

Namibia

Transfer of Convicted Offenders Act, 2005

Regulations in respect of the Transfer of Convicted Offenders, 2006

Government Notice 117 of 2006

Legislation as at 15 November 2017

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Regulations in respect of the Transfer of Convicted Offenders, 2006

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Republic of Namibia
Annotated Statutes

Transfer of Convicted Offenders Act, 2005

**Regulations in respect of the Transfer
of Convicted Offenders, 2006**

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**Chapter 1
PRELIMINARY**

1. Definitions

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**

2. Application or request for transfer

- (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.

3. Proof of citizenship or nationality

- (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.

4. Submission of application or request

- (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.

5. Consideration of transfer

- (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.

6. Notification of decision

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.

7. Cost of transfer

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

8. Application or request for transfer

- (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.

9. Proof of citizenship or nationality

- (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.

10. Submission of application or request

- (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 subregulation (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.

11. Consent of transfer

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.

12. Consideration of transfer

- (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.

13. Notification of decision

- (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.

14. Effecting transfer

- (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

15. Commissioner's Directives

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.

16. Application forms

- (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.

SCHEDULES

Forms

[Editorial note: The forms have not been reproduced]