenidos o condenados, al ingresar a un establecimiento de reclusión, serán requisados cuidadosamente. De los valores que se le retiren al interno en el momento de su ingreso se le expedirá el correspondiente recibo. La omisión de lo aquí dispuesto, constituirá causal de mala conducta para quien debió expedir dicho recibo.

*Article 60. Deposit of valuables and personal items*

*On entering the prison accused prisoners, detainees and sentenced prisoners will be carefully searched. For all valuable items confiscated on entry the prisoner will receive a receipt. Failure to do so will constitute as bad conduct on the part of the person responsible for issuing receipts.*

**EUROPE**

***NETHERLANDS, PENITENTIARY PRINCIPLES ACT***

Article 27

The prisoner's right to inviolability of his body, his clothes and the substances produced by his body, and his cell accommodation may be restricted in accordance with the provisions of this Chapter.

Article 29

1. The governor shall have the authority to examine the prisoners body or clothes when he enters or leaves the institution, before or at the end of a visit, or when this is otherwise necessary in the interest of maintaining order or safety in the institution.

2. The examination of the prisoners body shall consist of an external inspection of the openings and cavities of the prisoner's body. The examination of the prisoner's clothes shall also consist of an examination of the objects that the prisoner has on his person.

3. The examination of the prisoner's body shall be performed in an enclosed area and, if possible, by persons of the same sex as the prisoner's.

4. If, in an examination of the body or clothes, objects are found that the prisoner is forbidden to possess, and, if the examination concerns the openings or cavities of the prisoner's body, these objects can be removed without the use of tools, the governor shall have the authority to confiscate them. He shall provide that these objects are either placed in safekeeping for the prisoner at his expense with issue of a receipt, or destroyed with the prisoner's consent, or handed to a police-officer with a view to the prevention or detection of punishable acts.

Article 31

1. The governor may determine that a prisoner's body is examined if this is necessary to avert serious risk to the maintenance of order or safety in the institution or to the prisoner's health. The internal examination of the body shall be performed by a physician or, on his instructions, by a nurse.

2. An officer or employee of the institution where the prisoner is staying may take a decision as referred to in paragraph 1 if immediate carrying out is called for.

3. If, in the internal examination of the body, objects are found that the prisoner is forbidden to possess and these objects can be removed from the body by the physician or nurse, the governor shall have the authority to confiscate them. Article 29, paragraph 4, last sentence, shall apply mutatis mutandis.

### ***GERMANY, PRISON ACT***

#### **84 – Search**

It shall be permitted to search the prisoner, his belongings and the cells. When male prisoners are searched only men shall be present; when female prisoners are searched only women shall be present. The sense of shame shall not be offended.

A search of the body connected with stripping shall be admissible only where there is imminent danger or upon orders from the Head of the Institution in the individual case. Other prisoners shall not be present.

The Head of the Institution may make a general order to the effect that prisoners be searched in accordance with subsection (2) upon admission to the institution and after each absence from the institution.

## **CELL SEARCHES**

### ***AFRICA***

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

#### **26. Safe custody**

(1) The right of every prisoner to personal integrity and privacy is subject to the limitations reasonably necessary to ensure the security of the community, the safety of correctional officials and the safe custody of all prisoners.

(2) In order to achieve these, the objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35, a correctional official may-

a) search the person of a prisoner, his or her property and the place where he or she is in custody and seize any object or substance which may pose a threat to the security of the prison or of any person, or which could be used as evidence in a criminal trial or disciplinary proceedings;

b) take steps to identify the prisoner;

c) classify prisoners and allocate segregated accommodation, including single cells;

d) apply mechanical means of restraint; and

e) use reasonable force.

(3) In order to achieve the objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35, the Commissioner may classify and allocate accommodation to prisoners.

#### **101. Entry, search and seizure**

(1) In addition to the powers of a correctional official to search prisoners, their cells and their property and to seize articles in terms of section 27, a correctional official also has the power to enter any premises, to search without warrant any other person or place and seize any article when this is reasonably necessary for-

(a) maintaining the safe custody of a prisoner, the security of a prison and controlling access of persons to and permissibility of goods in a prison;

(b) carrying out any sentence or order in terms of which a person is subject to community corrections; or

(c) preventing, or gathering evidence of, the commission of any offence under this Act.

(2) Despite the provisions of subsection (1)-

(a) a correctional official may not search another correctional official or seize his or her property without his or her consent or being authorised to do so by the

Commissioner but a general authorisation to search other correctional officials may be granted to a correctional official who is required to act in order to control access to or maintain secure custody within a prison; and

(b) action cannot be taken in terms of subsection (1) (c) outside a prison unless a search warrant has been issued by a magistrate but a correctional official may act in terms of subsection (1) (c) without a warrant when he or she on reasonable grounds believes that-

i) a warrant will be issued authorising action in terms of subsection (1) (c); and

(ii) the delay in obtaining such a warrant would defeat the object of the search.

(3) (a) The provisions of section 21 of the Criminal Procedure Act, relating to the issue of a warrant to a police official apply, with the necessary changes, to a correctional official acting in terms of this section.

(b) The provisions of section 27 of the Criminal Procedure Act, relating to resistance to entry or search by a police official apply, with the necessary changes, to a correctional official acting in terms of this section.

(c) The provisions of section 29 of the Criminal Procedure Act, relating to the manner in which a search must be conducted by a police official apply, with the necessary changes, to a correctional official acting in terms of this section.

(4) (a) The Commissioner may sell any property seized in terms of this Act or the property of a deceased or escaped prisoner which is in the care of the Department by public auction, if it is not lawfully claimed within six months after being seized or after the death or escape.

(b) The proceeds of the sale may be appropriated in settlement of any claims by the State against the applicable person and the balance, if any, must be paid into the National Revenue Fund.

(c) If, after the period of six months referred to in paragraph (a), a person proves to the Commissioner that he or she is lawfully entitled to the balance of the proceeds, the balance must be paid to that person.

#### ***MALAWI, PRISONS BILL***

23. (1) A prison officer may search the property of a prisoner and the place where he is in custody.

(2) Such search shall take place in the presence of the prisoner, except that where a communal cell is searched the prisoners in that cell may be represented by at least two of them.

(3) A search need not be conducted in the presence of a prisoner as required by subsection (2) if there are reasonable grounds for believing that the presence of the prisoner would defeat the objective of the search.

(4) Where a search is not conducted in the presence of a prisoner, the prison officer conducting the search shall inform the prisoner or prisoners concerned what grounds he has for believing that their presence would defeat the objectives of the search.

#### **Seizure**

24. A prison officer who seizes any object or substance shall record in a manner prescribed by regulation the fact that such seizure has taken place and the way in which he has disposed of the objects and substances.

### ***AMERICAS***

#### ***CANADA, CORRECTIONS AND CONSITIONAL RELEASE ACT***

##### **Searches of cells**

58. A staff member may, in the prescribed manner, conduct searches of cells and their contents in the prescribed circumstances, which circumstances must be limited to what is reasonably required for security purposes.

##### **Searches in Community-based Residential Facilities**

Frisk search, room search

66. (1) An employee of a community-based residential facility who is so authorized by the Service may

(a) conduct a frisk search of an offender in that facility, and

(b) search an offender's room and its contents,

where the employee suspects on reasonable grounds that the offender is violating or has violated a condition of the offender's parole, statutory release or temporary absence and that such a search is necessary to confirm the suspected violation.

Power to seize

(2) An employee who conducts a search pursuant to subsection (1) may seize any evidence of a violation of the offender's conditions of release found in the course of the search.

## **EUROPE**

### ***NETHERLANDS, PENITENTIARY PRINCIPLES ACT***

Article 34

1. The governor shall have the authority to examine a prisoner's cell accommodation for the presence of objects he is forbidden to possess:

a. if this examination takes place in the framework of the general supervision of the presence of forbidden objects in the cell accommodations of prisoners;

c. if this is otherwise necessary in the interest of maintaining order or safety in the institution 2. Article 29, paragraph 4, shall apply mutatis mutandis.

### ***GERMANY, PRISON ACT***

84 – Search

It shall be permitted to search the prisoner, his belongings and the cells. When male prisoners are searched only men shall be present; when female prisoners are searched only women shall be present. The sense of shame shall not be offended.

A search of the body connected with stripping shall be admissible only where there is imminent danger or upon orders from the Head of the Institution in the individual case. Other prisoners shall not be present.

The Head of the Institution may make a general order to the effect that prisoners be searched in accordance with subsection(2) upon admission to the institution and after each absence from the institution.

## 5. SENTENCED PRISONERS

### 5.1 CLASSIFICATION

#### Commentary

*'Excessive control can be as prejudicial to safety as insufficient control.'*  
(Commentary to EPR, Rule 52)

Legislation deals with this in two parts: (1) the judicial and legal situation of the prisoner (i.e whether the prisoner is untried or convicted, first or habitual offender, short or long sentence), together with separation of women from men, the young from the adult;(2) some of the legislation makes provision for risk assessments to be made of the prisoner on admission to assess what 'regime' to include the person in and what type of institution to better promote and implement a 'resettlement strategy' so that the individual can be 'resocialised'.

Where prisons in many countries are under enormous pressure of numbers, the separation and classification of prisoners along the lines set out above and recommended in the international standards and guidelines becomes impracticable. There is agreement among prison officers in the USA that when a prison reaches 80% of its design capacity, administrative flexibility begins to suffer, particularly in regard to the classification and movement of prisoners.

The EPR emphasise the need to create a safe environment for all categories of prisoner rather than to rely on mere separation:

*'There has been a growing tendency in some prison systems to separate categories of prisoners or individuals. Instead, prison authorities should strive to create environments in which all prisoners can be safe and free from abuse and should have a set of procedures that enable all prisoners to mix without fear of assault or other violence, namely to ensure that prisoners are able to contact staff at all times, including at night.'* (Commentary to EPR, Rule 52)

Policy makers will need to explore better use of space and ensuring low risk prisoners are not housed needlessly in high security institutions.

The EPR offers helpful commentary in dealing with security in R51:

*'There are three main reasons for requiring that the security measures to which prisoners are subject shall be the minimum necessary to achieve their secure custody:*

*Staff are likely to identify more easily those prisoners who do require a high level of security if their numbers are restricted.*

*The lower the level of security, the more humane the treatment is likely to*

*be.*

*Security is expensive and the higher the level, the greater the cost. It makes financial sense not to have prisoners in a higher security category than is necessary.*

*Physical and technical security arrangements are essential features of prison life but on their own they are not sufficient to ensure good order.*

*Security also depends on an alert staff who interact with prisoners, who have an awareness of what is going on in the prison and who make sure that prisoners are kept active in a positive way. This is often described as dynamic security and is much more qualitative than one which is entirely dependent on static security measures. The strength of dynamic security is that it is likely to be proactive in a way which recognises a*

*threat to security at a very early stage. Where there is regular contact between staff and prisoners, an alert member of staff will be responsive to situations which are different from the norm and which may present a threat to security and thus will be able to prevent escapes more effectively...*

Assessment of risk can help to identify those prisoners who present a threat to themselves, to staff, to other prisoners and to the wider community. Rule 51.3 of EPR lists the main objectives of security risk assessment. Criteria for such evaluation have been developed in many countries. They include: the nature of the crime for which the prisoner was convicted; the threat to public were the prisoner to escape; previous history of attempting to escape and access to external help; the potential for threat to other prisoners and in the case of pre-trial prisoners, the threat to witnesses. Risk assessments in prison should take account of assessments made by other appropriate agencies, such as the police.

In many prison systems there is an assumption that all pre-trial prisoners must be held in high security conditions. This is not always necessary and it should be possible to apply an assessment of security risk to this group of prisoners if they were to escape as well as to those who have been sentenced.

In some countries the judge who passes sentence specifies the security of the regime in which the prisoner should be held. In other countries prisoners who are sentenced to life imprisonment or who are sentenced under a particular law automatically are held in the highest security conditions, regardless of any personal risk assessment.

Rule 51.5 of EPR requires that security levels should be reviewed at regular intervals as the sentence is served. It is often the case that a person becomes less of a security risk as his sentence progresses. The prospect of progressing to a lower security category during the sentence can also act as an incentive for good behaviour.'

## **International framework**

### **ICCPR**

Article 10

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

### **SMR**

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

(b) Untried prisoners shall be kept separate from convicted prisoners;

(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

(d) Young prisoners shall be kept separate from adults. Accommodation

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

63. (1) The fulfillment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided

#### Classification and individualization

67. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. ( I ) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

#### *D. CIVIL PRISONERS*

94. In countries where the law perm its imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

#### *E. PERSONS ARRESTED OR DETAINED WITHOUT CHARGE*

95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

### **Regional framework**

#### ***EPR***

11.1 Children under the age of 18 years should not be detained in a prison for adults, but in an establishment specially designed for the purpose.

11.2 If children are nevertheless exceptionally held in such a prison there shall be special regulations that take account of their status and needs.

12.1 Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose.

12.2 If such persons are nevertheless exceptionally held in prison there shall be special regulations that take account of their status and needs.

18.8 In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

- a) untried prisoners separately from sentenced prisoners;
- b) male prisoners separately from females; and
- c) young adult prisoners separately from older prisoners.

18.9 Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

Security

51.1 The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

51.2 The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.

51.3 As soon as possible after admission, prisoners shall be assessed to determine:

- a) the risk that they would present to the community if they were to escape;
- b) the risk that they will try to escape either on their own or with external assistance.

51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

#### Safety

52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.

#### Organisational aspects of imprisoning sentenced prisoners

104.1 As far as possible, and subject to the requirements of Rule 17, separate prisons or separate sections of a prison shall be used to facilitate the management of different regimes for specific categories of prisoners.

104.2 There shall be procedures for establishing and regularly reviewing individual sentence plans for prisoners after the consideration of appropriate reports, full consultations among the relevant staff and with the prisoners concerned who shall be involved as far as is practicable.

104.3 Such reports shall always include reports by the staff in direct charge of the prisoner concerned.

### **National legislation**

#### **AFRICA**

##### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

#### 42. Case Management Committee

(1) At each prison there must be one or more Case Management Committees composed of correctional officials as prescribed by regulation.

(2) The Case Management Committee must-

(a) ensure that each sentenced prisoner has been assessed, and that for prisoners serving more than twelve months there is a plan specified in section 38 (2);

(b) interview, at regular intervals, each prisoner sentenced to more than twelve months, review the plan for such prisoners and the progress made and, if necessary, amend such plan;

(c) make preliminary arrangements, in consultation with the Head of Community Corrections for possible placement of a prisoner under community corrections;

(d) submit a report, together with the relevant documents, to the Correctional Supervision and Parole Board regarding-

(i) the offence or offences for which the sentenced prisoner is serving a term of imprisonment together with the judgment on the merits and any remarks made by the court in question at the time of the imposition of sentence if made available to the Department;

(ii) the previous criminal record of such prisoner;

(iii) the conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental state of such prisoner;

- (iv) the likelihood of a relapse into crime, the risk posed to the community and the manner in which this risk can be reduced;
  - (v) a prisoner who has been declared an habitual criminal which indicates that-
    - (aa) there is a reasonable probability that the prisoner will in future abstain from crime and lead a useful and industrious life; or
    - (bb) the prisoner is no longer capable of engaging in crime; or
    - (cc) for any other reason, it is desirable to place the prisoner on parole;
  - (vi) the possible re-placement of such prisoner under correctional supervision in terms of a sentence provided for in section 276 (1) (i) or 287 (4) (a) of the Criminal Procedure Act, or in terms of the conversion of such prisoner's sentence into correctional supervision under section 276A (3) (e) (ii), 286B (4) (b) (ii) or 287 (4) (b) of the said Act, and the conditions for such placement;
  - vii) the possible placement of such prisoner on day parole or on parole, and the conditions for such placement; and
  - (viii) such other matters as the Correctional Supervision and Parole Board may request; and
  - (e) at the request of the Area Manager, submit a report contemplated in paragraph (d) to him or her in respect of any prisoner sentenced to 12 months' imprisonment or less.
- (3) A prisoner must be informed of the contents of the report submitted by the Case Management Committee to the Correctional Supervision and Parole Board or the Area Manager and be afforded the opportunity to submit written representations to the Correctional Supervision and Parole Board or Area Manager, as the case may be.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

22. Classification of sentenced prisoners
- (1) Subject to the provisions of sections 7(3), 29, and 39 of the Act, a sentenced prisoner must be classified according to the security risk he or she poses, taking into account his or her suitability for treatment and training at a prison.
- (2) The Commissioner determines the classification in accordance with the following principles: (a) individual classification in so far as the period of sentence permits and an analysis and assessment of the prisoner's previous record, aptitude, qualification or previous training, ability and other personal factors; (b) the maintenance of regular contact with, spouse, partner and next of kin; (c) in so far as the duration of sentence permits, the application of progressive and flexible reclassification.

#### ***MALAWI, PRISON BILL***

40. (1) As soon as possible after admission as a sentenced prisoner, such prisoner shall be interviewed and assessed by the Classification and Security Assessment Committee to determine:
- a) whether his initial security classification has to be revised;
  - b) health needs;
  - c) educational needs;
  - d) social and psychological needs;
  - e) religious needs;
  - f) specific development programme needs;
  - g) work allocation;
  - h) allocation to a specific prison;
  - i) privilege classification; and
  - j) needs regarding reintegration into the community.
- (2) In the case of a sentence of imprisonment of 12 months or more, the manner in which the sentence should be served shall be planned in the light of this assessment and any comments by the sentencing court.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT**

Security Classification

30. (1) The Service shall assign a security classification of maximum, medium or minimum to each inmate in accordance with the regulations made under paragraph 96(z.6).

(2) The Service shall give each inmate reasons, in writing, for assigning a particular security classification or for changing that classification.

## **EUROPE**

### **GERMANY, PRISON ACT**

140 – Separate Execution

Orders for preventive detention shall be executed in separate institutions or in separate units of a penal institution destined for the execution of prison sentences. Women shall be detained separate from men in special penal institutions for women. For special reasons separate units for women may be provided in institutions for men.

Separate detention in accordance with subsections (1) and (2) may be departed from in order to make it possible for a prisoner to participate in measures of treatment in some other institution or in another unit.

143 – Size and structure of Institutions

Penal institutions shall be structured in such a manner that treatment adapted to the needs of the individual prisoner is guaranteed.

The penal institutions shall be organised in such a manner that the prisoners can be formed into surveyable groups for care and treatment.

No more than 200 places should be planned for socio-therapeutic institutions and for penal institutions for women.

## 5.2 WOMEN PRISONERS

### Commentary

The proportion of women prisoners in any prison throughout the world tends to be small (between 2% -8%)(Coyle, p. 131). The impact of prison on women extends to the family as, in most countries, the woman has primary responsibility for the family. Special provisions need to be considered to ensure women prisoners can maintain meaningful contact with their children. Pregnant women should not be sent to prison unless there is no alternative.

If a woman is in prison and pregnant or with a young child, then the burden is on the state to supply all necessary medical, dietary, educational and clothing requirements. The birth certificate should not give the prison as the place of birth as this would stigmatise the child.

Separation from the mother when a child is young is not considered to be in the 'best interests' of the child - even if the environment is a prison. Therefore, prison institutions need to make facilities available which are as normal as possible to the mother with child - be it a crèche or other kind of 'mother and child unit' (South Africa); as well as access to the relevant health and social services outside. The age up to which a child can stay with the mother is not fixed and may range from months to five years (Malawi). 'Since the link between mother and child is all-important it is argued that the child should be able to stay with his or her mother for as long as possible.' (Coyle, p. 135).

The physical safety of women prisoners must be guaranteed while they are held in prison. They should therefore be kept entirely separately from the men and should never be supervised exclusively by male staff.

The prison administration should ensure that women prisoners, notwithstanding their relatively low numbers, enjoy the same access to education, vocational training, work and recreation as male prisoners. Women should not be restricted to typically "female occupations" such as sewing and cleaning.

Wherever possible, women prisoners should be allowed to leave prison for short periods to be with their families. When children visit them, as much physical contact as possible should be encouraged. At the same time their privacy should be respected. Any searching of visitors should be conducted with the child's best interests in mind.

### International framework

#### *ICCPR*

##### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

#### *CEDAW*

##### Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to

ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

### **SMR**

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

### **BPPP**

Principle 5

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons, shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

## **Regional framework**

### **EPR**

Women

34.1 In addition to the specific provisions in these rules dealing with women prisoners, the authorities shall pay particular attention to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention.

34.2 Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4. Prisoners shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities.

Infants

36.1 Infants may stay in prison with a parent only when it is in the best interest of the infants concerned. They shall not be treated as prisoners.

36.2 Where such infants are allowed to stay in prison with a parent special provision shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when the parent is involved in activities where the infant cannot be present.

36.3 Special accommodation shall be set aside to protect the welfare of such infants.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### 19. Children

(1) (a) Every prisoner who is a child and is subject to compulsory education must attend and have access to such educational programmes.

(b) Where practicable, all children who are prisoners not subject to compulsory education must be allowed access to educational programmes.

(2) The Commissioner must provide every prisoner who is a child with social work services, religious care, recreational programmes and psychological services.

(3) The Commissioner must, if practicable, ensure that prisoners who are children remain in contact with their families through additional visits and by other means.

##### 20. Mothers of young children

(1) A female prisoner may be permitted, subject to such conditions as may be prescribed by regulation, to have her child with her until such child is five years of age.

(2) The Department is responsible for food, clothing, health care as contemplated in section 12 and facilities for the sound development of the child for the period that such child remains in prison.

(3) Where practicable, the Commissioner must ensure that a mother and child unit is available for the accommodation of female prisoners and the children whom they may be permitted to have with them.

#### ***MALAWI, PRISONS BILL***

19. (1) A female prisoner may be permitted, subject to such conditions as may be prescribed, to have her child with her until such child is five years of age when it is in the best interests of the child.

(2) The Service is responsible for food, clothing, health care and facilities for the development of the child for the period that such child remains in prison.

### **EUROPE**

#### ***GERMANY, PRISON ACT***

##### 79 – Notification of Birth

In notifying the Registrar of the birth no mention shall be made of the penal institution as the place of child's birth, of the relation of the notifying person to the institution, or of the mother's imprisonment.

