



## CONDITIONS OF POLICE CELLS IN NAMIBIA

*by Oliver C Ruppel<sup>1</sup> & Angelique L Groenewaldt,<sup>2</sup>*

*Human Rights and Documentation Centre (HRDC), Faculty of Law*

*University of Namibia*

---

<sup>1</sup> OC Ruppel is senior lecturer and director of the Human Rights and Documentation Centre (HRDC) at the Faculty of Law of the University of Namibia. Dr Ruppel graduated in law after studies at the Universities of Lausanne (Switzerland) and Munich (Germany). He holds a Master of Laws degree (LL M / Public Law) from the University of Stellenbosch (South Africa), a degree in philosophy from the Munich School of Philosophy SJ (Germany), a doctoral degree in law from the University of Pressburg (Slovakia) and a Master of Mediation degree (M M) from the University of Hagen (Germany).

<sup>2</sup> AL Groenewaldt is a final year LL B student and currently employed as a student assistant at the Human Rights and Documentation Centre (HRDC) at the Faculty of Law of the University of Namibia. She holds a B-iuris degree from the University of Namibia.

## TABLE OF CONTENTS

<b>1. Introduction</b> .....	3
<i>1.1 Background to this study</i> .....	3
<i>1.2 Outline and methodology of this study</i> .....	4
<b>2. Legal Position</b> .....	5
<i>2.1 The Namibian Constitution</i> .....	5
<i>2.2 Prisons Act, 17 of 1998</i> .....	6
<i>2.3 Prisons Act, 17 of 1998: Regulations for the Administration and Control of the Namibian Prison Service of 2001</i> .....	7
<b>3. Police and Holding Cells in Namibia</b> .....	8
<i>3.1 The distinction between a holding cell and a police cell</i> .....	8
<i>3.2 The conditions in police cells</i> .....	10
<i>3.2.1 Windhoek Central Police Station</i> .....	12
<i>3.2.2 Katutura Police Station</i> .....	12
<i>3.2.3 Wanaheda Police Station</i> .....	13
<b>4. Recommendations</b> .....	14
<b>Executive Summary</b> .....	16
<b>Bibliography</b> .....	17

## **1. Introduction**

### *1.1 Background to this study*

The Forum of Human Rights in Namibia<sup>3</sup> mandated the Human Rights and Documentation Centre to further investigate the legal and social challenges of police and holding cells in Namibia. The question which needs to be addressed at this point is where the distinction lies between police cells and holding cells. Although not legislatively defined, a police cell has customarily been reserved for persons not yet charged with a crime while holding cells house persons who have been charged with a crime but are awaiting their trial. It is in that sense that the two concepts (police cells and holding cells) are used throughout this paper. It must be appreciated from the outset that the Office of the Ombudsman, in accordance with its constitutional and statutory obligations, conducted an extensive research on conditions prevailing at police cells throughout Namibia in November 2006.<sup>4</sup> This report is very remarkable in that it examined the conditions at police cells in the whole of Namibia and hence it will serve as a basis for this study. The objective of the present report is not to replicate the excellent work done by the Ombudsman's Office, but rather to expand on it from a legal and procedural perspective.

It should be noted at this point that the authors encountered some difficulties in obtaining access to other police cells, apart from the one in Windhoek. Therefore, the discussion, as it relates to the actual physical conditions of other police cells, should be considered with reference to the study done by the Office of the Ombudsman in 2006. Ultimately, the two reports are complementary and can be considered representative of the current conditions of police cells in Namibia.

---

<sup>3</sup> The Human Rights Forum in Namibia is an informal group of key actors who convene monthly meetings. The aim of the group is to endeavour to safeguard, uphold and encourage respect for the fundamental rights and freedoms of the Namibian people as enshrined in Chapter 3 of the Constitution of Namibia and under international law.

<sup>4</sup> Walters, J. R. (2006). *Special Report on Conditions Prevailing at Police Cells throughout Namibia*, Windhoek, John Meinert Printing.

The Namibian Government has national and international obligations to uphold, protect and safeguard the fundamental rights and freedoms of its citizens, irrespective whether they are prisoners or free persons.<sup>5</sup> Moreover Namibia is a signatory to various international instruments and agreements dealing with the protection of persons subjected to detention or imprisonment.<sup>6</sup> It is also a signatory, *inter alia*, to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>7</sup> In the premise this enquiry is imperative in that it would assess the physical conditions of holding cells in Namibia and then draw a comparison between what is happening on the ground *versus* the laws that regulates the establishment and maintenance of holding cells.

