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CONTENTS:

PROCLAMATION:	
No. A.G. 6 Executive Powers (Prisons) Transfer Proclamation, 1977	1

INHOUD:

PROKLAMASIE:	
No. A.G. 6 Proklamasie op die Oordrag van Uitvoerende Gesag (Gevangenis), 1977	1

PROCLAMATION

Whereas it is expedient to consolidate under one single law all laws relating to the administration of the prisons of the territory; and whereas it is expedient to give effect to the said consolidation by the Administrator-General for the Territory of South West Africa;

(Approved by the State President on 25 October 1977)

No. A.G. 6

1977

PROKLAMASIE

Hierin tekenende en gedateerde door de Administrateur-generaal van die Republiek van Suid-Afrika, met betrekking tot die uitvoering van die Proklamasie van 19 Augustus 1977, maak ek hierby die wette in die volgende vorm vast:

No. A.G. 6

1977

OORDRAG VAN ADMINISTRASIE VAN DIE DEPARTEMENT VAN GEVANGENISSE

Kragtens die bevoegdheid my verleent by Proklamasie 181 van 19 Augustus 1977, maak ek hierby die wette in die Bylae vervat.

M. T. STEYN,

Administrator-General,

Windhoek, 28 October 1977

Administrator-generaal Windhoek, 28 Oktober 1977

do (hierinafter referred to as "the Minister")

Administrator van die Departement van Gevangenisse,

Administrator van die Departement van Justisie en

Woordomskrywings, 28 Oktober 1977

1. (1) Tensy uit die samehang anders blyk, beteken in hierdie Proklamasie —

(i) "gebied" die gebied Suidwes-Afrika; (v)

(ii) "inwerkingtreding", met betrekking tot hierdie Proklamasie, die inwerkingtreding daarvan op die datum waarop dit in die *Offisiele Koerant* van die gebied aangekondig word; (i)

(iii) "Republiek" die Republiek van Suid-Afrika; (iv)

(iv) "wet" 'n Wet van die Parlement van die Republiek (met inbegrip van die Skatkis- en Auditwet, 1975

SCHEDULE

BYLAE

Definitions

1. (1) In this Proclamation, unless the context indicates otherwise —

(i) "commencement", in relation to this Proclamation, means its coming into operation on the date on which it is published in the *Official Gazette* of the territory; (ii)

(ii) "law" means an Act of the Parliament of the Republic (including the Exchequer and Audit Act, 1975 (Act 66 of 1975)), an Ordinance of the Legislative Assembly of the territory, any proclamation issued under such an Act or Ordinance, and any regulation, rule or other

enactment issued under such an Act, Ordinance or proclamation in so far as it relates to or applies in the territory or is connected with its administration or the administration in it of a matter referred to in section 2; (iv)

(iii) "Prisons Act" means the Prisons Act, 1959 (Act 8 of 1959), as applied to the territory by the State President of the Republic by Proclamation R. 130 of 23 May 1969, as amended by Proclamation R.211 of 9 September 1977; (v)

(iv) "Republic" means the Republic of South Africa; (iii)

(v) "territory" means the territory of South West Africa. (i)

(2) Proclamation R.211 of 9 September 1977, referred to in the definition of "Prisons Act" in subsection (1), is hereby amended by the deletion of paragraph 3 of the Schedule thereto.

Transfer of administration of Prisons Department

2. Notwithstanding anything to the contrary contained in any other law but subject to the provisions of this Proclamation, the administration of the affairs of the territory in relation to any matter which at the commencement of this Proclamation is administered by the Minister of Prisons of the Republic, shall be carried on by the Administrator-General.

Application of laws

3. (1) Subject to the provisions of subsection (2), any reference in the Prisons Act or in any other law relating to a matter referred to in section 2

(a) to the Minister of Prisons or Minister of Finance or State President or Parliament (including the Senate or the House of Assembly) or Government of the Republic, shall be construed as a reference to the Administrator-General;

(b) to the State, shall be construed as including a reference to the Administrator-General;

(c) to the Republic, shall be construed as a reference to the territory;

(d) to the *Government Gazette* of the Republic, shall be construed as a reference to the *Official Gazette* of the territory.