##### 80 – Mothers with Children

Where a women prisoner's child is not yet subject to compulsory school attendance he may, with the consent of the person entitled to determine the child's place of residence, be accommodated in the penal institution where his mother is, provided this would be for his welfare. Prior to such accommodation the Youth Welfare Office shall be consulted.

Accommodation shall be given at the expense of the person liable to pay for the child's maintenance. Assertion of claim to the refund of costs may be disregarded where the joint accommodation of mother and child would thereby be jeopardised.

##### 142 – Facilities for Mothers with Children

In penal institutions for women there shall be facilities where mother can be accommodated with their children.

## **AMERICAS**

### **PERU, CODIGO DE EJECUCION PENAL 1991**

#### **PERU, PENITENTIARY CODE 1991**

Artículo 81º.- Servicio médico para mujeres y niños

En los Establecimientos Penitenciarios para mujeres o en los sectores destinados a ellas, existe un ambiente dotado de material de obstetricia y ginecología.

En los Establecimientos Especiales para madres con hijos, existe un ambiente y materiales necesarios para la atención infantil.

*Article 81. Medical treatment for women and children*

*Women's prisons or areas designated to women are equipped with obstetric and gynecological materials. In special prisons for women with children there is the necessary environment and materials for childcare.*

## 5.3 PRISONERS UNDER 18

### Commentary

Young persons (under 18) constitute an exceptionally vulnerable group. Particular attention should be given to:

- protecting them from any form of threat, violence or sexual abuse;
- providing adequate education and schooling;
- helping them to maintain contact with their families;
- providing support and guidance in their emotional development; and
- providing appropriate sport and leisure activities.

Further protection of this group must be sought in specialist standards, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (SMRAJJ) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLs) listed below.

The general principle is that children should not be detained in an adult prison but in separate institutions. Where, exceptionally, they are held in an adult prison, they should be kept entirely separate from adults as it is in the best interests of children to be held separately. In the rare instances where this is not the case, such as where there are very few children in the prison system at all, careful steps should be taken to ensure that children are not at risk of abuse by the adult prisoners.

Emphasis is placed on special training for staff charged with the care and protection of young prisoners since this work requires a special set of skills. Prison administrations are encouraged to establish links with NGOs working with young people outside prison in order to extend the range of programmes available to young prisoners particularly in physical, cultural and social activities.

### International framework

#### **CRC**

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

#### **SMRAJJ**

13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

#### 19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

#### 21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

#### Institutional treatment

##### 26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

##### 27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

## 29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

### **JDLS**

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

### **BPPP**

Principle 16

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

## **Regional framework**

### **EPR**

Detained children

35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.

35.2 Every prisoner who is a child and is subject to compulsory education shall have access to such education.

35.3 Additional assistance shall be provided to children who are released from prison. Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

19 (1) (a) Every prisoner who is a child and is subject to compulsory education must attend and have access to such educational programmes.

(b) Where practicable, all children who are prisoners not subject to compulsory education must be allowed access to educational programmes.

(2) The Commissioner must provide every prisoner who is a child with social work services, religious care, recreational programmes and psychological services.

(3) The Commissioner must, if practicable, ensure that prisoners who are children remain in contact with their families through additional visits and by other means.

#### **20. Mothers of young children**

(1) A female prisoner may be permitted, subject to such conditions as may be prescribed by regulation, to have her child with her until such child is five years of age.

(2) The Department is responsible for food, clothing, health care as contemplated in section 12 and facilities for the sound development of the child for the period that such child remains in prison.

(3) Where practicable, the Commissioner must ensure that a mother and child unit is available for the accommodation of female prisoners and the children whom they may be permitted to have with them.

## 5.4 PRISONERS SENTENCED TO DEATH OR CONDEMNED PRISONERS

### Commentary

The UN SMR make no special provision for prisoners who have been sentenced to death. All prisoners shall be treated equally.

*'In terms of good prison management, there is no justification for holding such prisoners routinely in isolated conditions where they have no access to any facilities for work, education or cultural activities... Regardless of the fact that they are under sentence of death, such prisoners should be assessed in the same way as any other prisoner and allocated to appropriate conditions.'* (Coyle, p. 144)

The UN SGP give prime importance to legal safeguards. The prison administration needs therefore to give special attention to allowing prisoners sentenced to death full access to legal advice.

### International framework

#### ICCPR

##### Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

##### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### SGP

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

### **Regional framework**

#### ***ECHR P6***

Article 1. Abolition of the death penalty

The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

Article 2. Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

### **National legislation**

None

## 5.5 FOREIGN NATIONALS

### Commentary

Foreign nationals in prison are an especially vulnerable group as they are away from home and often in a country whose language they do not speak. The EPR recognise that these prisoners are 'in particular need of assistance when a State other than their own is exercising the power of imprisoning them.' (Commentary to EPR, Rule 37)

Accordingly they should be granted all facilities to communicate with representatives of their countries. Prison officials should also note that foreign prisoners may qualify for transfer under bilateral arrangements and should inform such prisoners of the possibility. The EPR also recognise the special needs of foreign prisoners and encourage contact with representatives of organisations concerned with the welfare of foreign prisoners.

National legislation is generally in conformity with international standards in granting foreign prisoners access to consular and diplomatic services.

However in many poorer countries, there is no country representative for the prisoner nor mission looking after the interests of the nationals of the other country. The issue is a live matter especially in Africa. In Malawi, attention is drawn to the common problem of using prison as immigration detention centres and providing a remedy for prison officers.

### International framework

#### **UDHR**

Article 14

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

#### **MATFR**

See full text

#### **SMR**

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

#### **BPPP**

Principle 16

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

## Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.
5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

## **VCCR**

### Article 36

Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
  - (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
  - (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
  - (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.
2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

## **Regional framework**

## **EPR**

Foreign nationals

- 37.1 Prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state.
- 37.2 Prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the state

which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.

37.3 In the interests of foreign nationals in prison who may have special needs, prison authorities shall co-operate fully with diplomatic or consular officials representing prisoners.

37.4 Specific information about legal assistance shall be provided to prisoners who are foreign nationals.

37.5 Prisoners who are foreign nationals shall be informed of the possibility of requesting that the execution of their sentence be transferred to another country.

*Ethnic or linguistic minorities*

38.1 Special arrangements shall be made to meet the needs of prisoners who belong to ethnic or linguistic minorities.

38.2 As far as practicable the cultural practices of different groups shall be allowed to continue in prison.

38.3 Linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison.

## **National legislation**

### ***AFRICA***

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

13. Contact with community

(5) A prisoner who is a foreign national must be allowed to communicate with the appropriate diplomatic or consular representative or, where there is no such representative, with a diplomatic representative of the state or international organisation whose task it is to protect the interests of such prisoner.

#### ***MALAWI, PRISONS BILL***

60. When a prohibited immigrant is detained under the Immigration Act (Cap. 15:03) for a period of more than 120 days the Officer in Charge shall bring the matter to the attention of the Chief Immigration Officer.

## **5.6 MENTALLY ILL**

### **Commentary**

The international standards are absolutely clear on one point: prison is not the place to keep person who are mentally ill as they require specialised treatment. The proper place is a mental hospital.

### **International framework**

#### ***SMR***

B. Insane and mentally abnormal prisoners

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

#### ***JDLS***

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

### **Regional framework**

#### ***EPR***

Insane and mentally abnormal prisoners

100. 1. Persons who are found to be insane should not be detained in prisons and arrangements shall be made to remove them to appropriate establishments for the mentally ill as soon as possible.

2. Specialized institutions or sections under medical management should be available for the observation and treatment of prisoners suffering gravely from other mental disease or abnormality.
3. The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all prisoners who are in need of such treatment.
4. Action should be taken, by arrangement with the appropriate community agencies, to ensure where necessary the continuation of psychiatric treatment after release and the provision of social psychiatric after-care.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

##### 7. Health care

- (13) (a) A prisoner who is certified in terms of Chapter 4 of the Mental Health Act, 1973 (Act No. 18 of 1973) may not be detained in a prison and must be removed to a designated health establishment as defined in section 1 of that Act.
- (b) Before the transfer of such a prisoner the prisoner must be placed under the special care of the medical office.

### **EUROPE**

#### ***GERMANY, PRISON ACT***

##### 136 – Detention in Psychiatric Hospital

Treatment of the detainee in Psychiatric Hospital shall be governed by medical considerations. As far as possible the detainee should be cured or his state of health be improved to such an extent that he will no longer be dangerous. He shall be given the necessary supervision, care and nursing.

##### 137 – Detention in a Detoxification Centre for Alcoholics or Drug Addicts

The objective of the detainee's treatment in a detoxification centre for alcoholics or drug addicts shall be to cure his addiction and to remedy the abnormal attitude at the root of this addiction.

##### 138 – Application of Other Provisions

Detention in a psychiatric hospital or in a detoxification centre for alcoholics or drug addicts shall be governed by Land law unless Federal law provides otherwise. As to detention under this title, section 51 subsection 4 and 5, Section 75 subsection 3 and section 109 to 121 shall apply mutatis mutandis.

## 5.7 TEMPORARY LEAVE<sup>1</sup>

### Commentary

When momentous family events occur (such as serious illness or death; marriage or birth etc.) then a strong argument exists for allowing a prisoner to attend that event (if necessary under escort) in the interests of 'humanity' (ICCPR, article 10 below).

The EPR highlights this need:

*'Rule 24.5 places a positive duty on the prison authorities to facilitate links with the outside world. One way in which this can be done is to consider allowing all prisoners leave from prison in terms of Rule 24.7 for humanitarian purposes. The ECtHR has held that this must be done for the funeral of a close relative, where there is no risk of the prisoner absconding. Humanitarian reasons for leave may include family matters such as the birth of a child.'*

The Canadian legislation sets out detailed provisions when temporary leave may be granted. In Peru it extends to managing urgent personal affairs. In Germany, certain categories of prisoners are allowed to work outside the institution. The length of time a prisoner is allowed out depends from country to country. Some countries extend it to as long as several months, although usually the time is measured in hours (72 in Colombia) and days.

### International framework

#### ICCPR

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person

### Regional framework

#### EPR

24.7 Whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral or for other humanitarian reasons.

### National legislation

#### AFRICA

##### **SOUTH AFRICA, CORRECTIONAL SERVICES ACT**

44. Temporary leave

(1) The Commissioner may grant permission in writing on such conditions and for such periods as he or she may specify, for a sentenced prisoner to leave prison temporarily for the purpose of-

- a) compassionate leave;
- b) treatment, development or support programmes;
- c) preparation for release; or
- d) any other reason related to the successful reintegration of the prisoner into the community.

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<sup>1</sup> See also Contact with the Community and Access to Prisons

(2) (a) A prisoner who is granted permission to leave prison remains a prisoner even while temporarily outside prison and may be placed under escort or under supervision.

(b) If the prisoner is placed under supervision the provisions of section 58 relating to supervision will apply, with the necessary changes.

(3) (a) Any permission in terms of subsection (1) may be withdrawn at any time by the Commissioner.

(b) In that event the Commissioner must inform the prisoner concerned and if such prisoner is outside prison direct him or her to return to prison by a specified time.

(4) A prisoner who fails to return to prison at the specified time, is guilty of an offence and liable on conviction to the penalty prescribed in section 117.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASEACT**

#### Escorted Temporary Absences

17. (1) Where, in the opinion of the institutional head,

(a) an inmate will not, by reoffending, present an undue risk to society during an absence authorized under this section,

(b) it is desirable for the inmate to be absent from penitentiary, escorted by a staff member or other person authorized by the institutional head, for medical, administrative, community service, family contact, personal development for rehabilitative purposes, or compassionate reasons, including parental responsibilities,

(c) the inmate's behaviour while under sentence does not preclude authorizing the absence, and

(d) a structured plan for the absence has been prepared, the absence may, subject to section 746.1 of the Criminal Code, subsection 140.3(2) of the National Defence Act and subsection 15(2) of the Crimes Against Humanity and War Crimes Act, be authorized by the institutional head

(e) for an unlimited period for medical reasons, or

(f) for reasons other than medical,

(i) for a period not exceeding five days, or

(ii) with the Commissioner's approval, for a period exceeding five days but not exceeding fifteen days.

(2) The institutional head may impose, in relation to a temporary absence, any conditions that the institutional head considers reasonable and necessary in order to protect society.

(3) The institutional head may cancel a temporary absence either before or after its commencement.

(4) The institutional head shall give the inmate written reasons for the authorizing, refusal or cancellation of a temporary absence.

(5) In addition to the period authorized for the purposes of a temporary absence, an inmate may be granted the time necessary to travel to and from the place where the absence is authorized to be spent.

(6) Where, pursuant to an agreement under paragraph 16(1)(a), an inmate has been admitted to a hospital operated by a provincial government in which the liberty of patients is normally subject to restrictions, the institutional head may confer on the person in charge of the hospital, for such period and subject to such conditions as the institutional head specifies, any of the institutional head's powers under this section in relation to that inmate.

#### Unescorted Temporary Absence

115. (1) Subject to subsection (2), the portion of a sentence that must be served before an offender serving a sentence in a penitentiary may be released on an unescorted temporary absence is

(a) in the case of an offender serving a life sentence, other than an offender referred to in paragraph (a.1), the period required to be served by the offender to reach the offender's full parole eligibility date less three years;

(a.1) in the case of an offender described in subsection 746.1(3) of the Criminal Code, the longer of

(i) the period that expires when all but one fifth of the period of imprisonment the offender is to serve without eligibility for parole has been served, and

(ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 120.2(2), less three years;

(b) in the case of an offender serving a sentence for an indeterminate period, other than an offender referred to in paragraph (b.1), the longer of

(i) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with section 761 of the Criminal Code, less three years, and

(ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 120.2(2), less three years;

(b.1) in the case of an offender serving a sentence for an indeterminate period as of the date on which this paragraph comes into force, the longer of (i) three years, and (ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 120.2(2), less three years; and

(c) in any other case,

(i) one half of the period required to be served by the offender to reach the offender's full parole eligibility date, or

(ii) six months,

whichever is greater.

(2) Subsection (1) does not apply to an offender whose life or health is in danger and for whom an unescorted temporary absence is required in order to administer emergency medical treatment.

(3) Offenders who, pursuant to subsection 30(1) and the regulations made under paragraph 96(z.6), are classified as maximum security offenders are not eligible for an unescorted temporary absence.

116. (1) The Board may authorize the unescorted temporary absence of an offender referred to in paragraph 107(1)(e) where, in the opinion of the Board,

(a) the offender will not, by reoffending, present an undue risk to society during the absence;

(b) it is desirable for the offender to be absent from penitentiary for medical, administrative, community service, family contact, personal development for rehabilitative purposes, or compassionate reasons, including parental responsibilities;

(c) the offender's behaviour while under sentence does not preclude authorizing the absence; and

(d) a structured plan for the absence has been prepared.

(2) The Commissioner or the institutional head may authorize the unescorted temporary absence of an offender, other than an offender referred to in paragraph 107(1)(e), where, in the opinion of the Commissioner or the institutional head, as the case may be, the criteria set out in paragraphs (1)(a) to (d) are met.

(3) An unescorted temporary absence for medical reasons may be authorized for an unlimited period.

(4) Subject to subsection (6), an unescorted temporary absence for reasons of community service or personal development may be authorized for a maximum of fifteen days, at the rate of not more than three times a year for an offender classified by the Service as a medium security offender and not more than four times a year for an offender classified as a minimum security offender.

(5) An unescorted temporary absence authorized for reasons referred to in subsection (4) must be followed by a period of custody of at least seven days before the next such absence.

(6) An unescorted temporary absence for purposes of a specific personal development program may be authorized for a maximum of sixty days and may be renewed, for periods of up to sixty days each, for the purposes of the program.

(7) Unescorted temporary absences for reasons other than those referred to in subsection (3) or (4) may be authorized for a maximum total of forty-eight hours per month for an offender classified by the Service as a medium security offender, and for a maximum total of seventy-two hours per month for an offender classified as a minimum security offender.

(8) The circumstances and manner in which, and the time at which, an application for an unescorted temporary absence must be made shall be prescribed by the regulations.

(9) In addition to the period authorized for the purposes of an unescorted temporary absence, an offender may be granted the time necessary to travel to and from the place where the absence is authorized to be spent.

(10) The Board, the Commissioner or the institutional head, whichever authorized a particular unescorted temporary absence of an offender, may cancel that absence, either before or after its commencement,

(a) where the cancellation is considered necessary and reasonable to prevent a breach of a condition of the absence or where such a breach has occurred;

(b) where the grounds for granting 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 authorized.

117. (1) The Board may confer on the Commissioner or the institutional head, for such period and subject to such conditions as it specifies, any of its powers under section 116 in respect of any class of offenders or class of absences.

(2) Where, pursuant to an agreement under paragraph 16(1)(a), an offender referred to in paragraph 107(1)(e) or subsection 116(2) has been admitted to a hospital operated by a provincial government in which the liberty of persons is normally subject to restrictions, the Board, the Commissioner or the institutional head, as the case may be, may confer on the person in charge of the hospital, for such period and subject to such conditions as they specify, any of their respective powers under section 116 in relation to that offender.

(3) Where the Board has not authorized the Commissioner or the institutional head under subsection (1) in respect of the offender or in respect of the absence, the institutional head of the penitentiary from which an unescorted temporary absence has been effected may suspend the absence if, in the opinion of the institutional head, the offender's retention in custody or recommitment to custody is justified in order to protect society, on the basis of information that could not reasonably have been provided to the Board when the absence was authorized.

(4) An institutional head who suspends the unescorted temporary absence of an offender shall forthwith refer the offender's case to the Board, and the Board shall decide whether the absence should be cancelled.

118. A person who cancels an unescorted temporary absence pursuant to subsection 116(10) or pursuant to a delegation of power under subsection 117(1) or (2), or who suspends an unescorted temporary absence pursuant to subsection 117(3), shall cause a warrant in writing to be issued authorizing the apprehension and recommitment to custody of the offender pursuant to section 137, where the offender is not in custody in a penitentiary or in a hospital referred to in subsection 117(2).

**PERU, CODIGO DE EJECUCION PENAL 1991**

**PERU, PENITENTIARY CODE 1991**

Artículo 43º.- Permiso de salida

El permiso de salida puede ser concedido al interno hasta un máximo de 72 horas, en los casos siguientes:

- 1.- Enfermedad grave, debidamente comprobada con certificación médica oficial, o muerte del cónyuge o concubino, padres, hijos o hermanos del interno
- 2.- Nacimiento de hijos del interno
- 3.- Realizar gestiones personales, de carácter extraordinario, que demanden la presencia del interno en el lugar de la gestión
- 4.- Realizar gestiones para la obtención de trabajo y alojamiento ante la proximidad de su liberación.

*Article 43. Permission for leave*

*Leave may be granted for a maximum period of 72 hours in the following circumstances:*

1. *In the event of a serious illness (proved by a medical certificate) or death of a spouse or partner, parents, children or siblings of the prisoner*
2. *Birth of prisoner's children*
3. *To organise personal affairs of an extraordinary nature that require the physical presence of the prisoner in place of the management*
4. *To organise work or accommodation prior to release*

### **COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO**

#### **COLOMBIA, PENITENTIARY CODE**

Artículo 147. Permiso Hasta De Setenta y Dos Horas

La Dirección del Instituto Penitenciario y Carcelario podrá conceder permisos con la regularidad que se establecerá al respecto, hasta de setenta y dos horas, para salir del establecimiento, sin vigilancia, a los condenados que reúnan los siguientes requisitos:

1. Estar en la fase de mediana seguridad
2. Haber descontado una tercera parte de la pena impuesta
3. No tener requerimientos de ninguna autoridad judicial
4. No registrar fuga ni tentativa de ella, durante el desarrollo del proceso ni la ejecución de la sentencia condenatoria (...)
6. Haber trabajado, estudiado o enseñado durante la reclusión y observado buena conducta, certificada por el Consejo de Disciplina.

*Article 147. Leave up to Seventy Two Hours*

*The Prison Director may grant permission up to 72 hours for a prisoner to leave the institution, unescorted, subject to the following conditions:*

1. *To be classified as 'medium security'*
2. *Have completed one third of the sentence*
3. *Have no pending judicial matters*
4. *Have no prior history of escape or attempted escape throughout the duration of prison sentence served*
6. *To have worked, studied or taught during his sentence and to have behaved well, which can be certified by the Disciplinary Council*

## **EUROPE**

### **GERMANY, PRISON ACT**

11 – Relaxation of Conditions of Imprisonment

In order to relax the conditions of imprisonment the following measures may, in particular, be ordered:

- that the prisoner may regularly perform work outside the institution under the supervision of a prison officer(outside work)or without such supervision (work release);or
- that the prisoner may go outside the institution for a certain period of the day under the supervision of a prison office (short leave under escort) or without such supervision (short leave).

- Such relaxation may be ordered with the prisoner's consent if it is not to be feared that he might evade serving his prison sentence or abuse the relaxation of imprisonment to commit criminal offences.

#### 12 – Short Leave under Escort for Special Reasons

A prisoner may be taken out under escort even without his consent if this is necessary for special reasons.

#### 13 – Leave from Custody

A prisoner may be granted leave from custody for up to twenty –one calendar days per year. Section 11(2) shall apply mutatis mutandis.

Leave should, as a rule, not be granted until after the prisoner has served at least six months of his sentence.

A prisoner sentenced to imprisonment for life may be granted leave after he has been imprisoned for ten years, including any preceding pre-trial custody or any other deprivation of liberty, or after he has been transferred to an open institution. Prisoners who, though eligible for committal to an open institution, are kept in a closed institution for special reason may be granted leave in accordance with the rules applicable to service in open institutions.

Leave shall not interrupt the execution of the sentence

#### 14 – Instructions, Cancellation of Relaxation and Leave

The Head of the Institution may impose instructions on the prisoner regarding relaxation and leave. He may cancel relaxation and leave where, as a result of the circumstances that have subsequently arisen, he would be justified in refusing such measures: or where prisoner abuses the measures, where the prisoner fails to comply with the instructions. He may cancel relaxation and leave which takes effect in the future if the prerequisites for their being granted have not been fulfilled.

#### 35 – Leave, Short Leave and Short Leave under Escort for Important Reasons

The Head of the Institution may grant a prisoner short leave or leave for up to seven days if there is an important reason; leave for any important reason other than that of a critical illness or the death of a relative shall not exceed seven days per year. Sections 11(2),13 (5) and 14 shall apply mutatis mutandis

Any leave granted in accordance with subsection (1) shall not be counted as regular leave.

