



# Police Act 19 of 1990

## What does the law do?

This law sets up the Namibian Police Force (Nampol) and describes the general powers and duties of police.

## What is the purpose of the law?

The law establishes Nampol as the national police force of Namibia, provides for its organisation and administration, and sets out the general functions, powers and duties of the police. It also provides procedures for complaints and disciplinary proceedings.

The Namibian Constitution says that there must be a statute establishing a Namibian police force “to secure the internal security of Namibia and to maintain law and order”. The Constitution says that the President must appoint an Inspector-General of Police on the recommendation of the Security Commission. The President also has the power to remove the Inspector-General of Police from office for good cause, if this is in the public interest.

The Constitution also says that the Inspector-General of Police has the following duties:

- to make provision for balanced structuring of the police force (to make sure that the police force reflects the diversity of the Namibian population)
- to make suitable appointments to the police force
- to arrange for the investigation and prosecution of charges of indiscipline against members of the police force
- to ensure the efficient administration of the police force.

Other details about the operation of Nampol are covered by the *Police Act*.

## When did the law come into force?

3 December 1990, shortly after independence.



### Security Commission

The Constitution and the *Security Commission Act 18 of 2001* set up the Security Commission. It is made up of the Chairperson of the Public Service Commission, the Chief of the Defence Force, the Inspector-General of Police, the Head of the Intelligence Service, the Commissioner-General of the Correctional Service and two members of the National Assembly. These two members are appointed by the President on the recommendation of the National Assembly, and they can hold office for as long as they remain members of the National Assembly. The Security Commission advises the President on appointments and other issues relating to security.



## How is Nampol organised?

The **Inspector-General** is in command of Nampol, which includes other officers and non-officers appointed by the Inspector-General. The Inspector-General has the authority –

- to organise Nampol into units and other groupings
- to decide on the number and grading of Nampol members
- to decide on the training that Nampol members must undergo
- to make decisions on how to deploy Nampol members
- to make rules on discipline and other issues.

The law says that the **Minister** responsible for policing may issue instructions to the Inspector-General, and that the Minister can also set aside or amend any decision of the Inspector-General.

There is a **Police Advisory Board** to advise the Minister on general questions affecting the police. The regulations issued under the *Police Act* say that this Advisory Board must be made up of five to seven persons with appropriate expertise appointed by the Minister for three-year terms. The majority of the persons on the Board must be people who do not work in the public service.

All **members of Nampol** must undergo medical examinations to ensure they are mentally and physically fit to serve. People who have been convicted of certain crimes are not allowed to join the police. Members of Nampol may be discharged on account of ill-health, extended absence without leave, incapacity to perform their duties efficiently or as a penalty for misconduct. They can also be reduced in rank because of inefficiency. Members of Nampol must obey all lawful orders from their seniors.

The *Labour Act* does not apply to the police force – although the constitutional right to fair and reasonable administrative action does apply. In terms of the regulations issued under the *Police Act*, police are not allowed to establish or join a trade union without the written permission of the Inspector-General.

## What are the functions of the police force?

The functions of Nampol are:

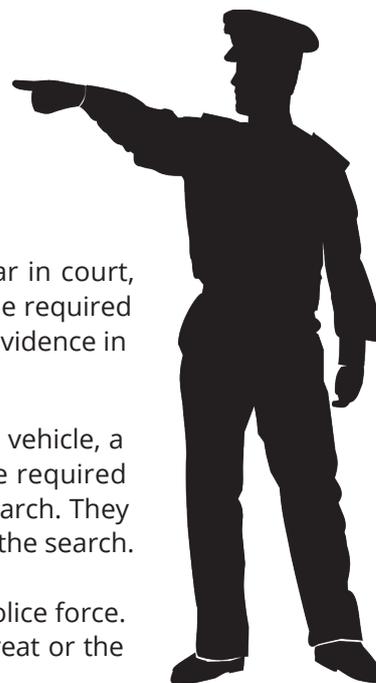
- to preserve internal security
- to maintain law and order
- to investigate crime
- to prevent crime
- to protect life and property.