### *1.2 Outline and methodology of this study*

The first step in the compilation of this report was to collect existing information on the conditions at police and holding cells in Namibia. This is partly done through a literature review of earlier research conducted in the area as well as desktop research. Thereafter a thorough examination of the relevant Constitutional provisions, legislation and policies on the detention of prisoners in Namibia was done by collecting and analyzing the applicable laws. An analysis of the laws dealing with prisons and prisoners is particularly important in that it provides an understanding on the grouping of prisoners; whether or not the different types of prisoners should be segregated; minimum standards on conditions of cells as well as the importance of the categories of cells (i.e. prisons, holding cells and police cells).

Furthermore interviews and field research were conducted during February, 2008 with a view to add depth and experience to this paper. The purpose of the field research and interviews was to examine the physical conditions of cells and to ascertain whether such conditions have improved, deteriorated or remained unchanged. It must be noted in this regard that this study was only done at stations in the

---

<sup>5</sup> Article 5, Article 143 and 144 of the Constitution of Namibia.

<sup>6</sup> It includes, *inter alia*, the Standard Minimum Rules for the Treatment of Prisoners; Standard Minimum Rules for the Administration of Juvenile Justice; Basic Principles for the Treatment of Prisoners; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; United Nations Rules for the Protection of Juveniles Deprived of Liberty; Standard Minimum Rules for Non-Custodial Measures, obtained from [www.mpcs.gov.na/policies](http://www.mpcs.gov.na/policies), accessed on 2 February 2008.

<sup>7</sup> Legal Assistance Centre (2004). NAMLEX Index to the Laws of Namibia, obtained from [www.lac.org.na](http://www.lac.org.na) accessed on 15 April 2005.

Khomas Region, Windhoek in particular. Consequently the report by the Office of the Ombudsman will serve as a starting point for most of the discussions.

## 2. Legal Position

### 2.1 *The Namibian Constitution*

In terms of Article 7 of the Constitution of Namibia, no one shall be deprived of personal liberty except according to the law. Consequently this provision specifically authorizes deprivation of liberty, such as imprisonment, if established by law.<sup>8</sup> Most international documents elaborate upon the basic rule enshrined in Article 7 of the Constitution. In the premise this provision should be read with Article 11 thereof which prohibits arbitrary arrest and detention and enshrines the right of *habeas corpus* in that all arrested or detained persons must be brought before a magistrate within 48 hours of their arrest and detention, failing which a person cannot remain in custody.<sup>9</sup> This provision is comparable to similar provisions of a vast number of international instruments.<sup>10</sup> According to Naldi,<sup>11</sup> arrest or detention must be reasonable and necessary in the circumstances<sup>12</sup> otherwise the accused has a right to release pending trial.<sup>13</sup>

The Namibian Constitution does not specifically lay down minimum rules for the protection of persons subjected to detention or imprisonment, except for the aforementioned broad provisions which comes under the entrenched provisions of the Bill of Rights in Chapter 3.<sup>14</sup> The Namibian Bill of Rights, like many other such documents, can be somewhat general and vague at times, to be determined by subsequent Acts of Parliament. Moreover, Article 121 of the Constitution explicitly states that an Act of Parliament that establishes a *Namibian prison service with prescribed powers, duties and procedures* should be promulgated. As a result the *Prisons Act, 17 of 1998* was enacted by the Parliament of Namibia.

---

<sup>8</sup> Naldi, G. (1995). *Constitutional Rights in Namibia: A Comparative Analysis with International Human Rights*, Kenwyn, Juta & Co Ltd, p. 40.

<sup>9</sup> Article 11(3) of the Constitution of Namibia. The right of habeas corpus was considered in *S v Mbahaba* 1991 (4) SA 668 (Nm).

<sup>10</sup> See Articles 3 and 9 of UDHR, Articles 9 and 14 of ICCPR, Article 5 of ECHR and Article 7 of ACHR.

<sup>11</sup> Naldi *supra*, p. 42.

<sup>12</sup> Mbahaba *supra*, p. 674.

<sup>13</sup> See also *S v Acheson* 1991 (2) SA 805, 822.

<sup>14</sup> It must also be noted in this regard that both Articles 7 and 11 can be derogated from in times of emergency (Article 24 (3)), but Article 24 (2) thereof lists certain safeguards for people detained without trial under emergency regulations.

