

REFORM INSTITUTIONS ACT

Act 35 of 1988 – 1 January 1989

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REFORM INSTITUTIONS ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Reform Institutions Act.

2. Interpretation

In this Act—

“aftercare” means the process of environmental re-adaption and social rehabilitation of a person discharged from an institution;

“aftercare order” means an order placing a person under the supervision of a Probation Officer;

“aggravated prison default” means such act as may be prescribed to be an aggravated prison default;

“Assistant Commissioner” means the Assistant Commissioner of Prisons;

“Board”, in relation to an institution, has the same meaning as in section 53;

“Commissioner” means the Commissioner of Prisons;

“Committee”, in relation to an institution, means a Discharged Persons’ Aid Committee set up under section 57 for that institution;

“Correctional Youth Centre” means an institution for the detention and training of minors as specified in regulations made under this Act;

“Correctional Youth Centre default” means such act as may be prescribed to be a Correctional Youth Centre default;

“Deputy Commissioner” means the Deputy Commissioner of Prisons;

“detainee” means—

- (a) a convicted or an unconvicted person detained in an institution; or
- (b) a person who has been granted leave of absence, permission or parole under Part V of the Act;

“institution” —

- (a) means a reform institution; and
- (b) includes —
 - (i) a prison;
 - (ii) a Correctional Youth Centre;
 - (iii) a Rehabilitation Youth Centre;
 - (iv) the grounds and buildings within the institution enclosure;
 - (v) any grounds or building belonging or attached to the institution and used by detainees or officers; and
 - (vi) all premises of a temporary detention centre;

“medical officer”, in relation to an institution, includes the medical practitioner or the dental surgeon designated under section 31 for that institution;

“member” means a member of a Board or a Committee;

“Minister” means the Minister to whom responsibility for the subject of reform institutions is assigned;

“minor” means a person who is under the age of 18;

“minor prison default” means such act as may be prescribed to be a minor prison default;

“officer” means an officer of the Service and includes —

- (a) a medical officer;
- (b) a prison hospital officer;
- (c) the staff of the Correctional Youth Centre; and
- (d) the staff of the Rehabilitation Youth Centre;

“officer in charge” means an officer designated by the Commissioner under section 4;

“Parole Board” means the Board referred to in section 51;

“prison” means a place or building as specified in regulations made under this Act;

“prison default” means an aggravated prison default or a minor prison default;

“prohibited article” means an article which —

- (a) is not issued under the authority of the Commissioner; or
- (b) may not, except with the Commissioner’s express authority, be introduced into or removed from an institution or be in the possession of a detainee;

“Probation Service” means the Mauritius Probation and Aftercare Service;

“Rehabilitation Youth Centre” means an institution for the detention and training of minors who have been convicted of offences punishable by imprisonment as specified in regulations made under this Act;

“Rehabilitation Youth Centre default” means such act as may be prescribed to be a Rehabilitation Youth Centre default;

“remission” means the remission of part of a sentence under section 50;

“Service” means the Mauritius Prisons Service;

“temporary detention centre” means a temporary detention centre provided under section 13;

“unconvicted detainee” includes—

- (a) a civil debtor;
- (b) a person imprisoned by virtue of an enactment relating to immigration; and
- (c) a person detained under an emergency law;

“young offender” means a minor who has been convicted of an offence punishable by imprisonment.

[S. 2 amended by Act 15 of 1998.]

PART II – THE PRISONS SERVICE

3. The Commissioner

(1) Subject to this Act, the administration of the institutions and the control and supervision of detainees shall be vested in the Commissioner.

(2) Any power exercisable by the Commissioner under this Act may be exercised by a Deputy Commissioner or an Assistant Commissioner and, by direction in writing of the Commissioner, by an officer not below the rank of Assistant Superintendent.

(3) The Commissioner may, subject to this Act, make standing orders and give administrative directions to the officers.

(4) No civil or criminal action shall lie against any officer or any other person in respect of anything done or ordered to be done in good faith under any standing order or direction made or given under this section.

4. The officer in charge

In every institution there shall be an officer in charge designated by the Commissioner, who shall—

- (a) supervise and control all matters in connection with the institution to which he is appointed;
- (b) keep such records as the Commissioner may direct; and

- (c) be responsible to the Commissioner for—
 - (i) the conduct of officers and the treatment and training of detainees under his control; and
 - (ii) the due observance by officers and detainees of this Act and any standing order or direction made or given under this Act.

5. Duties of officers

Every officer shall—

- (a) obey all lawful orders given, verbally or in writing, by the Commissioner; and
- (b) comply with all standing orders and administrative directions issued by the Commissioner.

6. Uniform and equipment

Every officer, other than one who is attached to a Rehabilitation Youth Centre—

- (a) shall wear the uniform of the Service and be provided with a baton; and
- (b) may be provided with such firearm, weapon, ammunition and other equipment as may be necessary for the effective discharge of his duties.

7. Powers and privileges of officers

An officer shall—

- (a) while in charge of a detainee for the purpose of conveying him to or from an institution;
- (b) for the purpose of apprehending a detainee who has escaped from lawful custody;
- (c) for the purpose of preventing the escape of a detainee or an attack on a detainee; and
- (d) in the performance of his duties under this Act,

have all the powers, protection and privileges of a police officer.

8. —

[S. 8 repealed by s. 36 of Act 14 of 2009 w.e.f. 1 July 2009.]

9. Admission to institution

(1) Subject to section 28, an officer may—

- (a) examine anything which is within or being brought into or taken out of an institution; and

- (b) where he has reason to suspect that a person or a vehicle is carrying a prohibited article or any stolen Government property in use in an institution, stop and search the vehicle or person found—
 - (i) within, or going in or out of, an institution;
 - (ii) close to a detainee, whether inside or outside an institution.

