



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

GOVERNMENT NOTICES		<i>Page</i>
No. 116	Commencement of Transfer of Convicted Offenders Act, 2005 (Act No. 9 of 2005)	1
No. 117	Transfer of Convicted Offenders Act, 2005 (Act No. 9 of 2005): Regulations in respect of the transfer of convicted offenders	4

Government Notices

MINISTRY OF SAFETY AND SECURITY

No. 116 2006

COMMENCEMENT OF TRANSFER OF CONVICTED OFFENDERS ACT, 2005 (ACT NO. 9 OF 2005)

In terms of section 24 of the Transfer of Convicted Offenders Act, 2005 (Act No. 9 of 2005), I determine 28 July 2006 as the date on which the said Act comes into operation.

P. TSHEEHAMA
MINISTER OF SAFETY AND SECURITY

Windhoek, 17 July 2006

MINISTRY OF SAFETY AND SECURITY

No. 117

2006

**TRANSFER OF CONVICTED OFFENDERS ACT, 2005 (ACT NO. 9 OF 2005):
REGULATIONS IN RESPECT OF THE TRANSFER OF CONVICTED
OFFENDERS**

The Minister of Safety and Security has, under section 22(1) of the Transfer of Convicted Offenders Act, 2005 (Act No. 9 of 2005), made the regulations set out in the Schedule.

ARRANGEMENT OF REGULATIONS**CHAPTER 1
PRELIMINARY**

1. Definitions

**CHAPTER 2
TRANSFER OF SENTENCED OFFENDERS TO NAMIBIA**

2. Application or request for transfer
3. Proof of citizenship or nationality
4. Submission of application or request
5. Consideration of transfer
6. Notification of decision
7. Effecting transfer

**CHAPTER 3
TRANSFER OF SENTENCED OFFENDERS FROM NAMIBIA**

8. Application or request for transfer
9. Proof of citizenship or nationality
10. Submission of application or request
11. Consent of transfer
12. Consideration of transfer
13. Notification of decision
14. Effecting transfer

**CHAPTER 4
MISCELLANEOUS**

15. Commissioner's Directives
16. Application forms
Schedules

SCHEDULE

CHAPTER 1 PRELIMINARY

Definitions

1. In these regulations, unless the context otherwise indicates, an expression defined in the Act has a corresponding meaning and -

"Commissioner" means the Commissioner of Prisons appointed under Article 32(4)(c)(cc) of the Namibian Constitution;

"officer in charge" means the officer in charge of the prison where the sentenced offender who applies to be transferred to a foreign State is incarcerated or detained in the Republic of Namibia;

"the Act" means the Transfer of Convicted Offenders Act, 2005 (Act No. 9 of 2005).

CHAPTER 2 TRANSFER OF SENTENCED OFFENDERS TO NAMIBIA

Application or request for transfer

2. (1) Notwithstanding local procedures in a foreign State, an application by a sentenced offender who is a Namibian citizen or national and who wants to be transferred to Namibia shall be made to the Minister, on an application form set out in the First Schedule.

(2) The request to transfer to Namibia a sentenced offender who is a Namibian citizen or national shall be made in writing by the Minister to the proper authority of the foreign State where such Namibian citizen or national is serving sentence.

(3) The Minister may make the request referred to in sub-regulation (2) -

- (a) on his or her own initiative;
- (b) upon a request by the relatives of the sentenced offenders; or
- (c) upon a request by any other person who, body or institution which, has a justifiable reason to make such a request to the Minister.

Proof of citizenship or nationality

3. (1) An application by a sentenced offender who is a Namibian citizen or National and who wants to be transferred to Namibia must be accompanied by proof of Namibian citizenship or nationality.

(2) The following documents shall be valid document to prove Namibian citizenship or nationality -

- (a) birth or baptismal certificate from Namibia;
- (b) a Namibian identification card;
- (c) a valid Namibian passport;

- (d) a certificate of naturalization;
- (e) any other document which is categorized as a valid document to prove Namibian citizenship or nationality.

