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CHAPTER 90

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CHAPTER 90**PRISONS ACT**

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**CHAPTER 90
PRISONS ACT**

[Date of assent: 27th December, 1962.]

[Date of commencement: 1st February, 1963.]

An Act of Parliament to consolidate and amend the law relating to prisons; to provide for youth corrective training centres, extra mural penal employment; to provide for the organisation, discipline, powers and duties of prison officers; and for matters incidental thereto and connected therewith

[Act No. 49 of 1962, Act No. 8 of 1963, Act No. 23 of 1963, L.N. 124/1964, L.N. 374/1964, Act No. 21 of 1966, Act No. 8 of 1968, Act No. 3 of 1969, Act No. 10 of 1969, L.N. 59 of 1970, Act No. 25 of 1971, Act No. 10 of 1981, Act No. 10 of 1983, Act No. 18 of 1986, Act No. 14 of 1991, Act No. 10 of 1998.]

PART I – PRELIMINARY**1. Short title**

This Act may be cited as the Prisons Act.

2. Interpretation

In this Act, except where the context otherwise requires—

“**aggravated prison offence**” means an offence declared to be such by rules made under this Act;

“**appellant prisoner**” means any convicted criminal prisoner who is detained in a prison as a result of a conviction which is the subject matter of an appeal which has been entered or lodged but the decision in regard to which has not been given;

“**Assistant Commissioner**” means an Assistant Commissioner of Prisons;

“**civil prisoner**” means any prisoner other than a criminal prisoner;

“**Commissioner**” means the Commissioner of Prisons;

“**convicted criminal prisoner**” means any criminal prisoner under sentence of a court or a court martial, and includes a person detained in prison under sections 162 to 167 (both inclusive) of the Criminal Procedure Code (Cap. 75);

“**court**” means any court or authority entitled to pass a sentence in a criminal case or to order a person to be detained in custody in any case;

“**criminal prisoner**” means any person duly committed to custody under the writ, warrant or order of any court exercising criminal jurisdiction or by order of a court martial;

“**Deputy Commissioner**” means the Deputy Commissioner of Prisons;

“**deserter**” means a prison officer who absents himself from duty without reasonable cause for a period of twenty-one days or more;

“**justice of the peace**” *deleted by Act No. 10 of 1983, Sch.;*

“**medical officer**” means the medical officer appointed by the Director of Medical Services or other proper officer of the Ministry responsible for Health to be the medical officer of a prison, or, if no medical officer has been so appointed, means the medical officer of the district in which the prison is situated, or in his absence any medical officer;

“**minor prison offence**” means an offence declared to be such by rules made under this Act;

“**officer in charge**” means a prison officer or an administrative officer appointed by the Commissioner to be in charge of any prison;

“**prison**” means a prison established or deemed to have been established under section 24 of this Act;

“**prisoner**” means any person, whether convicted or not, under detention in any prison;

“**prison officer**” means any member of the Kenya Prisons Service of whatever rank;

“**probation officer**” has the meaning assigned to that expression in the Probation of Offenders Act (Cap. 64);

“**prohibited article**” means an article the introduction or removal of which into or out of a prison is prohibited by this Act or by any rules made thereunder;

“**senior prison officer**” means a prison officer of or above such rank as the Minister may specify under section 3(2) of this Act;

“**Service**” means the Kenya Prisons Service established by the Prisons Act, 1948 (Cap. 78) (now repealed);

“**subordinate prison officer**” means a prison officer of or below such rank as the Minister may specify under section 3(2) of this Act;

“**unconvicted person**” means a debtor, and any person on remand or awaiting trial, or detained for safe custody or for want of sureties, who has not been convicted by any court;

“**visiting justice**” means a person appointed to be a visiting justice under section 72(1) of this Act;

“**youth corrective training centre**” means a youth corrective training centre established under section 66 of this Act.

[Act No. 25 of 1971, Sch., Act No. 10 of 1983, Sch.]

PART II – CONSTITUTION AND ADMINISTRATION

3. Composition of Service

(1) The Kenya Prisons Service shall consist of the members of the Service appointed under this Act and the Prisons Act, 1948 (Cap. 78) (now repealed).

(2) The Service shall consist of such ranks of senior and subordinate prison officers as the Minister may, by notice in the *Gazette*, specify, and prison officers shall have seniority as so specified.

4. Deleted by L.N. 124/1964, Sch.

5. Administration of Service

(1) The administration of the Service and the control and supervision of all prisoners shall be vested in the Commissioner, subject to the directions of the Minister.

(2) The Commissioner may, subject to this Act, from time to time make standing orders and give administrative directions for the observance of all prison officers.

6. Powers of Deputy Commissioner and delegation of powers

(1) The Deputy Commissioner may exercise any of the powers or perform any of the duties vested in or assigned to the Commissioner by or under this Act or any rules made thereunder or by or under any other written law.

(2) The Commissioner may delegate any of the powers vested in him by this Act or any rules made thereunder or, save where a contrary intention appears therein, by any other written law, to an Assistant Commissioner.

PART III – POWERS, DUTIES AND PRIVILEGES OF PRISON OFFICERS

7. General powers and duties of prison officers

Every prison officer shall exercise such powers and perform such duties as are by law conferred or imposed on prison officers of his class, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his senior officers.

8. Responsibility of officer in charge for stores, etc.

Every officer in charge shall be charged with the safe custody of arms, accoutrements, ammunition, clothing and all other public stores and foodstuffs issued and delivered for the use of the prison, the prison officers and the prisoners under his control, and with all public money for which he may be held accountable, and also, subject to the provisions of this Act, and of any rules made thereunder, with all valuables, money, articles of clothing and other property entrusted to his keeping as being the property of prisoners, and shall account for the same in case of their being lost or damaged otherwise than by unavoidable accident, theft, robbery or lawful use.

9. Cases where prison officers have the powers and privileges of police officers

While in charge of prisoners for the purpose of conveying any person to or from a prison, or for the purpose of apprehending any prisoner who may have escaped from a prison, or who may have escaped while being conveyed to or from a prison, or for the purpose of preventing the rescue of any persons in custody or an attack on a prison, every prison officer shall have all the powers, protection and privileges of a police officer.

10. Arrest of deserters

Any prison officer may, on reasonable suspicion that any person is a deserter from the Service, arrest such person without warrant and shall forthwith take him before a magistrate.

11. Power to examine persons or vehicles

(1) Any prison officer may examine anything within, or being brought into or out of, a prison, and may stop and search any vehicle or person within a prison, or going into or out of a prison or, whether within or without a prison, any person who, or any vehicle which, is without authority close to a prisoner or prisoners if he has reason to suspect that such person or vehicle is carrying a prohibited article or any property belonging to the Government in use in a prison.

(2) The senior officer on duty in a prison may refuse admission to the prison to any person who is not willing to be searched.

(3) The senior officer on duty in a prison may order any person within a prison who refuses to be searched to leave the prison and, if such person refuses to leave, may cause him to be removed from the prison, and for that purpose may use such force as may be necessary.

(4) If on stopping and searching any vehicle or person under the provisions of subsection (1) of this section a prison officer finds any prohibited article or any property belonging to the Government in use in a prison he may arrest that person or the person on the vehicle who appears to have charge of the article or property and shall as soon as practicable cause any such person to be made over to a police officer or, in the absence of a police officer, to be taken to the nearest police station.