(2) The officer in charge or, in his absence, the officer most senior in rank who is on duty in an institution, may—

- (a) refuse to admit to the institution any person, other than a detainee or an officer, who is not willing to be searched; and
- (b) order any person, other than a detainee or officer, who is within an institution and who refuses to be searched to leave the institution and, on the person's refusal, use such force as may be necessary to remove him from the institution.

(3) Where, on stopping and searching a vehicle or person, an officer finds a prohibited article or any stolen Government property in use in an institution, he may, without warrant, arrest the person who appears to have charge of the article or property and hand him over to the Police as soon as practicable.

(4) Any person who fails to comply with an order under subsection (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees.

10. Powers of officers outside institution

(1) Every officer may, without warrant—

- (a) search for and apprehend any detainee who has escaped from custody; and
- (b) enter and search any premises in which he has cause to believe that a detainee who has escaped from custody may be concealed.

(2) No officer shall enter any premises without first disclosing his identity to the occupier of the premises.

(3) Any person who obstructs an officer in the performance of his duties under subsection (1) shall commit an offence.

11. Assistance to officer

(1) An officer in the exercise of his duty may call upon any male adult to assist him to apprehend any person or to convey any person in his charge to an institution or any other place.

(2) Where a person called upon to assist an officer pursuant to subsection (1) fails to do so, he shall commit an offence and shall, on conviction, be liable to pay a fine not exceeding 1,000 rupees.

12. Use of force

(1) No officer shall use force against a detainee except such force as is reasonably necessary—

- (a) in self-defence;
- (b) in the defence of another person;
- (c) to prevent a detainee from escaping;
- (d) to compel obedience to an order which the detainee wilfully refuses to obey; or
- (e) to maintain discipline in the institution.

(2) An officer may, where he has reasonable cause to believe that he cannot otherwise deal with the situation, use any weapon or firearm which has been issued to him against a detainee who is—

- (a) escaping or attempting to escape from an institution or from lawful custody and refuses, when called upon to return;
- (b) engaged with others in riotous behaviour in an institution and refuses to desist when called upon; or
- (c) endangering the life of, or is likely to inflict serious injury on, any person.

13. Temporary detention centres

Where it appears to the Commissioner that—

- (a) the number of detainees in an institution is greater than that which can be conveniently kept there and that it is not convenient to transfer the excess number to another institution; or
- (b) owing to the outbreak of an epidemic within an institution or for any other reason, it is desirable to provide for the temporary shelter or safe custody of any detainee outside the institution,

he may, with the approval of the Minister, make provision for the temporary shelter and safe custody of a detainee in a temporary detention centre.

14. Additional assistance in case of need

Where the number of officers available for duty in an institution is insufficient to secure the good management of the institution, the Commissioner may—

- (a) with the approval of the Public Service Commission, recruit such temporary officers as may be necessary; and
- (b) with the approval of the Commissioner of Police, call for the assistance of such police officers as may be required.

PART III – SENTENCING AND DETENTION

15. Sentencing of young offenders

- (1) Before sentencing a minor, a Court shall ascertain his age and consider—
- (a) the evidence available as to the character and previous conduct of the minor and the circumstances of the offence;
 - (b) whether it is expedient for his reformation that he should undergo a period of training in a Correctional Youth Centre or a Rehabilitation Youth Centre, as the case may be;
 - (c) any report or representation which may be made to it by or on behalf of the Chief Probation Officer in consultation with the Commissioner as to the suitability of the case for treatment in a Correctional Youth Centre or a Rehabilitation Youth Centre; and
 - (d) the state of health and mental condition of the minor, especially with regard to the benefit that he would be likely to derive from instruction and discipline in a Correctional Youth Centre or a Rehabilitation Youth Centre.

(2) Subject to subsection (3), where the Court is satisfied that it is expedient for the reformation of a minor that he should undergo training in a Correctional Youth Centre or a Rehabilitation Youth Centre, it may direct that the minor be sent to that institution as appropriate.

(3) Subject to this Act, any sentence of training in a Correctional Youth Centre or a Rehabilitation Youth Centre shall—

- (a) be for a minimum period of 2 years; and
- (b) include supervision under section 49.

[S. 15 amended by Act 15 of 1998.]

16. Misconduct of detainee

(1) Where the Commissioner considers that a detainee in a Correctional Youth Centre is of such a character, or has conducted himself in such manner, as to render his detention in such centre no longer expedient, he may move the Court to order the detainee to undergo a term of imprisonment equivalent to the residue of his detention.

(2) The Court before which a motion is made under subsection (1) shall, upon being satisfied that the detainee deserves to be imprisoned, order that he undergoes a term of imprisonment which shall be equivalent to the residue of his detention.

17. Offence committed by detainee

Subject to this Act, where a Court convicts a person of an offence committed while he was a detainee in a Correctional Youth Centre and sentences him to a term of imprisonment, the Court shall—

- (a) in assessing the length of the term, take into consideration the period of that person's detention which remained unexpired at the time of the conviction; and

- (b) cancel the order committing the detainee to the Correctional Youth Centre.

18. Detainee in custody of officer in charge

(1) Every detainee shall be deemed to be in the lawful custody of the Commissioner from the time an order is made for his detention in any institution until his discharge by due course of law.

(2) Every officer in charge shall keep and detain every person duly committed to his custody according to the terms of the order by which the person has been committed or until that person is discharged by due course of law.

(3) A detainee who is being moved from one institution to another or to a Court shall, while outside the institution, be kept in the custody of the officer directed to convey him or any police officer who may be entrusted with the duty of escorting him.

(4) A detainee shall be deemed to be in the lawful custody of any person who has lawful charge of him during any period of time and for any purpose.

