



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

PROCLAMATION

No. 24	Emergency Regulations applicable to the Caprivi Region: Article 26 of the Namibian Constitution	1
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Proclamation

by the

THE PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 24 1999

EMERGENCY REGULATIONS APPLICABLE TO THE CAPRIVI REGION: ARTICLE 26 OF THE NAMIBIAN CONSTITUTION

Under the powers vested in me by Article 26(5) of the Namibian Constitution I hereby make the regulations set out in the Schedule, which shall be applicable in, and with respect to, the Caprivi Region in which the existence of a state of emergency has been declared under Proclamation No. 23 of 2 August 1999.

Given under My Hand and the Seal of the Republic of Namibia at Windhoek on this 3rd day of August, One Thousand Nine Hundred and Ninety-nine.

SAM NUJOMA
PRESIDENT
BY ORDER OF THE PRESIDENT-IN-CABINET

SCHEDULE

Definitions

1. In this Proclamation, unless the context indicates otherwise –

“declared area” means the Caprivi Region in which a state of emergency has been declared by Proclamation No. 23 of 2 August 1999;

“Minister” means the Minister of Defence;

“prison” means a prison as defined in section 1 of the Prisons Act, 1998 (Act No. 17 of 1998);

“security force” means the -

- (a) the Namibian Defence Force established in terms of section 5 of the Defence Act, 1957 (Act No. 44 of 1957); or
- (b) the Namibian Police Force established by section 2 of the Police Act, 1990 (Act No. 19 of 1990);

“state of emergency” means the state of emergency that was declared to exist in the Caprivi Region by Proclamation No. 23 of 2 August 1999.

Maintenance of order

2.(1) Whenever a member of a security force is of the opinion that the presence or conduct of any person or persons at any place in the declared area endangers or may endanger the safety of the public or the maintenance of public order, that member shall in a loud voice order such person or persons to proceed to a place indicated by him or her, or to desist from such conduct, and shall warn such person or persons that force will be used if the order is not obeyed immediately.

(2) If an order referred to in subregulation (1) is not obeyed immediately, such member of a security force may apply, or order the application of, such force as he or she under the circumstances may consider necessary in order to ward off or prevent the danger that exists in his or her opinion.

(3) If a member of a security force is of the opinion that it is necessary for the safety of the public, the maintenance of public order or the termination of the state of emergency, he or she may summarily order a person who is present in a particular area and who is not normally resident therein, to leave that area immediately, and if that person fails to leave the area in question immediately, that member may arrest that person or cause him or her to be arrested and may remove him or her from such area or cause him or her to be so removed.

Arrest and detention of persons

3.(1) A member of a security force may, without warrant of arrest, arrest or cause to be arrested any person whose detention is, in the opinion of such member, necessary for the safety of the public or the maintenance of public order or for the termination of the state of emergency, and may under a written order signed by any member of a security force detain or cause to be detained such person in custody in a prison, subject to compliance with the requirements of Article 24(2) of the Namibian Constitution.

(2) Subject to Article 24(2) of the Namibian Constitution, the fundamental right protected by Article 11(3) of the Namibian Constitution and the operation of section 50 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) are hereby suspended in relation to a person arrested and detained under subregulation (1), including any person who was arrested and detained before the coming into effect of these regulations for any reason contemplated in that subregulation.

(3) A person detained in a prison in terms of this regulation may, if the Minister or a member of the Police Force who is an officer, or the head of that prison, in writing so directs, be removed in custody from that prison to any other prison.

(4) A member of a security force may, with a view to the safety of the public or the maintenance of public order or the termination of the state of emergency, interrogate any person arrested or who is detained in terms of this regulation.

(5) No person other than the Minister, a member of the Advisory Board, or a person acting by virtue of his or her office in the service of the State, or the legal practitioner of the person concerned -

- (a) shall have access to a person detained in terms of this regulation; or
- (b) shall be entitled to any official information relating to such person, or to any other information of whatever nature obtained from or in respect of such person,

except with the consent of, and subject to such conditions as may be determined by, the Minister or a person authorized thereto by the Minister.

(6) The Minister may at any time by notice signed by him or her, order that a person detained in terms of this regulation be released from detention.