(5) Any search of a woman under this section shall be made by another woman with due regard to decency.

12. Use of force by prison officer

(1) Any prison officer may use such force against a prisoner as is reasonably necessary in order to make him obey lawful orders which he refuses to obey or in order to maintain discipline in a prison.

(2) Any prison officer may use any weapons which have been issued to him, including firearms, against a prisoner if—

- (a) he is escaping or attempting to escape and refuses, when called upon, to return; or
- (b) he is engaged with other persons in breaking out or attempting to break out of any part of a prison and continues to break out or attempts to break out when called upon to desist; or
- (c) he is engaged with others in riotous behaviour in a prison and refuses to desist when called upon; or
- (d) he is endangering the life of, or is likely to inflict grave injury to, the prison officer or to any other prison officer or person and the use of weapons, including firearms, is the only practicable way of controlling the prisoner:

Provided that weapons shall not be used as authorized in paragraphs (a), (b) and (c) of this subsection unless the officer has reasonable cause to believe that he cannot otherwise prevent the escape, breaking out or riotous behaviour, as the case may be.

13. Power to take photographs, fingerprints, etc., of prisoners

An officer in charge may cause photographs, measurements, footprints and casts thereof, palm prints and fingerprints to be taken of any prisoner by any prison officer or other person authorized by the Commissioner in that behalf, and where any person refuses to permit his photographs, measurements, footprints or casts thereof, palm prints or fingerprints to be taken, the officer may use or cause to be used such force as may be necessary to secure the photographs, footprints or casts thereof, palm prints or finger prints as the case may be:

Provided that the photographs, measurements, footprints and casts thereof, palm prints and fingerprints of a prisoner who is not subsequently convicted shall be destroyed upon the prisoner's release by the court.

14. Non-liability for act done under authority of a warrant

(1) Where the defence to any suit instituted against a prison officer is that the act complained of was done in obedience to a warrant purporting to be issued by a court or other competent authority, the court shall, upon production of the warrant and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of such prison officer.

(2) No proof of the signature on a warrant shall be required unless the court has reason to doubt the genuineness thereof; and where it shall be proved that such signature is not genuine, judgment shall nevertheless be given in favour of a prison officer if it is proved that, at the time the act complained of was committed, he believed on reasonable grounds that the signature was genuine.

PART IV – OFFENCES BY PRISON OFFENCES**15. Prison officers not to leave Service without permission**

(1) No prison officer shall leave the Service, withdraw himself from duty or be absent without leave unless expressly permitted to do so by the Commissioner or by some other prison officer authorized to grant such permission.

(2) Any prison officer who leaves the Service, withdraws himself from duty or is absent without leave or deserts the Service shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

16. Prison officers to be subject to Code of Regulations

Every prison officer shall be subject to the provisions of the Code of Regulations for Officers of the Government Service for the time being in force, so far as the same are not inconsistent the provisions of with this Act or of any rules or standing orders made thereunder.

17. Assault on officer senior in rank

Any prison officer who assaults, threatens or insults any officer senior to him in the Service, when such senior officer is on duty or when such assault, threat or insult relates to or is consequent upon the discharge of duty by the officer so assaulted, threatened or insulted, shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

18. Miscellaneous offences by prison officers

Every prison officer who without lawful authority—

- (a) knowingly suffers any intoxicating liquor, tobacco, bhang or hemp, drug, opiate, money, clothing, provisions, letter, document or other article to be sold to or received from or used by or on behalf of any prisoner; or
- (b) lends or gives to any prisoner any intoxicating liquor, tobacco, bhang or hemp, drug, opiate, money, clothing, provisions, letter, document or other article; or
- (c) knowingly suffers any letter, document, or other article to be brought out of any prison, or to be conveyed from any prisoner; or
- (d) without the permission of the Commissioner, informs the Press or any other person of any matter concerning a prison or a prisoner or any matter derived from official sources connected with or related to the Service,

shall be guilty of an offence and liable to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.

19. Other offences

(1) No prison officer or any person with any duty with prisoners shall sell or supply, or receive directly any benefit or advantage from the sale or supply of, any article to or for the use of any prisoner or for the use of any prison, nor shall any such officer or person directly or indirectly have any interest in any contract or agreement for the sale or supply of any such article.

(2) No prison officer or any person with any duty with prisoners shall directly or indirectly have any pecuniary interest in the purchase of any prison supplies, or receive any discount, gift or other consideration from any contractor for or seller of such supplies, or have any pecuniary dealing with any prisoner or with any friend of any prisoner with regard to him, or on behalf of any prisoner hold any unauthorized communication with any person.

(3) Any prison officer or person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for term not exceeding six months or to both such fine and such imprisonment.

20. Prison officers not to be members of trade unions

(1) It shall not be lawful for any prison officer to be or to become a member of—

- (a) any trade union or any body or association affiliated to a trade union; or
- (b) any body or association the objects or one of the objects of which is to control or influence conditions of employment in any trade or profession; or
- (c) any body or association the object or one of the objects of which is to control or influence the pay, pensions, or conditions of service of the Service, other than a staff association or Prison Council established and regulated by rules made under this Act.

(2) Any prison officer who contravenes the provisions of this section shall be liable to be dismissed from the Service and to forfeit all rights to any pension or gratuity.

(3) If any question arises as to whether a body is a trade union, or association to which this section applies, the question shall be decided by the Minister, whose decision shall be final and conclusive.

21. Prison officers not to engage in dealings with prisoners

(1) No prison officer shall receive any fee, favour or gratuity from or have any business dealing with any prisoner, or with any discharged prisoner, or with any visitor to a prison, or with any friend of any such visitor.

(2) No prison officer shall correspond with or have any dealing with any friend or relative of any prisoner, unless expressly authorized so to do by the officer in charge.

(3) No prison officer unless so authorized by the Commissioner shall give any certificate or testimonial to, or in respect of, any prisoner as regards his conduct in prison or otherwise.

(4) No prison officer shall, save in accordance with the orders or directions issued by the Commissioner, convey any communication or article to or from any prisoner.

(5) Any prison officer who contravenes any of the provisions of this section shall be liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

22. Search of prison officers

(1) A prison officer may at any time be searched on the orders of a prison officer senior in rank to him.

(2) The officer in charge may at any time order the quarters occupied by a prison officer to be searched by a prison officer senior in rank to such officer.

23. Powers of officers holding disciplinary inquiries

(1) Every prison officer inquiring into a disciplinary offence alleged to have been committed by a prison officer shall have power to summon and examine witnesses on oath or affirmation and to require the production of all documents relevant to such inquiry and to adjourn any hearing from time to time.

(2) Any person summoned as a witness under subsection (1) of this section who fails to attend at the time and place mentioned in the summons or on adjournment, or refuses to answer any question lawfully put to him shall be guilty of an offence and liable to a fine not exceeding three hundred shillings or to imprisonment for a term not exceeding one month:

Provided that no witness shall be obliged to answer any question which may tend to incriminate him or render him liable to any forfeiture or penalty.

(3) Any prison officer inquiring into a disciplinary offence under this section may order payment on the part of Government of the reasonable expenses of any witness attending before him as though such witness were attending a

subordinate court for the purposes of a trial under the Criminal Procedure Code (Cap. 75), and such order shall be made subject to any rules made under section 394 of the said Code, *mutatis mutandis*.