## What are the main powers and duties of the police force?

The *Police Act* describes only a few general police powers and duties. Police functions in specific contexts are described in other laws, such as the *Criminal Procedure Act 51 of 1977*.

- Police are authorised to deliver summons telling people to appear in court, warrants of arrest and other official court documents. Police may be required to take part in court cases on behalf of the State, such as by giving evidence in criminal proceedings.
- Police may search a person, a place or a vehicle (including a motor vehicle, a boat, a train or an aeroplane) without a search warrant if the time required to get a warrant from the court would defeat the purpose of the search. They can also seize anything that they find that relates to the purpose of the search. There are some safeguards:
  - The search must be reasonably related to the functions of the police force.
  - The search must not be “excessively intrusive” in light of the threat or the crime involved.
  - The police must inform the person concerned of the purpose of the search if that person is present.
  - A woman can be physically searched only by another woman.
- For the purpose of carrying out their functions, police may also stop and search any vehicle that is on a public road. They can set up a roadblock for this purpose, or simply direct drivers to stop. It is a crime to ignore a direction to stop, punishable by a fine of up to N\$2000 or prison for up to 12 months, or both.
- The Inspector-General may publish a photograph or sketch of a person in connection with the functions of the police force.
- Police may use “reasonable” force to prevent crime or to arrest an offender, a suspect or a person who is “unlawfully at large”.
- Police may enter without consent or break into any place that appears to be on fire, or into a place next door, to protect persons or property.
- Police may set up traffic barriers or block off public or private property without consent when this is necessary to maintain law and order or to prevent or detect crime. Police may also take reasonable steps to stop any person from crossing such barriers, on foot or in a vehicle. It is a crime for the driver of a vehicle to ignore a reasonable signal to stop at such a barrier. The penalty is a fine of up to N\$2 000 or prison for up to six months, or both.





## How are police held accountable?

It is a crime for any member of Nampol to violate the *Police Act*, or an order issued in terms of the *Police Act*. The penalty is a fine of up to N\$2 000 or prison for up to six months, or both.

The Inspector-General can bring disciplinary proceedings against any member of Nampol for misconduct. Regulations issued under the *Police Act* contain a long list of acts that are misconduct.

Here are some examples of police misconduct that are particularly relevant to members of the public:

- sleeping on duty
- being “grossly discourteous” to anyone while on duty
- being negligent or lazy in carrying out police duties
- using unnecessary force or violence against a person in custody, or otherwise ill-treating someone in custody
- fighting or otherwise behaving in a violent or unseemly way
- spreading false information
- acting in any way that is disgraceful or doing something that could cause embarrassment to the police force
- acting in a way that undermines the impartial discharge of police duties (or doing something that creates such an impression of bias amongst members of the public)
- refusing to carry out police duties
- withholding or unreasonably delaying a complaint against another member of the police force
- sharing information gained through official duties without the permission of the Inspector-General
- demanding or accepting any kind of bribe or reward for carrying out police duties, or for failing to carry out police duties
- being under the influence of alcohol or drugs (without a medical prescription), on or off duty
- taking an active part in party-political matters or associating with any particular political party or movement (including through party colours, symbols, badges or gestures), on or off duty
- using his or her position in the police force to promote or prejudice the interest of any political party, or trying to get political intervention to affect anyone’s position or conditions of employment in the police force
- hiding, altering or destroying any document relating to police functions or duties
- discriminating against anyone on the grounds of colour, race, nationality or ethnic or national origin while on duty
- using his or her position to promote or prejudice the interest of any business or private agency outside of official duties
- being convicted of any crime.



There are many additional forms of misconduct that relate to internal rules and discipline.

## How does a member of the public make a complaint about police conduct?



The regulations provide a procedure for complaints. Any member of the public can make a complaint about police misconduct to any member of Nampol. The person who receives the complaint must record it and give it to the Inspector-General.

The Inspector-General will then appoint a police officer to investigate the complaint. This officer must be higher in rank than the person being investigated, and from a different police station or office. If the complaint was made anonymously, the Inspector-General does not have a duty to start an investigation. There is also no duty to start an investigation if the complaint does not actually point to any misconduct.

