

POLICE

Police Act 19 of 1990

Summary: This Act ([GG 113](#)) provides for the establishment, organisation, administration, and powers and duties of the Namibian Police Force. It prescribes procedures to protect the internal security of Namibia and to maintain law and order. It also regulates the appointment, promotion, discipline and discharge of members of the Namibian Police Force. It repeals the *Police Act 7 of 1958*.

Note that the original *Gazette* was replaced by another GG 113 with the same date; the correct version states at the top: “*This Government Gazette replaces Government Gazette No. 113 of 3 December 1990.*”

Amendments: The Act is substantially amended by Act 3/1999 ([GG 2072](#)). Particularly notable is the amendment of section 14, which substantially broadens police powers of search and seizure.

Section 4 of the Act is amended by Act 5/2001 ([GG 2566](#)) (regarding standards for physical and mental fitness).

The General Law Amendment Act 14 of 2005 ([GG 3565](#)) amends section 1 of the Act.

Regulations: Regulations made in terms of the repealed *Police Act 7 of 1958* survive pursuant to section 45(2) of the Police Act 19 of 1990, with section 45(3)-(4) providing some rules of construction for such regulations. Pre-independence regulations have not yet been comprehensively researched.¹³⁴

The following regulations were made under this Act:

General regulations are contained in GN 167/1994 ([GG 919](#)), as amended by GN 143/1996 ([GG 1332](#)), GN 246/1998 ([GG 1965](#)), GN 166/2001 ([GG 2593](#)), GN 55/2002 ([GG 2718](#)), GN 252/2010 ([GG 4613](#)), GN 56/2011 ([GG 4708](#)), GN 298/2013 ([GG 5337](#)) and GN 238/2014 ([GG 5616](#)) (which withdraws GN 56/2011).

GN 238//2014 ([GG 5616](#)) refers to a previous amendment made by GN 201/2002 ([GG 2862](#)), but this is in fact a separate set of regulations which was replaced by GN 124/2003 ([GG 2997](#)). (See below.)

Regulations for Municipal Police Services are contained in GN 184/2002 ([GG 2833](#)), as amended by GN 253/2003 ([GG 3108](#)) and GN 197/2004 ([GG 3270](#)).

Regulations relating to the award of decorations and medals to members of the Namibian Police Force are contained in GN 201/2002 ([GG 2862](#)), which is replaced by GN 124/2003 ([GG 2997](#)).

Municipal regulations: Windhoek Municipal Police Service Regulations issued by the Council of the Municipality of Windhoek are contained in General Notice 32/2013 ([GG 5137](#)), which replaced and replaced General Notice 296/2004 ([GG 3335](#)).

Note that General Notice 32/2013 states that it repeals *Government* Notice 296 of 1 December 2004 and not *General* Notice 296 of 1 December 2004.

Cases: The following cases concern this Act –

S v Boois; S v Thomas 1991 NR 455 (HC) (application of section 35(2) to allegation of resisting arrest)

¹³⁴ One set of pre-independence regulations was contained in RSA GN R.203/1964 ([RSA GG 719](#), republished in OG 2542), as amended by GN 16/1991 ([GG 159](#)). However, the regulations issued in GN 167/1994 ([GG 919](#)) repealed and replaced these regulations, with the exception of regulation 58(32) which was declared unconstitutional by the Supreme Court case of *Kauesa v Minister of Home Affairs* 1995 NR 175 (SC).

S v Eigowab 1994 NR 192 (HC) (refusal to have blood sample taken after arrest for drunken driving can constitute violation of section 35(2)(a))

Eimbeck v Inspector-General of the Namibian Police & Another 1995 NR 13 (HC) (section 24(1))

S v Kandume 1997 NR 79 (HC) (sentence for assaulting a member of the police force and resisting arrest in contravention of sections 35(1) and 35(2)(a) of the Act)

S v Diergaardt 2000 NR 78 (HC) (section 35(1) in context of resisting unlawful attempt by police to enter premises)

Dresselhaus Transport CC v Government of the Republic of Namibia 2003 NR 54 (HC)(section 13); 2005 NR 214 (SC) (police duties)

Viljoen & Another v Inspector-General of the Namibian Police 2004 NR 225 (HC) (section 1(1) and regulations on transfers)

Sheehama v Inspector-General, Namibian Police 2006 (1) NR 106 (HC) (section 23(3); also discusses sections 18 and 24).