## 2.2 Prisons Act, 17 of 1998

This Act provides for the establishment of the Namibia prisons service and it replaces the Prisons Act 8 of 1959. It came into force on 15 August 1998.<sup>15</sup> Sections 13 and 14 of the Act respectively provides for the establishment of prisons and temporary prisons throughout Namibia as determined by the Minister (i.e. the Minister of Safety and Security).<sup>16</sup> A *prisoner* is defined in section 1 of the Act as *any person, whether convicted or not, who is lawfully detained in a prison*. According to this elucidation one can accept that the word ‘prisoner’ includes pre-charge suspects, trial awaiting prisoners and convicted prisoners.

Section 15 of the Act explicitly states that male and female prisoners should be kept apart and confined in separate prisons or separate parts of the same prison.<sup>17</sup> Furthermore, according to section 56 (1) a juvenile who is awaiting trial or the conclusion of his or her trial shall not be detained in prison. However this provision confers discretion on the Commissioner of Prisons either to detain or not detain a juvenile offender. Section 52 (2) lays down certain factors that must be considered by the Commissioner in deciding on a suitable place of detention for a juvenile. It is clear from section 52 that juvenile offenders should also be segregated from adult male trial awaiting detainees. Moreover section 51 under the heading *Classification and separation of prisoners* provides that:

*Prisoners shall, on admission to a prison, be classified by the officer in charge into one or more of the following groups, namely –*

- (a) *convicted prisoners;*
- (b) *unconvicted prisoners;*
- (c) *juvenile offenders;*
- (d) *adult prisoners;*
- (e) *first offenders;*
- (f) *prisoners with previous convictions;*

---

<sup>15</sup> NAMLEX Index to the Laws of Namibia supra.

<sup>16</sup> Please note that prison services in Namibia previously resorted under the Ministry of Prisons and Correctional Services, but since 2005 it has become a department within the Ministry of Safety and Security.

<sup>17</sup> See also section 53 of the Act.

- (g) *prisoners who are suffering from mental illness; and*
  - (h) *such other groups as the Commissioner may determine,*
- and so far as the prison accommodation renders it practicable, each group shall be detained separately.*

This provision reiterates that persons arrested and detained or if convicted and sentenced to imprisonment should be categorized into one of the enumerated groups and be detained accordingly. The aforementioned provisions are in particular important in that they illustrate the rationale for a study on holding cells in Namibia. The point is that often the legal framework protecting the rights and freedoms of individuals is in place, but the problem rests with the implementation of the relevant law. Implementation of laws can be hampered by various factors, ranging from availability of resources to incompetence or deliberateness. Laws are enacted for the purpose of addressing social, economic and political challenges, and when it is not put into practice in line with the purpose for which it was enacted, it becomes *a good dead law on a piece of paper*. In the end the ultimate aim of law, namely to govern human conduct with a view to facilitate social change will not be accomplished.

### *2.3 Prisons Act, 17 of 1998: Regulations for the Administration and Control of the Namibian Prison Service of 2001*

The Regulations made in terms of the previous Act survive in terms of section 127 of the Prisons Act of 1998. GN 67/1987 amends the regulations promulgated under the previous Act.<sup>18</sup> A new set of regulations was promulgated by the then Minister of Prisons and Correctional Services accordance with section 124 of the Prisons Act of 1998. The regulations deal with prison service personnel and the treatment of prisoners and are contained in GN 226/2001 (GG 2643).

Chapter 3 of the 2001 regulations deals with various aspects relating to prisoners.<sup>19</sup> Part 3 under this Chapter lays down minimum standards regarding the accommodation of prisoners. In particular, section 195 provides that a dormitory or cell used by prisoners for sleeping purposes should comply with the prescribed requirements in respect of floor space, cubic capacity,

---

<sup>18</sup> NAMLEX Index to the Laws of Namibia *supra*.

<sup>19</sup> See in particular the provisions of section 169 of the regulations.

lighting, ventilation and general health conditions. Sections 250-251 deals with hygienic conditions and explicitly states that prisoners should be provided with bathing and toilette facilities.<sup>20</sup> These provisions are in line with the Standard Minimum Rules for the Treatment of Prisoners.<sup>21</sup> Furthermore section 198 reiterates that male and female prisoners should be detained separately, while section 259 sets out the basis for classification of prisoners.