If no short leave can be granted for any of the reasons set out in Section 11(2), the Head of the Institution may have the prisoner taken out under escort. Any expense for this shall be borne by the prisoner. A claim thereto shall not be asserted where this would hamper treatment or social integration.

## 5.8 TREATMENT

### Commentary

*'Confidence in prison institutions' ability to reform offenders has given way to more realistic expectations about the effects of imprisonment. The emphasis has shifted towards providing prisoners, of whatever status, with assistance and opportunities to develop their individual potential and to cope positively with their return to society(...) It is in the interests both of the prisoner and of society to promote the prospects of resettlement through positive treatment in prison.'* (MSW VI.4 p. 117-118)

*"Programmes are of central importance. Resource problems cannot be used to justify not providing programmes for prisoners."* (UN Human Rights Committee)

The guiding principles of the SMR are person and not prison-oriented. They include:

- minimising the suffering inherent in imprisonment
- normalising prison life
- encouraging a law abiding and self-supporting life on release
- providing assistance according to individual needs
- facilitating a gradual return to life in society
- emphasising prisoners' continuing part in the community

The national legislation reviewed places emphasis on education and a progressive 'treatment' programme based on individual assessments. These assessments are necessarily directed towards those serving medium to long terms of imprisonment. The emphasis with short-term prisoners will be on contact with the family and community and a work programme best suited for their release.

Overcrowding causes severe disruption (at best) to these progressive aims however. Accordingly, legislators need to keep in mind effective alternatives to imprisonment for those convicted of offences at the lower end of the criminal scale and make provision for early release schemes (as part of a system of privileges or otherwise) so that prison numbers are kept in check.

### International framework

#### **UDHR**

Article 26

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

#### **ICCPR**

3. Article 10

The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be

segregated from adults and be accorded treatment appropriate to their age and legal status.

#### **HRC GC 21**

4. Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### **SMR**

##### Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

63. (1) The fulfillment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

##### Treatment

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical

officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Privileges

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and co-operation of the prisoners in their treatment.

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

### ***BPPP***

Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

## **Regional framework**

### ***EPR***

Basic principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

5. Life in prison shall approximate as closely as possible the positive aspects of life in the community. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

Prison regime

25.1 The regime provided for all prisoners shall offer a balanced programme of activities.

25.2 This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

25.3 This regime shall also provide for the welfare needs of prisoners.

25.4 Particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse.

Implementation of the regime for sentenced prisoners

103.1 The regime for sentenced prisoners shall commence as soon as someone has been admitted to prison with the status of a sentenced prisoner, unless it has commenced before.

103.2 As soon as possible after such admission, reports shall be drawn up for sentenced prisoners about their personal situations, the proposed sentence plans for each of them and the strategy for preparation for their release.

103.3 Sentenced prisoners shall be encouraged to participate in drawing up their individual sentence plans.

103.4 Such plans shall as far as is practicable include:

- a) work;
- b) education;
- c) other activities; and
- d) preparation for release.

103.5 Social work, medical and psychological care may also be included in the regimes for sentenced prisoners.

103.6 There shall be a system of prison leave as an integral part of the overall regime for sentenced prisoners.

103.7 Prisoners who consent to do so may be involved in a programme of restorative justice and in making reparation for their offences.

103.8 Particular attention shall be paid to providing appropriate sentence plans and regimes for life sentenced and other long-term prisoners.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

16. Development and support services

(1) The Department may provide development and support services even when not required to do so by this Act.

(2) In all instances, when the Department does not provide such services, the Commissioner must inform prisoners of services available from other sources and put prisoners who request such services in touch with appropriate agencies.

(3) The Department must take measures, in terms of planning, policy and infrastructure, to accommodate prisoners with disabilities in order to enable such prisoners, where practicable, to fully exercise the rights and to enjoy the amenities to which every prisoner is entitled.

(4) The Department must take measures, in terms of planning, policy and infrastructure, in order to create an environment sensitive to the gender of all prisoners.

37. General principles

(1) In addition to the obligations which apply to all prisoners every sentenced prisoner must-

- a) participate in the assessment process and the design and implementation of any development plan or programme aimed at achieving the said objective; and
- b) perform any labour which is related to any development programme or which generally is designed to foster habits of industry, unless the medical officer or psychologist certifies in writing that he or she is physically or mentally unfit to perform such labour.

(2) In addition to providing a regime which meets the minimum requirements of this Act, the Department must seek to provide amenities which will create an environment in which sentenced prisoners will be able to live with dignity and develop the ability to lead a socially responsible and crime-free life.

(3) All such amenities must be prescribed by regulation and as far as possible be available to all sentenced prisoners unless, for economic or other practical reasons, such amenities can be introduced in some prisons only, in which case, their partial introduction should be on a non-discriminatory basis.

(4) In addition to the general purpose stated in section 22, the disciplinary system for sentenced prisoners shall have the particular aim of promoting self-respect and responsibility on the part of the prisoner.

41. Treatment, development and support services

- (1) The Department must provide or give access to as full a range of programmes and activities as is practicable to meet the educational and training needs of sentenced prisoners.
- (2) Sentenced prisoners who are illiterate or children may be compelled to take part in the educational programmes offered in terms of subsection (1).
- (3) The Department must provide social and psychological services in order to develop and support sentenced prisoners by promoting their social functioning and mental health.
- (4) The Department must provide as far as practicable other development and support programmes which meet specific needs of sentenced prisoners.
- (5) Sentenced prisoners have the right to take part in the programmes and use the services offered in terms of subsections (1), (3) and (4).
- (6) Sentenced prisoners may be compelled to participate in programmes and to use services offered in terms of subsections (1), (3) and (4) where in the opinion of the Commissioner their participation is necessary, having regard to the nature of their previous criminal conduct and the risk they pose to the community.
- (7) Programmes must be responsive to special needs of women and they must ensure that women are not disadvantaged.

### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

#### 10. Development and Support Services

- (1) (a) Social work services must be rendered to sentenced prisoners and persons under community corrections who have a need for such services. Those services may be rendered only by a social worker duly registered as such in terms of the Social Work Act, 1978 (Act No. 110 of 1978).
- (b) If the need for social work services arises at a prison or community corrections office where those services are not available, the relevant Head of Prison or Head of Community Corrections, as the case may be, must take the necessary steps to ensure that those services are made available as soon as possible to cater for that need.
- (2) (a) Education and training services must be rendered to sentenced prisoners who have a need for such services, subject to paragraph (b), those services will be rendered in accordance with education and training programmes. The education of sentenced prisoners must be in accordance with the educational system of the country. A qualified academic or technical educationist must, subject to paragraph (d), render those services.
- (d) If such a qualified educationist is not available, a correctional official may be designated by the correctional official in charge of education and training programmes to perform the duties of the educationist. However such a correctional official must be trained in the principles of academic or technical instruction.
- (e) If such a qualified educationist or trained correctional official is not available, the Commissioner may appoint a temporary correctional official or voluntary worker who is qualified for the purpose, to perform the duties of such an educationist.

14 (3) (a) Psychological services must be available to all sentenced prisoners and persons under community corrections who have a need for such services. Psychologists and psychometrists who are to be trained as counsellors must be registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974).

(b) If such psychologists and psychometrists are not available at a prison and the need for such services arise, the Head of the Prison must take the necessary steps to ensure that such services are available. A prisoner may also utilise his or her psychologist of choice but at own expense.

### ***MALAWI, PRISONS BILL***

42. (1) The Service shall provide or give access to as full a range of programmes and activities as is practicable to meet the educational services and training needs of sentenced prisoners.

(2) Sentenced prisoners who are illiterate or children may be compelled to take part in educational programmes.

(3) The Service shall provide or give access to social services or community based organisations that contribute to the development and support of sentenced prisoners by preparing them for their social reintegration.

(4) Sentenced prisoners have the right to take part in the programmes and use the services offered in terms of subsections (1), (2) and (3).

(5) Sentenced prisoners may be compelled to participate in programmes and to use services offered in terms of subsections (1), (2) and (3) where in the opinion of the Officer in Charge their participation is necessary, having regard to the nature of their previous criminal conduct and the risk they pose to the community.

(6) Programmes shall be responsive to the special needs of women and they shall ensure that women are not disadvantaged.

43. (1) The Classification and Security Assessment Committee and reporting shall ensure that for each sentenced prisoner –

a) the date of final release, the date of release if there is no loss of remission, the earliest possible date for conditional release, is recorded;

b) the security and privilege classifications have been made; and

c) that for prisoners serving more than twelve months there is a plan of how his sentence should be carried out;

(b) interview at regular intervals of at least six months each prisoner and review his security and privilege classifications and for a prisoner sentenced to more than twelve months also review the plan of how his sentence should be carried out;

(c) submit a report, together with the relevant documents to the Inspectorate on prisoners who are to be considered for conditional release regarding-

(i) the offence or offences for which the sentenced prisoner is serving a term of imprisonment together with any remarks made by the court in question at the time of the imposition of sentence if made available to the Service;

(ii) the previous criminal record of such prisoner;

(iii) the conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental state of such prisoner;

(iv) the likelihood of a relapse into crime, the risk posed to the community and the manner in which this risk can be reduced;

(v) a recommendation on the possible conditional release of the prisoner; and

(vi) such other matters as the Inspectorate may request.

(2) prisoner shall be informed of the contents of the report of the Classification and Security Assessment Committee to the Inspectorate and be afforded the opportunity to submit written representations to the Inspectorate.

### ***AMERICAS***

#### ***CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT***

Inmate input into decisions

74. The Service shall provide inmates with the opportunity to contribute to decisions of the Service affecting the inmate population as a whole, or affecting a group within the inmate population, except decisions relating to security matters.

Programs for offenders generally

76. The Service shall provide a range of programs designed to address the needs of offenders and contribute to their successful reintegration into the community.

Programs for female offenders

77. Without limiting the generality of section 76, the Service shall

- (a) provide programs designed particularly to address the needs of female offenders; and
- (b) consult regularly about programs for female offenders with
  - (i) appropriate women's groups, and
  - (ii) other appropriate persons and groups with expertise on, and experience in working with, female offenders.

Respect for diversity

- (3) Policies adopted under paragraph (2)(a) must respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements.

Aboriginal Offenders

80. Without limiting the generality of section 76, the Service shall provide programs designed particularly to address the needs of aboriginal offenders.

81. (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

(2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-aboriginal offender.

(3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and of the aboriginal community.

82. (1) The Service shall establish a National Aboriginal Advisory Committee, and may establish regional and local aboriginal advisory committees, which shall provide advice to the Service on the provision of correctional services to aboriginal offenders.

(2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with aboriginal communities and other appropriate persons with knowledge of aboriginal matters.

#### **PERU, CODIGO DE EJECUCION PENAL 1991**

#### **PERU, PENITENTIARY CODE 1991**

Artículo 61º.- Definición del tratamiento penitenciario

E tratamiento penitenciario es individualizado y grupal. Consiste en la utilización de métodos médicos, biológicos, psicológicos, psiquiátricos, pedagógicos, sociales, laborales y todos aquéllos que permitan obtener el objetivo del tratamiento de acuerdo a las características propias del interno.

*Article 61. Definition of the treatment programme*

*Prison treatment is carried out individually and in groups. It consists of the use of medical, biological, psychological, psychiatric, pedagogical, social and labour methods and all those that obtain the objective of the treatment according to the personal characteristics of each prisoner*

Artículo 62º.- Individualización del tratamiento

Para individualizar el tratamiento se hace el estudio integral del interno mediante la observación y los exámenes que correspondan, a efecto de formular el diagnóstico y pronóstico criminológico.

*Article 62. Personalising the treatment*

In order to personalise the treatment a primary study of the prisoner is undertaken by means of observation and corresponding exams, for the purpose of formulating a diagnosis and criminal forecast

Artículo 64º.- Clasificación continua y categories

La clasificación del interno es continua, de acuerdo a su conducta y en las siguientes categorías:

- 1.- Fácilmente readaptable; y,
- 2.- Difícilmente readaptable.

*Article 64. Continuous classification and categories*

*Prisoner classification is continuous according to his conduct using the following categories:*

1. *easy to readjust*
2. *difficult to readjust*

Artículo 72º.- Estudios por correspondencia

La Administración Penitenciaria da facilidades al interno para que realice estudios por correspondencia, radio o televisión.

*Article 72. Distance learning*

*Facilities shall be provided by the prison administration to promote distance learning, by correspondence, radio or television.*

Artículo 86º.- Promoción de apoyo al tratamiento penitenciario

La asistencia social promueve el apoyo de las organizaciones públicas y privadas en el proceso de tratamiento del interno, de la víctima del delito y de los familiares inmediatos de ambos.

*Article 86. Promotion of support of prison treatment*

*Social welfare promotes the support from public and private organisations in the process of treatment of offenders, victims of crime and the immediate family of both.*

### **COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO** **COLOMBIA, PENITENTIARY CODE**

Artículo 63. Clasificación De Internos

Los internos en los centros de reclusión, serán separados por categorías, atendiendo a su sexo, edad, naturaleza del hecho punible, personalidad, antecedentes y condiciones de salud física y mental. Los detenidos estarán separados de los condenados, de acuerdo a su fase de tratamiento; los hombres de las mujeres, los primarios de los reincidentes, los jóvenes de los adultos, los enfermos de los que puedan someterse al régimen normal. La clasificación de los internos por categorías, se hará por las mismas juntas de distribución de patios y asignación de celdas y para estos efectos se considerarán no solo las pautas aquí expresadas, sino la personalidad del sujeto, sus antecedentes y conducta.

*Article 63. Prisoner Classification*

*Prisoners will be separated by categories depending on sex, age, nature of crime, personality, previous record, conditions of physical and mental health. The detainees will be separated from the sentenced according to the phase of treatment; the men from the women; the first-time offenders from the persistent offenders; the juveniles from the adults ; the ill from those that can be submitted to a normal regime. These guidelines will be used when allocating outdoor areas and cells in conjunction with personality, previous record and behaviour.*

Artículo 144. Fases Del Tratamiento

El sistema del tratamiento progresivo está integrado por las siguientes fases:

1. Observación, diagnóstico y clasificación del interno
2. Alta seguridad que comprende el período cerrado
3. Mediana seguridad que comprende el período semiabierto
4. Mínima seguridad o período abierto
6. De confianza, que coincidirá con la libertad condicional.

Los programas de educación penitenciaria serán obligatorios en las tres primeras fases para todos los internos, sin que esto excluya el trabajo. La sección educativa

del INPEC suministrará las pautas para estos programas, teniendo en cuenta que su contenido debe abarcar todas las disciplinas orientadas a la resocialización del interno.

PARAGRAFO La ejecución del sistema progresivo se hará gradualmente, según las disponibilidades del personal y de la infraestructura de los centros de reclusión.

*Article 144. Phases of Treatment*

*The progressive treatment system is made up of the following stages:*

- 1. Observation, diagnosis and classification of the offender*
- 2. High security in a closed environment*
- 3. Medium security in a semi-open environment*
- 4. Minimum security or an open environment*
- 6. Conditional release based on trust.*

*All prisoners must undertake programmes of prison education in the first three phases, without excluding work. The education section of the INPEC will provide the guidelines for these programmes, taking into account that its content must cover all disciplines oriented to the reconciliation of the prisoner.*

*Implementation of the progressive system will be gradual depending on the availability of personnel and the infrastructure of the prison.*

Artículo 157. Voluntariado Social

La Dirección del INPEC y los directores de centros de reclusión podrán organizar cuerpos de voluntariado social, para atender las necesidades de los internos y de sus familias como también para coadyuvar en la tarea de vigilar y estimular la conducta de los internos agraciados con beneficios administrativos o judiciales.

*Article 157. Voluntary Social Workers*

*The Management of INPEC and the directors of prisons can organise voluntary social work bodies to attend to the necessities of the prisoners and their families and share/help with the task of monitoring and stimulating the behaviour of the prisoners which has administrative and legal benefits.*

## **EUROPE**

### **GERMANY, PRISON ACT**

#### 4 – Prisoner's Status

(1) The prisoner shall participate in the drawing up of his treatment programme and in achieving the objectives of treatment. His willingness to this effect shall be aroused and encouraged.

#### Treatment Programme

On the basis of the treatment examination (section 6) a treatment programme shall be drawn up.

The treatment programme shall refer to at least the following treatment measures:

Detention in a closed or open institution

Transfer to a socio-therapeutic institution.

Allocation to residential groups and treatment groups;

Work and vocational training, further vocational training, or re-training for new jobs; Participation in educational activities; Special measures of relief and treatment; Relaxation of conditions of imprisonment; and Measures necessary to prepare his release.

The treatment programme shall be kept in line with the prisoners development and with further results of the study if his personality. To this end, adequate periods of time shall be fixed in the treatment programme.

#### 8 – Transfer. Temporary Transfer

Notwithstanding the execution scheme, the prisoner may be transferred to another institution competent for the execution of the prison sentence: if thereby the prisoner's treatment or his social integration after release will be promoted; or if this is necessary for reasons of penal organisation or for any other important reasons. The prisoner may be transferred temporarily to another penal institution if there is any other important reason for this.

#### 38 – Classes

For prisoners with an aptitude who failed to complete the secondary modern primary school provision shall be made to attend classes in the subjects taught at secondary modern schools or classes corresponding to those of a special school for mentally retarded or handicapped children. As far as vocational training or re-training for a new job is concerned, vocational school classes shall be provided; this shall be provided; this shall apply also to further vocational training, as far as the type of measure requires this. Classes shall take place during working hours.

#### 67 – General

The prisoner shall be given an opportunity to engage in leisure activities. He should be given an opportunity to attend classes, including sports, to watch television lessons, to attend courses and to take part in other activities of further education, in hobby groups, discussion groups and sports activities, and to make use of a library.

#### 71 – Basic Principle

The prisoner may avail himself of the social assistance of the institution in order to solve his personal problems. The assistance shall aim at enabling the prisoner to settle and regulate his affairs himself.

#### 141 – Differentiation

For the execution of prison sentences facilities shall be made available in different institutions or units guaranteeing treatment to meet the different needs of prisoners. In closed institutions detentions shall be a safe one, in open institutions there shall be no or only limited precautions against escape.

## **6. UNSENTENCED PRISONERS**

### **Commentary**

Unsentenced prisoners are those persons who have yet to be convicted by a court. They are also known as 'remand' prisoners; or prisoners who are: under-trial or awaiting trial or pre-trial.

Under international law, unsentenced prisoners are presumed innocent. This status gives rise to a range of consequences: they should be kept separate from other convicted prisoners, be allowed to wear their own clothes and consult his/her own medical practitioner. they should be allowed to meet regularly with family members and legal adviser(s). they may work if they so wish but cannot be required to work – as convicted prisoners may be.

The 'special privileges' attached to the untried prisoners often turn into additional hardships, however. Work in many prison systems is much sought after as it relieves the tedium of the day, provides a prisoner with a skill and source of income. Many prisons cannot supply all their prisoners with useful work to do and therefore do not allow remand prisoners to work. An attempt is sometimes made to justify this policy on the basis that the SMR state they cannot be made to work. However, this justification is unacceptable as both the SMR and EPR stipulate that remand prisoners should be offered the choice of whether they wish to work or not (see Work under Custody under Conditions of Human Dignity).

Many prisoners can wait years before they are brought to trial. The police delay in producing the evidence, the courts face long backlogs – the reasons are many and caused by events outside the control of the prison service.

Some of the legislation implicitly recognises the problem and attempts to build in mechanisms for ameliorating the situation. In Malawi for instance, the officer in charge of the prison is given power to approach the magistrate to consider bail where the person's trial has not started within a reasonable time.

### **International framework**

#### ***UDHR***

##### Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

##### Article 11

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

#### ***ICCPR***

##### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

### **BPPP**

#### Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

#### Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

#### Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

#### Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

#### Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

## **SMR**

### C. Prisoners under arrest or awaiting trial

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners," hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

### Civil Prisoners

94. In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

### Persons arrested or detained without charge

95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

## **Regional framework**

### ***EPR***

#### Part VII Untried prisoners

##### Status as untried prisoners

94.1 For the purposes of these rules, untried prisoners are prisoners who have been remanded in custody by a judicial authority prior to trial, conviction or sentence.

94.2 A state may elect to regard prisoners who have been convicted and sentenced as untried prisoners if their appeals have not been disposed of finally.

##### Approach regarding untried prisoners

95.1 The regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future.

95.2 The rules in this part provide additional safeguards for untried prisoners.

95.3 In dealing with untried prisoners prison authorities shall be guided by the rules that apply to all prisoners and allow untried prisoners to participate in various activities for which these rules provide.

##### Accommodation

96. As far as possible untried prisoners shall be given the option of accommodation in single cells, unless they may benefit from sharing accommodation with other untried prisoners or unless a court has made a specific order on how a specific untried prisoner should be accommodated.

##### Clothing

97.1 Untried prisoners shall be allowed to wear their own clothing if it is suitable for wearing in prison.

97.2 Untried prisoners who do not have suitable clothing of their own shall be provided with clothing that shall not be the same as any uniforms that may be worn by sentenced prisoners.

##### Legal advice (EPR commentary: read with R23)

98.1 Untried prisoners shall be informed explicitly of their right to legal advice.

98.2 All necessary facilities shall be provided to assist untried prisoners to prepare their defence and to meet with their legal representatives.

##### Contact with the outside world (EPR commentary: read with R24)

99. Unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners:

- a) shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners;
- b) may receive additional visits and have additional access to other forms of communication; and
- c) shall have access to books, newspapers and other news media.

##### Work

100.1 Untried prisoners shall be offered the opportunity to work but shall not be required to work.

100.2 If untried prisoners elect to work, all the provisions of Rule 26 shall apply to them, including those relating to remuneration.

##### Access to the regime for sentenced prisoners

101. If an untried prisoner requests to be allowed to follow the regime for sentenced prisoners, the prison authorities shall as far as possible accede to this request.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### 46. General principles

(1) Unsentenced prisoners may be subjected only to those restrictions necessary for the maintenance of security and good order in the prison and must, where practicable, be allowed all the amenities to which they could have access outside prison.

(2) The amenities available to unsentenced prisoners which may be restricted for disciplinary purposes must be determined by regulation.