PART V – ESTABLISHMENT AND CONTROL OF PRISONS

24. Declaration of prisons

(1) The Minister may, by notice in the *Gazette*, declare any building, enclosure or place, or any part thereof, to be a prison for the purposes of this Act, and may, in a like manner, declare that any prison shall cease to be a prison for the purposes of this Act.

(2) Every prison shall include the grounds and buildings within the prison enclosure and also any other grounds or buildings belonging or attached thereto and used by prisoners or the staff of the prison.

(3) In any writ, warrant or other legal instrument in which it may be necessary to describe a particular prison, any description designating a prison by reference to the name of the place or town where it is situated, or other definite description, shall be valid and sufficient for all purposes.

25. Temporary prisons

Whenever—

- (a) it appears to the Commissioner that the number of prisoners in any prison is greater than can be conveniently kept therein and that it is not convenient to transfer the excess number to some other prison; or
- (b) owing to the outbreak of epidemic disease within a prison or for any other reason, it is desirable to provide for temporary shelter or safe custody of any prisoners,

such provision shall be made as the Commissioner, with the approval of the Minister, may direct for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison, and every such temporary prison shall be deemed to be a prison for the purposes of this Act.

26. Officers in charge

(1) In every prison there shall be an officer in charge of the prison, who shall be designated “the officer in charge”.

(2) Where an administrative officer has been appointed to be an officer in charge of a prison, he shall, in relation to the prison, be subject to the orders and directions of the Commissioner, and shall, subject to any express limitations which may be imposed on him by the Commissioner in writing, have all the powers conferred by law upon an officer in charge.

(3) Every officer in charge shall supervise and control all matters in connexion with the prison to which he is appointed, and shall keep or cause to be kept such records as the Commissioner may from time to time direct and shall be responsible to the Commissioner for the conduct and treatment of prison

officers and prisoners under his control, and for the due observance by prison officers and prisoners of the provisions of this Act and of all rules, directions and orders made thereunder.

27. Appointment of police officers to perform the duties of prison officers

(1) Where in any prison the number of prison officers detailed for duty therein is insufficient to secure the good management and government thereof, it shall be lawful for the officer in charge of such prison, with the consent of the Commissioner of Police, to employ temporarily such number of police officers as he may consider necessary to perform the duties of prison officers in such prison.

(2) Every police officer appointed in pursuance of subsection (1) of this section shall thereupon have all the powers, and perform in such prison all the duties, of a prison officer of the class to which the officer in charge shall appoint and, for the purposes of this Act, shall be deemed to be a prison officer.

(3) Where, on the removal of any prisoner from any prison, the staff of warders is insufficient to provide escort for such prisoner, it shall be lawful for the officer in charge of the prison from which the prisoner is to be removed to deliver the prisoner to any police officer who may be detailed for such duty, and thereupon such police officer shall have the same powers and be subject to the same responsibilities, discipline and penalties and to the same authorities as a prison officer would have and be subject to in like circumstances.

28. Women prison officers and female prisoners

In any prison in which any female prisoner is imprisoned there shall be a woman prison officer who shall have the care and the superintendence of female prisoners, and who shall be responsible for their discipline.

29. Medical officers

(1) There shall be a medical officer stationed in or responsible for every prison.

(2) The medical officer shall be responsible for the health of all prisoners in a prison and shall cause all prisoners to be medically examined at such times as shall be prescribed.

(3) A medical officer may, whether or not a prisoner consents thereto, take or cause or direct to be taken such action (including the forcible feeding, inoculation, vaccination and any other treatment of the prisoner, whether of the like nature or otherwise) as he may consider necessary to safeguard or restore the health of the prisoner or to prevent the spread of disease.

(4) All actions of a medical officer, prison officer, medical orderly, or other person acting under the provisions of the preceding paragraph, or in pursuance of directions given thereunder, shall be lawful.

PART VI – ADMISSION, CONTROL AND DISCHARGE OF PRISONERS**30. Prisoner in custody of officer in charge**

(1) Every prisoner confined in any prison shall be deemed to be in the lawful custody of the officer in charge of the prison.

(2) Every officer in charge shall keep and detain all persons duly committed to his custody by any court or other competent authority according to the terms of the warrant or order by which such person has been committed, or until such person is discharged by due course of law.

(3) A prisoner who is being removed or transferred from one prison to another shall, while outside the prison, be kept in the custody of the prison officer directed to convey him and shall be deemed to be in the lawful custody of the officer in charge of the prison at which such prison officer is serving.

(4) Subject to such conditions as may be prescribed, the infant child of a female prisoner may be received into prison with its mother and may be supplied with clothing and necessaries at public expense:

Provided that such child shall only be permitted to remain in prison until it attains the age of four years or until arrangements for its proper care outside prison are concluded, whichever shall be the earlier.

31. Detention of remand prisoners

(1) Every person remanded to any prison by any court or other competent authority, being a person charged with any crime or offence, shall be delivered to the officer in charge together with a warrant of commitment, and such officer in charge shall detain such person according to the terms of such warrant and shall cause such person to be delivered to such court or competent authority, or shall discharge such person at the time named, in and according to the terms of such warrant.

- (a) A probation officer may be authorized by a court to remove from prison custody any prisoner remanded into such custody, for the purpose of making inquiries at the direction of the court, and it shall be lawful for a prison officer to hand over custody of any such remand prisoner to a probation officer so authorized to remove him.
- (b) In this subsection, “**probation officer**” means a probation officer appointed under the Probation of Offenders Act (Cap. 64).

32. Custody of persons under arrest

Every person arrested in pursuance of any warrant or order of any court, if such court is not sitting, may be delivered to an officer in charge for custody and such officer in charge shall cause such person to be brought before the court at its next sitting.

33. Prisoners required as witnesses

(1) Without prejudice to the provisions of section 148 of the Criminal Procedure Code (Cap. 75), whenever the presence of any prisoner is required by any court, such court may issue an order addressed to the officer in charge requiring production before the court of the prisoner in proper custody at the time and place to be named in such order, and the officer in charge shall cause the prisoner named in such order to be brought up as directed, and shall provide for his safe custody during his absence from prison, and every such court may by endorsement on such order require the prisoner named therein to be again brought up at any time to which the matter wherein such prisoner is required may be adjourned.

(2) A prisoner taken from a prison in pursuance of an order made under this section shall, whilst outside the prison, be kept in such custody, including police custody, as the officer in charge may direct and whilst in that custody shall be deemed to be in lawful custody.

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

34. Prisoners to be subject to prison discipline

Every prisoner shall be subject to prison discipline and to this Act and all rules, orders and directions made thereunder during the whole time of his imprisonment, whether he is or is not within the precincts of any prison.

35. Maintenance of certain prisoners from private sources

(1) A civil prisoner or an unconvicted person may be permitted to maintain himself and to purchase or receive from private sources, at proper hours, food, clothing or other necessaries, but subject to examination and to such other conditions as the Commissioner may direct.

(2) No food, clothing or other necessaries belonging to a civil prisoner or an unconvicted person shall be given, hired, loaned or sold to any other prisoner; and any prisoner or person contravening the provisions of this section shall be liable to lose the privilege of purchasing or receiving food, clothing or other necessaries from private sources for such time as the officer in charge may think proper.

(3) If a civil prisoner or an unconvicted person does not provide himself with food or clothing, or if such food or clothing is in the opinion of the officer in charge unsatisfactory, such prisoner or person shall receive the prescribed food and clothing.

