



# Public Gatherings Proclamation AG 23 of 1989

## What does the law do?

This law requires advance notification to police of certain public gatherings involving more than 20 persons.

## What is the purpose of the law?

The law ensures that public gatherings take place in a safe and orderly manner. It does *not* give police the power to *forbid* a public gathering altogether, but the police do have the authority to place *conditions* on a public gathering if they believe that it may endanger the public, lead to violence or restrict other people's rights. In practice, police often escort a march or attend a gathering to make sure that it takes place without causing problems such as blocking traffic or creating a risk of injury to others.



## When did the law come into force?

21 July 1989. This law is a South West African Proclamation issued by the Administrator-General of South West Africa shortly before Namibia's first democratic elections took place, to replace some repressive South African laws that were repealed in anticipation of the election. It remains in force in independent Namibia until it is changed by Parliament or declared unconstitutional by a Namibian court.

## What is a public "gathering"?

The term "*gathering*" means any gathering, meeting, march or procession in a public place. "*Public place*" includes any place that is generally open to the public or to some segment of the public, or a place that is open to the public only at specific times or only for a specific gathering. It also includes any place occupied by State authorities, or by any government or educational institution. Advance notice to the police is required if more than 20 persons are expected to be present at the gathering at any time. Some other rules apply to gatherings of *any* size.

## How does the notice requirement work?

Persons who want to hold a public gathering where more than 20 people are expected must notify the police at least three days before the gathering takes place. The notice must be in writing and given to the commander of the police station nearest to the place where the gathering will be held. The notice must list:

- the place and time of the gathering
- the nature of the gathering
- the person or organisation organizing the gathering
- the names and addresses of persons who will preside, speak or otherwise officiate at the gathering.

Failure to follow these rules can lead to a fine of up to N\$4 000 or prison for up to 2 years, or both.

## Are there any exceptions to the notice requirement?

Yes. No advance notice to the police is required for these types of gatherings:

- church services
- funerals
- gatherings connected with the domestic affairs of any household
- meetings of the members of a statutory body
- gatherings for the purpose of education
- sports events
- entertainment events
- meetings of any assembly, council, committee or other body established by or under any law.
- meetings for official administrative or judicial purposes.

## Conditions

The police do not have the power to prevent a public gathering from taking place. But the Inspector-General of the Namibian Police can impose conditions on a gathering that could endanger persons or valuable property, endanger public order or contribute to “feelings of hostility between different sections of the population”. Any conditions imposed by police must be communicated in one of the following ways:

- publication in the *Government Gazette* or in a newspaper, or by means of announcement on radio or television
- written notices distributed to the public and posted where the gathering will take place
- announcements where the gathering will take place
- a written notice delivered to the person who is organising or convening the public gathering.

The *Government Gazette* is a daily government publication that anyone can subscribe to. You can find all of Namibia's *Government Gazettes* on the [LAC website](#).



## Weapons at public gatherings

No one other than police may carry weapons at a public gathering, with one exception. The law allows persons to have pistols or revolvers at a public gathering if they are completely concealed. But the rule covers many other kinds of weapons, including real or imitation firearms, knives with blades longer than 10 centimetres, spears, batons, crowbars, axes, hammers and various other items that could be used as weapons.

## When can police disperse a public gathering?

Police can disperse a gathering if anyone present appears to be endangering persons or valuable property, or if anyone is encouraging “insurrection” or “forcible resistance” to a government authority. If the gathering is dispersed, police have a duty to do this with caution, using only the minimal force necessary to protect persons and property.



## Is this law constitutional?

The Namibian Constitution, under Article 21, guarantees freedom of speech and expression, freedom to assemble peacefully and without arms, and freedom of association – all of which are connected with public gatherings. These rights are important in a healthy democracy – but, like all constitutional rights, they are not absolute.

Under Article 21(2) of the Namibian Constitution, fundamental freedoms may be reasonably restricted by law where restrictions are necessary to protect the sovereignty and integrity of Namibia, national security or public order – which are also crucial for a healthy democracy. It is not clear that all of the restrictions contained in the law are reasonable or necessary for the purposes listed in the Constitution, but the law has not yet been challenged on constitutional grounds in any court case.



## Positive points

A positive feature of the law is that it does not require anyone to ask for *permission* to hold a gathering, but only to give a simple advance *notice* to the police of the gathering three days in advance. There is no authority for police to prohibit a public gathering. Police have only the power to impose conditions, and there is a high threshold for justifying any conditions.

## Criticism

The **International Commission of Jurists** (a group of 60 judges and lawyers from all over the world who work to ensure that laws follow international human rights standards) has said that the Public Gatherings Proclamation should be repealed or revised because it does not follow all of Namibia's international legal obligations.<sup>1</sup> Namibia has joined the International Covenant on Civil and Political Rights. Article 21 of this international covenant protects the right of peaceful assembly and says that no restrictions may be placed on the exercise of this right other than what is necessary in a democratic society in the interest of national security or public safety. Namibia is also a party to the African Charter on Human and Peoples' Rights. Article 11 of this Charter says that the right to assemble freely with others can be limited only by necessary restrictions provided for by law in the interest of national security or to protect the safety, health, ethics, or rights and freedoms of others.