##### 47. Clothing

No unsentenced prisoner may be compelled to wear prison clothes, unless the prisoner's own clothing is improper or insanitary or needs to be preserved in the interests of the administration of justice and the prisoner is unable to obtain other suitable clothing from another source.

##### 48. Food and drink

Subject to restrictions which may be prescribed by regulation, unsentenced prisoners may have food and drink sent to them in prison.

##### 49. Visitors and communication

Subject to restrictions which may be prescribed by regulation, unsentenced prisoners may receive visitors and write and receive letters and communicate telephonically.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

##### 26. General provisions

Unsentenced prisoners, must perform such duties as may be necessary to maintain the good order and cleanliness of any cell, room or other place occupied by them and may be permitted to perform other labour.

#### ***MALAWI, PRISONS BILL***

59. (1) When it appears to the Officer in Charge of a prison that the trial of a prisoner detained on a criminal charge has not begun within a reasonable period he shall approach the Chief Resident Magistrate and ask him to consider granting bail to any such prisoner.

(2) The case of any such prisoner whose trial has not commenced within 90 days of his being committed to prison or who has not been committed for trial in the High Court shall be referred by the Officer in Charge in terms of subsection (1).

## **7. ADMINISTRATION**

### **7.1 ADMISSION**

#### **Commentary**

The act of admission to a prison is a drastic infringement of the rights of the individual. Accordingly it is subject to a number of protective measures and oversight mechanisms to ensure that the State's awesome power in this regard is applied according to law.

Thus, the prison must be one that is officially recognised (to guard against 'ghost houses' and the disappearance of people) and the person must be detained under a valid committal warrant issued by a judicial or other competent authority. Once the authority is clearly established the person is then admitted into the institution and there follow a series of activities designed to identify the person and open a record in the form of a register detailing his/her detention, any property, state of health and preliminary security classification. The detainee should also be advised of the rules of the institution as well as her/his rights (principally to contact with relatives and friends and with legal advisers).

The international principles, rules and standards (below) set such basic procedural requirements and they are reflected in the national legislation cited. International standards do not deal fully with body searches in the prisons<sup>2</sup>.

#### **International framework**

##### ***PEPIEASE***

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

##### ***DPPEF***

###### **Article 10**

(1) Any person deprived of liberty shall be held in an officially recognised place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention

(2) Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned

(3) An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally each State shall take steps to maintain similar centralised registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

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<sup>2</sup> Though, the Human Rights Committee (established under the ICCPR) has issued a General Comment on the first (GC16, para 8).

## **SMR**

### Register

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

Information concerning his identity;

The reasons for his commitment and the authority therefor;

The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register. Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

Untried prisoners shall be kept separate from convicted prisoners;

Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

Young prisoners shall be kept separate from adults.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

## **BPPP**

### Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

### Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

#### Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

### **Regional framework**

#### ***IACFDP***

##### Article XI

Every person deprived of liberty shall be held in an officially recognised place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.

The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.

#### ***EPR***

##### Admission

No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law.

15.1 At admission the following details shall be recorded immediately concerning each prisoner:

- a) information concerning the identity of the prisoner;
- b) the reasons for commitment and the authority for it;
- c) the day and hour of admission;
- d) an inventory of the personal property of the prisoner that is to be held in safekeeping in accordance with Rule 31;
- e) any visible injuries and complaints about prior ill-treatment; and
- f) subject to the requirements of medical confidentiality, any information about the prisoner's health that is relevant to the physical and mental well-being of the prisoner or others.

15.2 At admission all prisoners shall be given information in accordance with Rule 30.

15.3 Immediately after admission notification of the detention of the prisoner shall be given in accordance with Rule 24.9.

16. As soon as possible after admission:

- a) information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42;
- b) the appropriate level of security for the prisoner shall be determined in accordance with Rule 51;
- c) the threat to safety that the prisoner poses shall be determined in accordance with Rule 52;
- d) any available information about the social situation of the prisoner shall be evaluated in order to deal with the immediate personal and welfare needs of the prisoner; and in the case of sentenced prisoners the necessary steps shall be taken to implement programmes in accordance with Part VIII of these rules.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICAN, CORRECTIONAL SERVICES ACT***

##### 6. Admission

(1) (a) A person may not be committed to a prison without a valid warrant for his or her detention. (b) Despite the wording of the warrant relating to the place of detention but subject to the provisions of this Act, such warrant authorises the Commissioner to detain the person concerned at any prison.

(2) At every prison there must be a register in which the following must be recorded: (a) information concerning the identity of the prisoner;

(b) the reason for the committal and the authority therefor; and (c) the day and hour of admission and release.

(3) On admission, a prisoner must be informed promptly of his or her right to-

(a) choose and consult with a legal practitioner; or

(b) have a legal practitioner assigned by the State, at state expense, if substantial injustice would otherwise result.

(4) (a) On admission a prisoner must be provided with written information in a language which he or she understands about the rules governing the treatment of the prisoners in his or her category, the disciplinary requirements, the authorised channels of communication for complaints and requests and all such other matters as are necessary to enable him or her to understand his or her rights and obligations.

(b) If a prisoner is illiterate, a correctional official must explain this written information to the prisoner, if necessary through an interpreter.

(c) The prisoner must confirm that he or she has understood the information so conveyed.

(5) As soon as possible after admission, every prisoner must-

(a) bath or shower; and

(b) undergo a health status examination, which must include testing for contagious and communicable diseases as defined in the Health Act, 1977 (Act 63 of 1977), if in the opinion of the medical officer it is necessary to protect or maintain the health of the prisoners or other persons.

(6) On admission the Commissioner must make a preliminary security classification of the prisoner.

##### 38. Assessment

(1) As soon as possible after admission as a sentenced prisoner, such prisoner must be assessed to determine his or her-

security classification for purposes of safe custody;

health needs;

(c) educational needs;

(d) social and psychological needs;

(e) religious needs;

(f) specific development programme needs;

(g) work allocation;

(h) allocation to a specific prison; and

(i) needs regarding reintegration into the community.

(2) In the case of a sentence of imprisonment of 12 months or more, the manner in which the sentence should be served must be planned in the light of this assessment and any comments by the sentencing court.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

##### 2. Admission to prison

(a) The Head of Prison or any correctional official authorised

by him or her must take into safekeeping the money, valuables and any other articles in the possession of a prisoner on admission to the prison or during the period of imprisonment. The Commissioner may prescribe by Order the conditions for and circumstances under which taking into safekeeping, release or disposal of such money, valuables or other articles may take place.

Every prisoner who is admitted to a prison must bath or shower as soon as possible after admission, as prescribed by Order.

3. (a) Every prisoner and every cared-for child who is admitted to a prison must, within twenty four hours after admission and before being allowed to mix with the general prisoner population, undergo a medical examination conducted by either a medical officer or a registered nurse, who must report on the health status of such prisoner or child and confirm such person's medical history.

A registered nurse who has conducted such a medical examination must refer the case of the prisoner or cared-for child to the medical officer as soon as reasonably possible if:

- the prisoner or cared-for child who, upon admission to the prison had been injured, was ill or has complained that he or she is injured or ill;
- the prisoner or cared-for child is using prescribed medication or receives medical treatment;
- the prisoner or cared-for child is receiving continued or ancillary medical treatment;
- the prisoner is pregnant; or
- there exists any other condition with regard to the prisoner or cared-for child which the registered nurse on reasonable grounds believes requires the medical officer to issue the admission report.

The medical officer or registered nurse must screen all prisoners admitted to the prison for communicable, contagious or obscure diseases and record the presence thereof, as prescribed by Order.

(4) (a) The registered nurse must upon admission record any medical assistance device in possession of a prisoner.

A medical assistance device may not be removed without the written instruction of the attending medical practitioner.

(5) Any medicine in possession of a prisoner must be recorded and handed to the registered nurse who must deal with it as prescribed by Order.

(a) The possession of an emergency identification locket or bracelet by a prisoner or cared-for child and the condition identified by it must be recorded by the registered nurse.

Such a locket or bracelet may be worn by the prisoner unless it constitutes a security risk.

(7) A prisoner may only mix with the general prisoner population after being medically assessed.

### ***MALAWI, PRISON BILL***

6. (1) A person may only be admitted to prison with a lawful warrant of detention.

(2) A warrant is only lawful if it is authorized by a provision in legislation which provision must be stipulated in that warrant.

(3) At every prison there shall be a register in which shall be recorded on admission -

(a) the identity of the prisoner; any clearly visible physical injury; the reason for the admission and the authority for it; the day and hour of admission; and subject to subsection (4), the date of release.

4) (a) Where an unsentenced prisoner is admitted the expiry date of the warrant shall be recorded as the date of release.

(b) Where a sentenced prisoner is admitted the date of release shall be calculated both on the basis of the sentence imposed by the court and where the sentence has to be confirmed in terms of section 15 of the Criminal Procedure and Evidence Code

(Cap.8:01) on the basis that the sentence may not be confirmed before the prisoner is released.

(c) If the sentence is subsequently confirmed the latter date shall be removed from the register.

(d) When the possible dates of release after remission and unconditional release have been calculated as required in section 43(1)(a) these dates shall be added to the register.

(5) (a) On admission, all property belonging to a prisoner which he is not allowed to retain, shall be placed in safe custody;

(b) The prisoner shall sign an inventory of such property.

(6) On admission, a prisoner shall be informed promptly of his right to legal advice.

(7) (a) On admission, a prisoner shall be given information setting out the disciplinary requirements, procedures for complaints and requests and all other information necessary for him to understand his rights and obligations.

(b) Such information shall be in a language the prisoner can understand and provided orally if he is illiterate.

(8) (a) On admission, a preliminary security classification shall be made for each prisoner.

(b) Security classification is determined by the extent to which the prisoner presents a security risk and is undertaken to determine the prison, class of prison or part of the prison in which he is to be detained.

(c) The lowest security classification appropriate to individual risk shall be allocated.

(9) As soon as possible after admission every prisoner shall undergo a medical examination and be screened for communicable diseases.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT**

Reception of Inmates:

11. A person who is sentenced, committed or transferred to penitentiary may be received into any penitentiary, and any designation of a particular penitentiary in the warrant of committal is of no force or effect.

28. Where a person is, or is to be, confined in a penitentiary, the Service shall take all reasonable steps to ensure that the penitentiary in which the person is confined is one that provides the least restrictive environment for that person, taking into account

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

(i) the safety of the public,

(ii) the safety of that person and other persons in the penitentiary, and

(iii) the security of the penitentiary;

(b) accessibility to

(i) the person's home community and family,

(ii) a compatible cultural environment, and

(iii) a compatible linguistic environment; and

(c) the availability of appropriate programs and services and the person's willingness to participate in those programs.

### **PERU, CODIGO DE EJECUCION PENAL 1991**

#### **PERU, PENITENTIARY CODE 1991**

Artículo 2º.- Judicialidad de la condena y legalidad penitenciaria

El interno ingresa al Establecimiento Penitenciario sólo por mandato judicial, en la forma prevista por la ley. Es ubicado en el Establecimiento que determina la Administración Penitenciaria.

*Article 2. Legality of punishment and imprisonment*

*The prisoner is jailed only by a court order as laid down by law. The prison administration is located within the prison.*

Artículo 6º.- Examen medico

Al ingresar al Establecimiento Penitenciario, el interno es examinado por el servicio de salud para conocer su estado físico y mental. Si se encuentran huellas de maltratos físicos, se comunica inmediatamente al representante del Ministerio Público y, en su caso, al Juez competente.

*Article 6. Medical Examination*

*On entering prison the inmate is examined by the health service to assess their physical and mental state. If they find evidence of maltreatment they will immediately contact a representative from the public ministry and a competent judge*

Artículo 8º.- Derecho de defensa del interno

El interno tiene derecho a comunicar inmediatamente a su familia y abogado su ingreso o su traslado a otro Establecimiento Penitenciario.

*Article 8. The Right to prisoner defence*

*On admission or transfer to another prison, the detainee has the right to communicate with his family and legal representative.*

Artículo 9º.- Información al interno

Al ingresar a un Establecimiento Penitenciario, el interno es informado de sus derechos y obligaciones y se le entrega una cartilla con las normas de vida que rigen en el Establecimiento. Si es analfabeto, dicha información le es proporcionada oralmente.

*Article 9. Information of admission*

*On admission to prison, the detainee shall be informed of his rights and duties and he will be given a booklet setting out the prison regulations. If he is illiterate the information will be explained orally.*

Artículo 10º.- Ficha y expediente personal

Cada interno tiene una ficha de identificación penológica y un expediente personal respecto a su situación jurídica y tratamiento penitenciario. Tiene derecho a conocer y ser informado de dicho expediente.

*Article 10. File and Personal Records*

Every prisoner has a penal identification file and personal record according to his legal situation and prison processing. He has the right to know about and to be reported of said record.

Artículo 13º.- Custodia de objetos de valor del interno

Todo objeto de valor, salvo los de uso personal que lleve consigo el interno, previo inventario, podrá quedar bajo custodia de la Administración Penitenciaria, o será entregado a la persona que aquél determine.

*Article 13. Safe keeping of Personal property*

All valuables subject to inventory which a prisoner brings with him, except those of personal use, can be kept by the prison administration or will be given to a person decided by the prisoner.

**COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO**  
**COLOMBIA, PENITENTIARY CODE**

Article 56. Registro

En los centros de reclusión se llevará un registro de ingreso y egreso con los datos especiales de cada interno, fecha, hora de ingreso, estado físico, fotografía y reseña dactiloscópica. Simultáneamente se abrirá un prontuario para cada sindicado y una cartilla biográfica para cada condenado.

*Article 56. Registration*

*In each prison there will be a register of entry and exit with the particulars of each detainee setting out: date and time of admission, physical state, photograph and fingerprint. At the same time, a file will be opened for each accused and personal record for each convicted person.*

#### Article 60. Deposito De Objetos Personales y Valores

Los capturados, detenidos o condenados, al ingresar a un establecimiento de reclusión, serán requisados cuidadosamente. De los valores que se le retiren al interno en el momento de su ingreso se le expedirá el correspondiente recibo. La omisión de lo aquí dispuesto, constituirá causal de mala conducta para quien debió expedir dicho recibo.

#### *Article 60. Deposit of Personal Belongings and Valuables*

*On entering the prison accused prisoners, detainees and sentenced prisoners will be carefully searched. For all valuable items confiscated on entry the prisoner will receive a receipt. Failure to do so will constitute as bad conduct on the part of the person responsible for issuing receipts.*

### **EUROPE**

#### **UK, PRISON ACT, 1952**

##### 12 Place of confinement of prisoners

- (1) A prisoner, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise, may be lawfully confined in any prison.
- (2) Prisoners shall be committed to such prisons as the Secretary of State may from time to time direct; and may by direction of the Secretary of State be removed during the term of their imprisonment from the prison in which they are confined to any other prison.

#### **NETHERLANDS, PENITENTIARY PRINCIPLES ACT**

##### Article 56

1. The governor shall provide that, upon entering the institution, the prisoner is informed of his rights and obligations under this Act in writing and as much as possible in a language he understands.
2. In particular, the prisoner shall, upon entering the institution, be informed of his power to:
  - a. lodge an objection or a petition in accordance with Chapter IV;
  - b. turn to the visiting officer of the Supervisory Committee;
  - c. enter a complaint or appeal in accordance with Chapters XI, XII and XIII.
3. A detained alien shall, upon entering the institution, be informed of his right to have the consular representative of his country notified of his detention.

#### **GERMANY, PRISON ACT**

##### 5 – Procedure of Admission

No other prisoners shall be present in the course of the process of admittance.

The prisoner shall be informed of his rights and obligations.

The prisoner shall undergo a medical examination promptly after his admission and be introduced to the Head of the Institution of the head of the reception unit.

##### 6 – Treatment Examination

###### Prisoner's Participation

Subsequent to the procedure of admission steps shall be taken to find out about the prisoners' personality and back ground. This may be dispensed with if it appears to be unnecessary in view of the length of the sentence to be served.

The examination shall embrace all facts that are needed to be known for a reasonable treatment of the prisoner serving his sentence and for his integrate into society after his release.

The treatment programme shall be discussed with the prisoner.

#### 10 – Open and Closed Institutions

(1) A prisoner shall, with his consent, be committed to an open institution or unit if he meets the special requirements for such treatment and in particular, if it is not to be feared that he might evade serving his prison sentence or abuse the chances of an open institution to commit criminal offences.

(2) Prisoners otherwise shall be committed to closed institutions. Moreover a prisoner may be committed to a closed institution or be re-transferred to it if this necessary for his treatment.

#### 72 – Assistance on Admission to the Institution

In his admission to the institution the prisoner shall be assisted in causing the necessary measures to be taken for needy relatives and in securing his property outside the institution.

The prisoner shall be given advice as to the continuation of social insurance.

## **7.2 DEATH IN PRISON**

### **Commentary**

In cases of death in custody, international standards require that two events must follow as a matter of course: notification of the relatives or next of kin of the deceased and the holding of an inquest into the circumstances surrounding death, even where the circumstances are not suspicious. The administrative aspects of burial/cremation and the property of the deceased are usually dealt with in secondary regulations. Most of the laws reviewed are silent on the issue of compensation with the notable exception of the Canadian legislation which contains specific provisions (below).

Special provision should be made for the early release of terminally ill prisoners on humanitarian grounds. The SMR clearly state that in any event they should not be in a prison (R25(2)) and should rather be transferred to a hospital (R22(2)).

The WHO Guidelines (below) make special provision for AIDS sufferers. The proposed Malawi legislation makes provision for the release of any terminally ill prisoner on the recommendation of medical staff.

### **International framework**

#### ***SMR***

Notification of death, illness, transfer, etc.

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

#### ***BPPP***

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

#### ***BPUFF***

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

### ***JDLS***

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile, there should be an independent inquiry into the cause of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

### ***WHOGHIVAIDS***

51. If compatible with considerations of security and judicial procedures, prisoners with advanced AIDS should be granted compassionate early release, as far as possible, in order to facilitate contact with their families and friends and allow them to face death with dignity and in freedom.

### ***PEPIEASE***

See full text

## **Regional framework**

### ***EPR***

24.8 Prisoners shall be allowed to inform their families immediately of their imprisonment or transfer to another institution and of any serious illness or injury they may suffer. Upon the admission of a prisoner to prison, the death or serious illness of, or serious injury to a prisoner, or the transfer of a prisoner to a hospital, the authorities shall, unless the prisoner has requested them not to do so, immediately inform the spouse or partner of the prisoner, or, if the prisoner is single, the nearest relative and any other person previously designated by the prisoner.

## **National legislation**

### ***AFRICA***

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

15. Death in prison

(1) Where a prisoner dies and a medical practitioner cannot certify that the death was due to natural causes, the Head of Prison must in terms of section 2 of the Inquests Act, 1959 (Act 58 of 1959), report such death.

(2) Any death in prison must be reported forthwith to the Inspecting Judge who may carry out or instruct the Commissioner to conduct any enquiry.

(3) The Head of Prison must forthwith inform the next of kin of the prisoner who has died or, if the next of kin are unknown, any other relative.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

9. Death in prison

(a) The Head of Prison must keep a record and report all deaths in prison, such record and report must reflect all the particulars required by Order.

(b) A deceased prisoner must be buried by the Head of Prison at a burial place in the magisterial district where he or she was detained, but the Commissioner may, upon written request of the spouse, partner or next of kin allow them to remove and bury the deceased at their own expense.

For humanitarian reasons the Commissioner may at the written request of the spouse, partner or next of kin, allow the deceased prisoner to be transported at State expense to another magisterial district. The cost of the burial is to be born by the person requesting the transportation as prescribed by Order.

### ***MALAWI, PRISON BILL***

17.(1) Where a prisoner dies the Officer in Charge shall within 48 hours

(a) report such death to a Coroner ...

(b) report such death to the Inspectorate which may carry out or instruct the Chief Commissioner to conduct an inquiry.

54. The Inspectorate may order the release on conditions of any prisoner who, based on a report from the medical officer, is diagnosed as being terminally ill.

58. When an unsentenced prisoner is seriously ill, the Officer in Charge of a prison shall approach the Chief Resident Magistrate and ask him to consider granting bail to any such prisoner.

### ***AMERICAS***

#### ***CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT***

##### **Investigations**

19. (1) Where an inmate dies or suffers serious bodily injury, the Service shall, whether or not there is an investigation under section 20, forthwith investigate the matter and report thereon to the Commissioner or to a person designated by the Commissioner.

2) The Service shall give the Correctional Investigator, as defined in Part III, a copy of its report referred to in subsection (1).

20. The Commissioner may appoint a person or persons to investigate and report on any matter relating to the operations of the Service.

21. Sections 7 to 13 of the Inquiries Act apply in respect of investigations carried on under s. 20

(a) as if the references to "commissioners" in those sections were references to the person or persons appointed under section 20; and

(b) with such other modifications as the circumstances require.

##### **Compensation for Death or Disability**

22. The Minister or a person authorized by the Minister may, subject to and in accordance with the regulations, pay compensation in respect of the death or disability of

(a) an inmate, or

(b) a person on day parole

that is attributable to the participation of that inmate or person in an approved program.

#### ***CANADA, CORRECTIONS AND CONDITIONAL RELEASE REGULATIONS***

##### **Death of an Inmate:**

116. (1) Where an inmate dies, the institutional head or a staff member designated by the institutional head shall promptly notify

(a) subject to subsection (2), the person who the inmate indicated to the Service in writing was to be notified;

(b) the coroner or medical examiner who has jurisdiction over the area in which the penitentiary is located; and

(c) the Commissioner or a staff member designated by the Commissioner.

(2) Where an inmate has not indicated the name of a person pursuant to subsection (1), the institutional head or staff member designated by the institutional head shall, as soon as practicable, notify the inmate's next of kin.

117. (1) Where the body of a deceased inmate is claimed by the person referred to in paragraph 116(1)(a) or by the inmate's next of kin, the institutional head or a staff member designated by the institutional head shall arrange, at public expense to the extent that the moneys standing to the inmate's credit in the Inmate Trust Fund are insufficient to cover the cost, for the body to be transported to a funeral home in the person's or next of kin's hometown.

(2) The Service may, on humanitarian grounds or where the costs of the funeral of an inmate would prevent the body of the inmate being claimed, pay all or part of the costs of the funeral in the hometown of the inmate or of the person who claims the body.