36. Female prisoners to be kept apart

Male and female prisoners shall be confined in separate prisons, or in separate parts of the same prison in such manner as to prevent, as far as practicable, their seeing or conversing or holding any communication with each other.

37. Prisoners may be removed to any prison

A prisoner may be removed from any prison to any other prison from time to time at the Commissioner's discretion.

38. Removal of prisoners of unsound mind

(1) Whenever a medical officer is of the opinion that any prisoner is of unsound mind, he may, by order under his hand in the form prescribed, direct that such prisoner be removed to any mental hospital in Kenya and be there detained, and such order shall be authority for the reception of the prisoner and for his detention in such mental hospital until removed or discharged as hereinafter provided.

(2) Where any prisoner removed to a mental hospital under subsection (1) of this section is, in the opinion of the person in charge of such mental hospital, no longer of unsound mind, the person in charge as aforesaid shall notify the officer in charge of the prison from which the prisoner was removed, and the prisoner shall then be delivered into the custody of the officer in charge of that prison if still liable to be confined in prison, and if not so liable, shall be released.

(3) Upon the expiration of the term of imprisonment to which he has been sentenced, the provisions of section 30 of the Mental (Treatment) Act (Cap. 248) shall apply to any prisoner detained in a mental hospital under this section as if he were detained in accordance with a reception order made under Part VI of that Act.

(4) The period during which the prisoner has been detained in a mental hospital under this section shall be reckoned as part of his term of imprisonment.

39. Removal of sick prisoners to hospital

(1) In the case of the illness of a prisoner detained in a prison in which there is not suitable accommodation for such prisoner, the officer in charge, on the advice of the medical officer, may order his removal to a hospital, and in case of emergency such removal may be ordered by the officer in charge without the advice of the medical officer.

(2) Any prisoner who shall have been removed to a hospital under the provisions of this section shall be deemed to be under detention in the prison from which he was so removed.

(3) Whenever the medical officer in charge of a hospital considers that the health of a prisoner removed to that hospital under this section no longer requires his detention therein, he shall notify the officer in charge of the prison from which the prisoner was removed and the officer in charge of that prison shall thereupon cause such prisoner to be returned to the prison if he is still liable to be confined therein.

(4) Every reasonable precaution shall be taken by the medical officer in charge of a hospital and the persons employed therein to prevent the escape of any prisoner who may at any time be under treatment therein, and it shall be lawful for such officer and person to take such measures for the preventing of the escape of any such prisoner as may be necessary:

Provided that nothing shall be done under the authority of this section which, in the opinion of the medical officer in charge of such hospital, is likely to be prejudicial to the health of such prisoner.

(5) The period during which the prisoner has been detained in a hospital under this section shall be reckoned as part of his term of imprisonment.

40. Measures for further security of prisoners in hospital

Where in any case from the gravity of the offence for which any prisoner may be in detention or for any other reason the officer in charge considers it desirable to take special measures for the security of such prisoner while under treatment in hospital, it shall be lawful for him to give such prisoner into the charge of fit and proper persons, not being less than two in number, one of whom shall always be with such prisoner day and night, and such persons shall be vested with full

power and authority to do all things necessary to prevent such prisoner from escaping and shall be answerable for his safe custody until such time as he is handed over to the officer in charge on his discharge from hospital or until such time as his sentence expires, whichever shall first occur.

41. Removal of leper prisoners to leper settlements.

(1) Where a medical officer reports to the Commissioner that a prisoner is a leper, the Commissioner may, subject to the provisions of subsection (2) of this section, by order in writing direct the removal of that prisoner to a leper settlement, there to be kept and treated until cured of his leprosy or until such time as he ceases to be liable to confinement in prison, whichever shall be the earlier.

(2) No order shall be made by the Commissioner under subsection (1) of this section unless and until he has received notification in writing that the person in charge of the leper settlement to which he wishes to remove the leper prisoner is able and willing to receive such prisoner.

(3) So long as any prisoner who shall have been removed to a leper settlement under this section shall remain therein and remain liable to confinement in prison, the person in charge thereof shall from time to time transmit to the officer in charge of the prison from which such prisoner was removed a certificate signed by him that it is in his opinion necessary that he should remain in such settlement.

(4) So soon as, in the opinion of the person in charge of a leper settlement, it is no longer necessary that a prisoner who has been removed to such settlement should remain therein, he shall transmit to the officer in charge of the prison whence the prisoner was removed, if such prisoner is still liable to confinement in prison, a certificate stating that such necessity has ceased, and thereupon the officer in charge shall forthwith cause such prisoner to be returned to the prison; and, if not so liable, the prisoner shall be released.

(5) Every reasonable precaution shall be taken by the person in charge of a leper settlement and the other persons employed therein to prevent the escape of any prisoner who may at any time be under treatment therein, and it shall be lawful for such persons to take such measures for the preventing of the escape of any such prisoner as may be necessary:

Provided that nothing shall be done under the authority of this section which, in the opinion of the person in charge of such settlement, is likely to be prejudicial to the health of such prisoner.

(6) For the purpose of this section, "**leper**" means a person suffering from active leprosy.

42. Prison officer not liable for escape of prisoners in hospital, etc.

If any prisoner escapes during such time as he is in any hospital, mental hospital or leper settlement, no prison officer shall be held answerable therefore unless such prisoner has been in the personal custody of such officer, and no medical officer, person in charge of a leper settlement or other person shall be held answerable therefor unless it is shown that he has helped such prisoner to escape or has wilfully neglected to take reasonable precautions to prevent his escape.

43. Labour of prisoners

(1) Every prisoner under sentence of imprisonment with hard labour may be kept to labour, within or without the precincts of any prison, in such type of employment as the Commissioner may direct.

(2) Every prisoner under sentence of imprisonment may be required to engage in such type of employment approved by the Commissioner as the officer in charge may direct.

(3) A medical officer may order that a prisoner shall not be required to perform any labour, or any labour other than light labour, as the case may be, for such period as the physical and mental conditions of the prisoner may require.

[Act No. 3 of 1969, s. 8.]

44. Employment of unconvicted criminal prisoners

(1) Civil prisoners and unconvicted persons shall be required to keep their cells, precincts of cells, furniture, clothing and utensils clean; other employment may be given them at their own request.

(2) Appellant prisoners shall be required to keep their cells, precincts of cells, furniture, clothing and utensils clean and to perform such labour as the Commissioner, with the approval of the Minister, may direct.

45. Release of prisoners

(1) The officer in charge shall be responsible for the due discharge of all prisoners immediately upon their becoming entitled to release.

(2) No prisoner under treatment by the medical officer shall be discharged from prison except at his own request until, in the opinion of the medical officer, such discharge can be effected without danger to the health of such prisoner.

(3) All prisoners shall be discharged before noon on the date on which they are entitled to be released, but should that date fall on a Sunday or a public holiday, they shall be released before noon on the day preceding that Sunday or public holiday.

PART VII – REMISSION OF SENTENCE**46. Remission of part of sentence of certain prisoners**

(1) Convicted criminal prisoners sentenced to imprisonment, whether by one sentence or consecutive sentences, for a period exceeding one month, may by industry and good conduct earn a remission of one-third of their sentence or sentences:

Provided that in no case shall—

- (i) any remission granted result in the release of a prisoner until he has served one calendar month;
- (ii) any remission be granted to a prisoner sentenced to imprisonment for life or for an offence under section 296(1) or 297(1) of the Penal Code (Cap. 63) or to be detained during the President's pleasure.