19. Unconvicted detainee

(1) Every person who is charged with an offence and remanded to an institution shall be delivered to the officer in charge together with a warrant of committal and the officer in charge shall deliver that person into custody in time for him to be brought before a Court at such time as the Court may order.

(2) Every person arrested under a warrant or by order of a Court may, where the Court is not sitting, be delivered to an officer in charge for custody, and the officer in charge shall deliver that person into police custody in time for him to be brought before the Court at its next sitting.

(3) A Probation Officer may be authorised to visit and interview a remanded detainee within sight but not within the hearing of an officer in any institution for the purpose of carrying out any enquiry either for the Court or for any other official cause.

20. Presence of detainee in Court

(1) Where the presence of a detainee is required in a Court, the Court may issue an order addressed to the officer in charge requiring him to produce the detainee before the Court at the time and place specified in the order, and the officer in charge shall deliver that detainee into police custody in time for him to be brought before the Court which issued the order.

(2) Every detainee who is on remand or committal for trial and whose attendance is required in a Court shall—

- (a) for that purpose be taken into police custody at the institution to which he has been committed; and
- (b) remain under police custody until returned to the institution or discharged by the Court.

21. Transfer of detainee

(1) Notwithstanding anything in any judgment, warrant or order, a detainee may, at the discretion of the Commissioner, be confined in or removed to any institution of the type to which he was committed.

(2) Where, in the opinion of the Commissioner, it is necessary or desirable for a detainee to be transferred between islands within Mauritius—

- (a) an officer or a police officer shall accompany the detainee on the ship or aeroplane in which the detainee is to be transferred;
- (b) the detainee shall be deemed to be in the lawful custody of the officer or police officer accompanying him; and
- (c) the captain of the ship or aeroplane may take such reasonable steps as he thinks fit to retain or control the detainee during the journey.

PART IV – TREATMENT OF DETAINEES

22. Detainee to comply with discipline and Act

Every detainee shall, during the whole term of his detention, whether or not he is in an institution, comply with institution discipline and this Act or any regulations made under it.

23. Particulars of detainee

(1) Every detainee shall within 24 hours of his admission to an institution—

- (a) have his name, nationality, age, weight and any distinguishing mark or feature recorded;
- (b) subject to section 28, be searched and have every prohibited article taken from him;
- (c) take a bath or shower;
- (d) be examined by a medical officer who shall record the state of health of the detainee; and
- (e) be provided in the recreation room or association yard with sufficient information as to—
 - (i) the disciplinary requirements of the institution;
 - (ii) earnings and privileges; and
 - (iii) the proper methods of making complaints as to food, clothing, bedding and other necessities.

(2) A search under subsection (1) (b) shall be conducted in such manner, consistent with respect for the person, as the necessity for discovering prohibited articles requires.

(3) An officer in charge may cause photographs, measurements, footprints or casts of footprints, palm prints or fingerprints of any detainee to be taken by an officer or any other person authorised by the Commissioner.

(4) The officer in charge shall forward to the Commissioner of Police copies of fingerprints and photographs taken under subsection (3).

24. Property of detainee

(1) Subject to this section, property belonging to a detainee and which he is allowed to retain shall be placed in the custody of the officer in charge and the officer shall keep an inventory signed by him and the detainee.

(2) Any article of a perishable nature or which is likely to spread disease in an institution shall, if found in the possession of a detainee on his admission, with the approval of the Commissioner, be destroyed.

(3) Where the clothes of a detainee are so old, worn out or dirty as to be useless, the officer in charge may, with the approval of the Commissioner, order them to be destroyed.

25. Clothing and bedding

(1) Every convicted detainee shall—

- (a) be supplied with and wear such clothing as may be directed by the officer in charge; and
- (b) be supplied with bedding adequate for warmth and health.

(2) Additional or alternative clothing and bedding shall, on the recommendation of a medical officer or by order of the officer in charge, be supplied to a convicted or unconvicted detainee.

26. Maintenance from private resources

(1) The Commissioner may authorise an unconvicted detainee to—

- (a) bring in or purchase food or clothing from his private resources instead of receiving the diet or clothing provided by the Service; and
- (b) receive cigarettes and toilet articles from his private resources.

(2) (a) No food, clothing or other article belonging to an unconvicted detainee shall be given, hired, loaned or sold to any other detainee.

(b) Where a detainee contravenes paragraph (a), the Commissioner may withdraw any authorisation granted under subsection (1).

(3) Where an unconvicted detainee does not provide himself with food or clothing, or where the food or clothing provided under subsection (1) is, in the opinion of the officer in charge, unsatisfactory or prejudicial to good order and discipline, the detainee shall receive the food and clothing prescribed for convicted detainees.

27. Accommodation of detainee

(1) Male and female detainees shall be confined in separate institutions, or in separate parts of an institution in such manner as to prevent, as far as practicable, their seeing or communicating with each other.

(2) The infant child of a female detainee may be received into an institution with his mother and may be supplied with clothing and necessaries at public expense until—

- (a) he attains the age of 5 years; or
- (b) arrangements for his proper care outside the institution are made,

whichever is the earlier.

[S. 27 amended by Act 15 of 1998.]

28. Search of detainee

No person shall be searched in an institution otherwise than by a person of the same sex.

29. Complaint by detainee

(1) Every detainee may make a complaint to—

- (a) a member;
- (b) the Commissioner; or
- (c) such classes of officers as the Commissioner may designate to hear complaints.

(2) An officer to whom a complaint is made shall—

- (a) make arrangements to see the detainee concerned at the first convenient opportunity; and
- (b) record the complaint of the detainee and submit it to the Commissioner for consideration.

(3) The officer in charge shall, at a convenient hour on every day, other than a Sunday or other public holiday, see every detainee who requests to see him.