(7) The Minister may, if he or she is of the opinion that it is necessary for the safety of the public, the maintenance of public order or the termination of the state of emergency, and without prior notice to any person -

- (a) make the release of a person under subregulation (6) subject to such conditions as may be specified in a notice signed by the Minister and addressed to that person;
- (b) at any time after the release of such person, by further notice signed by the Minister and addressed to that person, revoke or amend any condition imposed under paragraph (a) or impose any new condition as specified in such notice.

(8) A condition imposed under subregulation (7) remains of force for such period as may be specified in the relevant notice or, if no period is so specified, for as long as these regulations remain in force.

Establishment of Advisory Board

4. Pursuant to Article 26(5)(c) of the Namibian Constitution, there is hereby established an Advisory Board, to be constituted in accordance with the provisions of that Article, to perform the functions set out in Article 24(2)(c) of the Constitution in relation to persons detained without trial under any provision of these regulations.

Power of entry, search and seizure

5.(1) If a member of a security force is of the opinion that it is necessary for the safety of the public, the maintenance of public order or the termination of the state of emergency, he or she may without warrant, but subject to subregulation (2) -

- (a) enter any premises, building, vehicle, vessel or aircraft and thereon or therein take any steps which he or she is by any provision of these regulations or any other law authorized to take;
- (b) search any person or any premises, building, vehicle, vessel or aircraft or any receptacle, object or other article;
- (c) for the purpose of searching any vehicle or vessel which is moving or any aircraft preparing for take off, cause it to be stopped, in such manner as he or she may deem fit;

- (d) seize any vehicle, vessel or aircraft or any receptacle, object or other article -
 - (i) which has been used, or is intended to be used, or believed by such member, to have been used, or intended to be used, in connection with the commission of an offence or the suspected commission of an offence;
 - (ii) which may be used as evidence in criminal proceedings.
- (2) The provisions -
 - (a) of sections 27 and 29 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in relation to the entry and search of premises and the search of persons by a police official, apply *mutatis mutandis* to any search or entry under subregulation (1) by a member of a security force; and
 - (b) of sections 30 to 36 of that Act, apply *mutatis mutandis* to anything seized under subregulation (1).

Request for name and address of a person

6. A member of a security force may in the exercise of any power or the performance of any duty conferred or imposed by or under these regulations, request any person to furnish such member with his or her full name and address.

Issuing of orders

7.(1) The Minister or the Chief of the Defence Force, or any person acting on the written authority of the Minister or the Chief of the Defence Force, may, without prior notice to any person, issue orders not inconsistent with these regulations -

- (a) relating to -
 - (i) the demarcation of areas;
 - (ii) the closing off of a particular area or part thereof in order to control entrance to or departure from that area or that part thereof;
 - (iii) the control of entrance to or departure from any particular area or part of such area;
 - (iv) the control of all traffic;
 - (v) the temporary closing of any public or private place or any business or industrial undertaking;
 - (vi) the removal of any person or any section of the public out of or to any particular area in the interest of public order or safety of the public or the termination of the state of emergency;
 - (vii) the control of essential services and the security and safety of any installation or works connected therewith;
- (b) whereby any person is prohibited, or is prohibited without the consent of the Chief of the Defence Force, from -
 - (i) bringing into any particular area any object or article specified in the order or being in possession thereof in such area;
 - (ii) performing any act or carrying on any activity specified in the order in a particular area;

- (iii) being outside the boundaries of a particular area at any time or during periods or hours specified in the order;
 - (iv) being outside the boundaries of his or her residential premises in a particular area at any time or during hours specified in the order;
 - (v) putting in motion or driving or being in or upon a vehicle that is in motion in a particular area at any time specified in the order;
 - (vi) entering a particular area if he or she is not normally resident in that area;
- (c) whereby a particular gathering, or a gathering of a particular nature, class or kind, is prohibited at a place or in an area specified in the order;
- (d) prohibiting the holding of a particular gathering, or a gathering of a particular nature, class or kind, in an area specified in the order otherwise than in accordance with conditions likewise specified, which may include conditions -
- (i) requiring the prior approval of the Chief of the Defence Force for the date time and place of the gathering and of the person or persons who may make speeches thereat;
 - (ii) prescribing the hours of the day or the days of the week during which the gathering may or may not take place;
 - (iii) limiting the number of persons who may attend the gathering; and
 - (iv) prohibiting persons not being of a specified category of persons from making speeches at the gathering;
- (e) prohibiting persons from committing at a gathering referred to in paragraph (d) acts specified in the order, or from attending, or from remaining present at, a gathering in respect of which a condition specified in the order has not been or is not being complied with;
- (f) requiring, in the case of a gathering which is in the form of a procession, including a funeral procession, that the procession must proceed only along a route determined by the Chief of Defence or that persons partaking in the procession must proceed in vehicles only.
- (2) An order issued under subregulation (1) -
- (a) may be of force generally or relate to a particular person or to a particular category of persons specified in the order, or to any person or persons not belonging to a particular category specified in the order; and
 - (b) shall be of force during a period specified in the order or, if no period is so specified, until the order is withdrawn or until the declaration that a state of emergency exists in the Caprivi Region is withdrawn or expires, whichever occurs first.
- (3) Consent by the Chief of the Defence Force under subregulation (1)(b) -
- (a) may be granted on such conditions as he or she may determine;
 - (b) shall not be granted if he or she is convinced that the granting of consent will threaten the safety of the public or the maintenance of the public order or delay the termination of the state of emergency.
- (4) In any proceedings before a court of law in which it is relevant whether or not