Once the investigation is complete, the investigating officer will give a report to the Inspector-General. The Inspector-General will refer the matter to the Prosecutor-General if it appears that a crime may have been committed, or start a disciplinary proceeding if there appears to be misconduct.

## Disciplinary proceedings

The procedure for disciplinary proceedings is set out in the law. The Inspector-General may choose a presiding officer who is a member of the police higher in rank than the person who is facing possible discipline. Alternatively, the Minister can appoint any legally qualified member of the public service to preside over the proceedings, after consulting the Attorney-General.

There are slightly different procedures for charges of misconduct that are not triggered by a complaint from a member of the public.



The disciplinary proceedings must take place within 12 months of the date when the misconduct took place or came to light. Persons facing possible discipline must be given a chance to present their side of the story, with the assistance of a legal practitioner if they wish (at their own cost).

The Inspector-General may suspend members while a criminal trial or disciplinary proceedings are pending, after giving them a chance to explain why they should not be suspended. During a suspension, members are stripped of all powers, functions and authority, and they are not entitled to receive any salary unless the Minister directs otherwise. They are also not allowed to wear a police uniform while suspended.

If a member of the police is found guilty of misconduct the possible penalties are:

- a caution or reprimand
- a reduction in salary or rank (or both)
- a fine of up to N\$2000 (which could be suspended or paid in instalments)
- a recommendation to the Inspector-General that the member should be discharged or called upon to resign.

After the disciplinary proceedings are concluded, the Inspector-General may confirm, alter or set aside the conviction or the penalty. No conviction or penalty can be put into effect unless it is confirmed by the Inspector-General. A convicted member of the police force can also appeal the conviction and penalty to the Minister.

## Complaining to the Ombudsman about police conduct

In terms of Article 91 of the Namibian Constitution, the functions of the Ombudsman include the duty to investigate complaints concerning violations of fundamental rights and freedoms, abuse of power or unfair, harsh, insensitive or discourteous treatment by any official in the employ of any organ of Government – as well as any unlawful, oppressive or unfair conduct by a public official. The Ombudsman also has a duty to investigate complaints concerning the administration of the police force, including any complaints about the failure to achieve a balanced structuring of the police force.



The Ombudsman must investigate any complaint about these matters that is brought to his or her attention. The Ombudsman can take various steps to remedy any problem that the investigation reveals. If the problem is not resolved, the Ombudsman must compile a report on the issue and submit it to the Speaker of the National Assembly, Cabinet and the relevant government authority with recommendations on the way forward.

## Holding police accountable in court

If someone wants to sue the State for damages resulting from police action or inaction, the case must be brought within 12 months of the event. But the Namibian Supreme Court has said that the shorter time limit is constitutional because it promotes the speedy resolution of claims against the State, while having sufficient flexibility to be fair to the public since the Minister can waive it at any time.<sup>1</sup>

## Are police allowed to engage in outside work or business?

The general rule is that members of Nampol are required to place all of their time at the disposal of the State. But, with the approval of the Minister, they are permitted to earn money in pursuits outside the police force. If they earn money outside the police force without permission, they must pay the amount earned over to Nampol. Similarly, if members of the police force receive any payment or reward in connection with performance of their duties (other than their normal salaries and allowances), they must pay this amount over to Nampol. In either case, failure to pay over these amounts is a crime. The Minister has the power to make partial or total exceptions to the rule about paying over such proceeds.



### How are police recognised for good work?

With the approval of the Minister, the Inspector-General may provide a monetary reward or any other kind of reward for extraordinary diligence or devotion in the performance of police duties.

The President may decide on medals or decorations that may be awarded for exceptional police service. But it is a crime for persons to wear such medals or decorations if they are not genuine or not actually awarded to them.

<sup>1</sup> *Minister of Home Affairs v Majiedt*, Supreme Court, 2007

## Crimes relating to police

There are some crimes relating to the police that can be committed by members of the public.