118. Where the body of a deceased inmate is not claimed by the person referred to in paragraph 116(1)(a) or by the inmate's next of kin, the institutional head or a staff member designated by the institutional head shall arrange, at public expense to the extent that the inmate's estate is insufficient to cover the costs, for the body to be

(a) where practicable, buried, cremated or otherwise dealt with, in accordance with the instructions left by the inmate; or

(b) buried or cremated, where the inmate did not leave instructions, or where it is not practicable to carry out the inmate's instructions.

119. (1) The Service shall deliver the portion of the estate of a deceased inmate that is under the control of the Service to the inmate's personal representative, if any, in accordance with applicable provincial laws.

(2) For the purposes of subsection (1), the portion of the estate of a deceased inmate that is under the control of the Service includes

(a) any pay that was owed to the inmate by the Service at the time of death;

(b) any moneys standing to the inmate's credit in the Inmate Trust Fund; and

(c) the inmate's personal belongings, including cash, that are in the care or custody of the Service.

#### Compensation Payable on Death:

131. (1) Subject to subsection (2), the compensation that may be paid in respect of the death of an inmate or a person on day parole attributable to the inmate's or person's participation in an approved program is

(a) subject to section 117, an amount not exceeding \$900 for the burial or cremation of the body;

(b) subject to section 117, an amount not exceeding \$300, where for humanitarian reasons the body is transported to a region or an area that is outside the region or area in which the inmate or person on day parole resided immediately before the death;

(c) a lump sum of \$500 plus a monthly payment equal to 75 per cent of the monthly minimum wage that is in force on the date of the payment, for the surviving spouse; and

(d) \$125 per month for each dependent child, and if the surviving spouse dies, \$140 per month thereafter.

(2) Where compensation is payable to dependent children who are the sole survivors of an inmate or a person on day parole and the dependent children have been placed in the care and custody of a foster parent by the appropriate provincial authorities, the Minister or authorized person may pay the foster parent a monthly payment equal to 75 per cent of the monthly minimum wage that is in force on the date of the monthly payment until the last dependent child in the care and custody of the foster parent ceases to be eligible for compensation.

132. The Minister or authorized person may request, in writing, that a claimant who is a dependant submit proof that the claimant meets the conditions set out in these Regulations for payment of compensation, and may, until receipt of such proof, withhold further payments.

#### No Payment in Certain Cases:

133. The Minister or authorized person shall not pay compensation in respect of the death or disability of an inmate or a person on day parole where the death or disability is attributable to improper conduct, including self-inflicted wounding or criminal conduct, by the inmate or person on day parole.

134. The Minister or authorized person shall not pay compensation to a claimant for any period during which the claimant is incarcerated or serving a sentence in a provincial correctional facility.

135. The Minister or authorized person shall not pay compensation to a claimant who is or would have been eligible to claim compensation in respect of the incident giving rise to the claim under the Government Employees Compensation Act or the Merchant Seamen Compensation Act, or under provincial compensation legislation providing for compensation to workers or their dependants.

136. (1) The Minister or authorized person shall not pay compensation in respect of a disability to a claimant who resides outside Canada, other than a claimant

(a) whose residence outside Canada has been approved by the Minister pursuant to subsection (2);

(b) who was removed from Canada pursuant to a removal order, or left Canada pursuant to a departure notice, made under the Immigration Act;

(c) who was deported from Canada pursuant to the Immigration Act as that Act read prior to April 10, 1978; or

(d) who has been transferred outside Canada under the Transfer of Offenders Act.

(2) Where a claimant is claiming or receiving compensation for a disability, the Minister or authorized person shall, before granting approval of the residence outside Canada, consider whether the residence will worsen the claimant's disability or increase the medical care required by the claimant.

137. The Minister or authorized person shall not pay compensation where the Minister or authorized person determines that, because of the place or circumstances in which the claimant is living, the claimant would not be or would no longer be a dependant if the deceased inmate or person on day parole was still living.

#### **COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO COLOMBIA, PENITENTIARY CODE**

Article 108. Nacimientos y Defunciones

El director de establecimiento de reclusión informará a las autoridades competentes y al INPEC, los nacimientos y defunciones que ocurran dentro de los mismos. Igualmente, informará a los parientes que figuren en el registro del interno. De ninguna manera en el registro de nacimientos figurará el lugar donde tuvo ocasión el mismo.

En caso de muerte, el cadáver será entregado a los familiares del interno que lo reclamen. Si no media petición alguna, será sepultado por cuenta del establecimiento.

*Article 108. Births and Deaths*

*The director of the prison will inform the authorities and the INPEC of the births and deaths that happen inside the prison. Similarly, the director will inform the parents noted on the prisoner's register. Under no circumstance does the place of birth appear on birth registers. In the case of death, the corpse will be delivered to the prisoner's family. If this is not requested the prisoner will be buried by the prison.*

#### **EUROPE**

##### **NETHERLANDS, PENITENTIARY ORDER**

Article 48

In case of the prisoner's death, the State shall bear the costs of burial or cremation if these are deemed reasonably necessary.

##### **GERMANY, PRISON ACT**

66 – Notification of Illness or Death

Where a prisoner has fallen seriously ill, a close relative of his, a person of his confidence or his statutory representative shall be notified without delay. The same shall apply in case of a prisoner's death.

The prisoner's request to notify also other persons should be compelled with as far as possible.



## **7.3 POWERS, FUNCTIONS AND DUTIES OF PRISON OFFICERS**

### **Commentary**

Prison officers perform an important public service. In many countries they are associated (whether through structure, uniform or line ministry) with the military. The trend in democratic societies is increasingly to move away from this link and to 'civillianise' the prison service. This maybe some by introducing training programmes directed more at addressing offending behaviour, education, vocational skills and rehabilitation within a dynamic rather than oppressive security framework.

Every prison requires staff of a high calibre since 'it is their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institution depends' (SMR 46(1)). The staff deals with prisoners on a daily basis, cater for their needs, is responsible for the smooth running of the prison and for security and safety and identify and tackle problems. 'A prison is in some ways a society in microcosm. Its inhabitants are in a perpetual state of interdependence – a situation in no way diminished by inequalities in the balance of power (Making Standards Work. PRI. 1995. Section VII.1).

The role of prison staff is to treat prisoners in a manner which is decent, humane and just; ensure that all prisoners are safe; make sure that dangerous prisoners do not escape; make sure that there is good order and control in prisons; and to provide prisoners with the opportunity to use their time in prison positively so that they will be able to resettle into society when they are released (Coyle, p.14).

### **International framework**

#### ***ICCPR***

Article 10.

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

#### ***CCLEO***

See full text

#### ***BPUFF***

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

#### ***JDLS***

V. Personnel

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention

facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfill their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfillment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

## **SMRAJJ**

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

## **SMR**

### Institutional personnel

46. (1) The prison administration, shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47. (1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.

(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.

(3) He shall reside on the premises of the institution or in its immediate vicinity. (4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

#### Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

## **Regional framework**

### ***EPR***

#### Management and staff

##### Prison work as a public service

71. Prisons shall be the responsibility of public authorities separate from military, police or criminal investigation services.

72.1 Prisons shall be managed within an ethical context which recognises the obligation to treat all prisoners with humanity and with respect for the inherent dignity of the human person.

72.2 Staff shall manifest a clear sense of purpose of the prison system. Management shall provide leadership on how the purpose shall best be achieved.

72.3 The duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance.

72.4 Staff shall operate to high professional and personal standards.

73. Prison authorities shall give high priority to observance of the rules concerning staff. Particular attention shall be paid to the management of the relationship between first line prison staff and the prisoners under their care. Staff shall at all times conduct themselves and perform their duties in such a manner as to influence the prisoners by good example and to command their respect.

74. Particular attention shall be paid to the management of the relationship between first line prison staff and the prisoners under their care.

75. Staff shall at all times conduct themselves and perform their duties in such a manner as to influence the prisoners by good example and to command their respect.

#### Selection of prison staff

76. Staff shall be carefully selected, properly trained, both at the outset and on a continuing basis, paid as professional workers and have a status that civil society can respect.

77. When selecting new staff the prison authorities shall place great emphasis on the need for integrity, humanity, professional capacity and personal suitability for the complex work that they will be required to do.

78. Professional prison staff shall normally be appointed on a permanent basis and have public service status with security of employment, subject only to good conduct, efficiency, good physical and mental health and an adequate standard of education.

79.1 Salaries shall be adequate to attract and retain suitable staff.

79.2 Benefits and conditions of employment shall reflect the exacting nature of the work as part of a law enforcement agency.

80. Whenever it is necessary to employ part-time staff, these criteria shall apply to them as far as that is appropriate.

Training of prison staff

81.1 Before entering into duty, staff shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

81.2 Management shall ensure that, throughout their career, all staff maintain and improve their knowledge and professional capacity by attending courses of in-service training and development to be organised at suitable intervals.

81.3 Staff who are to work with specific groups of prisoners, such as foreign nationals, women, juveniles or mentally ill prisoners, etc., shall be given specific training for their specialised work. The training of all staff shall include instruction in the international and regional human rights instruments and standards, especially the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as in the application of the European Prison Rules.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

96. Powers, functions and duties of correctional officials

(1) The Department and every correctional official in its service must strive to fulfill the purpose of this Act and to that end every correctional official must perform his or her duties under this Act.

(2) Subject to the provisions of subsection (1), the relationship between the Department as employer and every correctional official in the service of the Department is regulated by the provisions of the Labour Relations Act.

(3) Subject to the provisions of this Act and the provisions of the Labour Relations Act and having regard to the operational requirements of the Department, the Commissioner shall determine the qualifications for appointment and promotion and decide on the appointment, promotion and transfer of correctional officials, but-

(a) the appointment or promotion of a correctional official to or above the post level of director takes place in consultation with the Minister;

(b) all persons who qualify for appointment, promotion or transfer must be considered;

(c) the assessment of persons shall be based on level of training, relevant skills, competence, and the need to redress the imbalances of the past in order to achieve a Department broadly representative of the South African population, including representation according to race, gender and disability;

(d) despite the provisions of paragraph (c), the Commissioner may, subject to the conditions prescribed by regulation, approve the appointment, transfer or promotion of persons to promote the basic values and principles referred to in section 195 (1) of the Constitution; and

[Para. (d) substituted by s. 35 (a) of Act 32 of 2001.]

(e) for the purposes of promotion or transfer, the Commissioner may exempt a correctional official who is exceptionally skilled, has special training, renders exceptional service, or has successfully completed a prescribed departmental training course, from the requirements of the Code of Remuneration.

(4) (a) The Commissioner may appoint unpaid voluntary workers who are not employees of the Department.

(b) Such workers have the same duties and are subject to the same restrictions as correctional officials but may only exercise the powers of correctional officials to the extent determined by the Commissioner.

(5) The provisions relating to the retirement of correctional officials contained in the Correctional Services Act, 1959 (Act 8 of 1959), remain in force unless amended in the Bargaining Council for the Department of Correctional Services in terms of the Labour Relations Act.

#### 97. Delegation of powers

(1) The Minister may delegate any of the powers vested in him or her by this Act to the Commissioner, except the powers contemplated in section 134 of this Act.

(2) The Commissioner may delegate any of the powers vested in him or her by this Act or any other Act to any correctional official or other person employed by the Department and may delegate any of the delegated powers in terms of subsection (1) to a correctional official of a post level of Deputy Director or higher.

(3) Any delegation in terms of this section takes effect on date of publication in the Gazette.

#### 98. Professionals

Any professional correctional official appointed by the Commissioner to work directly with prisoners and persons subject to community corrections retains professional independence.

### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

#### 30. Departmental inspectors, investigators and auditors

(a) The Commissioner must appoint correctional officials as departmental inspectors, investigators and auditors to perform the functions as set out in section 95 of the Act.

(b) An inspector, investigator or auditor may be appointed to perform those functions within the Republic as a whole, or a particular province or area.

(c) Officials appointed as inspectors, investigators and auditors will be issued with a certificate or letter of appointment and an identity card to that effect. In order to fulfil the functions as set out in section 95 of the Act, the departmental inspectors, investigators and auditors may enter any departmental premises and also have access to, or search and seize any Departmental record or document. Any person who hinders or obstructs or refuses to comply with the lawful instructions of Departmental inspectors, investigators and auditors is guilty of an offence and is liable on conviction to a fine, or in default of payment, to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine or both.

#### 31. Work facilities

The Commissioner may allocate official residential accommodation to a correctional official for occupation for such period and under such conditions as he or she may determine.

#### 32. Work hours

The Commissioner determines the hours of work for correctional officials.

#### 33. Discipline

Correctional officials are subject to the disciplinary code and procedure as provided for in resolution 1 of 2001 in the Departmental Bargaining Council of the Department, as reflected in Schedule A and B hereto.

#### 34. Emergency work

In an emergency, the Commissioner may require from a correctional official to perform work outside his or her normal hours of work.

#### 35. Medical examination

(1) (a) Any report received by the department from a medical practitioner and which is to the effect that a correctional official has become or is likely to become medically unfit to remain in the service of the Department must be submitted to the Commissioner without delay.

(b) Upon receipt of such a report, the Commissioner -

(i) may require the correctional official concerned to undergo a further medical examination as a prerequisite to convening Medical Board proceedings in terms of regulation 37; and

may, if so satisfied, convene such proceedings. However, nothing in this paragraph precludes such a correctional official from being granted sick leave in the interim.

#### 36. Medical Board proceedings

The Commissioner must convene a Medical Board to consider and determine whether any correctional official who allegedly has become on medical grounds unfit to remain in the service of the Department, and is in fact medically unfit for that purpose.

(2) A correctional official whose case is considered by a Medical Board may, at his or her own expense arrange for a medical practitioner of his or her own choice and a trade union representative to be present at the relevant proceedings of the Medical Board

(a) The Medical Board must consist of medical practitioners designated by the Commissioner.

(b) The proceedings of the Medical Board must be recorded and must duly reflect all documentary and oral evidence and representations by that Board including those tendered or made by or on behalf of the correctional official concerned and all medical and other reports, and must include the Board's findings, recommendations and report.

(c) The record must be duly signed by the members of that Board.

(4) The Commissioner may determine the form in which the report of a Medical Board must be submitted.

(5) The Commissioner, may with due regard to the findings and recommendations of a Medical Board and if consistent therewith - grant further sick leave to the correctional official concerned;

(b) discharge the correctional official due to medical unfitness for duty; or

(c) instruct the correctional official to resume duty.

For the purposes of this regulation and regulation 36, medical unfitness means any physical or mental illness or disability which renders a correctional official unfit for his or her duties or to perform efficiently.

#### 37. Leave

The following categories of leave may be granted to correctional officials:

vacation leave;

(b) sick leave;

(c) special leave;

(d) leave without pay; as prescribed by Order, and may prescribe by Order such deviations from leave conditions as are justified.

#### 38. Establishment of Correctional Services Facilities Fund

A Correctional Services Facilities Fund was established in terms of the provisions of the Correctional Services Act, 1959 and continues to exist in terms of section 134 (1) (jj) of the Act.

(a) The administration and control of the Fund is vested in a

Board of Trustees with the powers, functions and duties as prescribed by Order.

(b) The Board consists of the Commissioner as chairperson or, in his or her absence, a Chief Deputy Commissioner or Deputy Commissioner, appointed by the Commissioner for this purpose and such other members as are necessary and are appointed by the Commissioner for a stipulated period. The purpose of the Fund is to, in the interest of the Department, make provision for grants or loans: to Correctional Services clubs for the promotion of sport and recreation; for the establishment and maintenance of holiday resorts;

(c) to correctional officials for the purpose of study or research; (d) for any other purpose which, in the opinion of the Board Trustees, is meritorious and in the interest of the Department.

(4) The assets of the Fund consist of:

monies, assets and investments, together with accrued interest or dividends which, with the approval of the Commissioner, have been paid or transferred by any existing Correctional Services benefit fund or association to the Fund, for its sole benefit and ownership;

(b) any grants made by the State; and any other donations to the Fund, interest or dividends from investments, and any other income.

#### 39. Establishment of departmental canteen

The Commissioner may approve the establishment of a departmental canteen contemplated in section 132 of the Act.

(2) (a) A departmental canteen established in terms of sub regulation (1) must be controlled by a committee of which the Area Manager concerned will be the chairperson. The committee will be constituted and exercise its functions as prescribed by Order.

(b) Any profits, assets or any proceeds from the liquidation of a departmental canteen may be distributed by the committee, as may be determined by the Commissioner, for any purposes contemplated in section 132 of the Act, or for the common benefit or welfare of correctional officials, pensioners, civilian employees and their dependants.

(c) A departmental canteen must be conducted on business principles and, with the exception of accommodation or other necessities which may be provided by the State and any expenditure which the Commissioner may, in consultation with the Department of State Expenditure, authorise from public funds, must be self-supporting.

(3) A Correctional Services canteen must be managed for the sole use or benefit of: correctional officials; civilian employees of the Department; civilian persons employed in any work in or in connection with a Correctional Services canteen; the families of persons referred to in paragraph (a) up to and including (d); (e) persons to whom permission, referred to in section 99 of the Act, has been granted to be present in a prison; and (f) prisoners in detention.

#### 40. Searching of correctional official

A correctional official required to act in order to control access to or maintain secure custody within a prison may, in terms of the Act, search any correctional official and his or her property without his or her consent.

#### 41. Refusal of admission to a prison

(1) The Head of Prison may refuse to admit any person, including a correctional official, to a prison if the person concerned refuse or neglects to furnish him or her with satisfactory replies to any questions in regard to his or her identity, the purpose of his or her visit or any incidental matter, or who, if required, refuses to be searched.

Any person who, during a visit to a prison, conducts him- or herself improperly or acts contrary to the good order and discipline of such prison, may be ordered by the Head of Prison to leave such prison, and, if such person refuse to comply with such an instruction, the

Head of Prison may cause him or her to be forcibly removed from the prison.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT**

#### Principles

4. The principles that shall guide the Service in achieving the purpose referred to in section 3 are

(a) that the protection of society be the paramount consideration in the corrections process;

(b) that the sentence be carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, other information from the trial or sentencing process, the release policies of, and any comments from, the National Parole Board, and information obtained from victims and offenders;

(c) that the Service enhance 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 programs to offenders, victims and the public;

(d) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders;

(e) that offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence;

(f) that the Service facilitate the involvement of members of the public in matters relating to the operations of the Service;

(g) that correctional decisions be made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

(h) that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements;

(i) that offenders are expected to obey penitentiary rules and conditions governing temporary absence, work release, parole and statutory release, and to actively participate in programs designed to promote their rehabilitation and reintegration; and

(j) that staff members be properly selected and trained, and be given

(i) appropriate career development opportunities,

(ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and

(iii) opportunities to participate in the development of correctional policies and programs.

Correctional Service of Canada

5. There shall continue to be a correctional service in and for Canada, to be known as the Correctional Service of Canada, which shall be responsible for

(a) the care and custody of inmates;

(b) the provision of programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community;

(c) the preparation of inmates for release;

(d) parole, statutory release supervision and long-term supervision of offenders; and

(e) maintaining a program of public education about the operations of the Service.

6. (1) The Governor in Council may appoint a person to be known as the Commissioner of Corrections who, under the direction of the Minister, has the control and management of the Service and all matters connected with the Service.

(2) The national headquarters of the Service and the offices of the Commissioner shall be in the National Capital Region described in the schedule to the National Capital Act.

(3) The Commissioner may establish regional headquarters of the Service.

7. (1) Subject to subsection (3), the Commissioner may, by order, declare any prison as defined in the Prisons and Reformatories Act, or any hospital, to be a penitentiary in respect of any person or class of persons.

(2) Subject to subsection (3), the Governor in Council may, by order, declare any place to be a penitentiary.

(3) No prison, hospital or place administered or supervised under the authority of an Act of the legislature of a province may be declared a penitentiary under subsection (1) or (2) without the approval of an officer designated by the lieutenant governor of that province.

8. In any proceedings before a court in Canada in which a question arises concerning the location or description of lands alleged to constitute a penitentiary, a certificate purporting to be signed by the Commissioner, setting out the location or description of those lands as constituting a penitentiary, is admissible in evidence and, in the absence of any evidence to the contrary, is proof that the lands as located or described in the certificate constitute a penitentiary.

9. For greater certainty, a person who is an inmate by virtue of subparagraph (b)(ii) of the definition "inmate" in section 2 shall be deemed to be in the lawful custody of the Service.

10. The Commissioner may in writing designate any staff member, either by name or by class, to be a peace officer, and a staff member so designated has all the powers, authority, protection and privileges that a peace officer has by law in respect of

- (a) an offender subject to a warrant or to an order for long-term supervision; and
- (b) any person, while the person is in a penitentiary.

95. The Minister shall cause to be laid before each House of Parliament, not later than the fifth sitting day of that House after the 31st day of January next following the end of each fiscal year, a report showing the operations of the Service for that fiscal year.

## **EUROPE**

### **GERMANY, PRISON ACT**

#### 81 – Basic Principle

The prisoner's sense of responsibility for an orderly community life in the institution shall be aroused and encouraged.

The duties and restrictions imposed on the prisoner in order to maintain security and good order of the institution shall be chosen in such a manner that they are in a reasonable proportion to their purpose and do not affect the prisoner more and longer than necessary.

#### 82 – Conduct

The prisoner shall obey the Institution Rules regarding the time table (working hours, leisure time, night's rest). He shall not disturb community life by his behaviour towards the institution staff, co-prisoner and other persons.

The prisoner shall obey orders from the institution staff even if he feels aggrieved by them. He shall not leave without permission an area allocated to him.

He shall keep in good order and treat with care his cell and the articles given to him by the institution.

The prisoner shall report without any circumstances which may mean a danger to the life, or a considerable danger to the health, of a person.

#### 139 – Penal Institutions

Prison sentences and orders for preventive detention shall be executed in penal institutions of the Land Judicial Administrations.

#### 140 – Separate Execution

Orders for preventive detention shall be executed in separate institutions or in separate units of a penal institution destined for the execution of prison sentences.

Women shall be detained separate from men in special penal institutions for women. For special reasons separate units for women may be provided in institutions for men.

Separate detention in accordance with subsections (1) and (2) may be departed from in order to make it possible for a prisoner to participate in measures of treatment in some other institution or in another unit.

#### 143 – Size and structure of Institutions

Penal institutions shall be structured in such a manner that treatment adapted to the needs of the individual prisoner is guaranteed.