the Chief of the Defence Force has issued a particular order, a copy of the order certified under his or her hand shall be accepted as *prima facie* evidence of the issuing of the order and of the contents thereof.

Promulgation of orders

8. Any order issued under regulation 8 shall be promulgated in any one or more of the following manners:

- (a) By publishing the order by notice in the *Gazette*;
- (b) by publishing the order in a newspaper circulating in the area in respect of which the order applies;
- (c) by making the order known by means of the radio or television;
- (d) by distributing the order in a written form among members of the public and by affixing it on public buildings or at prominent places in the area concerned;
- (e) if the order is directed to a particular person, by handing or tendering it or causing it to be handed or tendered in a written form to that person; or
- (f) by oral announcement to the person to which it is directed, or to members of the public in general, in the area concerned in a manner considered fit by the Chief of the Defence Force whenever, due to the urgency thereof or for any reason whatsoever, it can in his or her opinion be communicated in accordance with the provisions of paragraph (a), (b), (c), (d) or (e).

Obligation to report certain injuries

9. Any person who, within the declared area treats or treated any other person in any hospital, clinic, consulting-room or other place for, or renders or rendered to such other person medical or other aid of whatever nature in connection with, wounds or other injuries suspected of having been sustained by such other person because of any event connected with the state of emergency, to report the matter without delay to a member of a security force and to furnish such member with such particulars relating thereto.

Offences

10. (1) Any person who –
- (a) contravenes or fails to comply with any order, direction or request issued, given or made under any provision of these regulations; or
 - (b) contravenes or fails to comply with any condition imposed in respect of him or her under any provision of these regulations;
 - (c) contravenes any provision of these regulations;
 - (d) resists, obstructs or hinders any member of a security force in the exercise of any power of the performance of any duty or function conferred by or under any provision of these regulations,
 - (e) destroys, defaces or falsifies any notice order or other writing issued or purporting to have been issued under these regulations,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding 10 years, or to such imprisonment without the option of a fine, and the court convicting such person may declare any goods property or instrument by means of which or in connection with which the offence was committed, to be forfeited to the State.

Limitation of fundamental rights or freedoms

11. In so far as any provision of these regulations authorises the taking of any measures which cause a limitation of any fundamental rights or freedoms contemplated in Chapter 3 of the Namibian Constitution, such provision is enacted on authority of Article 24(1) and (3) of the Namibian Constitution.

Limitation of liability

12.(1) The State, the President, the Minister responsible for any Government Ministry, a member of a security force, any other person in the service of the State or any person acting by direction or with the approval of any such person or authority shall not be liable by reason of any act in good faith advised, commanded, ordered, directed or performed by any person in the carrying out of any duty, or the exercise of any power or the performance of any function in terms of these regulations with intent to ensure the safety of the public, the maintenance of public order or the termination of the state of emergency in the declared area, or in order to deal with circumstances which have arisen or are likely to arise as a result of the state of emergency in the declared area.

(2) If in any proceedings brought against any person referred to in subregulation (1), or the State, the question arises whether any act advised, commanded, ordered, directed, or performed by a person was advised, commanded, ordered, directed or performed by him in good faith, it shall be presumed, in the absence of evidence to the contrary proven, that such act was advised, commanded, ordered, directed or performed by the person concerned in good faith.