Chapter 4 of the regulations regulates the treatment of different categories of prisoners. Section 298 provides that *a trial or sentence awaiting prisoner should be segregated from sentenced and other categories of unsentenced prisoners*. It is submitted that this section clearly stipulates that trial or sentenced awaiting prisoners should be detained separately from convicted prisoners and pre-charge suspects. Moreover, juveniles and women, whether they are pre-charge suspects, trial awaiting prisoners or convicted prisoners should at all times be segregated from adults and males. Failure to separate the different groups could result in gross human rights violations, such as rape, sodomy, cruel inhuman and degrading treatment, to mention but a few.

### **3. Police and Holding Cells in Namibia**

#### *3.1 The distinction between a holding cell and a police cell*

It would be useful to endeavour to distinguish between a police cell and a holding cell, especially since it came to light during the interviews conducted by the authors that prison officials do not really appreciate such a distinction. Unfortunately the Prisons Act of 1998 does not define these concepts and only provide a definition of the word *prison*. A *prison*, in terms of the Act, means a prison established under section 13, and includes a temporary prison declared under section 14.<sup>22</sup> Thus what amounts to a *police cell* or a *holding cell* in all probability depends on the interpretation by each particular prison service or police station.

---

<sup>20</sup> See also sections 255-257 which deals with the provision of food to prisoners, as well as section 258 that provides for the provision of clothes to prisoners.

<sup>21</sup> United Nations (1988) Human Rights: A Compilation of International Instruments, New York, United Nations Publication, pp.190-194.

<sup>22</sup> Section 1 of the Act.



Traditionally police cells are understood to accommodate persons arrested who have not been brought before a Magistrate or judicial officer as envisaged by Article 11 (3) of the Constitution.<sup>23</sup> This type of detainees is sometimes also referred to as *pre-charge suspects*, since they have not yet been charged with the crime they have allegedly committed. Conversely a detainee who has made a first appearance in court, but whose case has been postponed for one or other reason<sup>24</sup>, or a detainee whose bail was set but due to indigence he or she could not pay the bail, is called a *trail awaiting prisoner*. The ideal is that police cells should be reserved for pre-charge suspects while trail awaiting prisoners should be detained in holding cells. This principle is then also in line with section 51 of the Prisons Act.

The rationale for keeping pre-charge suspects separate from trail awaiting prisoners is simple. Police cells are originally designed to keep arrested persons in custody, pending a first appearance before a Magistrate or judicial officer. Consequently the holding capacity of police cells is relatively small, ranging between 20 to 211 total cell capacity.<sup>25</sup> In Namibia, most of the police cells have a total cell capacity of less than 50.<sup>26</sup> Moreover police cells are not designed for extended imprisonment, but only for overnight or over weekend detention of arrested persons. If pre-charge suspects and trail awaiting prisoners are incarcerated together the result is overcrowded police cells.<sup>27</sup>

For instance, if 180 prisoners are detained in a police cell originally designed for the temporary detention of 80 prisoners, it is obvious that overcrowding will follow. Overcrowding of police cells in turn results in numerous other problems such as a lack of sleeping and bathroom facilities, unhygienic conditions, increase in prison offences, to mention but a few. An over capacity of prisoners calls for more police staff to guard and tend to the prisoners, a luxury that

---

<sup>23</sup> See also section 54 of the 1998 Prisons Act.

<sup>24</sup> See for instance the numerous reasons advanced for postponement of cases in Walters *supra*, pp. 3-4.

<sup>25</sup> Walters *supra*.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, p. 5

can hardly be afforded in the already understaffed police service. Moreover the Ombudsman found in 2006 that most of the stations throughout Namibia were understaffed.<sup>28</sup>

### *3.2 The conditions in police cells*

The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country...these are the symbols which in the treatment of crime and criminals mark and measure the stored up strength of a nation, and are the signs and proof of the living virtue of it (Winston Churchill, UK House of Commons, 20 July 1910).<sup>29</sup>

A person, who is deprived of liberty by being held in custody, whether in a prison or in police cells remains a citizen who retains certain rights. Moreover such a person is also in the total care of the State, through delegation to custodial authorities who are responsible for their safety, health and welfare while in custody. Custodial authorities in this way owe incarcerated persons a duty of care which means that they should not be put at risk of injury, illness or death while in custody.<sup>30</sup>

Fundamental breaches of rights and conditions within prison have been exposed by a number of inquiries such as the report by the Ombudsman<sup>31</sup> and a report compiled by the NSHR on allegations of assault and other afflictions at the Katutura police cells in 2003.<sup>32</sup> The investigation done by the NSHR in 2003 confirmed that trail awaiting prisoners were assaulted by Special Field Force (SSF) members.<sup>33</sup> The NSHR also found at the time that the general conditions relating to food, sleeping facilities and medical treatment for detainees at the Katutura

---

<sup>28</sup> Ibid.