(2) For the purpose of giving effect to the provisions of subsection (1) of this section, each prisoner on admission shall be credited with the full amount of remission to which he would be entitled at the end of his sentence if he lost no remission of sentence.

(3) A prisoner may lose remission as a result of its forfeiture for an offence against prison discipline, and shall not earn any remission in respect of any period

- (a) spent in hospital through his own fault or while malingering; or
- (b) while undergoing confinement as a punishment in a separate cell.

(3A) A prisoner may be deprived of remission—

- (a) where the Commissioner considers that it is in the interests of the reformation and rehabilitation of the prisoner;
- (b) where the Minister for the time being responsible for internal security considers that it is in the interests of public security or public order.

(4) Notwithstanding the provisions of subsection (1) of this section, on the recommendation of the Commissioner, the Minister may grant a further remission on the grounds of exceptional merit, permanent ill-health or other special grounds.

(5) The Minister shall have power to restore forfeited remission in whole or in part.

[L.N. 124/1964, Sch., Act No. 21 of 1966, Second Sch., Act No. 8 of 1968, Sch., L.N. 59/1970, Act No. 10 of 1981, Sch., Act No. 18 of 1986, Sch.]

PART VIII – COMPULSORY SUPERVISION ORDERS

47. Compulsory supervision orders

(1) The Commissioner—

- (a) shall, in the case of a prisoner who, having been sentenced to imprisonment on not less than two previous occasions, is serving a sentence of imprisonment for a term of or exceeding three years; and
- (b) may in the case of any other prisoner where he considers it necessary or desirable in the interests of the rehabilitation of that prisoner so to do,

make an order, to be known as a “Compulsory Supervision order”, providing for the compulsory supervision of the prisoner for any period not exceeding one year.

(2) Every compulsory supervision order shall be made on or prior to the discharge of the prisoner in respect of whom it is made and shall be in such form and subject to such terms and conditions as may be prescribed.

(3) Where the Commissioner is satisfied that any prisoner in respect of whom a compulsory supervision order has been made has, during the continuance in force of the order, been convicted of any offence or has contravened or failed to comply with any of the terms or conditions of his order, the Commissioner may revoke the order and issue a certificate to that effect which shall contain a

statement of the amount of remission earned by the prisoner under section 46 of this Act immediately before the making of the order, and such certificate shall be conclusive evidence of its contents.

(4) When any compulsory supervision order made under this section has been revoked the prisoner in respect of whom such order had been made shall, after undergoing any other punishment to which he has been sentenced, if any, undergo a term of imprisonment equal to a period of three months, or to the period of remission he had earned under section 46 of this Act, immediately before the making of the compulsory supervision order, whichever is the greater.

(5) Where a compulsory supervision order has been revoked by the Minister, a magistrate shall, on production to him of a certificate of such revocation signed by the Commissioner, issue a warrant for the arrest of the person in respect of whom the compulsory supervision order had been made; and such person on being arrested shall be brought before that magistrate or any other magistrate having jurisdiction who, on being satisfied after proper inquiry that the person has been convicted of an offence or has contravened or failed to comply with any of the terms and conditions of his order, shall commit him to prison for the term provided in subsection (4) of this section.

(6) Notwithstanding the provisions of subsection (1) of this section, the Commissioner may at any time discharge a prisoner undergoing a term of imprisonment under subsection (4) of this section, and at the same time make a further compulsory supervision order in respect of such prisoner.

(7) The Commissioner may vary a compulsory supervision order, and if he considers that a person subject to a compulsory supervision order should be freed from all liability under this Act he may cancel the order, and the person shall thereupon be free from all such liability.

[Act No. 8 of 1968, Sch., Act No. 10 of 1981, Sch.]

48. Board of Review

(1) The President shall appoint a Board of Review, which shall at prescribed intervals, or at such lesser intervals as circumstances may require, review the sentences of all prisoners serving sentences of or exceeding seven years, including prisoners sentenced to imprisonment for life or to be detained during the President's pleasure, and in each case shall tender advice to the President on the exercise of the prerogative of mercy.

(2) The Commissioner shall submit each month to the Board of Review a report on the general condition and conduct of every prisoner referred to in subsection (1) of this section who has during the previous month completed such period of his sentence as may be prescribed.

[Act No. 21 of 1966, Second Sch., L.N. 124/1964.]

49. Release on parole

(1) Within three months of the date upon which a prisoner serving a sentence of or exceeding four years is due for release, the Commissioner may allow such prisoner to be absent from prison on parole for such length of time and upon such conditions as the Commissioner may specify.

(2) The Commissioner or an officer in charge may at any time recall a prisoner released on parole.

(3) Any prisoner who fails to return to prison in accordance with the conditions of his parole or when informed that he has been recalled under subsection (2) of this section may be arrested without warrant, and he shall be guilty of an offence and liable to the same punishment as if he had escaped from prison.

(4) A prisoner who, when released on parole, contravenes or fails to comply with the conditions imposed upon him shall be guilty of an offence and liable to imprisonment for a term not exceeding six months.

PART IX – OFFENCES BY PRISONERS

50. Prison offences

The Minister may prescribe what acts or omissions by prisoners shall be deemed to be prison offences and shall prescribe which of such offences shall be minor prison offences and which shall be aggravated prison offences.

51. Punishment of prisoners by officer in charge

(1) An officer in charge, if he is a senior prison officer or an administrative officer, may punish any prisoner found after due inquiry by him to be guilty of a minor offence by awarding him one or more of the following punishments—

- (a) confinement in a separate cell on the prescribed punishment diet for a term not exceeding such period as may be prescribed;
- (b) forfeiture of remission not exceeding such amount as may be prescribed;
- (c) reduction in stage, or forfeiture of privileges, or postponement of promotion in stage, or forfeiture of all or part of earnings, or removal from any earnings, or removal from any earnings scheme, or reduction in earnings grade, for such period as may be prescribed.

(2) An officer in charge, if a subordinate prison officer, may punish any prisoner found after due inquiry by him to be guilty of a minor prison offence by awarding him one or more of the following punishments—

- (a) confinement in a separate cell on the prescribed punishment diet for a term not exceeding such period as may be prescribed;
- (b) reduction in stage, or forfeiture of all privileges, or postponement of promotion in stage, or forfeiture of all or part of earnings, or removal from any earnings scheme, or reduction in earnings grade, for such period as may be prescribed.

(3) An officer in charge, if a senior prison officer or an administrative officer, may punish any prisoner found after due inquiry by him to be guilty of an aggravated prison offence by awarding him one or more of the following punishments—

- (a) corporal punishment with a cane not exceeding such amount as may be prescribed;
- (b) confinement in a separate cell on the prescribed punishment diet for a term not exceeding such period as may be prescribed;
- (c) forfeiture of remission not exceeding such amount as may be prescribed;

- (d) reduction in stage, or forfeiture of privileges, or postponement, of promotion in stage, or forfeiture of all or part of earnings, or removal from any earnings scheme, or reduction in earnings grade, for such period as may be prescribed.

52. Punishment of prisoners by the Commissioner

(1) The Commissioner may punish any prisoner, found after due inquiry by him to be guilty of a prison offence.