30. Petition to President

(1) Subject to subsection (2), an adult detainee may petition the President.

(2) No detainee shall petition the President—

- (a) on the same subject more than once in any period of 6 months; or
- (b) regarding any appeal against conviction or sentence which has not yet been determined.

(3) Where the petition of a detainee includes any complaint about the Service—

- (a) the Commissioner may submit his observations, if any, on the subject matter of the complaint; and

- (b) the President may order an enquiry to be made into the complaint.

[S. 30 amended by Act 48 of 1991.]

31. Medical officers

(1) Such medical officers as may be designated by the Permanent Secretary of the Ministry responsible for the subject of health shall be responsible for the health of detainees.

(2) A medical officer—

- (a) shall cause every detainee to be examined at such time as may be prescribed;
- (b) may, with or without the detainee's consent, take, cause or direct the taking of such action as he thinks fit in the interests of the health of a detainee; and
- (c) shall keep in such form as may be prescribed—
 - (i) a case book showing the name, disease, ailment or complaint and treatment of every detainee who is sick, ill or injured;
 - (ii) a journal containing his comments on the state of sanitation and hygiene of the institution and detainees;
 - (iii) a case book giving full details of the medical history, treatment and cause of death of every detainee who dies in the institution; and
 - (iv) a record of the nature and quality of the food of the detainee both before and after cooking.

(3) The Commissioner shall, following the written report of a medical officer, take such steps as may be necessary for improving the state of hygiene of an institution.

32. Removal of sick detainee

(1) A medical officer, or in case of emergency, the officer in charge, may, where there is no suitable accommodation in the institution, arrange for the removal to hospital of a detainee who is ill or injured.

(2) Except where the Commissioner has taken special security measures under section 34, the person in charge of a hospital to which a detainee is removed under subsection (1) and every other person working in the hospital shall take reasonable precautions to prevent the escape of the detainee.

(3) Where the person in charge of a hospital to which a detainee has been removed under subsection (1) considers that the health of the detainee no longer requires treatment in the hospital, he shall notify the Commissioner who shall, where the detainee is still liable to detention, cause him to be returned to the appropriate institution.

33. Mental illness of detainee

(1) Where a medical officer is of the opinion that a detainee is mentally ill, he shall inform the Commissioner who shall, unless he has reasonable ground for not so acting, by written direction, arrange for the detainee to be removed to a mental hospital for detention.

(2) Notwithstanding the Mental Health Care Act, an order made under subsection (1) shall be sufficient authority for the reception of the detainee and his detention in a mental hospital until removed or discharged.

(3) Except where the Commissioner has taken special security measures under section 34, the person in charge of a hospital to which a detainee is removed under subsection (1) and every other person working in the hospital shall take reasonable precautions to prevent the escape of the detainee.

(4) Where the person in charge of a mental hospital to which a detainee has been removed under subsection (1) considers that the detainee is no longer mentally ill, he shall notify the Commissioner who shall, where the detainee is still liable to be detained, cause him to be returned to the appropriate institution.

34. Special security measures

(1) Where the Commissioner considers it desirable to take special measures for securing a detainee who is under treatment in a hospital or mental hospital, he may deliver the detainee into the charge of a number of persons, not being less than 2, one of whom shall remain with the detainee during such time as may be determined by the Commissioner.

(2) Every person receiving charge of a detainee under subsection (1) may do everything reasonably necessary to prevent him from escaping and shall be answerable for his safe custody until—

- (a) he is handed over to the officer in charge on his discharge from hospital or mental hospital; or
- (b) the expiry of his period of detention,

whichever is the earlier.

35. Employment of detainee

(1) (a) Subject to this section and Part V, every sentence of detention shall subject the detainee to detention and performance of such work as may be directed by the officer in charge during the term of the sentence.

(b) Detainees in a Rehabilitation Youth Centre may attend classes in ordinary education.

(2) Where a medical officer finds that a detainee is physically unfit, such detainee shall not be required to perform—

- (a) any labour; or
- (b) any labour other than light labour.

(3) A convicted detainee may, while serving his sentence, participate in such earning schemes as may be approved by the Minister.

36. Punishment of detainee

Except as is provided for in this Act, no detainee shall be subjected to punishment or privation of any kind.

37. Punishment for prison defaults

(1) Where the Commissioner or, in Rodrigues, the Island Chief Executive, after due enquiry made by him, finds a detainee guilty of a minor prison default, he may punish the detainee by giving him a warning or by ordering—

- (a) his confinement in a separate cell for a period not exceeding 2 weeks;
- (b) the forfeiture of his privileges for a period not exceeding 3 months;
- (c) the forfeiture of his earnings for a period not exceeding 3 months;
- (d) a loss of remission for a period not exceeding 2 months; or
- (e) a combination of any of the punishments specified in paragraphs (a) to (d).

(2) Where an officer in charge of a prison or, in Rodrigues, the Island Chief Executive, considers after due enquiry made by him, that there is a *prima facie* case of aggravated prison default against the detainee, he shall refer the case to the Commissioner with—

- (a) a copy of the charge; and
- (b) the record of all the evidence given in the case, including that of the detainee.

(3) On receipt of a record referred to him under subsection (2), the Commissioner may, after due inquiry—

- (a) require the officer in charge to take further evidence and re-submit the matter; and
- (b) refer the matter together with any record to the Board for such decision as the Board thinks fit.