<sup>29</sup> Taylor, J. R. (2007). Conditions for the Persons in Custody and the Role of the Victorian Ombudsman, unpublished paper presented at the Australian and New Zealand 19<sup>th</sup> Annual Conference held in Hobart, 9-7 February 2007 under the theme 'Criminology and Human Rights', obtained from [www.ombudsman.vic.gov.au/resources/documents/Conference\\_paper\\_](http://www.ombudsman.vic.gov.au/resources/documents/Conference_paper_), accessed on 16 February 2008.

<sup>30</sup> Ibid.

<sup>31</sup> Walters *supra*.

<sup>32</sup> !Owoseb, T. & Festus, P. (2003). Katutura Police Cells: Allegations of Assault and other Afflictions, Windhoek, National Society for Human Rights (NSHR).

<sup>33</sup> Ibid., p. 2.

police cells were terrible.<sup>34</sup> When detainees complained about the indecent food, regular police officers would call in SSF members to assault the complaining detainees.<sup>35</sup> The NSHR recommended, *inter alia*, that the Inspector General of the Namibian Police should initiate investigations in respect of the complaints of assault on detainees by SSF members; the physical conditions of the police cells and the regular provision of health services to detainees.<sup>36</sup>

According to the report done by the Office of the Ombudsman poor sanitary conditions, overcrowding, insufficient food supplies, unsafe infrastructure, stagnant water, lack of access to medical care facilities and potable water, and insufficient bathroom and shower facilities were prevailing at police holding cells throughout the country.<sup>37</sup> As stated previously, the Ombudsman also noted police stations were understaffed and that officers could not tend to detainees in addition to their regular police duties.<sup>38</sup> Furthermore the Ombudsman also found that some detainees were held with convicted prisoners. In many rural areas juveniles continued to be held with adults.

Article 11 (3) of the Constitution of Namibia requires that an arrested person must be brought before trial within 48 hours. The Country Report on Human Rights Practices of 2006, compiled by the United States Bureau of Democracy, Human Rights and Labour, reveals that the government did not always respect this provision in practice.<sup>39</sup> A trial must take place *within a reasonable time*, or the accused must be released; however, lengthy pre-trial detention was a problem. The lack of qualified magistrates and other court officials, the high cost of legal aid, and slow or incomplete police investigations resulted in a serious backlog of criminal cases, which often translated into delays of up to one year or more between arrest and trial. At the time

---

<sup>34</sup> Ibid., pp. 2-5

<sup>35</sup> Ibid., pp. 2-3

<sup>36</sup> !Owoseb, T. & Festus, P. *supra*, pp.5-6.

<sup>37</sup> Walters *supra*, pp. 3-7.

<sup>38</sup> Ibid., p. 5.

<sup>39</sup> Bureau of Democracy, Human Rights and Labour (2007). Country Reports on Human Rights Practices (Namibia) – 2006, obtained from [www.state.gov/g/drl/rls/hrrpt/2006/78749.htm](http://www.state.gov/g/drl/rls/hrrpt/2006/78749.htm), accessed on 2 February 2008.

of the Ombudsman's visit to police holding cells nationwide during August and September, there were 2,950 detainees awaiting trial.<sup>40</sup>

### *3.2.1 Windhoek Central Police Station*

In an interview with the authors, Inspector Oelofse at the Windhoek central police station confirms that the status quo remained unchanged since the report done by the Office of the Ombudsman, save for a new coat of paint to the cells.<sup>41</sup> There are 8 cells with a total cell capacity of 80 at the Windhoek central police station, but the visitor's area is for the time-being also converted to a cell to accommodate detainees.<sup>42</sup> At present there are about 180 male detainees in these cells. Women and juvenile offenders are sent to the Wanaheda police station, because the Windhoek Central and Katutura police stations do not have the facilities to detain these groups separately. There is one holding cell in which detainees who are sick are kept. The cells are cleaned daily, but sometimes it is difficult to secure cleaning material.