(3) The Minister shall send any of the above documents to a foreign State when he or she is requested as such under section 5(2) of the Act.

Submission of application or request

4. (1) The application referred to in regulation 2(1) shall be submitted to the Namibian Ambassador in that foreign State for submission to the Minister: Provided that before submitting to the Minister, the Ambassador shall verify and confirm the applicant's Namibian citizenship or nationality and his or her voluntary consent for transfer to Namibia.

(2) A request referred to in regulation 2(2) shall be submitted to the Namibian Ambassador in that foreign State for submission to the proper authority of that State.

Consideration of transfer

5. (1) When deciding to approve or disapprove the transfer of a sentenced offender to Namibia, the Minister shall take into consideration, among others, the following -

- (a) whether the offender has fulfilled the conditions of the Act and the agreement in respect of which the transfer was requested;
- (b) whether the return of the offender to Namibia would outrage the public because of the serious nature of the offender's crime or circumstances surrounding it;
- (c) whether the return of the offender to Namibia would constitute a threat to National Security;
- (d) whether there is reason to believe that the offender would, on the offender's return to Namibia, engage in any activity that would be part of a pattern of criminal activity planned and organized by a number of persons acting in concert or in furtherance of any offence that may be punishable under any law including common law;
- (e) whether the offender left or remained outside Namibia with the intention of abandoning Namibia as the offender's place of permanent residence, and whether the offender has no social or family ties in Namibia;
- (f) whether the offender has previously been transferred under the Act;
- (g) whether the offence committed in a foreign State is punishable as a crime in Namibia;
- (h) any other matter as the Minister may deem fit and appropriate.

(2) The Minister may consult, or request information from, any person, institution or agency when considering the application by a sentenced offender who is a Namibian citizen or national and who wants to be transferred to Namibia.

Notification of decision

6. The decision of the Minister on the application by the sentenced offender shall be sent to the proper authority of a foreign State through the Namibian Ambassador in that State.

Cost of transfer

7. When the application or request for transfer is approved, the sentenced offender shall be transferred to Namibia on costs as provided for under section 19 of the Act and the effecting of sentence shall be done as provided for under section 11 of the Act.

**CHAPTER 3
TRANSFER OF SENTENCED OFFENDERS FROM NAMIBIA****Application or request for transfer**

8. (1) An application by a sentenced offender who is a citizen or national of a foreign State and who wants to be transferred to that State shall be made to the Minister on an application form set out in the Third Schedule.

(2) The request for transfer to a foreign State of a sentenced offender who is a citizen or national of that foreign State shall be made in writing by the proper authority of that foreign State to the Minister.

Proof of citizenship or nationality

9. (1) The offender who is making the application as provided under regulation 8(1) shall secure and submit, together with his or her application form, proof of citizenship or nationality of the foreign State to which he or she wants to be transferred.

Submission of application or request

10. (1) The application referred to in regulation 8(1) shall be submitted to the officer in charge of the prison where the offender is detained and the officer in charge of the prison must make his or her comments on the application.

(2) Subject to regulation 11, the officer in charge shall forward the application, together with his or her comments, to the Commissioner.

(3) The Commissioner shall consider the application and forward it together with his or her comments to the Minister for consideration and decision.

(4) A request referred to in regulation 8(2) can be submitted to the Minister through the Namibian Ambassador in that foreign State or through the Ambassador of that foreign State in Namibia.

(5) The Minister shall inform the Commissioner of a request received under sub-regulation (4) and the Commissioner shall inform the officer in charge of such request.

(6) Upon the receipt of the information from the Commissioner as per sub-regulation (5), the Officer in charge shall, as soon as practicably possible, inform the concerned sentenced offender about the request and when the sentenced offender agrees with the request, he or she shall complete the application form set out in the Third Schedule and the procedure provided for under regulations 10(2), 10(3) and 11 shall be followed.

