

PRISONS

Prisons Act 17 of 1998.

Summary: This Act provides for the establishment of the Namibia Prisons Service and replaces the *Prisons Act 8 of 1959*. It came into force on 15 August 1998 (GN 206/1998, GG 1927).

Amendments: Act 5/1999 (which will come into force on a date determined by the Minister) corrects certain references in sections 28 and 83.

The Transfer of Convicted Offenders Act deletes sections 120-121.

The General Law Amendment Act 14 of 2005 amends sections 1 and 112.

Act 2/2010 substitutes the First Schedule to the Act, and inserts section 7A to empower the Minister to amend the First Schedule in future by notice in the *Government Gazette*.

Regulations: Regulations made in terms of the previous Act survive in terms of section 127. GN 67/1987 amends the regulations promulgated under the previous Act (which have not been recorded here).

A new set of regulations pertaining to prison service personnel and the treatment of prisoners is contained in GN 226/2001 (GG 2643), as amended by GN 34/2009 (GG 4223) and GN 134/2009 (GG 4274).

Several new prisons are established by GN 201/1998 (GG 1927). The Katima Mulilo police cells are declared to be a prison by GN 160/1999 (GG 2163).

Presidential pardons: Pardons are issued to certain categories of prisoners in Proclamation 15/1993 (GG 642), Proclamation 11/1994 (GG 836), Proclamation 3/1995 (GG 1051) and Proclamation 4/1997 (GG 1533).

The names of prisoners covered by the Presidential pardon contained in Proc. 1/2000 (GG 2306) issued in honour of the tenth anniversary of the independence of Namibia are listed in GN 183/2000 (GG 2379).

The names of prisoners covered by the Presidential pardon contained in Proc. 12/2003 (GG 2956) issued in honour of the thirteenth anniversary of the independence of Namibia are listed in GN 145/2003 (GG 3012).

The names of prisoners covered by the Presidential pardon contained in Proc. 1/2005 (GG 3397) issued in honour of the fifteenth anniversary of the independence of Namibia are listed in GN 103/2005 (GG 3483).

Certain categories of prisoners are given a Presidential pardon in Proc. 4/2006 (GG 3626) in honour of the sixteenth anniversary of the independence of Namibia, but no Government Notice could be located listing the names of prisoners who fell within these categories.

The names of prisoners covered by the Presidential pardon contained in Proc. 6/2009 (GG 4230) issued in honour of the nineteenth anniversary of the independence of

Namibia are listed in GN 191/2009 (GG 4343).

Cases: The following cases relate to the previous *Prisons Act 8 of 1959-*

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC) (sections 36, 37, 48(1), 54(2), 56(3) and Regulation 100 of the Prison Regulations)

S v Haruseb 1991 NR 155 (HC) (section 48(1)(a))

S v Mbahapa 1991 NR 274 (HC) (section 48(1)(a))

S v Vihajo & Others 1993 NR 233 (HC) (section 48(1)(a))

S v Matsuis 1993 NR 234 (HC) (section 48(1)(a))

S v Matthias 1993 NR 420 (HC) (section 48(1)(a))

Namunjepo & Others v Commanding Officer, Windhoek Prison & Another 1999 NR 271 (SC) (section 80 and Regulation 102)

S v Linyando 1999 NR 300 (HC) (section 48(2) read together with section 32(2))

Amakali v Minister of Prisons and Correctional Services 2000 NR 221 (HC) (section 48)

The following cases relate to the present Act –

S v Babiep 1999 NR 170 (HC) (meaning of “prison”, section 54, section 75(1))

S v Njuluwa 2000 NR 97 (HC) (held that it would derogate from the statutory powers conferred by sections 92, 95-98 if judicial officers were allowed to order that convicted persons may not be paroled)

Kennedy & Others v Minister of Prisons and Correctional Services 2008 (2) NR 631 (HC) (legal duty of care of members of Namibian Prison Services; discussion at 654G-I of reasonable force under section 30(1)).

Conditions in police cells: It appears that the Prisons Act is the governing legislation for police cells where awaiting-trial prisoners are held. *McNab & Others v Minister of Home Affairs & Others* 2007 (2) NR 531 (HC) at 548C-ff found that conditions in the holding cells in which the plaintiffs were detained were inhuman and degrading and therefore a violation of the constitutional right to human dignity. See also *Report of the Standing Committee on Foreign Affairs, Defence And Security on Visits to Police Stations, Police Cells, Prisons, Border Posts and Military Installations*, National Assembly, 2006; Adv JR Walters, *Special Report on Conditions Prevailing at Police Cells throughout Namibia*, Windhoek: Office of the Ombudsman, 2006; Adv JR Walters, *Follow-up Report on Conditions Prevailing at Police Cells in Namibia*, Windhoek: Office of the Ombudsman, 2008, available at www.ombudsman.org.na; Oliver C Ruppel and Angelique L Groenewald, *Conditions of Police Cells in Namibia*, Windhoek: Human Rights and Documentation Centre, University of Namibia, undated, available at www.unam.na.

Transfer of Convicted Offenders Act 9 of 2005.

Summary: This Act makes provisions for the mutual transfer of sentenced offenders between Namibia and foreign States. It came into force on 28 July 2006 (GN 116/2006 (GG 3674)).

Regulations: Regulations are contained in GN 117/2006 (GG 3674).

APPOINTMENTS

Appointment of First Commissioner of Prisons, Proc. 19/1990.

Appointment of Commissioner of Prisons, Proc. 34/1997 (GG 1765).

See also Security Commission Act 18 of 2001 (**CONSTITUTION**).