It is a crime –

- to falsely pretend to be associated with the police force
- to wear a uniform, badge or button so similar to that of the police as to be calculated to deceive others.

The penalty is a fine up of up to N\$4 000 or prison for up to 12 months, or both.

There are also some crimes that can lead to even more serious penalties –

- to falsely pretend to be a member of the police force.
- to try to get a member of the police force to violate his or her duties
- to do anything “calculated to cause disaffection amongst members” of the police force
- to assault a member of the police force or anyone who is assisting the police
- to obstruct police in the execution of their duties or functions
- to threaten to harm members of the police force or their families, or property belonging to them or their families, with a view to influencing the exercise of their duties.

The penalty is a fine up of up to N\$20 000 or prison for up to 5 years, or both.



## City police

Local authorities are allowed to establish municipal police services, although the Minister can limit this to certain categories of local authorities. The Minister can issue regulations on which parts of the *Police Act* apply to municipal police services, and the Inspector-General will determine the minimum standards of training required for their members.

## Crime statistics

The Inspector-General is required to give the Minister information and statistics on crime from time to time, and the Minister must table a summary of this information in the National Assembly once a year. Any information tabled in the National Assembly is available to the general public.

# CRIME

# LET'S BRING IT

# DOWN



## Criticism

It has been suggested that complaints about police conduct should be handled by an independent authority to make sure that all complaints are thoroughly investigated. One analysis stated, "International experience shows that independent civilian oversight of the police is of the utmost importance for ensuring effective performance."<sup>2</sup> There have been reports that police at charge offices sometimes refuse to accept public complaints about misconduct by their colleagues.<sup>3</sup> The Office of the Ombudsman has also reported that it experiences problems in getting progress reports on complaints against police once they are referred to the investigative division within Nampol, even though the Ombudsman's duty of oversight over police conduct is laid down in the Namibian Constitution.<sup>4</sup>

It has also been suggested that the law should match powers with functions. Many police functions are preventative in nature, such as preventing crime and maintaining law and order, in contrast to the duty to investigate crimes that have already been committed. It might be helpful if the police powers set out in the law were connected to specific police functions, to make sure that the powers are appropriate and proportional to the functions being served. For instance, it might make sense to apply a different standard for searching someone's home for evidence of a crime that has already been committed than for searching someone's home as part of a general crime prevention exercise.<sup>5</sup>

Also, it is somewhat confusing that there are overlapping rules in the *Criminal Procedure Act 51 of 1977* and in the *Police Act 19 of 1990* for searching persons and places in the case of suspected crimes, as well as for protecting internal security, maintaining law and order and preventing crime. This means that it may not always be clear which law applies – and police should not be able to choose between the two laws on the basis of which one gives them the most authority.<sup>6</sup>



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<sup>2</sup> John Nakuta & Vincia Cloete, *The Justice Sector & the Rule of Law in Namibia: The Criminal Justice System*, Namibia Institute for Democracy / Human Rights and Documentation Centre, [2010], pages 16-18

<sup>3</sup> "Policing and Human Rights – Assessing Southern African Countries' Compliance with the SARPPCO Code of Conduct for Police Officials", African Policing Oversight Forum, 2012, page 104

<sup>4</sup> John Walters, "The protection and promotion of human rights in Namibia: The constitutional mandate of the Ombudsman" in N Horn & A Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Macmillan Namibia, 2008, page 125

<sup>5</sup> Clemens Artz, "Constitutionalism, Rule of Law and Preventive Powers of Police in Namibia", *Namibian Law Journal*, Volume 11, Issue 1, 2019, page 16; Clemens Artz, "Preventive Powers of Police in Namibia – A Rights-Based Approach", *Verfassung und Recht in Uebersee*, 2019, pages 516-517

<sup>6</sup> Clemens Artz, "Constitutionalism, Rule of Law and Preventive Powers of Police in Namibia", *Namibian Law Journal*, Volume 11, Issue 1, 2019, page 18; Clemens Artz, "Preventive Powers of Police in Namibia – A Rights-Based Approach", *Verfassung und Recht in Uebersee*, 2019, page 519