(4) Subject to subsection (5) and to section 43, where a matter has been referred to the Board under subsection (3) and the Board, after such further enquiry it thinks necessary, finds a detainee guilty of an aggravated prison default, the Board may punish the detainee by ordering—

- (a) his confinement in a separate cell for a period not exceeding 30 days;
- (b) a loss of remission for a period not exceeding 12 months;
- (c) a reduction in his stage or postponement of promotion in his stage for a period not exceeding 6 months;

- (d) forfeiture of his privileges for a period not exceeding 6 months;
- (e) forfeiture of his earnings for a period not exceeding 6 months; or
- (f) a combination of any of the punishments specified in paragraphs (a) to (e).

(5) Where the Board finds that the evidence discloses only a minor prison default, it may inflict any of the punishments authorised under subsection (1).

38. Punishment of minor

(1) Subject to sections 42 and 43, the officer in charge of a Rehabilitation Youth Centre may punish a minor found after due inquiry by him to be guilty of a Rehabilitation Youth Centre default by ordering that the detainee shall—

- (a) be deprived of either or both of—
 - (i) the privilege of playing games;
 - (ii) the privilege of pocket money;
- (b) suffer loss of grade for a period not exceeding one month;
- (c) be confined in a separate room for a period not exceeding 3 days; or
- (d) suffer a combination of any of the punishments specified in paragraphs (a) to (c).

(2) Where the officer in charge is of the opinion that in the circumstances of the case the powers of punishment he possesses are inadequate, he shall refer the case to the Commissioner.

(3) Where the officer in charge refers a case to the Commissioner under subsection (2), he shall forward to the latter—

- (a) a copy of the charge;
- (b) the record of all the evidence given in the case;
- (c) the reasons why he has found the detainee guilty; and
- (d) any representation the minor wishes to make to the Commissioner in regard to punishment.

(4) Subject to section 43, the Commissioner may punish a minor found after due inquiry by him to be guilty of a Rehabilitation Youth Centre default by ordering—

- (a) any punishment authorised under subsection (1);
- (b) confinement in a separate room for a period not exceeding 14 days; or
- (c) loss of grade for a period not exceeding 3 months; or
- (d) a combination of any of the punishments specified in paragraphs (a) to (c).

[S. 38 amended by Act 15 of 1998.]

39. Correctional Youth Centre defaults

(1) Subject to sections 16 and 43, the officer in charge of a Correctional Youth Centre may punish any young offender found after due inquiry by him to be guilty of a Correctional Youth Centre default by ordering—

- (a) confinement in a separate room for a period not exceeding 7 days;
- (b) reduction in stage or a deferment of promotion in stage for a period not exceeding one month;
- (c) forfeiture of privileges for a period not exceeding 2 months;
- (d) forfeiture of earnings for a period not exceeding 2 months; or
- (e) a combination of any of the punishments specified in paragraphs (a) to (d).

(2) On finding a young offender guilty of a Correctional Youth Centre default, the officer in charge may, where he is of the opinion that in the circumstances of the case, the powers of punishment he possesses are inadequate, refer the case to the Commissioner.

(3) Where the officer in charge refers a case to the Commissioner under subsection (2), he shall forward to the Commissioner—

- (a) a copy of the charge;
- (b) the record of all the evidence given in the case;
- (c) the reasons why he has found the young offender guilty; and
- (d) any representation the young offender wishes to make to the Commissioner in regard to punishment.

(4) Subject to sections 16 and 43, the Commissioner may—

- (a) punish a young offender found after due enquiry by him to be guilty of a Correctional Youth Centre default by—
 - (i) any punishment authorised under subsection (1);
 - (ii) confinement in a separate room for not more than 15 days;
 - (iii) a reduction in stage or a deferment of promotion in stage for a period not exceeding 3 months; or
 - (iv) a combination of any of the punishments specified in subparagraphs (i) to (iii);
- (b) refer the record to the Board.

40. Meaning of “stage”

In sections 37, 38 and 39, “stage” means the level of training reached by a detainee.

41. Segregation

(1) Where it appears to the officer in charge that for the good order and discipline of the institution it is desirable for a detainee to be segregated and not to work or be associated with other detainees, he may order accordingly for such period as he thinks fit.

(2) The officer in charge may order any refractory or violent detainee to be temporarily confined in a separate or special room.

(3) Where it appears to the officer in charge that it is desirable in the interest of security to place a prisoner under special watch, he may order accordingly for such period as he thinks fit.

42. Restraint of detainee

(1) Where it is necessary to do so to prevent a detainee from escaping or to prevent him from doing injury to himself or to another person, the detainee shall be placed in handcuffs or under restraint.

(2) No means of restraint other than those approved by the Commissioner shall be used.

(3) An order to place a detainee under restraint shall—

- (a) be made in case of necessity;
- (b) be made by the most senior officer present;
- (c) be immediately notified to a medical officer; and
- (d) not, without the permission of the Commissioner, consist of confinement for more than 48 hours.

(4) No detainee shall be kept under restraint unless a medical officer certifies that the restraint will not injure the detainee's health.

43. Register of punishment

(1) Every officer in charge shall keep a register in which he shall enter a record of every punishment imposed on a detainee, showing in respect of each detainee punished—

- (a) his name;
- (b) the nature of his default; and
- (c) the extent of the punishment.

(2) The register shall—

- (a) be in such form as may be prescribed; and
- (b) be open for inspection by the members of the Board.

44. Religious instruction and moral advice

(1) Subject to subsection (2), the Minister may designate such persons as he thinks fit to—

- (a) give religious instruction and training to detainees who so consent or whose responsible parties consent to such religious instruction and training being given;
- (b) give moral advice to detainees; or
- (c) perform such religious rites as may be necessary,

within an institution.

(2) No detainee shall be required to follow religious instruction and training given by a priest who does not belong to his religious denomination.

(3) No religious rite shall be performed with respect to a detainee by a priest who does not belong to the religious denomination of the detainee.

(4) The Commissioner may, with the approval of the Minister, invite a fit and proper person to give a lecture on morals, civic duties and social life to such groups of detainees as he may determine.