(2) An officer in charge on finding a prisoner guilty of an aggravated prison offence may, if he is of the opinion that in the circumstances of the case or because of the prisoner's character the powers of punishment he possesses are inadequate, transfer the case to the Commissioner for punishment.

(3) An officer in charge, if he transfers a case to the Commissioner under subsection (2) of this section, shall forward to the Commissioner—

- (a) a copy of the charge;
- (b) the record of all the evidence he has taken, including the evidence of the prisoner;
- (c) the reasons why he has found the prisoner guilty; and
- (d) any representations the prisoner wishes to make to the Commissioner in regard to punishment.

(4) The Commissioner on receipt of a record forwarded to him under subsection (3) of this section may—

- (a) punish the prisoner; or
- (b) reverse the findings of the officer in charge and find the prisoner not guilty; or
- (c) require the officer in charge to take further evidence and submit it to him prior to his making a decision.

(5) The Commissioner may award a prisoner one or more of the following punishments—

- (a) corporal punishment not exceeding such amount as may be prescribed;
- (b) confinement in a separate cell on the prescribed diet for such period as may be prescribed;
- (c) forfeiture of remission not exceeding such amount as may be prescribed;
- (d) reduction in stage, or forfeiture of privileges, or postponement of promotion in stage, or forfeiture of all or part of earnings, or removal from any earnings scheme, or reduction in earnings grade, for such period as may be prescribed.

(6) In this section and in section 51 of this Act the expressions, "**reduction in stage**" and "**postponement of promotion in stage**" mean the removal of a prisoner to a lower stage and the postponement of promotion to a higher stage, respectively, in the prescribed progressive stage system.

53. Prisoner's defence

No prisoner shall be punished for a prison offence until he has had an opportunity of hearing the charge against him and making his defence.

54. Medical examination before punishment

(1) No prisoner shall be subjected to punishment diet or corporal punishment until certified as medically fit to undergo it by a medical officer or other person appointed for such purpose by the medical officer.

(2) Punishment diet shall not be combined with labour.

55. Corporal punishment

(1) Where corporal punishment is awarded the number of strokes shall be limited to a maximum of ten strokes in the case of persons of or under the apparent age of sixteen years, and in all other cases to eighteen strokes, and shall be inflicted with such type of cane as may be prescribed.

(2) Every sentence of corporal punishment imposed upon a prisoner by an officer in charge shall be subject to confirmation by the Commissioner, who may increase or reduce the number of strokes ordered to be inflicted, or may substitute any other punishment or punishments he is authorized by this Act to award.

(3) No sentence of corporal punishment shall be carried out until a period of twenty-four hours has elapsed from the time of the order thereof nor until a medical officer has certified that the offender is physically fit to undergo such punishment.

(4) A medical officer may give such orders for the prevention of injury to the health of the offender ordered to receive corporal punishment as he may deem necessary, and such orders shall be carried out before the punishment is inflicted; and if, during the course of the infliction of such punishment, the medical officer shall order it to be discontinued, it shall be discontinued accordingly.

(5) Corporal punishment shall not be inflicted upon any female prisoner, nor upon male prisoners under sentence of death, nor upon any civil prisoner.

[Act No. 25 of 1971, Sch.]

56. Segregation of prisoner

Whenever it appears to the officer in charge that it is desirable for the good order and discipline of the prison for a prisoner to be segregated and not to work nor to be associated with other prisoners, it shall be lawful for such officer to order the segregation of such prisoner for such period as may be considered necessary.

57. Register of punishment

The officer in charge shall cause to be entered in a register, which shall be open to the inspection of the visiting justices, a record of all punishments imposed upon prisoners, showing in respect of each prisoner punished, his name, the nature of his offence, and the extent of his punishment.

PART X – OFFENCES IN RELATION TO PRISONERS

58. Trafficking

Any person without lawful authority who—

- (a) conveys, supplies or causes to be supplied or conveyed to any prisoner, whether within or without a prison, or hides or places for the use of any prisoner, any letter or document, or any intoxicating liquor, tobacco, bhang or hemp, drug, opiate, money, clothing, provisions or any other articles whatsoever; or
- (b) brings or attempts to bring by any means whatsoever into any prison, or places or attempts to place where prisoners shall labour, any letter or document, or any intoxicating liquor, tobacco, bhang or hemp, drug, opiate, money, clothing or provisions; or
- (c) brings or attempts to bring out of any prison or conveys from any prison any letter or document; or
- (d) communicates with any prisoner without lawful authority,

shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding four thousand shillings or to both such fine and such imprisonment.

59. Prohibited articles

(1) Any person who without lawful authority brings or introduces in any manner into a prison a prohibited article, or who without lawful authority takes out or removes from a prison a prohibited article, shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand shillings or to both such fine and such imprisonment.

(2) For the purpose of this section, a “**prohibited article**” shall be any article contained in the list which shall be fixed in a conspicuous place outside every prison and shall be signed by the Commissioner or by the officer in charge on his behalf and shall contain a list of articles which the Commissioner has decided shall be prohibited. The list shall be written in English, Swahili and the language which the officer in charge considers to be the local vernacular.

60. Seizure of prohibited articles, etc.

Whether or not any criminal or disciplinary proceedings are commenced against any person, any prison officer may seize any article found to be unlawfully in a prison and the officer in charge may order its confiscation and declare it to be forfeited.

61. Trespassing

(1) Any person who without lawful authority enters or remains within the boundaries of a prison or any place where prisoners are working shall be guilty of an offence and, if he refuses to leave when requested to do so, may be arrested without warrant by a prison officer or a police officer.

- (2) Any person who, without authority from the Commissioner—
- (a) takes a photograph of any prisoner; or
 - (b) takes a photograph or makes a sketch, plan or other representation of any object or person within the precincts of a prison,

shall be guilty of an offence.

(3) Any person who contravenes the provisions of subsection (1) or subsection (2) of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding three months or to a fine not exceeding five hundred shillings, or to both such imprisonment and fine.

62. Unlawful possession of prison articles

Any person who is found in possession of any article whatsoever which has been supplied to any prison officer for use on duty, or of any prison property, and who fails to account satisfactorily for the possession thereof, or who without lawful authority or excuse purchases or receives any such article or property from any prison officer, or who aids and abets any prison officer to sell or dispose of any such article or property, shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand shillings or to both such imprisonment and such fine.

63. Incitement and abetting of desertion, mutiny and sedition

(1) Any person who by any means directly or indirectly procures or persuades, or attempts to procure or persuade, any prison officer to desert, or who aids, abets or is accessory to the desertion of any prison officer, or who, having reason to believe that any person is a deserter, harbours such deserter, or aids him in concealing himself, or assists in his rescue, shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding four thousand shillings or to both such imprisonment and such fine.

(2) Any person who directly or indirectly instigates, commands, counsels, or solicits any mutiny, sedition or disobedience to any lawful command of a prison officer to any other prison officer, or maliciously endeavors to seduce any prison officer from his allegiance or duty, shall be guilty of an offence and liable to imprisonment, for a term not exceeding two years or to a fine not exceeding six thousand shillings or to both such imprisonment and such fine.

64. Harboursing prisoners

Any person who knowingly harbours in or about his house, land or otherwise, or who knowingly employs any person under sentence of imprisonment and illegally at large, shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding six thousand shillings or to both such imprisonment and such fine.