Consent of transfer

11. Before submitting the application to the Commissioner as provided for under regulation 10(2), the officer in charge shall ensure that the offender voluntarily consents to the transfer and that such consent is not a result of any promises, threats or any other improper inducement and the officer in charge shall administer an oath or affirmation to such effect.

Consideration of transfer

12. (1) When deciding to approve or disapprove the transfer of a sentenced offender from Namibia to a foreign State, the Minister shall take into consideration, among others, the following -

- (a) whether the offender has fulfilled the conditions of the Act and the agreement in respect of which the transfer was requested;
- (b) whether the offence committed in Namibia is punishable as a crime in that foreign State;
- (c) any other matter as the Minister may deem fit and appropriate.

(2) When considering the application the Minister may consult, or request information from, any person, institution or agency.

Notification of decision

13. (1) The decision of the Minister or the proper authority of a foreign State on the application by the sentenced offender for transfer shall be sent to the officer in charge through the Commissioner for the officer in charge to inform the offender of such decision.

(2) The decision of the Minister on a request by the proper authority of a foreign State shall be sent to that proper authority through the Ambassador of that foreign State in Namibia.

Effecting transfer

14. (1) Where the transfer of a sentenced offender to a foreign State is approved by both parties, the Minister shall issue to the officer in charge a warrant as set out in the Forth Schedule to authorise the release of the sentenced offender and the Minister must clearly indicate in that warrant to whom the offender should be handed over.

(2) The provisions of section 19 of the Act shall apply in regards to costs for transfer.

**CHAPTER 4
MISCELLANEOUS****Commissioner's Directives**

15. The Commissioner may issue to the officer in charge administrative directives on any matter concerning the transfer of convicted offenders for the purpose of ensuring proper and effective implementation of the transfer process.

Application forms

16. (1) Application forms for transfer to Namibia can be obtained from the Namibian Embassy or from the office of the Commissioner.

(2) Application forms for transfer from Namibia can be obtained from the officer in charge or from the office of the Commissioner.

FIRST SCHEDULE

NAMIBIAN PRISON SERVICE

APPLICATION FOR TRANSFER TO NAMIBIA IN TERMS OF THE REGULATIONS IN RESPECT OF THE TRANSFER OF SENTENCED OFFENDERS

Instructions:

- 1. This form must be completed and submitted to the Minister in duplicate.
- 2. Part A is to be completed by the sentenced offender.
- 3. Parts B, C, and D are to be completed by the prison authorities where the sentenced offender is serving his or her sentence.

PRISON: FOREIGN STATE:

A. OFFENDER'S PARTICULARS

- 1. Surname: Full name or names:
- 2. Date of birth: Place of birth:
- 3. Gender: Male or Female: Marital status: Single or Married:
- 4. Last residential address in Namibia:

5. Next of kin:

Surname:

Full name or names:

Residential Address:

Telephone:

Relationship:

6. You are Namibian citizen by:

Birth: or Naturalisation:

7. Education and Work Experience:

Educational Qualifications:

Current Occupation:

Previous work experience:

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8. **Residence Abroad:**

How long have you resided abroad? years months.

Residential address:

Briefly state your reasons for being abroad:

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9. **Support:**

State the name of any person or agency and their contact addresses and telephone numbers who might be willing to give you support after your transfer to Namibia:

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10. State any other information that you think Namibian officials should know about you or your case:

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11. I certify that the information I gave above is to the best of my knowledge true and that I am voluntarily requesting to be transferred to Namibia and my reasons for requesting the transfer are as follows:

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.....
Signature: Sentenced offender

.....
Date

B. PARTICULARS OF OFFENCE AND SENTENCE

1. Current Offence and sentence thereof:

Offence	Sentence
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.....

2. Names of accomplices (if any):

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3. Offender's version on offence or offences:

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4. Official version on offence or offences:

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C. CRIMINAL HISTORY AND CONVICTIONS

1. Previous Convictions:

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2. History of any escape or attempted escape from lawful custody:

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3. Any involvement in untoward incidents or riot or assault or hostage taking at a prison?