[S. 44 amended by Act 15 of 1998.]

45. Report to Minister

The Commissioner shall report to the Minister on the general condition of every institution and of detainees at such time and in such manner as the Minister may determine.

PART V – LEAVE OF ABSENCE, REMISSION, PAROLE AND DISCHARGE

46. Leave of absence

(1) A Magistrate may, by written direction, authorise a detainee to leave an institution under escort for the purpose of declaring the birth of his child.

(2) Where the Commissioner is satisfied that a spouse, parent, grandparent, child, brother or sister of a detainee has died, he may permit the detainee to leave the institution in ordinary clothes and under escort, for the purpose of viewing the body before burial or cremation.

(3) The officer in charge of a Correctional Youth Centre or a Rehabilitation Youth Centre may—

- (a) grant leave of absence to a detainee for such period and on such conditions as he thinks fit; and
- (b) at any time revoke the leave of absence for breach of any of its conditions and direct the detainee to whom the leave was granted to return to the centre.

(4) The Commissioner, or the officer in charge of a Correctional Youth Centre or a Rehabilitation Youth Centre, may authorise a detainee to proceed, under escort, to such place or premises as are specified in a request under the hand of the Commissioner for Drugs, being a place or premises at or upon which he intends to carry out a search in the detainee's presence pursuant to an order made under section 45A (1) of the Dangerous Drugs Act.

[S. 46 amended by s. 9 of Act 29 of 2003 w.e.f. 1 September 2003.]

47. Aftercare order

(1) (a) The Commissioner may permit a detainee in a Correctional Youth Centre or a Rehabilitation Youth Centre who has served a minimum of 6 months, to live under the charge of a suitable and willing person.

(b) A detainee who is released under subsection (1) shall be deemed to be on aftercare and be guided and advised by a Probation Officer.

(2) Aftercare granted under subsection (1) shall, unless revoked under section 48, remain in force until the expiry of the detainee's sentence.

(3) The time during which a detainee is absent from a Correctional Youth Centre or a Rehabilitation Youth Centre on aftercare shall be deemed to be part of his detention in the Correctional Youth Centre or Rehabilitation Youth Centre.

48. Revocation of aftercare order

An aftercare order granted under section 47 may be revoked by the Commissioner—

- (a) where the person to whom it was granted has not complied with a condition of the aftercare order or any instruction given by a Probation Officer; or
- (b) where revocation of the aftercare order appears to be in the best interest of the person to whom it was granted.

49. Supervision after release on aftercare

(1) Subject to subsection (5), every minor who is released on aftercare shall, on release, remain on aftercare for a period of one year or the balance of his sentence, whichever is the longer, under the supervision of a Probation Officer.

(2) Every person who is under supervision under subsection (1) shall comply with the conditions contained in the aftercare order and any other instructions given by the Probation Officer with particular reference to his place of residence, occupation, activities or conduct.

(3) A person on aftercare who is recalled shall be detained for a period not exceeding 3 months unless his sentence terminates earlier.

(4) Subject to subsection (5), where a person is detained under subsection (3) he shall, on completion of the period of detention, be released and remain under supervision on the conditions of a fresh aftercare order until the expiry of the period of supervision.

(5) The Commissioner may decide at any time to cancel an aftercare order where in his opinion supervision is no longer necessary or desirable.

[S. 49 amended by Act 15 of 1998.]

50. Remission

(1) Subject to this section and section 51, a person sentenced to imprisonment for a period exceeding 31 days shall be eligible for discharge after having served two thirds of the period of sentence.

(2) No person sentenced to detention for a period exceeding 31 days shall serve less than 31 days of his sentence.

- (3) The Commissioner may, where he thinks fit—
- (a) reward by additional remission any prisoner who has worked extra hours or on a Sunday or other public holiday;
 - (b) restore remission lost under section 37, otherwise than in derogation of an order of the Board, to an extent not exceeding two thirds of the lost remission.

51. Release on parole

(1) There shall be a Parole Board which shall be composed of such persons, not exceeding 10 in number, as the Minister may appoint.

(2) The Minister may, on the recommendation of the Parole Board—

- (a) release on parole a convicted detainee who has served not less than one half of his sentence or at least 16 months thereof, whichever expires the later;
- (b) recall a detainee released on parole where—
 - (i) the detainee has not complied with a condition of parole; or
 - (ii) revocation of parole appears to the Parole Board to be in the interest of the detainee.

(3) Where a detainee released on parole is recalled under subsection (2) and he voluntarily returns to an institution, he may be detained for the remainder of the parole period.

(4) Every detainee released on parole, who upon being recalled under subsection (2), fails to return to an institution, may be arrested without warrant and shall be detained for the remainder of the parole period, unless he satisfies the Parole Board that his failure to return was due to good cause or sufficient justification.

(5) The supervision of detainees released on parole shall be vested in the Probation Service.

51A. No remission or parole

Sections 50 and 51 shall not apply to a person who has been convicted of—

- (a) an offence under any of the provisions of the Dangerous Drugs Act other than section 34; or
- (b) a sexual offence on a child or a handicapped person.

[S. 51A amended by Act 29 of 1994; Act 30 of 1994; s. 4 of Act 20 of 2004.]

52. Discharge of detainee

(1) The officer in charge shall be responsible for the release of a detainee immediately on his becoming entitled to release.

(2) A detainee shall be released before noon on the day of release or, where that day is a Sunday or other public holiday, on the preceding day.

- (3) Subject to subsection (4), the officer in charge shall—
- (a) return to a detainee who is released all articles of clothing and property belonging to him which have not been destroyed under section 24;
 - (b) in the case of a detainee who has been detained for a period of not less than 3 years, give him clothing of a suitable kind.