Sleeping facilities are not sufficient and detainees have to sleep on cell rugs. There is only one toilette and shower per cell which is hardly sufficient for the needs of about 180 detainees. In addition there is at times a shortage of bath soap and toilette paper. Inspector Oelofse also pointed out that the food of detainees is much worse than that of the convicted prisoners in the prison.

### *3.2.2 Katutura Police Station*

In view of the fact that the authors could not secure interviews with the respective Inspectors of the Katutura and Wanaheda police stations, these two parts will reflect the findings of the Ombudman's report of 2006.<sup>43</sup> The Katutura police station has 4 police cells which can accommodate 70 detainees. At the time of the Ombudsman's visits to the station there were 94 persons detained in the police cells. It does not appear that there are any holding cells at the

---

<sup>40</sup> Walters supra.

<sup>41</sup> Oelofse, (2008) Interview in Windhoek, text cleared with interviewee.

<sup>42</sup> See also Walters supra, p. 10. The position has not changed during the last year.

<sup>43</sup> Ibid., pp.11-12.

Katutura police station. Furthermore there are also no separate facilities for women and juveniles. They are sent to Wanaheda.

Basically the same problems prevail in respect of sleeping and bathing facilities, namely lack of cleaning materials and soap and toilets that are not in a good condition. According to Chief Inspector Hanghome, who was interviewed by the Ombudsman, bedding is sufficient and cleaned by the detainees themselves. However what is rather unsettling is the fact that the photographs that were taken of the cells by the Ombudsman's Office reveal that there no natural lightning or flow of air in these cells.<sup>44</sup> Moreover the Regulations of 2001 specifically provide that no dormitory or cell must be used for sleeping purposes unless it complies with the prescribed requirements in respect of floor space, cubic capacity lighting, ventilation and general health conditions.<sup>45</sup>

### 3.2.3 *Wanaheda Police Station*

There are 8 police cells at the Wanaheda police station, 2 small and 6 bigger ones.<sup>46</sup> The total capacity of these cells is approximately 170, but at the time the Ombudsman wrote the report there were 276 inmates.<sup>47</sup> Wanaheda has separate facilities for females and juveniles. It would seem from the report that bedding and toilette facilities were adequate at the time.<sup>48</sup> The station also did not experience a lack of cleaning materials and soap. Food supply was also sufficient and was prepared at the police single quarters. However if one examine the photographs that were taken by the Office of the Ombudsman it is especially clear from the one taken of cell where women are detained that the bedding facilities is horrible.<sup>49</sup> All of the above discussed reports are stark reminders that conditions in custody remain problematic and indicate the need for robust external scrutiny and law reform.

---

<sup>44</sup> See below the photographs, courtesy of the Office of the Ombudsman.

<sup>45</sup> Section 195 of the Regulations to the Prisons Act.

<sup>46</sup> Walters *supra*, p. 12.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*, p. 13

<sup>49</sup> See the photo gallery below.

#### 4. Recommendations<sup>50</sup>

- 4.1 In view of the aforementioned studies on holding and police cells in Namibia, it is suggested that the Regulations of 2001 should be implemented accordingly so that trial or sentence awaiting prisoners are segregated from convicted and pre-charge suspects (section 298). This provision should be read with sections 15, 51, 52, 53, 54 and 56 of the Prisons Act of 1998.
- 4.2 The Ministry of Safety and Security (hereinafter ‘the Ministry’) should lobby for the re-introduction and establishment of holding cells where trial awaiting prisoners can be detained. Police cells should only be employed to detain pre-charge suspects as this is the purpose for which they were originally designed, while convicted prisoners should be kept in prisons. This would not only address the issue of overcrowding in police cells, but will also reduce prison offences and the likelihood of human rights violations such as keeping detainees in poor sanitary conditions, insufficient food supplies, unsafe infrastructure, stagnant water, lack of access to medical care facilities and potable water, and insufficient bathroom and shower facilities.
- 4.3 The question of who has oversight, and who monitors that the rights and the standards for decent custodial conditions are complied with, is critical in ensuring accountability and in attending to early warning signs. In the premise it is suggested that a monitoring committee should be established within the Ministry that would pay regular visits to police and holding cells as well as prisons with a view to investigate physical conditions at cells as well the general state of health of prisoners.
- 4.4 Furthermore it is also recommended that Magistrates should enquire at every appearance of accused persons into the reasons why bail was not paid (where bail was granted) in order to reduce the amount where it is warranted. In addition Magistrates should reconsider bail in circumstances where it was previously refused. This would contribute to solving the issue of overcrowded police cells.