(2) The provisions of subsection (1) shall not apply with reference to —

(Wet 66 van 1975)), 'n Ordonnansie van die Wetgewende Vergadering van die gebied, 'n proklamasie wat kragtens so 'n Wet of Ordonnansie uitgevaardig is, en 'n regulasie, reël of ander maatreel wat kragtens so 'n Wet, Ordonnansie of proklamasie uitgevaardig is, vir sover dit op die gebied betrekking het of daarin geld of met die administrasie daarvan, of die administrasie van 'n aangeleentheid in artikel 2 bedoel daarin, in verband staan; (ii)

(v) "Wet op Gevangenis" die Wet op Gevangenis, 1959 (Wet 8 van 1959), soos deur die Staatspresident van die Republiek by Proklamasie R.130 van 23 Mei 1969, soos gewysig deur Proklamasie R.211 van 9 September 1977, op die gebied toegepas. (iii)

(2) Proklamasie R.211 van 9 September 1977, waarna in die omskrywing van "Wet op Gevangenis" in subartikel (1) verwys word, word hierby gewysig deur paragraaf 3 van die Bylae daarby te skrap.

Oordrag van administrasie van Departement van Gevangenis

2. Ondanks andersluidende bepaling van enige ander wet maar behoudens die bepaling van hierdie Proklamasie, word die administrasie van die sake van die gebied met betrekking tot 'n aangeleentheid wat by die inwerkingtreding van hierdie Proklamasie deur die Minister van Gevangenis van die Republiek geadministreer word, deur die Administrateur-generaal behartig.

Toepassing van wette

3. (1) Behoudens die bepaling van subartikel (2), word 'n verwysing in die Wet op Gevangenis of in enige ander wet wat op 'n aangeleentheid in artikel 2 bedoel, betrekking het —

(a) na die Minister van Gevangenis of Minister van Finansië of Staatspresident of Parlement (met inbegrip van die Senaat of die Volksraad) of Regering van die Republiek, uitgelê as 'n verwysing na die Administrateur-generaal;

(b) na die Staat, uitgelê as 'n verwysing ook na die Administrateur-generaal;

(c) na die Republiek, uitgelê as 'n verwysing na die gebied;

(d) na die *Staatskoerant* van die Republiek, uitgelê as 'n verwysing na die *Offisiële Koerant* van die gebied.

(2) Die bepaling van subartikel (1) is nie van toepassing nie met betrekking tot —

(a) sections 19 and 88, and the reference to the State President in section 72 and, in relation to the commutation of any sentence by the State President, in section 31 of the Prisons Act;

(b) those provisions of the Prisons Act or any other law providing for or relating to the appointment, promotion, transfer, secondment, remuneration, allowances, discipline, trial, discharge or suspension, the retirement, leave and pension rights and privileges or any other conditions of service of any member of the Prisons Service as defined in the said Act or of any other person who is, or is engaged for employment, in the service of the State or the Government of the Republic or any of its departments in terms of that Act or any other law;

(c) such provisions of any law as the Administrator-General may determine, to such extent or with reference to such matter and with effect from such date (which may be a date earlier than the date of the determination) as he may determine, and made known by the Chief Director of his Office by notice in the *Official Gazette* of the territory.

(3) Any proclamation, regulation or rule which is issued or made after the commencement of this Proclamation by the State President, or by or under the authority of the Minister of Prisons, in terms of a law applying both in the territory and in the Republic, and which is published in the *Government Gazette* of the Republic, shall, notwithstanding the provisions of subsection (1), apply in the territory if such proclamation, regulation or rule or the notice by which it is so published, contains a statement that it has been issued or made with the consent of the Administrator-General and applies also in the territory: Provided that for the purposes of the application of such proclamation, regulation or rule in the territory, the provisions of subsection (1) shall apply.

Delegation of powers

4. (1) The Administrator-General may delegate any power other than a power to issue a proclamation or to make regulations or rules, which is conferred upon him by any law as applied by section 3(1), and which but for the provisions of this subsection he would not be empowered to delegate, to the Commissioner of Prisons.

(2) The Commissioner of Prisons may delegate any power delegated to him under subsection (1) or, notwithstanding anything to the contrary contained in any other law, delegated to or conferred upon him under or by such other law, to an officer as defined in the Prisons Act who is stationed in the territory.