(4) Where—

- (a) a detainee is discharged and fails to claim his property within 6 months of his discharge; or
- (b) a detainee dies in the institution and his personal representative or a close relative does not claim his property within 6 months of his death,

the officer in charge may, with the approval of the Minister, destroy the property or sell it and devote the proceeds to the welfare of other detainees.

(5) Where a detainee is discharged from an institution, the Commissioner shall provide him with free transport or sufficient money to enable him to return to his place of residence.

(6) Where the property of a deceased detainee is returned to his close relative, a receipt signed by the relative shall constitute a sufficient discharge against any claim brought by any other person.

PART VI – BOARDS OF VISITORS AND DISCHARGED PERSONS' AID COMMITTEES

53. Board of Visitors

(1) (a) Subject to paragraph (b), there shall be established for every institution such Boards of Visitors as may be necessary.

(b) A Board may be assigned to 2 or more institutions.

(2) (a) A Board assigned to a prison shall be composed of not less than 3 Magistrates, a law officer and 4 other members, 3 of whom shall not hold public office.

(b) The Chairperson of the Board shall be a senior Magistrate and the Court Officer attached to the Magistrate shall act as Secretary.

(3) (a) A Board assigned to a Correctional Youth Centre or a Rehabilitation Youth Centre shall be composed of not less than 8 members.

(b) The Chairperson of the Board shall be designated by the Minister.

(4) The members shall be appointed annually by the Minister.

(5) Any person may be a member of more than one Board.

(6) In Rodrigues, the Board shall consist of the Visiting Magistrate who shall be the Chairperson, the Island Chief Executive and the Superintending Medical and Health Officer.

54. Functions of Board of Visitors

(1) A Board of Visitors shall—

- (a) meet at least once every month and on such other occasions as the Minister may direct;
- (b) enquire into the condition of detention of the detainees;
- (c) —
- (d) inquire into and report to the Minister on—
 - (i) any abuse within an institution;
 - (ii) any repair which may be urgently required in an institution; or
 - (iii) any matter which it may consider expedient; and
- (e) do such acts as it may be required to do by the Minister.

(2) At least one member shall visit the institution every month.

(3) A member may inspect—

- (a) any part of the institution;
- (b) the detainees at work, in hospital or in separate or other rooms or wards;
- (c) all the books, journals and records relating to detainees.

(4) Subject to subsection (5), no person shall accompany a member during a visit of inspection.

(5) The officer in charge, or in his absence the officer most senior in rank, shall—

- (a) where a detainee wishes to see a member during the visit, inform a member of such wish;
- (b) afford a member every assistance in his visit; and
- (c) depute an officer to accompany him.

(6) A Board may ask the Commissioner or the medical officer any information or report but shall not otherwise interfere in the management of an institution or issue orders to officers.

[S. 54 amended by s. 12 (a) of Act 21 of 2012 w.e.f. 1 July 2013.]

55. Board minute book

(1) There shall be kept in every institution a Board minute book in which a visiting member shall—

- (a) record his visit and any suggestion or remark which he may have to make;
- (b) enter any irregularity in the administration of the institution which he discovers or any improvement or repair which he thinks necessary for the institution; and
- (c) register the name and number of any detainee who has complained to him and the nature of his complaint.

(2) The officer in charge shall forward to the Commissioner—

- (a) a copy of the entries made in the minute book by a member; and
- (b) any comment which he may have to make on the entry made by a member.

56. Member's report

(1) Where a visiting member makes a report, it shall be communicated to every member of the Board who shall be free to address to the Commissioner any comment he may wish to make on the report.

(2) Any comment made under subsection (1) shall be reported in writing to the Commissioner.

57. Discharged Persons' Aid Committee

(1) (a) There shall be established a Discharged Persons' Aid Committee consisting of such members as may be appointed annually by the Minister.

(b) A Probation Officer not below the grade of a Senior Probation Officer shall act as Secretary.

(2) The Committee shall—

(a) interview every detainee, before his discharge, concerning his plans and prospects; and

(b) use its best endeavours—

(i) to produce employment for persons who have been discharged;

(ii) to persuade a person who has been discharged to live by honest means and provide him with a loan or a reasonable sum of money to that end if the Committee so decides; and

(iii) to ensure that a person who has been discharged is completely rehabilitated and gets all the assistance he needs to return to civilian life and settle therein as a civilised person.

(3) The Accountant-General shall at the beginning of each financial year pay to the Committee out of the Consolidated Fund such sum as may have been approved by the Assembly for the running of its business.

(4) The Committee shall at the beginning of every financial year submit to the Minister a report on its activities and financial transactions during the previous year.

(5) A report made under subsection (4) shall be laid before the Assembly.

[S. 57 amended by Act 48 of 1991.]

58. Appointment of Board or Committee

(1) The Minister shall appoint a Chairperson for each Board or Committee.

(2) Four members of a Board or Committee shall constitute a quorum.

(3) The Commissioner may designate such officer as may be necessary to assist a Board or Committee in the performance of its functions.

59. Board members

(1) The names of the members of a Board or Committee shall be published in the *Gazette*.

(2) The Commissioner shall, on request, submit to a Board or Committee such reports as will enable it to make suggestions and recommendations to the Commissioner in the interest of detainees, generally or individually.

(3) No officer shall refuse admittance to an institution to a member of a Board or Committee or hinder or obstruct any such member in the performance of his duties under this Act.

(4) (a) A member of a Board or Committee may resign on giving one month's notice to the Minister.