---

<sup>50</sup> These recommendations should be read as complementary to that contained in the report of the Ombudsman in Walters *supra*, pp. 7-9.

4.5 In the final it is suggested that the Ministry of Safety and Security should liaise with the Ministry of Health and Social Services to make health workers (i.e. nurses and even a doctor) available who would visit police and holding cells on a regular basis.

## **Executive Summary**

The purpose of this report was to investigate the legal and social conditions at police and holding cells in Namibia with a view to ascertain what is really happening on the ground. Although not legislatively defined, police cells have customarily been reserved for persons not yet charged with a crime while holding cells house persons who have been charged with a crime but are awaiting their trial. Namibia is a signatory to various international instruments and agreements dealing with the protection of persons subjected to detention or imprisonment. While the Constitution of Namibia does not explicitly lay down rules pertaining to the treatment and protection of persons arrested or imprisoned, the Prisons Act and the Regulations thereto lay down minimum standards concerning the treatment of prisoners. A person, who is deprived of liberty by being held in custody, whether in a prison or in police cells remains a citizen who retains certain rights. Be that as it may, the findings of this report coupled with those of the Ombudsman clearly depict a different reality. In 2006 the Office of the Ombudsman found that poor sanitary conditions; overcrowding; insufficient food supplies; unsafe infrastructure; stagnant water; lack of access to medical care facilities and potable water, and insufficient bathroom and shower facilities were prevailing at police holding cells throughout the country.

This situation has remained unchanged in February 2008, at least in respect of the Windhoek Central police station. The only notable change is that the paint was refreshed at some cells. Further than that the research conducted encountered various problems with regard to the principles of access to information and transparency. It seems that the lack of co-operation experienced from the various officials in charge, actually reflected the presumption that the detrimental circumstances already investigated under the 2006 Ombudsman's Report have not been adhered to appropriately.



## Bibliography

### *Books, Articles and Reports*

Bureau of Democracy, Human Rights and Labour (2007). *Country Reports on Human Rights Practices – 2006*, obtained from [www.state.gov/g/drl/rls/hrrpt/2006/78749.htm](http://www.state.gov/g/drl/rls/hrrpt/2006/78749.htm), accessed on 2 February 2008

Legal Assistance Centre (2004). *NAMLEX Index to the Laws of Namibia*, obtained from [www.lac.org.na](http://www.lac.org.na) accessed on 15 April 2005

Naldi, G. (1995). *Constitutional Rights in Namibia: A Comparative Analysis with International Human Rights*, Kenwyn, Juta & Co Ltd.

!Owoseb, T. & Festus, P. (2003). *Katutura Police Cells: Allegations of Assault and other Afflictions*, Windhoek, National Society for Human Rights.

Taylor, J. R. (2007). *Conditions for the Persons in Custody and the Role of the Victorian Ombudsman*, unpublished paper presented at the Australian and New Zealand 19<sup>th</sup> Annual Conference held in Hobart, 9-7 February 2007 under the theme ‘Criminology and Human Rights’, obtained from [www.ombudsman.vic.gov.au/resources/documents/Conference\\_paper\\_](http://www.ombudsman.vic.gov.au/resources/documents/Conference_paper_), accessed on 16 February 2008.

United Nations (1988) *Human Rights: A Compilation of International Instruments*, New York, United Nations Publication

Walters, J. R. (2006). *Special Report on Conditions Prevailing at Police Cells throughout Namibia*, Windhoek, John Meinert Printing.

### *Table of National Laws and International Instruments*

- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or imprisonment
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

- Constitution of Namibia, Act 1 of 1990
- Prisons Act, 17 of 1998
- Prisons Act, 17 of 1998: Regulations for the Administration and Control of the Namibian Prison Service
- Standard Minimum Rules for the Administration of Juvenile Justice
- Standard Minimum Rules for the Treatments of Prisoners
- United Nations Rules for the Protection of Juveniles Deprived of Liberty; Standard Minimum Rules for Non-Custodial Measures

***Table of cases***

*S v Acheson* 1991 (2) SA 805

*S v Mbahaba* 1991 (4) SA 668 (Nm)