65. General penalty

Any person who commits any offence against this Act or any rules made thereunder shall, where no penalty is specially provided therefor, be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

PART XI – YOUTH CORRECTIVE TRAINING CENTRES

66. Establishment of youth corrective training centre

(1) The Minister may, by notice in the *Gazette*, declare any building, enclosure or place, or any part thereof, to be a youth corrective training centre for the purposes of this Act, and may, in like manner, declare that any youth corrective training centre shall cease to be a youth corrective training centre for the purposes of this Act.

(2) No prisoner other than a person sentenced to corrective training in a youth corrective training centre under section 67 of this Act shall be detained in a youth corrective training centre.

(3) Subject to subsection (2) of this section, every youth corrective training centre shall be deemed to be a prison for the purposes of this Act.

67. Corrective training may be ordered in certain circumstances

(1) Notwithstanding the provisions of any other written law, where a person, who has attained the apparent age of seventeen years but has not attained the apparent age of twenty-one years, is convicted of an offence not punishable with death, the court may sentence such person to corrective training in a youth corrective training centre for a period of four months:

Provided that no person shall be sentenced to corrective training in a youth corrective training centre—

- (i) if he has previously been detained in prison, a detention camp as defined in the Detention Camps Act (Cap. 91) (now repealed), an approved school as defined in the Children and Young Persons Act (Cap. 141) (now repealed), or a borstal institution as defined in the Borstal Institutions Act (Cap. 92); or
- (ii) if he has previously been sentenced to corrective training in a youth corrective training centre; or
- (iii) for failure to pay any tax or rate under the Personal Tax Act (Cap. 470):

Provided further that no person shall be sentenced to corrective training in a youth corrective training centre unless the court is satisfied that accommodation for such person is available in a youth corrective training centre.

(2) Every person sentenced to corrective training in a youth corrective training centre shall be deemed to be a prisoner for the purposes of this Act, including remission of sentence.

[Act No. 8 of 1963, s. 82, Act No. 23 of 1963, s. 53, Act No. 10 of 1969, Sch.].

PART XII

EXTRA MURAL PENAL EMPLOYMENT

68. Extra mural penal employment may be ordered in lieu of imprisonment or detention

(1) Where in any declared area, a prisoner is—

- (a) sentenced to imprisonment for a term not exceeding six months; or
- (b) committed to imprisonment for non-payment of any fine, compensation, costs or other sum adjudged to be paid under any written law; or
- (c) sentenced to detention under the Detention Camps Ordinance,

the court so sentencing or committing that person may order that he shall perform public work, in accordance with this Part, outside a prison or detention camp, as the case may be, for the duration of such imprisonment or detention.

(2) Upon making an order under subsection (1) of this section the court shall order the person in respect of whom the order is made to report forthwith to an authorized officer of the district in which it is sitting or to any other specified officer under the control of such authorized officer.

(3) Any officer to whom a person reports in pursuance of an order made under subsection (1) of this section shall notify such person or cause him to be notified of the hours, place, nature and any other necessary details of the public work to be performed by such person.

(4) Any person who, having been ordered to perform public work as aforesaid, is found by a medical officer to be medically unfit to perform such work shall be removed to prison or to a detention camp, as the case may require, and shall there suffer the imprisonment or detention to which he is liable, subject nevertheless to a deduction of the number of days, if any, on which he has completed his daily task.

(5) Any person who has been ordered to perform public work as aforesaid may by industry and good conduct earn a remission of one-third of the term of imprisonment or detention to which he had been sentenced or for which he had been committed.

(6) If an authorized officer in any district is satisfied that any person in respect of whom an order under this section has been made, during the term of imprisonment to which he had been sentenced or for which he had been committed—

- (a) has failed without reasonable cause or excuse to present himself for work at the appointed place and hour; or
- (b) absents himself without reasonable cause or excuse from his task; or
- (c) fails to accomplish without reasonable cause or excuse a day's task; or
- (d) is otherwise found to be unsatisfactory in his conduct, he may-
 - (i) order such person to suffer the imprisonment or detention to which he is liable; or
 - (ii) award as punishment loss of remission not exceeding twenty-eight days; or
 - (iii) both order that such person shall suffer the imprisonment or detention to which he is liable and award as punishment loss of remission not exceeding twenty-eight days.

(7) Where any order is made under paragraph (i) or (iii) of subsection (6) of this section, the person to whom the order relates shall forthwith be removed to prison or to a detention camp, as the case may require, and shall there suffer the imprisonment or detention to which he is liable, subject, nevertheless to a deduction of the number of days on which he has completed his daily task.

(8) For the purposes of this section—

"authorized officer" means a public officer appointed by the Minister for the purposes of Part XII of this Ordinance;

"declared area" means any area declared by the Minister, by notice in the *Gazette*, to be an area to which this Part of this Ordinance shall apply;

"public work" means work performed in any department of the Government, the Organization or any service administered by it, or any local authority.

(9) Any person in respect of whom an order to perform public work is made under subsection (1) of this section and who—

- (a) fails without reasonable cause or excuse to report as ordered under subsection (2) of this section; or
- (b) fails without reasonable cause or excuse to present himself for work at the appointed place and hour; or
- (c) absents himself without reasonable cause or excuse from his task; or
- (d) fails to accomplish without reasonable cause or excuse a day's task; or
- (e) is otherwise found by the court to have been unsatisfactory in his conduct,

shall be guilty of an offence and, notwithstanding any action taken by the authorized officer under subsection (6) of this section, shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

[Act No. 10 of 1969, Sch.]

PART XII

68. Extra mural penal employment may be ordered in lieu of imprisonment or detention

(1) Where in any declared area, a prisoner is—

- (a) sentenced to imprisonment for a term not exceeding six months; or
- (b) committed to imprisonment for non-payment of any fine, compensation, costs or other sum adjudged to be paid under any written law; or
- (c) sentenced to detention under the Detention Camps Ordinance,

the court so sentencing or committing that person may order that he shall perform public work, in accordance with this Part, outside a prison or detention camp, as the case may be, for the duration of such imprisonment or detention.

(1A) The Commissioner shall, upon being satisfied that a prisoner serving a term of imprisonment or detention is of good conduct and industry and whose remaining balance of sentence does not exceed six months, order the prisoner to report to an authorized officer of the district in which his home is situated for the purpose of performing public work for the duration of the remainder of his sentence.

(2) Upon making an order under subsection (1) of this section the court shall order the person in respect of whom the order is made to report forthwith to an authorized officer of the district in which it is sitting.

(3) Any officer to whom a person reports in pursuance of an order made under subsection (1) of this section shall notify such person or cause him to be notified of the hours, place, nature and any other necessary details of the public work to be performed by such person.

(4) Any person who, having been ordered to perform public work as aforesaid, is found by a medical officer to be medically unfit to perform such work shall be removed to prison or to a detention camp, as the case may require, and shall there

suffer the imprisonment or detention to which he is liable, subject nevertheless to a deduction of the number of days, if any, on which he has completed his daily task.

(5) Any person who has been ordered to perform public work as aforesaid may by industry and good conduct earn a remission of one-third of the term of imprisonment or detention to which he had been sentenced or for which he had been committed.