The penal institutions shall be organised in such a manner that the prisoners can be formed into surveyable groups for care and treatment.

No more than 200 places should be planned for socio-therapeutic institutions and for penal institutions for women.

#### 151 – Controlling Authorities

The Land Judicial Administration shall exercise control over the penal institutions. They may delegate powers of control to Judicial execution Offices.

Suitable specialists of the controlling authorities shall have a share in the control of labour matters as well as of social work, further education, health matters and the other specialist treatment of prisoners; where a controlling authority has no suitable specialists of its own, advice of experts shall be secured.

#### 152 – Scheme of Execution

The Land Judicial Administration shall regulate local competence and competence ration materiae of the penal institutions in a scheme of execution.

The scheme of execution shall designate which convicted persons shall be committed to an allocation institution or unit. A transfer to a further prison may be determined on the basis of reasons of treatment and rehabilitation

In other respects competence shall be determined according to general criteria.

#### 154 – Co-operation

All members of the prison services shall co-operate and contribute towards fulfilling the functions of the prison.

Close co-operation with the authorities and agencies engaged in the care of released prisoners, with probation officers, the supervisory agencies for the supervision of conduct, the Labour Offices, the social insurance organisations and social assistance agencies, the relief facilities of other authorities, and charitable welfare institutions shall be striven for. The prison authorities should co-operate with persons and associations whose influence may further the prisoner's rehabilitation.

#### 155 – Institutional Staff

The functions of the penal institutions shall be performed by prison officers. If there are special reasons they may be delegated to other institutional staff or to persons working on a part-time basis or under a contract.

According to its function, each institution shall have the necessary number of staff of the different categories, including in particular prison officers, administrative staff, trade instructors, as well as chaplains, medical officers, teachers, psychologists and social workers.

#### 156 – Head of the Institution

For each penal institution a higher-grade officer shall be appointed full-time Head of the Institution. If there are special reasons, an institution may be headed by an intermediate-grade officer.

The Head of the Institution shall represent the institution vis-à-vis the outside world. He shall be responsible for the entire penal regime in the institution, unless certain functions have been transferred to, and are the responsibility of, other prison staff or are a matter of their joint responsibility.

The power to order a search in accordance with Section 84(2), the special precautions in accordance with Section 88, and the disciplinary measures in accordance with Section 103 may be delegated only with the consent of the controlling authority.

#### 159 – Conferences

For the purpose of preparing and reviewing the treatment programme and for the preparation of important decisions the Head of the Institution shall hold conferences with those persons contributing substantially to the treatment.

#### 160 – Prisoner's Co-Responsibility

The prisoners and detainees shall be given an opportunity to share in the responsibility for matters of joint interest which, depending on the type and function of the institution are suited for their participation.

#### 161 – Institution Rules

The Head of the Institution shall set up Institution Rules. They shall require the consent of the controlling authority.

The Institutions Rules shall contain in particular the regulations regarding visiting hours, frequency and length of visits, working hours, leisure time and night's rest, and the possibilities of making requests and complaints or for applying to a representative of the controlling authority.

(2) A copy of the Institution Rules shall be made available in each cell.

#### 162 – Establishment of Advisory Councils

(1) For the penal institutions Advisory Councils shall be established.

Institutional staff shall not be members of Advisory Council.

Details shall be regulated by the Laender.

#### 163 – Functions of Advisory Council

Members of the Advisory Council shall participate in the organisation of the prison regime and in the treatment of prisoners. They shall support the Head of Institution by making suggestions and proposals for improvement and shall lend a hand in the prisoner's social integration after release.

#### 164 – Powers

The members of the Advisory Council shall have powers, in particular, to accept requests, suggestions and complaints. They shall be allowed to gather information on accommodation, occupation, vocational training, food, medical services and treatment, as well as to inspect the institution and its facilities.

The members of the Advisory Council shall be allowed to visit the prisoners and detainees in their rooms. Interventions and correspondence shall not be supervised

#### 165 – Observation of Secrecy

The members of the Advisory Council shall be under obligation not to disclose outside their office any matters of a confidential nature, in particular about names and personalities of the prisoners and detainees. The same office has come to an end.

## 7.4 PRISONERS FILES

### Commentary

*'Detainees and prisoners are particularly vulnerable when they first arrive in detention or imprisonment. International law recognises that the right to life and freedom from torture and ill-treatment require a specific framework of protection at this time.'* (Coyle, p. 37)

Each prisoner should have an individual file that identifies the person and contains up to date information (positive and negative) about the person (i.e the offence, the person's personal history, the judgment of the court, any statement by the victim, conduct in prison, any punishment record etc). Some prisons enter all this information on one file. Others use separate registers dealing with punishment, property, death, execution, medical matters etc.

*'The details relating to each prisoner should be sufficient to identify each prisoner. This is to ensure that people are only held in prison if there is a legitimate sanction for their detention, that they are not held for longer than the law allows and in order to guard against human rights violations such as 'disappearance', torture or ill-treatment, and extra-judicial killing. The register should be bound and the entries numbered so that it is not possible to delete or add entries out of sequence. In the case of a person detained without sentence, the written legal sanction for detention should specify the date when the person should next appear before a legal authority.'* (Coyle, p. 40)

The commentary to the EPR (Rule 15) emphasises the need for 'meticulous record keeping for each prisoner (...) throughout the time that the prisoner is kept in prison.'

### International framework

#### **PEPIEASE**

6. Governments shall ensure that persons deprived of their liberty are held in officially recognised places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

#### **DPPEF**

Article 10

3. An official up to date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similarly centralised registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

#### **SMR**

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefor;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register. Separation of categories

## **Regional framework**

### ***EPR***

14. No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law.

15.1 At admission the following details shall be recorded immediately concerning each prisoner:

- a) information concerning the identity of the prisoner;
- b) the reasons for commitment and the authority for it;
- c) the day and hour of admission;
- d) an inventory of the personal property of the prisoner that is to be held in safekeeping in accordance with Rule 31;
- e) any visible injuries and complaints about prior ill-treatment; and
- f) subject to the requirements of medical confidentiality, any information about the prisoner's health that is relevant to the physical and mental well-being of the prisoner or others.

15.2 At admission all prisoners shall be given information in accordance with Rule 30.

15.3 Immediately after admission notification of the detention of the prisoner shall be given in accordance with Rule 24.9.

16. As soon as possible after admission:

- a) information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42;
- b) the appropriate level of security for the prisoner shall be determined in accordance with Rule 51;
- c) the threat to safety that the prisoner poses shall be determined in accordance with Rule 52;
- d) any available information about the social situation of the prisoner shall be evaluated in order to deal with the immediate personal and welfare needs of the prisoner; and
- e) in the case of sentenced prisoners the necessary steps shall be taken to implement programmes in accordance with Part VIII of these rules.

## **National legislation**

### ***AFRICA***

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

28. Identification

(1) To ensure safe custody the following steps may be taken to identify a prisoner:

- a) the taking of finger and palm prints;
- b) the taking of photographs;
- c) the ascertaining of external physical characteristics;
- d) the taking of measurements;
- e) referral of the prisoner to the medical officer to ascertain the age of the prisoner; and
- f) the attachment of an electronic or other device to the body of the prisoner in the manner prescribed by regulation.
- g) The prisoner may request that, at his or her own expense, his or her private medical practitioner be present at an investigation referred to in paragraph (e).

(2) Identification data obtained in this way must be included in the prisoner's personal file.

(3) If as a result of ascertaining the age of a prisoner in terms of subsection (1) (e) or for any other reason it appears to the Head of Prison that the court's determination of the age of the said prisoner is incorrect, the Head of Prison may remit the case to the court concerned for a reappraisal of the prisoner's age.

### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

#### **17. Identification**

The name, age, height, mass, full address, distinctive marks of a prisoner and other particulars as may be required must be recorded in the manner prescribed by Order. If required the fingerprints and photographs of a prisoner must be taken, as prescribed by Order.

### ***AMERICAS***

#### ***CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT***

#### **Information**

23. (1) When a person is sentenced, committed or transferred to penitentiary, the Service shall take all reasonable steps to obtain, as soon as is practicable,

(a) relevant information about the offence;

(b) relevant information about the person's personal history, including the person's social, economic, criminal and young-offender history;

(c) any reasons and recommendations relating to the sentencing or committal that are given or made by

(i) the court that convicts, sentences or commits the person, and

(ii) any court that hears an appeal from the conviction, sentence or committal;

(d) any reports relevant to the conviction, sentence or committal that are submitted to a court mentioned in subparagraph (c)(i) or (ii); and

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

(2) Where access to the information obtained by the Service pursuant to subsection (1) is requested by the offender in writing, the offender shall be provided with access in the prescribed manner to such information as would be disclosed under the Privacy Act and the Access to Information Act.

(3) No provision in the Privacy Act or the Access to Information Act shall operate so as to limit or prevent the Service from obtaining any information referred to in paragraphs (1)(a) to (e).

24. (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.

(2) Where an offender who has been given access to information by the Service pursuant to subsection 23(2) believes that there is an error or omission therein,

(a) the offender may request the Service to correct that information; and

(b) where the request is refused, the Service shall attach to the information a notation indicating that the offender has requested a correction and setting out the correction requested.

1992, c. 20, s. 24; 1995, c. 42, s. 9(F).

25. (1) The Service shall give, at the appropriate times, to the National Parole Board, provincial governments, provincial parole boards, police, and any body authorized by the Service to supervise offenders, all information under its control that is relevant to release decision-making or to the supervision or surveillance of offenders.

26. (1) At the request of a victim of an offence committed by an offender, the Commissioner

(a) shall disclose to the victim the following information about the offender:

- (i) the offender's name,
  - (ii) the offence of which the offender was convicted and the court that convicted the offender,
  - (iii) the date of commencement and length of the sentence that the offender is serving, and
  - (iv) eligibility dates and review dates applicable to the offender under this Act in respect of temporary absences or parole; and
- (b) may disclose to the victim any of the following information about the offender, where in the Commissioner's opinion the interest of the victim in such disclosure clearly outweighs any invasion of the offender's privacy that could result from the disclosure:
- (i) the offender's age,
  - (ii) the location of the penitentiary in which the sentence is being served,
  - (iii) the date, if any, on which the offender is to be released on temporary absence, work release, parole or statutory release,
  - (iv) the date of any hearing for the purposes of a review under section 130,
  - (v) any of the conditions attached to the offender's temporary absence, work release, parole or statutory release,
  - (vi) the destination of the offender on any temporary absence, work release, parole or statutory release, and whether the offender will be in the vicinity of the victim while travelling to that destination, and
  - (vii) whether the offender is in custody and, if not, the reason why the offender is not in custody.

#### **PERU, CODIGO DE EJECUCION PENAL 1991**

#### **PERU, PENITENTIARY CODE 1991**

Artículo 10º.- Ficha y expediente personal

Cada interno tiene una ficha de identificación penológica y un expediente personal respecto a su situación jurídica y tratamiento penitenciario. Tiene derecho a conocer y ser informado de dicho expediente.

*Article 10. Record and personal file*

*Every prisoner has a penal identification file and personal record in respect to his legal situation and prison processing. He has the right to be informed of said report.*

#### **EUROPE**

#### **NETHERLANDS, PENITENTIARY ORDER**

Article 35

Save for aliens in custody, a penitentiary file shall be made of each prisoner and participant in a penitentiary programme.

Article 36

1. The penitentiary file shall be built up in accordance with a fixed standard lay-out. Included in the penitentiary file in the order given shall be:

- a. an overview of the periods and institutions of stay;
  - b. selection and placement proposals;
  - c. registration cards;
  - d. the documents mentioned in Article 37, categorised according to institution.
2. The file shall be kept in a lockable room in the institution.

Article 37

1. The penitentiary file shall also contain:

- a) a final report of the institution upon release of the prisoner or a final report of the penitentiary programme upon release of the participant from the penitentiary programme;
- b) a copy of an selection recommendation, or a transfer proposal, or a proposal for participation in a penitentiary programme or termination thereof including the accompanying recommendations;
- c) the most recent registration card;

- d) other important judicial documents, including:
- 1 the extract of the sentence;
  - 2 forms concerning leave and the decisions take with respect to this;
  - 3 requests and authorisations for placing and transfer and participation in a penitentiary programme;
  - 4 clemency requests and the decisions taken with respect to this;
  - 5 requests for interruption of punishment and the decisions taken with respect to this;
  - 6 notices concerning early release.
- e) results of urine tests or a summary overview thereof;
- f). copies of punishment reports, notifications of unusual incidents;
- g) documents concerning complaint cases and appeal cases',
- h) copies of correspondence of the institution concerning the prisoner;
- i) a copy of the intake form per institution of stay;
- j) summary of periodic discussions concerning the prisoner in the institution consultations.
2. The other documents regarding the prisoner shall be collected in a institution file. They shall be categorised in chronological order according to subject.

#### Article 38

1. If the governor makes a proposal for selection of the prisoner, he shall send the penitentiary file along with it to the selection officer.
2. The governor shall send, simultaneously with the prisoner's formal transfer, the penitentiary file to the governor of the institution or wing where the prisoner will be staying.
3. If a prisoner is given the opportunity to take part in a penitentiary programme, the governor shall send the penitentiary file to the governor referred to in Article 8, paragraph 1
4. In the case of release, escape or decease of a prisoner, the governor shall send the penitentiary file to Our Minister.

#### Article 39

- 1 Our Minister shall store the penitentiary file for a period of ten years, counting from the time the file is received.
2. After the period mentioned in paragraph 1, the documents shall be included in the penitentiary file, destroyed, or processed in such a way that it can longer be connected to the prisoner, unless this is contrary to an important interest of a person other than the prisoner.
3. If the prisoner is detained again before the end of the period referred to in paragraph 1, the storage period shall cease to be applicable.
4. The institution file referred to in Article 37, paragraph 2, shall be destroyed six months after the end of the prisoner's stay in the institution. If the prisoner is detained again in the institution before the end of this period, the storage period shall cease to be applicable.

#### Article 40

1. In case the prisoner is denied access to his file on one of the grounds of Article 30 of the Data Protection Act, the governor may allow a member of the Supervisory Committee authorised by the prisoner to take cognizance of the data the prisoner is prevented from examining. Articles 57 and 58 of the Act shall apply mutatis mutandis.
  2. Data from the file may be furnished to Our Minister and the officers or employees designated by him if this is necessary for:
    - a. the handling of requests relating to the prisoner;
    - b. the handling of procedures relating to the prisoner;
    - c. the management of the files;
    - d. the handling of other decisions relating to the prisoner.
- The same shall apply to the selection officer, the governor and the officers or employees designated by them.

### **GERMANY, PRISON ACT**

To ensure imprisonment the following identification measures shall be admissible taking finger and palm prints Taking photographs; Ascertaining outer physical characteristics; Taking measurements.

The identification data obtained in this way shall be included on the prisoner's personal file. They may also be kept in registers of the criminal investigation department.

Persons who have been treated for identification purposes in accordance with subsection(1) shall be entitled to demand after their release from imprisonment that the identification data obtained be destroyed as soon as the execution of the judicial decision on which imprisonment was based has been completed. They shall be informed about this right at the latest on their release.

## **7.5 RELEASE**

### **Commentary**

Every prisoner thinks about the day of release from the moment of incarceration. Every prison regime is about preparing the prisoner for that day of release. In order to prepare the prisoner for release, many regimes have 'pre-release' schemes whereby the prisoner is allowed out into society for increasing long periods prior to release so as to make the re-entry more gradual and less of a shock. Such a system is actively encouraged by the UN SMR and EPR.

Half-way houses exist in some countries which do not have the support services necessary to monitor pre-release schemes. Near to the end of the prisoner's sentence, s/he can spend the last few months in a half-way house (usually administered by non prison personnel, such as a NGO or faith group) and learn a trade in a more relaxed environment before their release. In other countries they move into 'open' prisons where the security status is relaxed and prisoners have greater access to society by going out to work or study during the day.

Conditional release schemes also exist by way of reward or incentive to prisoners who have completed a fixed part of their sentence and been assessed as suitable. These prisoners are allowed out for the day, week-end or number of days conditional on their returning to the institution at the end of the leave dates.

Remission of sentence is automatic in some countries and amounts to a percentage (one-third in many) of the sentence imposed. Others, e.g. in Latin America, reward days worked or studied with remission of sentence. However, certain categories of offenders are excluded from eligibility for either remission or conditional release schemes (eg: the 'habitual' offender or person convicted of egregious crimes).

In Germany, specific provision is made for 'release grants' so that ex-prisoners have the means of getting home.

Early release is available in many countries where legislation puts it no social purpose is served by further incarceration, eg: the person is too old, ill, is blind or suffering a terminal condition or permanent incapacitation.

In Malawi, the draftsmen introduced two special 'bursting provisions' to deal with severe overcrowding (below at ss 56 and 57) and for reducing the prison population. If the relevant authority (in the case of Malawi, the Inspectorate of Prisons) is of the opinion that the prison system is so over-crowded that the safety or dignity of prisoners is being affected materially, it may approach the Minister who may release prisoners either conditionally or unconditionally in order to alleviate the situation. Another measure is that an Officer in Charge of a grossly overcrowded prison may approach the judicial authority and ask him/her to consider granting bail to any unconvicted prisoner in order to alleviate the situation.

### **International framework**

#### ***DPPEF***

##### Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

### **SMR**

60(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.

### **Regional framework**

#### **EPR**

Release of prisoners

33.1 All prisoners shall be released without delay when their commitment orders expire, or when a court or other authority orders their release.

33.2 The date and time of the release shall be recorded.

33.3 All prisoners shall have the benefit of arrangements designed to assist them in returning to free society after release.

33.4 On the release of a prisoner all articles and money belonging to the prisoner that were taken into safe custody shall be returned except in so far as there have been authorised withdrawals of money or the authorised sending of any such property out of the institution, or it has been found necessary to destroy any article on hygienic grounds.

33.5 The prisoner shall sign a receipt for the property returned.

When release is pre-arranged, the prisoner shall be offered a medical examination in accordance with Rule 42 as close as possible to the time of release. Steps must be taken to ensure that on release prisoners are provided, as necessary, with appropriate documents and identification papers, and assisted in finding suitable accommodation and work.

Released prisoners shall also be provided with immediate means of subsistence, be suitably and adequately clothed with regard to the climate and season, and have sufficient means to reach their destination.

35.3 Additional assistance shall be provided to children who are released from prison. Release of sentenced prisoners There shall be a system of prison leave as an integral part of the overall regime for sentenced prisoners.

107.1 Sentenced prisoners shall be assisted in good time prior to release by procedures and special programmes enabling them to make the transition from life in prison to a law-abiding life in the community.

107.2 In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society.

107.3 This aim may be achieved by a pre-release programme in prison or by partial or conditional release under supervision combined with effective social support.

107.4 Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment. Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

##### 45. Placement and release

(1) A sentenced prisoner must be prepared for placement, release and reintegration into society by participating in a pre-release programme.

(2) Where a prisoner is to be placed under correctional supervision or to be released on parole there must be compliance with section 55 (3).

(3) At release, sentenced prisoners must be provided with material and financial support as prescribed by regulation.

(4) If the medical officer considers it necessary to establish the health status of a prisoner at his or her release, the prisoner must undergo a health status examination which may include testing for contagious and communicable diseases as defined in the Health Act, 1977 (Act 63 of 1977).

##### 73. Length and form of sentences

(1) Subject to the provisions of this Act-

(a) a sentenced prisoner remains in prison for the full period of sentence; and

(b) a prisoner sentenced to life imprisonment remains in prison for the rest of his or her life.

(2) Any sick prisoner whose sentence has expired but whose release is certified by the medical officer to be likely to result in his or her death or impairment of his or her health or to be a source of infection to others, may be temporarily detained until his or her release is authorised by the medical officer.

(3) A sentenced prisoner must be released from prison and from any form of community corrections imposed in lieu of part of a sentence of imprisonment when the term of imprisonment imposed has expired.

(4) In accordance with the provisions of this Chapter a prisoner may be placed under correctional supervision or on day parole or on parole before the expiration of his or her term of imprisonment.

(5) (a) Subject to the conditions of community corrections set by such Board or court-

(i) a prisoner must be placed under correctional supervision or on day parole or on parole on a date determined by the Correctional Supervision and Parole Board; or

(ii) in the case of a prisoner sentenced to life imprisonment on day parole or on parole on a date to be determined by the court.

(b) Such placement is subject to the prisoner accepting the conditions for placement.

(6) (a) Subject to the provisions of paragraph (b), a prisoner serving a determinate sentence may not be placed on parole until such prisoner has served either the stipulated non-parole period, or if no non-parole period was stipulated, half of the sentence, but parole must be considered whenever a prisoner has served 25 years of a sentence or cumulative sentences.

(b) A person who has been sentenced to-

(i) periodical imprisonment, must be detained periodically in a prison as prescribed by regulation;

(ii) imprisonment for corrective training, may be detained in a prison for a period of two years and may not be placed on parole until he or she has served at least 12 months;

(iii) imprisonment for the prevention of crime, may be detained in a prison for a period of five years and may not be placed on parole until he or she has served at least two years and six months;

(iv) life imprisonment, may not be placed on parole until he or she has served at least 25 years of the sentence but a prisoner on reaching the age of 65 years may be placed on parole if he or she has served at least 15 years of such sentence;

(v) imprisonment contemplated in section 51 or 52 of the Criminal Law Amendment Act, 1997 (Act 105 of 1997), may not be placed on parole unless he or she has served at least four fifths of the term of imprisonment imposed or 25 years, whichever is the shorter, but the court, when imposing imprisonment, may order that the prisoner be considered for placement on parole after he or she has served two thirds of such term.

(c) A person who has been declared an habitual criminal may be detained in a prison for a period of 15 years and may not be placed on parole until after a period of at least seven years.

(7) (a) A person sentenced to imprisonment under section 276 (1) (i) of the Criminal Procedure Act, must serve at least one sixth of his or her sentence before being considered for placement under correctional supervision, unless the court has directed otherwise, but if more than one sentence has been imposed under section 276 (1) (i) of the said Act, the person may not be placed under correctional supervision for a period exceeding five years.

(b) If a person has been sentenced to imprisonment under section 276 (1) (i) of the Criminal Procedure Act, and to imprisonment for a period not exceeding five years as an alternative to a fine the person must serve at least one sixth of the effective sentences before being considered for placement under correctional supervision, unless the court has directed otherwise.