(a) artikels 19 en 88, en die verwysing na die Staatspresident in artikel 72 en, met betrekking tot die versagting van binne vonnis deur die Staatspresident, in artikel 31 van die Wet op Gevangenis;

(b) daardie bepalings van die Wet op Gevangenis of 'n ander wet wat voorseeing maak vir of betrekking het op die aanstelling, bevordering, verplasing, aloorplasing, aftaan, besoldiging, toelaes, tug, verhoor, ontslag of skorsing, die uitdienstredings-, verlof- en pensioenregte en voordele of enige ander diensvoorraades van 'n lid van die Gevangenisdiens soos in genoemde Wet omskryf of van 'n ander persoon wat in gevolge daardie Wet of 'n ander wet in die diens van die Staat of die Regering van die Republiek of 'n departement daarvan is of geneem word;

(c) die bepalings van 'n wet wat die Administrateur-generaal bepaal, in dié mate of met betrekking tot dié aangeleentheid en vanaf dié datum (wat 'n datum vroeër as die datum van die bepaling kan wees) wat hy bepaal, en wat deur die Hoofdirekteur van sy Kantoor by kennisgewing in die *Offisiële Koerant* van die gebied bekendgemaak word.

(3) 'n Proklamasie, regulasie of reël wat na die inwerkingtreding van hierdie Proklamasie deur die Staatspresident of deur of op gesag van die Minister van Gevangenis kragtens 'n wet wat sowel in die gebied as in die Republiek van toepassing is, uitgevaardig of gemaak word en wat in die *Staatskoerant* van die Republiek aangekondig word, is, ondanks die bepalings van subartikel (1), in die gebied van toepassing indien daar in die proklamasie, regulasie of reël of die kennisgewing waarby dit aldus aangekondig word, verklaar word dat dit met die toestemming van die Administrateur-generaal uitgevaardig of gemaak is en ook in die gebied van toepassing is: Met dien verstande dat die bepalings van subartikel (1) by die toepassing van daardie proklamasie, regulasie of reël in die gebied geld.

Delegering van bevoegdhede

4. (1) Die Administrateur-generaal kan 'n bevoegdheid, behalwe 'n bevoegdheid om 'n proklamasie uit te vaardig of om regulasies of reëls te maak, wat by 'n wet soos deur artikel 3(1) toegepas, aan hom verleen word en wat hy nie sou kon deleger as dit nie vir die bepalings van hierdie subartikel was nie, aan die Kommissaris van Gevangenis delegee.

(2) Die Kommissaris van Gevangenis kan 'n bevoegdheid wat kragtens subartikel (1) of, ondanks andersluidende bepalings van enige ander wet, kragtens of by sodanige ander wet aan hom gedelegeer is of verleen word, aan 'n offisier soos in die Wet op Gevangenis omskryf wat in die gebied diens doen, delegee.

(3) The Commissioner of Prisons shall not be deprived of a power delegated by him to such an officer, and may alter or withdraw any decision given by such officer in the exercise of that power.

(4) The Administrator-General shall not be deprived of a power delegated by him, and may alter or withdraw any decision given in the exercise of that power, including a decision given by the Commissioner of Prisons under subsection (3).

(5) Where a power has been delegated to the holder of a post, that power may be exercised by the person who for the time being performs the functions attached to such post.

Transitional provisions

5. Anything done under a law referred to in subsection (1) of section 3 before the commencement of this Proclamation, shall be deemed to have been done under that law as applied by that subsection.

Short title

6. This Proclamation shall be called the Executive Powers (Prisons) Transfer Proclamation, 1977.

Printed and obtainable from *Suidwes-Drukkery Beperk*
The *P.O. Box 2196, Windhoek.*
South West Africa.

(3) Die Kommissaris van Gevangenis word nie ontdoen van 'n bevoegdheid wat hy aan so 'n offisier gedelegeer het nie, en kan 'n beslissing deur dié offisier by die uitoefening van daardie bevoegdheid gegee, wysig of intrek.

(4) Die Administrateur-generaal word nie ontdoen van 'n bevoegdheid wat deur hom gedelegeer is nie, en kan 'n beslissing by die uitoefening van daardie bevoegdheid gegee, met inbegrip van 'n beslissing deur die Kommissaris van Gevangenis se kragtens subartikel (3) gegee, wysig of intrek.¹⁰ In die gevalle

a (5) Waar 'n bevoegdheid aan die bekleer van 'n pos gedeleer is, kan daardie bevoegdheid uitgeoefen word deur die persoon wat te eniger tyd die werkzaamhede wat aan daardie pos verbonde is, verrig.

Organizational

5. Eniglets wat voor die inwerkingtreding van hierdie Proklamasie gedoen is kragtens 'n wet in subartikel (1) van artikel 3 bedoel, word geag kragtens daardie wet soos deur daardie subartikel toegepas, gedoen te wees.

Kort titel av **John Smith** vid **2023-01-01**

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