(6) If an authorized officer in any district is satisfied that any person in respect of whom an order under this section has been made, during the term of imprisonment to which he had been sentenced or for which he had been committed—

- (a) has failed without reasonable cause or excuse to present himself for work at the appointed place and hour; or
- (b) absents himself without reasonable cause or excuse from his task; or
- (c) fails to accomplish without reasonable cause or excuse a day's task; or
- (d) is otherwise found to be unsatisfactory in his conduct, he may—
 - (i) order such person to suffer the imprisonment or detention to which he is liable; or
 - (ii) award as punishment loss of remission not exceeding twenty-eight days; or
 - (iii) both order that such person shall suffer the imprisonment or detention to which he is liable and award as punishment loss of remission not exceeding twenty-eight days.

(7) Where any order is made under paragraph (i) or (iii) of subsection (6) of this section, the person to whom the order relates shall forthwith be removed to prison or to a detention camp, as the case may require, and shall there suffer the imprisonment or detention to which he is liable, subject, nevertheless to a deduction of the number of days on which he has completed his daily task.

(8) For the purposes of this section—

"authorized officer" means a public officer appointed by the Minister for the purposes of Part XII of this Ordinance;

"declared area" means any area declared by the Minister, by notice in the Gazette, to be an area to which this Part of this Ordinance shall apply;

"public work" means work performed in any department of the Government, or any local authority.

(9) Any person in respect of whom an order to perform public work is made under subsection (1) of this section and who—

- (a) fails without reasonable cause or excuse to report as ordered under subsection (2) of this section; or
- (b) fails without reasonable cause or excuse to present himself for work at the appointed place and hour; or
- (c) absents himself without reasonable cause or excuse from his task; or
- (d) fails to accomplish without reasonable cause or excuse a day's task; or
- (e) is otherwise found by the court to have been unsatisfactory in his conduct,

shall be guilty of an offence and, notwithstanding any action taken by the authorized officer under subsection (6) of this section. shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

[Act No. 10 of 1969, Sch., Act No. 14 of 1991, Sch.]

PART XII

68. Repealed by Act No. 10 of 1998, s. 15.

PART XIII – MISCELLANEOUS

69. Manner of execution of persons sentenced to death

When any person is sentenced to death, he shall be hanged by the neck until he is dead and the sentence shall be carried out in such manner as the Commissioner shall direct.

70. Appointment of prison ministers

The Minister may, from time to time, appoint by notice in the *Gazette* ministers or priests of any religious faith to be prison ministers

71. Standing orders for the guidance of prison ministers

The Commissioner shall frame standing orders for the guidance of such prison ministers who may receive such remuneration or reimbursement of their expenses as may be prescribed.

72. Appointment and powers of visiting justices

(1) The Minister shall, from time to time, appoint by notice in the *Gazette* fit and proper persons to be visiting justices for each prison.

(2) The District Commissioner, the resident magistrate and all administrative officers in any district in which a prison is situate shall be *ex officio* visiting justices of that prison.

(3) A visiting justice may at any time visit a prison in respect of which he is a visiting justice.

(4) A visiting justice may inspect the several wards, cells, yards, punishment cells and other apartments and divisions of the prison, inspect and test the quality and quantity of the prisoners' food, hear the complaint, if any, of any prisoner, and question any prisoner or prison officer, and shall ascertain so far as possible whether this Act, and the rules made thereunder, and the prison standing orders, are adhered to, and shall call the attention of the officer in charge to any irregularity that may be observed in the working of the prison or in the treatment of any prisoner confined therein, and shall exercise and perform such other duties as may be prescribed.

(5) The visiting justices to any prison may appoint a chairman and may act as a Board of Visiting Justices and may, at the end of each year or at any other convenient time, render a report to the Minister on the state of the prison to which they are visiting justices.

73. Power of Ministers and judges

(1) A Minister or a judge may at any time visit any prison and exercise all or any of the powers of a visiting justice, and may enter any observations he thinks fit to make in reference to the condition of the prison and the prisoners, in a visitors' book to be kept for that purpose by the officer in charge; the officer in charge shall inform the Commissioner of any observations so entered in the visitors' book.

(2) *Deleted by Act No. 10 of 1983, Sch.*

74. Power to make rules

(1) The Minister may make rules for the better carrying into effect of the provisions and purposes of this Act and, without prejudice to the generality of the foregoing, may make rules providing for—

- (a) the classification of prisons and prisoners into categories, and their separation accordingly;

Prisons

- (b) the duties and responsibilities of prison officers, including the duties and responsibilities of particular classes of such officers;
- (c) the disciplinary control of prison officers;
- (d) the duties and powers of visiting justices;
- (e) the duties of medical officers; the medical inspection of prisons and prisoners; and the prevention of contagious diseases in prisons;
- (f) the safe custody, management, organization, hours, mode and kind of labour and employment, clothing, maintenance, instruction, discipline, treatment, restraint, correction and discharge of prisoners and the manner in which prison offences shall be tried;
- (g) the provision of a suitable diet and dietary scales, including punishment diet for prisoners and prescribing the conditions under which such diet and scale may be varied;
- (h) the construction, description, equipment and supervision of cells and wards;
- (i) the payment of prisoners for work done while in prison;
- (j) the establishment of a prisons rewards and fines fund and the method of administration of such fund by the Commissioner;
- (k) the establishment of prisoners' aid associations and societies in connection with discharged prisoners and the appointment of officers responsible for the aftercare of prisoners;
- (l) the medical examination, measuring, photographing and taking of fingerprint impressions, footprints and casts thereof, palm prints or other records of prisoners, detained in any prison or otherwise detained in custody, including detailed personal statistics and histories, and for requiring full and truthful answers to all questions put to such persons with the object of obtaining such statistics and histories; and the person, if any, to whom such measurements, photographs, fingerprint impressions, footprints and casts thereof, palm prints or other records are to be sent or supplied;
- (m) the disposal of products of prison labour;
- (n) the disposal of prisoners' property left unclaimed for a prescribed period, including its sale and the disposal of the proceeds of such sale;
- (o) the manner in which the remission of sentences, including any period of public work under Part XII of this Act, shall be calculated;
- (p) the manner in which petitions by prisoners to the President shall be presented;
- (q) suitable diet and dietary scales or ration allowances for persons employed on public work under Part XII of this Act;
- (r) anything which by this Act may or is required to be prescribed, and generally for the good management and government of prisons and the prisoners therein whether in, about or beyond the limits of such prisons.

(2) Notwithstanding anything to the contrary in this section contained, the Minister may make different rules in respect of different classes, categories or groups of prisons, prisoners or prison officers, or in respect of particular prisons.

[Act No. 21 of 1966, Second Sch., L.N. 124/1964.]

75. Amendment of Cap. 91

The Detention Camps Act (Cap. 91) (now repealed) is amended by substituting for section 15 thereof a new section as follows—

15. Application of Act 49 of 1962 (Cap. 90)

The provisions of sections 26, 29, 30, 38, 45, 50, 51(1), 51(2), 52, 53, 54, 55, 56 and 57 of the Prisons Act, 1962, shall apply and be read as part of this Act, as if there were substituted for the words “prison” and “prisoner”, wherever they appear therein, the words “detention camp” and “detainee” respectively.

76. Repeal and saving

- (1) The Prisons Act, 1948 (Cap. 78) is repealed.
- (2) Notwithstanding the repeal of the Prisons Act—
 - (a) all prisons established under that Ordinance shall be deemed to be prisons established under this Act; and
 - (b) all prison officers appointed under that Act shall be deemed to have been appointed under this Act and shall, in so far as such provisions apply to them, be subject to the provisions of this Act.