(c) If a person has been sentenced to imprisonment for-

(i) a definite period under section 276 (1) (b) of the Criminal Procedure Act;

(ii) imprisonment under section 276 (1) (i) of the said Act;

(iii) a period not exceeding five years as an alternative to a fine, the person shall serve at least a quarter of the effective sentences imposed or the non-parole period, if any, whichever is the longer before being considered for placement under correctional supervision, unless the court has directed otherwise.

(d) A person sentenced to imprisonment for a definite period in terms of section 276 (1) (b) of the said Act may not be placed under correctional supervision unless such sentence has been converted into correctional supervision in accordance with section 276A (3) of the said Act.

#### ***MALAWI, PRISONS BILL***

46. (1) A sentenced prisoner shall be prepared for placement, and release and reintegration into society by participating in a pre-release programme.

(2) Where a prisoner is to be released conditionally the conditions of release and the consequences of not complying with such conditions must be explained to him.

(3) At release, sentenced prisoners shall be provided with material and financial support as prescribed by regulation.

51. (1) All sentenced prisoners shall be released promptly from prison when they have completed their sentences or when they are to be released conditionally.

(2) Time spent in a mental institution during the course of a sentence shall be regarded as part of the sentence served.

(3) Prison sentences are complete –when the period of the sentence of imprisonment imposed by the Court has elapsed; or when the prisoner has to be released earlier because - the sentence has not been confirmed by the High Court in terms of section 15 of the Criminal Procedure and Evidence Code (Cap. 8:01); remission of sentence has been granted; or the term of imprisonment has been reduced by an unconditional pardon, amnesty or special measure for the reduction of the prison population.

(4) Prisoners shall be released conditionally when such release is ordered in terms of sections 53, 54, 56 and 57 of this Act.

(5) All sentences shall run concurrently unless a court specifies otherwise.

(6) Any prisoner whose sentence expires on Sunday or public holiday shall be released on the day before such Sunday or public holiday.

52.(1) On admission to prison all prisoners shall be granted remission of one third of their sentence.

(2) Such remission may be reduced by a penalty imposed as a result of a disciplinary infringement.

53. (1) In order to contribute to the rehabilitation of prisoners and their reintegration into the community as law-abiding citizens the Inspectorate shall consider the release on conditions of every prisoner sentenced to a term of imprisonment of more than one year who has served – at least one third or twelve years of a determinate sentence; or at least twelve years of a sentence of life imprisonment.

(2) In order to make a decision on the conditional release of a prisoner the Inspectorate may require the Chief Commissioner to provide any information that it requests.

(3) A prisoner who is to be considered for conditional release may make written representations to the Inspectorate.

(4) The Inspectorate may release any prisoner referred to in subsection (1) on conditions of release that shall include a provision that, if a prisoner is convicted of an offence and sentenced to imprisonment without the option of a fine, the conditional release shall be cancelled and the prisoner recalled to prison.

(5) (a) The Inspectorate may, without considering individual cases, order the conditional release, according to general rules that it may establish, of prisoners who were sentenced to terms of imprisonment of one year or less after they have served one third of their sentences.

(b) Where a prisoner sentenced to terms of one year or less does not fall to be released by in terms of rules established by the Inspectorate under subsection (a) the Inspectorate may nevertheless, if it is of the opinion that his case is exceptional, consider his conditional release after he has served one third of his sentence.

54. The Inspectorate may order the release on conditions of any prisoner who, based on a report from the medical officer, is diagnosed as being terminally ill.

55. (1) (a) A person who is released conditionally is not deemed to have completed his sentence, but may be recalled to prison to complete his sentence.

(b) Time spent on conditional release is to be regarded as part of the sentence served even if the prisoner is recalled to prison before the conditional part of the sentence is completed.

(2) If it is brought to the attention of a police officer that a person has infringed his conditions of release, the police officer may arrest such person and bring him before a magistrate within 48 hours or if the period of 48 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry.

(3) If the magistrate finds that the person is in material breach of his conditions of release he may order that such person be recalled to prison.

(4) When a prisoner has been recalled to prison the Officer in Charge shall notify the Inspectorate.

(5) The Inspectorate may at any time consider the conditional release of a prisoner who has been recalled to prison but shall do so within two years of the date on which such prisoner was recalled to prison.

56. (1) If the Inspectorate is of the opinion that the prison system is so overcrowded that the safety, human dignity or physical care of prisoners is being affected materially it may recommend to the Minister that one or more of the following steps are taken - sentenced prisoners who would not otherwise qualify are released conditionally; or the unconditional release dates of any group of sentenced prisoners are advanced.

(2) If the Minister accepts the recommendation of the Inspectorate, he may order the release of prisoners or groups of prisoners either unconditionally or on such conditions as he may set in consultation with the Inspectorate.

(3) If the Chief Commissioner is of the opinion that the conditions referred to in subsection (1) are present, he shall draw the conditions to the attention of the Inspectorate and request it to consider acting in terms of subsection (1).

57. (1) When a prison is so overcrowded that the safety, dignity or physical care of prisoners is being affected materially the Officer in Charge shall approach the Chief Resident Magistrate or the High Court and ask the Magistrate or Court to consider granting bail to any unconvicted prisoners in the prison.

(2) If the Chief Commissioner is of the opinion that the conditions referred to in subsection (1) are present but the Officer in Charge has not acted in terms of it, the Chief Commissioner shall order the Officer in Charge to act in terms of subsection (1).

(3) The Chief Commissioner may take the steps referred in subsection (1) on behalf of an Officer in Charge or order any prison officer more senior in rank than the Officer in Charge to act on behalf of the Officer in Charge.

59. (1) When it appears to the Officer in Charge of a prison that the trial of a prisoner detained on a criminal charge has not begun within a reasonable period he shall approach the Chief Resident Magistrate and ask him to consider granting bail to any such prisoner.

(2) The case of any such prisoner whose trial has not commenced within 90 days of his being committed to prison or who has not been committed for trial in the High Court shall be referred by the Officer in Charge in terms of subsection (1).

60. When a prohibited immigrant is detained under the Immigration Act (Cap. 15:03) for a period of more than 120 days the Officer in Charge shall bring the matter to the attention of the Chief Immigration Officer.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT**

25. (1) The Service shall give, at the appropriate times, to the National Parole Board, provincial governments, provincial parole boards, police, and any body authorized by the Service to supervise offenders, all information under its control that is relevant to release decision-making or to the supervision or surveillance of offenders.

(2) Before the release of an inmate on an unescorted temporary absence, parole or statutory release, the Service shall notify all police forces that have jurisdiction at the destination of the inmate if that destination is known.

(3) Where the Service has reasonable grounds to believe that an inmate who is about to be released by reason of the expiration of the sentence will, on release, pose a threat to any person, the Service shall, prior to the release and on a timely

basis, take all reasonable steps to give the police all information under its control that is relevant to that perceived threat.

84. Where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community

- (a) adequate notice of the inmate's parole application; and
- (b) an opportunity to propose a plan for the inmate's release to, and integration into, the aboriginal community.

84.1 Where an offender who is required to be supervised by a long-term supervision order has expressed an interest in being supervised in an aboriginal community, the Service shall, if the offender consents, give the aboriginal community

- (a) adequate notice of the order; and
- (b) an opportunity to propose a plan for the offender's release on supervision, and integration, into the aboriginal community.

#### Purpose of conditional release

100. The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens.

101. The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are

- (a) that the protection of society be the paramount consideration in the determination of any case;
- (b) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender;
- (c) that parole boards enhance their effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of their policies and programs to offenders, victims and the general public;
- (d) that parole boards make the least restrictive determination consistent with the protection of society;
- (e) that parole boards adopt and be guided by appropriate policies and that their members be provided with the training necessary to implement those policies; and
- (f) that offenders be provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.

102. The Board or a provincial parole board may grant parole to an offender if, in its opinion,

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

121. (1) Subject to section 102 and notwithstanding sections 119 to 120.3 or any order made under section 743.6 of the Criminal Code or section 140.4 of the National Defence Act, parole may be granted at any time to an offender

- (a) who is terminally ill;
- (b) whose physical or mental health is likely to suffer serious damage if the offender continues to be held in confinement;
- (c) for whom continued confinement would constitute an excessive hardship that was not reasonably foreseeable at the time the offender was sentenced; or

(d) who is the subject of an order of surrender under the Extradition Act and who is to be detained until surrendered. (2) Subsection (1) does not apply to an offender who is

(a) serving a life sentence imposed as a minimum punishment or commuted from a sentence of death; or

(b) serving, in a penitentiary, a sentence for an indeterminate period.

#### **PERU, CODIGO DE EJECUCION PENAL 1991**

#### **PERU, PENITENTIARY CODE 1991**

Artículo 44º.-Redención de pena por el trabajo

El interno redime la pena mediante el trabajo, a razón de un día de pena por dos días de labor efectiva, bajo la dirección y control de la Administración Penitenciaria, salvo lo dispuesto en el artículo 46º.

*Article 44. Reduction in sentence for work*

*The prisoner can reduce his sentence by working, at a rate of one day of the sentence to two days of labour, under the management and control of the prison administration, except when Article 46 applies.*

Artículo 45º.-Redención de pena por el estudio

El interno que recibe educación en sus diversas modalidades, bajo la dirección del órgano técnico del Establecimiento Penitenciario, redime un día de pena por dos días de estudio, debiendo aprobar la evaluación periódica de los estudios que realiza, salvo lo dispuesto en el artículo 46.

*Article 45. Reduction in sentence for study*

*A prisoner receiving education in a variety of modules, under the direction of the technical tutor of the prison, can redeem one day's sentence in return for two day's study, producing the work he has done within the evaluation period, except when Article 46 applies*

Artículo 46º.-Casos especiales de redención

En los casos de los artículos 129º, 200º, segunda parte, 325º a 332º y 346º del Código Penal, el interno redime la pena mediante el trabajo o la educación a razón de un día de pena por cinco días de labor efectiva o de estudio, en su caso.

*Article 46. Special cases of reduction in sentence*

*In the case of articles, 129, 200, the second part of article 325 to 332 and 346 of the Penal Code, the prisoner can reduce his sentence by means of work and education at a rate of one day of the sentence to 5 days of labour or study.*

Artículo 47º.- Inaplicabilidad

El beneficio de la redención de la pena por el trabajo y la educación, no es acumulable cuando éstos se realizan simultáneamente.

El beneficio de la redención de la pena por el trabajo o la educación no es aplicable a los agentes de los delitos tipificados en los artículos 296º, 297º, 301º, 302º y 319º a 323º del Código Penal.

*Article 47. Not Applicable*

*The benefits of a reduction in sentence through work and education are not cumulative when these activities are carried out simultaneously.*

*The benefits of a reduction in sentence through work and education are not applicable to offenders of crimes laid out in articles 296, 297, 301, 302 and 319 to 323 in the Penal Code*

**ARTICULO 148. LIBERTAD PREPARATORIA.** *En el tratamiento penitenciario, el condenado que no goce de libertad condicional, de acuerdo con las exigencias del sistema progresivo y quien haya descontado las cuatro quintas partes de la pena efectiva, se le podrá conceder la libertad preparatoria para trabajar en fábricas, empresas o con personas de reconocida seriedad y siempre que éstas colaboren con las normas de control establecidas para el efecto.*

*En los mismos términos se concederá a los condenados que puedan continuar sus estudios profesionales en universidades oficialmente reconocidas.*

*El trabajo y el estudio solo podrán realizarse durante el día, debiendo el condenado regresar al centro de reclusión para pernoctar en él. Los días sábados, domingos y festivos, permanecerá en el centro de reclusión.*

*Antes de concederse la libertad preparatoria el Consejo de Disciplina estudiará cuidadosamente al condenado, cerciorándose de su buena conducta anterior por lo menos en un lapso apreciable, de su consagración al trabajo y al estudio y de su claro mejoramiento y del proceso de su readaptación social.*

*La autorización de que trata este artículo, la hará el Consejo de Disciplina, mediante resolución motivada, la cual se enviará al Director del Instituto Nacional Penitenciario y Carcelario para su aprobación.*

*La dirección del respectivo centro de reclusión instituirá un control permanente sobre los condenados que disfruten de este beneficio, bien a través de un oficial de prisiones o del asistente social quien rendirá informes quincenales al respecto.*

#### *Article 148. Preparatory liberty*

*In the prison process a sentenced prisoner that does not enjoy conditional freedom, according to the demands of the progressive system, and who has served four fifths of their sentence, will be eligible for preparatory freedom. They can work in factories, businesses or with people of recognized seriousness, provided that they collaborate with the norms of control established for the effect*

*On the same terms sentenced prisoners will be granted permission to continue their professional studies in an officially recognised university.*

*Work and study can only be carried out during the day, the sentenced prisoner must return to the prison to spend the night there. They will remain in the prison on Saturdays, Sundays and festive days. Before being granted preparatory freedom the Discipline Council will study the prisoner carefully- confirming his previous conduct at least in a considerable space of time, his dedication to work and to study, of his improvements and of the process of his social readjustment.*

*The Disciplinary Council will authorise the application of this article and then send it to the Director of the National Institute of Prisons for its approval.*

*The management of the each prison will establish a permanent control over sentenced prisoners that enjoy this benefit. This will be done through an official of the prison or a social worker who will produce biweekly reports on the issue.*

**ARTICULO 159. SERVICIO POSPENITENCIARIO.** *El servicio pospenitenciario como función del Instituto Nacional Penitenciario y Carcelario buscará la integración del liberado a la familia y a la sociedad.*

#### *Article 159. Post imprisonment service*

*The post imprisonment service is a function of the National Institute for Prisons which strives to integrate the newly freed person with their family and society.*

**ARTICULO 160. CASAS DEL POSPENADO.** *Las casas del pospenado podrán ser organizadas y atendidas por fundaciones, mediante contratos celebrados y controlados por la Dirección del INPEC. Los liberados podrán solicitar o ser enviados a la casa del pospenado de su localidad, siempre y cuando hayan observado conducta ejemplar en el establecimiento de reclusión.*

#### *Article 160. Houses for post offenders*

*Houses for post offenders will be organised and attended to by funds, by means of contracts held and controlled by INPEC management. The newly freed person will be able to request or be sent to one of these houses in their locality, only when exemplary behaviour has been observed by the prison.*

**ARTICULO 161. GASTOS DE TRANSPORTE.** *La dirección de los centros de reclusión dispondrán de un fondo para proveer gastos de transporte a los reclusos puestos*

*en libertad, para trasladarse al lugar donde fijaren su residencia, dentro del país, siempre y cuando carecieren de medios económicos para afrontar este gasto.*

*Article 161 Transportation expenses*

*The management of the prison will use a fund for providing expenses for transportation for prisoners ready for release who do not have the monetary means to afford this expense. They will be taken to a fixed resident within the country.*

## **EUROPE**

### **GERMANY, PRISON ACT**

#### **15 – Preparation for Release**

In preparation for the release the condition of imprisonment shall be relaxed (Section 11). The prisoner may be transferred to an open institution or unit (Section 10) if this serves to prepare his release. Within three months prior to the release special leave for up to one week may be granted for preparing the release. Section 11(2),13(5) and shall apply mutatis mutandis. Prisoners who are on work-release (section 11 (1) No.1) may be granted special for up to six days per month within nine months prior to their release. Section 11(2),13(5) and 14 shall apply mutatis mutandis. The first sentence of subsection (3) shall not apply.

#### **16 – Date and time of Release**

On the last day of his term of imprisonment the prisoner should be released as early as possible, at all events during the morning. In the event of the term of imprisonment ending on a Saturday or Sunday, an official holiday, or on a day in the period between 22 December and 2 January the prisoner may be released on the working day preceding such day or period, provided that this is reasonable in view of the length of the term served and not barred by any reasons connected with after-care. Release may take place earlier, two days at most, if there are compelling reasons showing that this is material for the prisoner regarding his social integration.

#### **74 – Pre-release Assistance**

In order to prepare his release the prisoner shall be given advice regarding the settlement of his personal, financial and social affairs. Such advice shall include the naming of the agencies competent for social benefits. The prisoner shall be helped to find employment, accommodation and personal assistance for the time after his release.

#### **75 – Release Grant**

Where the prisoner's own funds are not sufficient the institution shall give him a grant for his travel expenses and some tide-over grant and, if necessary, adequate clothing. In assessing the amount of the tide-over grant account shall be taken of the length of imprisonment, the prisoner's personal; engagement in his house money during his term of imprisonment. Section 51(2), second and third sentences, shall apply mutatis mutandis. The tide-over grant may, wholly or in part, be remitted to the person entitled to maintenance. The claim to a grant for travel expenses and the money actually paid for travel expenses shall be exempt from attachment. As to the claim to a tide-over grant and to any cash after payment of such tide-over grant to the prisoner, section 51(4), first and third sentences and (5) shall apply mutatis mutandis

#### **124 – Leave in Preparation for Release**

The Head of the Institution may grant special leave not exceeding six months to a prisoner in order to prepare his release. Section 11 subsection 2 and Section 13 subsection 5 shall apply mutatis mutandis.

The person granted leave shall be given instructions for his leave. He may in particular be ordered to subject himself to a person designated by the institution for his care and to return to the institution for short periods of time. Section 14

subsection 2 shall apply mutatis mutandis. The leave shall be cancelled if this is necessary for the treatment of the prisoner.

#### 134 – Preparation for Release

In order to test and prepare release the conditions of detention may be relaxed and special leave for a period not exceeding one month may be granted. In respect of detainees in a socio-therapeutic institution, section 124 shall remain unaffected.

#### 147 – Facilities for Release

For the purpose preparing for release open facilities shall be attached to closed institutions or separate open institutions shall be established.

## **7.6 TRANSFER**

### **Commentary**

There exists a wide discretion in all the legislation reviewed for transfers of prisoners whether on grounds of order, health, overcrowding, good conduct, the prisoner's own safety or well-being and so on. However, this discretion is not unlimited. The authorities should attempt to act in the best interests of the prisoners and ensure that they are detained in prisons reasonably near to their homes or the place where they will live after release and in prisons where their training and other needs can best be met. Normally the prisoners should be consulted about such transfers (see South Africa below).

In addition steps should be taken to ensure that:

- a) prisoners are not exposed to public view or ridicule; and that the conditions of transfer are dignified and satisfy basic minimum standards, and
- b) relatives are informed of their transfer.

### **International framework**

#### ***SMR***

Removal of prisoners

45. (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

#### ***BPPP***

Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

### **Regional framework**

#### ***EPR***

Transfer of prisoners

32.1 While prisoners are being moved to or from a prison, or to other places such as court or hospital, they shall be exposed to public view as little as possible and proper safeguards shall be adopted to ensure their anonymity.

32.2 The transport of prisoners in conveyances with inadequate ventilation or light, or which would subject them in any way to unnecessary physical hardship or indignity, shall be prohibited. The transport of prisoners shall be carried out at the expense and under the direction of the public authorities.

## **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

43. Location and transfer of prisoners

(1) A sentenced prisoner must be housed at the prison closest to the place where he or she is to reside after release, with due regard to the availability of accommodation and facilities to meet his or her security requirements and with reference to the availability of programmes.

(2) The transfer of a prisoner is subject to the same consideration.

(3) A prisoner must be examined by the registered nurse or medical officer before his or her transfer. Where such a prisoner is being treated by a medical practitioner, he or she must not be transferred until the prisoner has been discharged from the treatment or the transfer has been approved by the medical officer after consultation with the Head of Prison section

(4) The Commissioner may, in consultation with the Director-General of the Department of Welfare, transfer a sentenced child to a reform school as contemplated in the Child Care Act, 1983 (Act 74 of 1983), and from the date of such transfer, the provisions of section 290 of the Criminal Procedure Act will apply.

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES REGULATIONS***

25. Location and transfer of prisoners

(1) (a) When a prisoner is transferred the Head of Prison or a correctional official authorised by him or her must, subject to paragraph (b) convey the reason for the proposed transfer to the prisoner and allow the prisoner to make a representation in this regard, which must be recorded in writing, where after the Head of Prison or the authorised official may take a decision on the proposed transfer.

(b) If the transfer is for security reasons the Head of Prison or the authorized official need not inform the prisoner of the proposed transfer, but the prisoner must be informed of the reasons as soon as practicable after his or her admission to the place where he or she is transferred to and must be allowed the opportunity to make a representation in this regard as well as the opportunity to notify his or her spouse, partner or next of kin in the manner prescribed by Order.

(2) If a prisoner or cared-for child is being transferred his or her medical history file and any prescribed medication must be transferred with him or her.

(3) The correctional official in charge of education and training must be consulted when the transfer of a prisoner, who is a learner and involved in an education or training programme or who is involved in a final examination, is being considered.

#### ***MALAWI, PRISONS BILL***

44. (1) In order to encourage close community and family contacts, a sentenced prisoner shall be housed at the prison closest to the place where he is to live after release.

Subject to the principle in subsection (1) consideration shall also be given to the availability of accommodation and facilities to meet his security requirements and with reference to the availability of programmes.

(3) The transfer of a prisoner is subject to the principles set out in subsections (1) and (2).

- (4) A prisoner shall be examined by a medical officer before transfer.
- (5) Where a prisoner is being treated by a medical practitioner, he shall not be transferred until he has been discharged from the treatment or the transfer has been approved by such medical practitioner or the Chief Commissioner after taking further medical advice has ordered the transfer.

## **AMERICAS**

### **CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT**

26(2) Where a person has been transferred from a penitentiary to a provincial correctional facility, the Commissioner may, at the request of a victim of an offence committed by that person, disclose to the victim the name of the province in which the provincial correctional facility is located, if in the Commissioner's opinion the interest of the victim in such disclosure clearly outweighs any invasion of the person's privacy that could result from the disclosure.

29. The Commissioner may authorize the transfer of a person who is sentenced, transferred or committed to a penitentiary to
- (a) another penitentiary in accordance with the regulations made under paragraph 96(d), subject to section 28; or
  - (b) a provincial correctional facility or hospital in accordance with an agreement entered into under paragraph 16(1)(a) and any applicable regulations.

#### Removal of prisoners

50. 1. When prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
2. The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship or indignity shall be prohibited.
3. The transport of prisoners shall be carried out at the expense of the administration and in accordance with duty authorised regulations.