(b) The Minister may remove from office a member who—

- (i) has absented himself without sufficient cause from 3 consecutive meetings of the Board or Committee;
- (ii) has become insolvent, has assigned his estate for the benefit of his creditors or has made any arrangements with his creditors;
- (iii) has been guilty of any misconduct or default in the discharge of his duties as a member which, in the opinion of the Minister, renders him unfit to be a member;
- (iv) has been convicted of an offence of such a nature as, in the opinion of the Minister, renders it desirable that he should be removed from office;
- (v) is suffering from such mental or physical infirmity as, in the opinion of the Minister, renders him unfit to discharge his duties as a member; or
- (vi) is otherwise found to be unsuitable by the Minister to continue to be a member.

60. Visit by Judge or Magistrate

A Judge or Magistrate may—

- (a) visit an institution; and
- (b) note his observations in the visitor's book.

60A. Visit by National Preventive Mechanism Division and Subcommittee on Prevention of Torture

(1) The National Preventive Mechanism Division of the National Human Rights Commission and the Subcommittee on Prevention of Torture may visit any institution or exercise any power for the purposes of discharging their functions under the National Preventive Mechanism Act or the Optional Protocol, as the case may be.

(2) In this section—

“Optional Protocol” means the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 and acceded to by the Government of Mauritius on 21 June 2005;

“Subcommittee on Prevention of Torture” means the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, established under the Optional Protocol.

[S. 60A inserted by s. 12 (b) of Act 21 of 2012 w.e.f. 1 July 2013.]

PART VII – OFFENCES

61. Offences

(1) No officer shall—

- (a) without lawful authority, permit a prohibited article to be conveyed or supplied to a detainee, received or used by a detainee or brought into or taken out of an institution;
- (b) in respect of a transaction concerning supplies, receive any discount, gift or other consideration from any person selling or providing such supplies to an institution;
- (c) receive any fee, favour or gratuity from a detainee or a discharged person;
- (d) for or on behalf of a detainee, receive any fee, favour or gratuity from, or have any business dealing with, a visitor to an institution or a friend of any such visitor, or any other person;
- (e) give a certificate or testimonial to or in respect of a detainee as regards his conduct in an institution or otherwise;
- (f) discuss his duties or a matter of discipline or of institutional arrangements within the hearing of a detainee;
- (g) without the permission of the Commissioner, inform any person of any matter concerning an institution, a detainee or a discharged person;
- (h) without the permission of the Commissioner, communicate to the press any information derived from his office or from official source and connected with or related to the service;
- (i) knowingly harbour a detainee who has escaped from custody in or about his house or land or other premises owned or occupied by him;
- (j) directly or indirectly and by any means instigate, command, counsel, call for, cause, stir or bring about any mutiny, sedition or disobedience to any lawful command or duty;
- (k) directly or indirectly and by any means, seduce another officer from his allegiance or duty; or
- (l) give false evidence at any enquiry held under this Act.

(2) No person shall—

- (a) convey or supply to a detainee in or outside an institution, or hide or place for the use of a detainee, a prohibited article;
- (b) by any means, bring into an institution or a place where a detainee is working, a prohibited article;
- (c) take out of or convey from an institution a prohibited article;
- (d) communicate with a detainee or cause or induce any other person to do so;

- (e) enter or remain in an institution or any place where a detainee is working or stationed for any purpose;
- (f) take a photograph of a detainee or of any other person in an institution;
- (g) take a photograph or film or make a sketch, plan or other representation of any object in or any internal layout of an institution;
- (h) purchase, obtain, keep in his possession, destroy or otherwise dispose of an article which has been supplied to an officer for use on duty or any property of an institution;
- (i) aid and abet an officer or other person in destroying or otherwise disposing of an article which has been supplied to an officer for use on duty or any property of an institution; or
- (j) aid an officer or detainee in the commission of an offence under this Act.

(3) (a) No detainee shall escape from lawful custody.

(b) No person shall counsel, induce or instigate a detainee to escape from lawful custody.

(4) Every officer who has directly or indirectly any pecuniary interest in the purchase of an institution's supplies shall declare such interest in writing and submit such declaration to the Commissioner.

(5) Subject to section 62 (3), any person who contravenes this Act or any regulations made under it shall commit an offence and shall, on conviction, where no specific penalty is provided, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

[S. 61 amended by Act 5 of 1999.]

62. Escape from custody

(1) No detainee shall escape from lawful custody by breach of prison or by the use of violence.

(2) No person shall aid a detainee to escape from lawful custody—

- (a) by breach of prison;
- (b) by furnishing any instrument, arms or weapon calculated to assist in effecting escape; or
- (c) by violence.

(3) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 8 years.

(4) Where a detainee commits an offence under this section, he shall, on conviction, be ordered to serve immediately after the expiry of any other sentence for which he was detained, any sentence imposed upon him by the Court.

63. Arrest and forfeiture

(1) Any person who, when requested to do so, refuses to leave an institution or place where a detainee is working, shall commit an offence and may be arrested without warrant by an officer or a police officer.

(2) An officer may seize any article found to be unlawfully in an institution and deliver it to the officer in charge who may order its confiscation.

(3) An article confiscated under subsection (2) may be disposed of in such manner as the Court may order, or, where the article is not required to be produced in Court or in connection with any disciplinary proceedings, in such manner as the Commissioner may order.

(4) Any person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding 1,000 rupees.

PART VIII – MISCELLANEOUS

64. Savings

(1) No detainee punished under section 37, 38, 39 or 41 may plead or set up punishment or segregation as a defence or bar to any criminal prosecution.

(2) Nothing in this Act shall affect the custody, discipline or employment of persons imprisoned by order of a Court martial or any military or naval authority.

65. Application of Act

This Act shall apply to the Island of Mauritius and to Rodrigues.

66. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) The Minister may, by regulations and with such modifications as he thinks fit, extend the application of this Act to any other island within the State of Mauritius.

67. – 70. —