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4. Violence:

(a) Violent incidents involving the offender occurred in:

Community: Prison:

(b) The violent incidents resulted in:

Property damage: Death:

Minor injury:..... Serious injury:

Other (Specify):

(c) The violent incidents included the use of:

Firearms: Other (Specify):

5. History of drug or alcohol abuse:

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D. TREATMENT PROGRAMMES

1. Offender's interests:

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2. Level of participation in treatment programmes:

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3. Offender's immediate needs (medical, security, psychiatric, psychological) specify:

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E. COMMENTS OF NAMIBIAN EMBASSY

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Signature: Namibian Embassy

.....
Date

F. DECISION

Transfer Approved or Transfer not Approved

Remarks:

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MINISTER

.....
Date

SECOND SCHEDULE

NAMIBIAN PRISON SERVICE

DETENTION WARRANT

TO: The Officer in charge

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RE: NAME OF OFFENDER:

GENDER:

The above mentioned sentenced offender who has been transferred to Namibia from was convicted of the undermentioned offence or offences and was sentenced to imprisonment as indicated hereunder. This is to authorize you to receive him or her into your custody to continue serving the remainder of his or her sentence in accordance with Namibian Prison Laws.

Offence or offences for which the offender was convicted:

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Date of conviction:

Sentence:

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Date of sentence:

.....
MINISTER

.....
DATE

THIRD SCHEDULE

NAMIBIAN PRISON SERVICE

APPLICATION FOR TRANSFER TO FOREIGN STATE

Instructions:

1. This form must be completed and submitted in duplicate.
2. The oath should be administered by the officer in charge.

A. OFFENDER'S PARTICULARS

1. Surname: Full name or Names:
2. Date of birth: Place of birth:
3. Gender: Male or Female: Marital status: Single or Married:
4. Last residential address before coming to Namibia:
.....

5. Next of kin:

Surname:

Full name:

Residential Address:

Telephone:

Relationship:

6. You are citizen of by:

Birth: Naturalisation:

B. DECLARATION

I, do hereby declare that:

- (i) I am voluntarily applying for transfer to to serve the remainder of my sentence;
- (ii) I understand the provisions of the Transfer of Convicted Offenders Act, 2005 and the provisions of the agreement on transfer of convicted offenders between Namibia and and I accept that the mentioned provisions are binding to me;
- (iii) I authorize the Namibian Prison Service to release any information and records for the purpose of this application;
- (iv) I am conversant with the contents of this application and understand it;
- (v) I do or do not have any objection to take the prescribed oath;

(vi) I do or do not consider the prescribed oath as binding on my conscience.

.....
Signature: Offender

.....
Date

I certify that the offender admits that he/she is conversant with the contents of this application and understands it. This declaration was sworn to/affirmed before me and the offender's signature was affixed thereto in my presence at on this day of 20

Signature:

Full Names:

Address:
.....
.....

RANK:
COMMISSIONER OF OATH
EX-OFFICIO

C. RECOMMENDATION BY OFFICER IN CHARGE

Transfer Recommended or Transfer not Recommended

Remarks:
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OFFICER IN CHARGE

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Date

D. RECOMMENDATION BY COMMISSIONER OF PRISONS

Transfer Recommended or Transfer not Recommended

Remarks:
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COMMISSIONER OF PRISONS

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Date

E. DECISION

Transfer Approved or Transfer not Approved

Remarks:

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MINISTER

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Date

FOURTH SCHEDULE

NAMIBIAN PRISON SERVICE

RELEASE WARRANT

TO: The Officer in charge
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.....

RE: NAME OF OFFENDER:

PRISON NUMBER:

GENDER:

CASE NUMBER: CR NUMBER:

I hereby authorize you to release the above mentioned sentenced offender whose application for transfer to has been approved and you should hand him/her over to

.....
MINISTER

.....
DATE