### **COLOMBIA, CODIGO PENITENCIARIO Y CARCELARIO COLOMBIA, PENITENTIARY CODE**

Artículo 75. Causales De Traslado.

Son causales del traslado, además de las consagradas en el Código de Procedimiento Penal:

1. Cuando así lo requiera el estado de salud, debidamente comprobado por médico oficial.
2. Falta de elementos adecuados para el tratamiento médico.
3. Motivos de orden interno del establecimiento.
4. Estímulo de buena conducta con la aprobación del Consejo de Disciplina
5. Necesidad de descongestión del establecimiento.
6. Cuando sea necesario trasladar al interno a un centro de reclusión que ofrezca mayores condiciones de seguridad.

*Article 75. Reasons for Transfer*

*There are reasons for transfer besides those noted down in the Code of Penal Procedure*

- 1. When the state of a prisoner's health requires a transferal. This must be verified by an official doctor*
- 2. When there is a lack of adequate essentials for medical treatment*
- 3. Used as a measure to ensure internal order of the prison*
- 4. A transferal can be awarded because of good behaviour once approved by the Discipline Council*
- 5. When it is necessary to relieve prison overcrowding*
- 6. When it is necessary to transfer a prisoner to a more secure prison*

## **EUROPE**

### **GERMANY, PRISON ACT**

#### **9 – Transfer to a Socio-therapeutic Institution**

A prisoner may, with his consent, be transferred to a socio-therapeutic institution if the special therapeutic remedies and social aids of that institution appear advisable for his resocialisation. He may be moved back if no successful results can be expected to be achieved there through these remedies and aids. Section 8 and 85 shall remain unaffected.

Such transfer shall require the consent of the Head of the socio-therapeutic institution.

#### **85 – Safe Custody**

A prisoner may be transferred to an institution more suitable for his safe custody if there is increased danger of his escaping or if his behaviour or condition constitutes in any other way a danger to the security of good order of the institution.

#### **153 – Competence for Transfers**

The Land Judicial Administration may reserve the right to determine any transfers, or it may delegate such right to a control agency.

## 7.7 INSPECTIONS

### Commentary

Where people are dependant entirely on those charged with caring for their most basic needs, the potential for abuse is always present.

*'Reports by national and international NGOs, the findings of the Committee for the Prevention of Torture (CPT) and various decisions of the European Court of Human Rights show that, even in countries with well developed and relatively transparent prison systems, independent monitoring of conditions of detention and treatment of prisoners is essential to prevent inhuman and unjust treatment of prisoners and to enhance the quality of detention and of prison management. The establishment of independent national monitoring bodies in addition to a government-run inspectorate should not be seen as an expression of distrust of the quality of governmental control but as an essential additional guarantee for the prevention of maltreatment of prisoners.'*  
(Commentary to EPR, Part VI, Inspection and Monitoring)

Inspections ensure that proper procedures are in place and observed by staff. They also act as a safeguard for prison staff against unjust allegations. Inspections not only expose bad practices, they identify good practices which can be used as a model elsewhere and 'they can also give credit to staff who are doing their work in a professional manner' (Coyle, p. 111).

Inspections are organised internally (i.e. by a prison or line ministry audit team or staff from the central prison administration), judicially (i.e by a visiting magistrate/judge on regular occasions), constitutionally (by a Commission specially appointed for the purpose or an Inspector of Prisons) and/or through lay visitor or independent prison visitor schemes involving members of civil society.

These inspections cover a wide range of topics such as conditions, security, grievances, finance etc.

There are different international and regional inspection mechanisms such as the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Working Group on Arbitrary Detention and UN Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on Prisons and Conditions of Detention in Africa (reporting to the African Commission on Human and Peoples' Rights), the Council of Europe's Committee for the Prevention of Torture. The International Committee of the Red Cross (ICRC) is active in prisons in areas of conflict.

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) also creates 'a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment'. Particularly, it establishes a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture as an international preventive mechanism mandated to visit places of detention defined by protocol. OPCAT also obliges state-parties to 'set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment' as national preventive mechanism.

*'The most independent arrangement is when they [inspection bodies] are appointed by parliament/national assembly and report back to it.'*  
(Coyle, p. 112)

The international standards require that all prisons and places of detention (including military camps and police stations) are subject to a system of inspection, independent of the authority responsible for administering those places. They also confer on prisoners the right of full and confidential access to inspectors.

*'In the member-states of the Council of Europe different models of independent monitoring of conditions of imprisonment can be found. In some countries an ombudsman has powers in this respect; in other states this task is entrusted to judicial authorities, often combined with the power to receive and handle complaints of prisoners. This Rule does not intend to prescribe one single form of monitoring but underlines the need for a high quality of such independent supervision. This presupposes that these monitoring bodies are supported by a qualified staff and have access to independent experts.'*

*It is important that the findings of these bodies, together with any observations that may have been submitted by the management of the prison concerned, are open to the public. Reports of the monitoring bodies may contain proposals and observations concerning existing or draft legislation.*

*Independent monitoring bodies should be encouraged to forward copies of their reports and the responses of the governments concerned to international bodies, authorised to monitor or inspect the prisons such as the European Committee for the Prevention of Torture. This would assist these international bodies to plan their visits and allow them to keep their finger on the pulse of the national penitentiary systems. Because of their limited financial resources and the increase of the number of states to be visited, international bodies must rely increasingly on communication with independent national monitoring bodies.*

*In many penitentiary systems individual prisons are being monitored in some way or another by boards of visitors, consisting of (professionally) interested volunteers recruited from the community. A common approach of these boards is that its members take turns to visit the prison, talk to prisoners about their worries and complaints and, in most cases, try to mediate between the prison management and the prisoners to find solutions for perceived problems.*

*Though it is self evident that the existence of local boards of visitors can be a guarantee for a more intensive and involved monitoring, in small countries with only a few prisons and a small prison population independent monitoring by a national authority could be sufficient.'*  
(Commentary to EPR, Rule 93)

## **International framework**

### **OPCAT**

See full text

### **BPPP**

Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

### **SMR**

#### Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

### **Regional framework**

### **EPR**

#### Part VI

#### Inspection and monitoring

#### Governmental inspection

92. Prisons shall be inspected regularly by a governmental agency in order to assess whether they are administered in accordance with the requirements of national and international law, and the provisions of these rules.

#### Independent monitoring

93.1 The conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public.

93.2 Such independent monitoring body or bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons.

### **National legislation**

### **AFRICA**

#### ***SOUTH AFRICA, CORRECTIONAL SERVICES ACT***

#### 85. Establishment of Judicial Inspectorate

(1) The Judicial Inspectorate of prisons is an independent office under the control of the Inspecting Judge.

(2) The object of the Judicial Inspectorate is to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners in prisons and on conditions in prisons.

#### 86. Inspecting Judge

(1) The President must appoint the Inspecting Judge who must be-

(a) a judge of the High Court who is in active service ...; or

(b) a judge who has been discharged from active service ...

(2) An Inspecting Judge in active service must be seconded from the Supreme Court of Appeal or the High Court and holds office as such during the period of active service or until the Inspecting Judge requests to be released to resume judicial duties.

(3) The Inspecting Judge continues to receive the salary, allowances, benefits and privileges attached to the office of a judge.

#### 87. Appointment of Assistants

(1) From time to time the Inspecting Judge may, after consultation with the Commissioner, appoint one or more person or persons with a legal, medical or

penological background as an Assistant or Assistants to assist in the performance of his or her duties.

(2) Assistants are appointed for a fixed period or until the completion of a specific task.

(3) Assistants have the same powers, functions and duties as the Inspecting Judge, but are under the authority and control of the Inspecting Judge.

(4) The salary and conditions of service of Assistants must be determined by the Inspecting Judge after consultation with the Commissioner and in consultation with the Director-General of the Department of Public Service and Administration.

#### 89. Inspectors and staff

(1) The staff complement of the Judicial Inspectorate must be determined by the Inspecting Judge in consultation with the Commissioner.

(2) The Inspecting Judge must appoint within this complement inspectors and such other staff, including a secretary, as are required.

(3) Such employees are deemed for administrative purposes to be correctional officials seconded to the Judicial Inspectorate, but are under the control and authority of the Inspecting Judge.

(4) The Inspecting Judge has the same powers and duties as the Commissioner for the purposes of administrative management and control of employees under his or her authority and may delegate any such power and assign any such duty to an employee of a post level of Deputy-Director or higher.

(5) The conditions of service of such employees are regulated by this Act, but the salaries and allowances of such employees are regulated by the Public Service Act.

#### 90. Powers, functions and duties of Inspecting Judge

(1) The Inspecting Judge inspects or arranges for the inspection of prisons in order to report on the treatment of prisoners in prisons and on conditions and any corrupt or dishonest practices in prisons.

(2) The Inspecting Judge may only receive and deal with the complaints submitted by the National Council, the Minister, the Commissioner, a Visitors' Committee and, in cases of urgency, an Independent Prison Visitor and may of his or her own volition deal with any complaint.

(3) The Inspecting Judge must submit a report on each inspection to the Minister.

(4) (a) The Inspecting Judge must submit an annual report to the President and the Minister.

(b) The report must be tabled in Parliament by the Minister.

(5) For the purpose of conducting an investigation, the Inspecting Judge may make any enquiry and hold hearings.

(6) At a hearing, sections 3, 4 and 5 of the Commissions Act, 1947 (Act 8 of 1947), apply as if the Inspecting Judge and the secretary of the Judicial Inspectorate were the chairperson and secretary of a Commission, respectively.

(7) The Inspecting Judge may delegate any of his or her functions to inspectors, except where a hearing is to be conducted by the Inspecting Judge.

(8) After consultation with the Director-General of the Department of Public Service and Administration, the Inspecting Judge may appoint persons with appropriate qualifications from outside the Public Service, to assist in any specialised aspect of inspection or investigation, at a rate of remuneration determined in accordance with the Public Service Act.

(9) The Inspecting Judge may make such rules, not inconsistent with this Act, as are considered necessary or expedient for the efficient functioning of the Judicial Inspectorate.

(10) The Inspecting Judge must perform any other function ascribed to him or her in this Act.

#### 91. Expenses of Judicial Inspectorate

The Department is responsible for all expenses of the Judicial Inspectorate.

#### 92. Appointment of Independent Prison Visitors

(1) The Inspecting Judge must as soon as practicable, after publicly calling for nominations and consulting with community organisations, appoint an Independent Prison Visitor for any prison or prisons.

(2) An Independent Prison Visitor holds office for such period as the Inspecting Judge may determine at the time of such appointment.

(3) The Inspecting Judge may at any time, if valid grounds exist, suspend or terminate the service of an Independent Prison Visitor.

#### 93. Powers, functions and duties of Independent Prison Visitors

(1) An Independent Prison Visitor shall deal with the complaints of prisoners by-

(a) regular visits;

(b) interviewing prisoners in private;

(c) recording complaints in an official diary and monitoring the manner in which they have been dealt with; and

(d) discussing complaints with the Head of Prison, or the relevant subordinate correctional official, with a view to resolving the issues internally.

(2) An Independent Prison Visitor, in the exercise and performance of such powers, functions and duties, must be given access to any part of the prison and to any document or record.

(3) The Head of Prison must assist an Independent Prison Visitor in the performance of the assigned powers, functions and duties.

(4) Should the Head of Prison refuse any request from an Independent Prison Visitor relating to the functions and duties of such a Visitor, the dispute must be referred to the Inspecting Judge, whose decision will be final.

(5) An Independent Prison Visitor must report any unresolved complaint to the Visitors' Committee and may, in cases of urgency or in the absence of such a committee, refer such complaint to the Inspecting Judge.

(6) The Inspecting Judge may make rules concerning, or on the appointment of an Independent Prison Visitor, specify, the number of visits to be made to the prison over a stated period of time and the minimum duration of a visit, or any other aspect of the work of an Independent Prison Visitor.

(7) Each Independent Prison Visitor must submit a quarterly report to the Inspecting Judge, which shall include the duration of visits, the number and nature of complaints dealt with, and the number and nature of the complaints referred to the relevant Visitors' Committee.

(8) The Minister may, on the recommendation of the Department of Public Service and Administration and with the concurrence of the Minister of Finance, determine remuneration and allowances to be paid to the Independent Prison Visitors who are not in the full-time service of the State.

#### 94. Visitors' Committee

(1) Where appropriate, the Inspecting Judge may establish a Visitors' Committee for a particular area consisting of the Independent Prison Visitors appointed to prisons in that area.

(2) The Committee must meet at least quarterly.

(3) The functions of the Committee are-

(a) to consider unresolved complaints with a view to their resolution;

(b) to submit to the Inspecting Judge those complaints which the Committee cannot resolve;

(c) to organise a schedule of visits;

(d) to extend and promote the community's interest and involvement in correctional matters; and

(e) to submit minutes of meetings to the Inspecting Judge.

### ***MALAWI, PRISONS BILL***

95. In accordance with section 169 of the Constitution, there shall be an Inspectorate of Prisons in this Act otherwise referred to as the "Inspectorate".

96. In addition to the functions conferred on the Inspectorate under the Constitution, the Inspectorate shall have the following further functions -

to report annually to the National Assembly on –

- the treatment of prisoners;
- conditions in prisons and police holding cells; and
- any corrupt or dishonest practices in the Service;
- to deal with any complaints or requests referred to it under section 20;
- to conduct investigations in prisons and, for that purpose, to make any enquiry and hold hearings;
- to order the release of prisoners on conditions;
- to recommend to the Minister measures to be taken to reduce overcrowding in prisons;

to appoint, after consultations with the community, Independent Prison Visitors for any prison or prisons and to lay down the conditions under which such Visitor or Visitors shall work.

97.(1) The Inspectorate shall determine its own rules of procedure which may include the creation of sub-committees to fulfill some of its functions.

(2) Such sub-committees shall include at least one member of the Inspectorate who is not a co-opted member.

98.(1) The Inspectorate shall, after publicly calling for nominations and consulting with community organisations, appoint an Independent Prison Visitor for every prison.

(2) An Independent Prison Visitor shall hold office for such period as the Inspectorate may determine at the time of such appointment.

(3) The Inspectorate may at any time, if valid grounds exist, suspend or terminate the service of an Independent Prison Visitor.

99. (1) An Independent Prison Visitor shall deal with the complaints and requests of prisoners by visiting prisons regularly; interviewing prisoners in private;

(c) recording complaints and requests in an official diary and monitoring the manner in which they have been dealt with; and

(d) discussing complaints and requests with the Officer in Charge, or the relevant prison officer, with a view to resolving the issues internally.

(2) An Independent Prison Visitor, in the exercise and performance of such powers, functions and duties, shall be given access to any part of the prison and to any document or record.

(3) The Officer in Charge shall assist an Independent Prison Visitor in the performance of the assigned powers, functions and duties.

(4) Should the Officer in Charge refuse any request from an Independent Prison Visitor relating to the functions and duties of such a Visitor, the dispute shall be referred to the Inspectorate, whose decision will be final.

(5) An Independent Prison Visitor shall report any unresolved complaint to the Inspectorate.

(6) The Inspectorate may make rules concerning, or on the appointment of an Independent Prison Visitor, specify, the number of visits to be made to the prison over a stated period of time and the minimum duration of a visit, or any other aspect of the work of an Independent Prison Visitor.

(7) Each Independent Prison Visitor shall submit a quarterly report to the Inspectorate, which shall include the duration of visits, the number and nature of complaints dealt with, and the number and nature of the complaints referred to the Inspectorate.

(8) The Minister may, with the concurrence of the Minister responsible for Finance, determine remuneration and allowances to be paid to the Independent Prison Visitors who are not in the full-time service of the Government.

100(1) The staff complement of the Secretariat shall be determined by the Chairman in consultation with the Secretary for Home Affairs and Internal Security.

(2) The Secretariat shall be independent of the Service and under the supervision of the Chairman of the Inspectorate.

(3) The Ministry is responsible for all expenses of the Inspectorate.

114. (1) Judges of the High Court, Ministers, Members of Parliament and the Principal Secretary for the Ministry responsible for the Service may visit any prison at any time. Magistrates may visit any prison within the area in which they are stationed at any time. Councillors may visit any prison within the area for which they are elected at any time. A judge, magistrate, Member of Parliament or Councillor referred to in subsection (1) shall be allowed access to any part of a prison and any documentary record, and may interview any prisoner and bring any matter to the attention of the Minister, Chief Commissioner, or Inspectorate. The Chief Resident Magistrate shall ensure that each prison in his area of jurisdiction is visited at least once every month by a magistrate. The Chief Commissioner may permit any person to visit a prisoner, a prison or any specific section of a prison for any special or general purpose.

## **AMERICAS**

### ***CANADA, CORRECTIONS AND CONDITIONAL RELEASE ACT***

72. Every member of the House of Commons, every Senator and every judge of a court in Canada has the right to

- (a) enter any penitentiary,
- (b) visit any part of a penitentiary, and
- (c) visit any inmate, with the consent of the inmate, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons.

## 8. APPENDICES

### APPENDIX 1. REFERENCED TEXTS

#### International and regional instruments

ACHPR:	<a href="#">African Charter on Human and Peoples' Rights</a>
BPPP:	<a href="#">Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment</a>
BPRL:	<a href="#">Basic Principles on the Role of Lawyers</a>
BPTP:	<a href="#">Basic Principles for the Treatment of Prisoners</a>
BPUFF:	<a href="#">Basic Principles on the Use of Force and Firearms by Law Enforcement Officials</a>
CAT:	<a href="#">Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</a>
CCLEO:	<a href="#">Code of Conduct for Law Enforcement Officials</a>
CEDAW:	<a href="#">Convention on Elimination of All Forms of Discrimination against Women</a>
CRC:	<a href="#">Convention on the Rights of the Child</a>
DPPEF:	<a href="#">Declaration on the Protection of all Persons from Enforced Disappearance</a>
ECHR:	<a href="#">European Convention for the Protection of Fundamental Rights and Freedoms</a>
ECHR P6:	<a href="#">Protocol 6 to the European Convention for the Protection of Fundamental Rights and Freedoms concerning the Abolition of Death Penalty</a>
EPR:	<a href="#">European Prison Rules</a>
HRC GC21:	<a href="#">UN Human Rights Committee General Comment 21</a>
IACFDP:	<a href="#">Inter-American Convention on Forced Disappearances of Persons</a>
ICCPR:	<a href="#">International Covenant on Civil and Political Rights</a>
JDLS:	<a href="#">United Nations Rules for the Protection of Juveniles Deprived of their Liberty</a>
KDPCA:	<a href="#">Kampala Declaration on Prison Conditions in Africa</a>
MATFP:	<a href="#">Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners</a>
ODAPPRA:	<a href="#">Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reform in Africa</a>
OPCAT:	<a href="#">Optional Protocol to the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment</a>
PEPIEASE:	<a href="#">Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions</a>
PMERHP:	<a href="#">Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</a>
SGP:	<a href="#">Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty</a>
SMR:	<a href="#">Standard Minimum Rules for the Treatment of Prisoners</a>
SMRAJJ:	<a href="#">United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")</a>
UDHR:	<a href="#">Universal Declaration of Human Rights</a>
VCCR:	<a href="#">Vienna Convention on Consular Relations</a>
WHOGHIVAIDS:	<a href="#">WHO Guidelines on HIV Infection and AIDS in Prison</a>

## National legislation

### AFRICA

- Malawi: Prison Bill, 2003  
Prison Regulations, 2003
- Morocco: Loi Relative à l'organisation et au fonctionnement des établissements penitentiaires, 1999  
*Law relating to the organisation and functioning of penitentiary institutions, 1999*
- South Africa: [Correctional Services Act, 1998 amended in 2001](#)  
Correctional Services Regulations, 2002

### AMERICAS

- Canada: [Corrections and Conditional Release Act, 1992](#)  
[Corrections and Conditional Release Regulations, 1992](#)
- Colombia: [Código Penitenciario y Carcelario, 1993 modificada de 1997, 1999 and 2004](#)  
*Penitentiary Code, 1993 amended in 1997, 1999 and 2004*
- Peru: Código de Ejecucion Penal, 1991  
*Penitentiary Code, 1991*

### EUROPE

- Czech Republic: [Imprisonment Act, 1999](#)
- UK: [Prison Act, 1952](#)
- Germany: Act Concerning the Execution of Prisons Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty (Prison Act), 1976 amended in 1989 and 1990
- Netherlands: [Penitentiary Principles Act, 1999](#)

## **APPENDIX 2. FURTHER READING**

Making Standards Work. PRI. 1995 (available online in [English](#), [French](#), [Spanish](#), [Russian](#), [Farsi](#))

Imprisonment Today and Tomorrow. Second edition. Van Zyl Smit and Dünkel, Kluwer, 2001

Treatment of prisoners under International Law. Rodley, Nigel. OUP. 2001

A Human Rights Approach to Prison Management. Handbook for Prison Staff. Coyle, Andrew. International Centre for Prison Studies. 2002 (Available online in [English](#))

Commentary to the Recommendation Rec (2006) 2 of the Committee of Ministers to the Member States of the European Prison Rules (available in [English](#))

### **APPENDIX 3. QUESTIONNAIRE**

*This questionnaire is designed to get readers feedback on the Compendium to inform future editions.*

1. Do you find the Compendium useful?
2. Do you think it meets the demands of drafters on working out or reforming the prison related legislation?
3. Do you find it easy to use the Compendium? If not, how might it be made more user-friendly?
4. How might the layout and structure of the Compendium be improved?
5. Do you have any suggestions for additional content?
6. Do you think there are any important topics related to prisons missing in the Compendium?

If yes, please, list your suggestions here:

7. Are commentaries to each topic helpful? What would you suggest to include/change there?
8. Do you think it is enough to have samples of national legislation in English or it is more useful to include texts in original language as well?
9. If you have examples of national legislation that in your opinion reflect 'positive, realistic and contemporary' prison practices you can send them to Penal Reform International Head office in London at [publications@penalreform.org](mailto:publications@penalreform.org) or by post to the following address: PRI, Unit 450, The Bon Marche Centre, 241-251 Ferndale Road, London SW98BJ, UK. Please, note that for the time being we are able to consider national laws translated into English only.
10. Can you suggest any other 'materials for further reading' to be included in the Compendium?

Please add any other comments and suggestions you may have with regard to the Compendium.

*Thank you!*