In 2006, Namibia's **Law Reform and Development Commission** made some recommendations for a new law on public gatherings, but the research behind these recommendations is now long out-of-date.<sup>2</sup>

One good source of guidance on the best ways to regulate public gatherings without violating the right to assemble peacefully is a 2017 study by the **United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association**, which summarises court cases on this issue from around the world.<sup>3</sup>

These are some aspects of Namibia's law that could be improved.

### (1) Need to clarify the overly-broad definition of gathering:

The definition of a "*gathering*" and a "*public place*" are both very wide. Meetings in Namibia which are not really intended for the public at large often take place outdoors under trees, especially in rural areas, simply because there is no large private space available – but not all meetings that take place in the open are really public gatherings. For instance, in 1997, police attempted to disperse a consultation between a large group of Himba clients and a Legal Assistance Centre attorney that was taking place outdoors in a rural area, even though this was actually a private meeting covered by the rules on attorney-client confidentiality.<sup>4</sup>



### (2) Need for clearer standards for imposing conditions on gatherings:

The law should set out clearer criteria for allowing police to impose conditions, and limit conditions to measures that are necessary to prevent violence or protect public order.<sup>5</sup>

<sup>1</sup> [Namibia: authorities must investigate police abuse of people protesting Gender Based Violence](#), 13 October 2020

<sup>2</sup> Law Reform and Development Commission, [Report on Public Gatherings \(Project 10\)](#), LRDC 14, March 2006

<sup>3</sup> Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, [FOAA Online! The right to freedom of peaceful assembly](#), 2017

<sup>4</sup> *Kapika v Government of the Republic of Namibia*, High Court, 1997

<sup>5</sup> Clemens Artz, "Preventive Powers of Police in Namibia – A Rights-Based Approach", *Verfassung und Recht in Uebersee*, 2019, page 522

**(3) Improved guidance on use of force by police at public gatherings:**

The current law allows the use of lethal weapons (firearms and other weapons that can cause death) to disperse a gathering if there is danger to human lives or “valuable property”. But current international standards say that lethal force should be used only as a last resort, and only when necessary to protect life or to prevent serious injury.<sup>6</sup>



The steps that police can take to control a public gathering that turns violent should be carefully laid out and further restricted to comply with current international principles on policing.<sup>7</sup>

**(4) Do not make it a crime to fail to give advance notice of a public gathering:** In South Africa, the Constitutional Court struck down a similar crime in South Africa’s law on public gatherings. The Court said that making it a crime to fail to give notice of a gathering might discourage the exercise of the important right of assembly. The Court also said that there are many less restrictive ways of encouraging the public to comply with the notice requirement, such as administrative fines (which do not create a criminal record), or allowing the police to restrict a gathering that is convened without proper notice to a particular place, or to guide the participants along a particular route.<sup>8</sup>

**(5) Need for better rules about conduct at gatherings:**

- **Firearms:** It is odd that the law allows concealed firearms at public gatherings, while prohibiting so many other weapons. The similar law in South Africa prohibits all kinds of firearms at public gatherings, concealed or not, including even harmless objects that look like firearms.<sup>9</sup>
- **Reasonable rules for participants:** It might be useful to have some rules in the law about participation in public gatherings, such as prohibiting discriminatory hate speech, prohibiting the use of force to get anyone to take part in the gathering or prohibiting participants from blocking the entrance to any building or blocking the path of any emergency vehicles. The law could also require the organisers to supply a reasonable number of marshals in light of the expected size of the gathering, to assist in keeping the gathering orderly. It could also prohibit disruption of public gatherings organised by others at a similar time and place. South Africa prohibits people at a public gathering from wearing any clothing that might make them look like members of the security forces when they are not.

**(6) Competing gatherings:** It might be helpful to give the police power to set reasonable conditions to make sure that competing gatherings do not take place close together at the same time, or to prevent a gathering from interfering with other gatherings – without allowing the police to prevent any gathering from taking place.

**(7) Spontaneous gatherings:** The law should have an exception to the notice requirement for gatherings that take place without being organised by anyone. No one should be held responsible when a group of people simply come together without any advance warning or planning.

In general, the Namibian government has respected the public’s right to freedom of speech, and many peaceful political protests have taken place unhindered by police. But there is some risk that the law on public gatherings could be applied to discourage public gatherings that criticise government or promote unpopular issues.

Public assemblies are important in democracies and should be regulated to the minimum extent necessary to protect public order. As the South African Constitutional Court pointed out, people without political and economic power have only protests as a tool to communicate their concerns. The right for people to gather together to make their views known should be carefully safeguarded.

<sup>6</sup> See Legal Assistance Centre, [Use of force by law enforcement officials in Namibia](#), November 2019 and Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, [FOAA Online! The right to freedom of peaceful assembly](#), 2017, section 13.

<sup>7</sup> [The Law on Police Use of Force Worldwide: Namibia](#), Centre for Human Rights, University of Pretoria, updated 2021

<sup>8</sup> [Mlungwana v S](#), South African Constitutional Court, 2019

<sup>9</sup> South African [Regulation of Gatherings Act 205 of 1993](#)