Immanuel v Minister of Home Affairs & Another 2006 (2) NR 687 (HC) (section 8 enquiry)

S v Malumo & Others 2007 (2) NR 198 (HC) (effect of “Judges’ Rules”, which are administrative directives to be observed by police)

Minister of Home Affairs v Majiedt & Others 2007 (2) NR 475 (SC) (prescription period in section 39(1) not unconstitutional; at paras 43-45: prescription period reasonably related to legitimate governmental purpose “of regulating claims against the State in a way that promotes speed, prompt investigation of surrounding circumstances, and settlement, if justified”)

S v Afrikaner 2007 (2) NR 584 (HC) (definition of assault in section 35, as amended by Act 3/1999, [GG 2072](#))

Ongombe Farmers Association v Tjiuro & Others 2011 (2) NR 630 (HC) (“civil proceedings” in section 39 do not include urgent interdictory relief)

Nakanyala v Inspector-General Namibia & Others 2012 (1) NR 200 (HC) (section 3A does not require exhaustion of internal remedies before seeking administrative review in court; section 23 on suspension and regulations on transfers)

Shaanika v The Windhoek City Police 2013 (4) NR 1106 (SC) (section 43C(5))

S v Malumo & Others (In re Ndala) 2014 (3) NR 690 (the question of whether this Act is applicable to the Eastern Caprivi Zipfel was raised, but the Court ruled that the issue can be considered only after the conclusion of the trial in terms of s. 319 of the Criminal Procedure Act 51 of 1977)

Mahupelo v Minister of Safety and Security & Others 2017 (1) NR 275 (HC) (section 39(1) notice)

Lazarus v Government of The Republic of Namibia (Ministry of Safety and Security) (1) 2018 (1) NR 38 (HC) (quantum of damages for repeated unlawful warrantless search, arrest and detention, including being fired upon by police; one arrest appeared to be a direct response to a notice under s 39 of the Act regarding a claim for the previous illegal arrests and detentions, which attracted particular censure from the Court

The naked level of callousness and disregard for the right to other people's liberty displayed by the police officers in this case is worrying and a lesson that this is a constitutional state, where the rule of law and the fundamental rights and freedoms are upheld, must be driven home very strongly and sternly too. It must be made plain to the relevant police officers that regard for fundamental human rights, including the right to liberty and dignity are paramount and that a high price and value is attached to such rights by the courts of this land. (para 44)

See also *Lazarus v Government of the Republic of Namibia (Ministry of Safety & Security) (2)* 2018 (1) NR 56 (HC) (costs awarded against two police officers in their personal capacities in view of their “objectionable, unreasonable, unjustifiable and oppressive” violation of the rights of the victim of the repeated unlawful arrests)

S v Teek 2019 (1) NR 215 (SC) (dicta on irregularities of police investigative process)

Article 118 of the Namibian Constitution establishes the police force and enjoins the police to ‘maintain law and order’. It provides that an Act of Parliament shall establish a national police force with prescribed powers, duties and procedures. In terms of s 13(c) of the Police Act, the police are enjoined, among other things, to investigate any offence or alleged offence. Neither the

Namibian Constitution nor the Police Act, empower the police to investigate any crime against any person in a selective manner for the purpose of securing a conviction of an accused person. Any person accused of having committed any offence, whether that person is a judge or is holding a position of high office, should not be treated differently because of his or her public status. (para 89)

Khariseb v Ministry of Safety and Security & Others 2018 (4) NR 1180 (HC); upheld on appeal in *Khariseb v Ministry of Safety and Security & Others* 2020 (3) NR 794 (SC) (sections 3A(1)(b), 9 and 39)

Minister of Safety and Security & Others v Longer 2020 (4) NR 1048 (SC) (resignation to avoid disciplinary proceedings does not constitute a dismissal)

Government of the Republic of Namibia v Phillipus 2018 (2) NR 581 (SC) (application of section 39 discussed in passing in para 5); see also *Phillipus vs Government of the Republic of Namibia* (I 1598-2013) [2016] NAHCMD 238 (18 August 2016).

The following cases concern the 2004 **Regulations for the Windhoek Municipal Police Service (now repealed)** –

Keramem v Council of The Municipality of Windhoek & Others 2014 (4) NR 992 (HC) (Regs 18-19; referral for disciplinary inquiry does not preclude fitness inquiry or constitute “double jeopardy” as the two inquiries have different purposes).

The following are post-independence cases concerning the previous **Police Act 7 of 1958** –

Minister of Police v Haunawa 1991 NR 28 (SC)

Simon v Administrator-General, South West Africa 1991 NR 151 (HC).

Regulation 58(32), made under the previous Act, was declared unconstitutional in the Supreme Court case of *Kauesa v Minister of Home Affairs* 1995 NR 175 (SC), which reversed the High Court judgment *Kauesa v Minister of Home Affairs* 1994 NR 102 (HC). This regulation was subsequently repealed.

Commentary:

Clinton Light, *Namibian Police Human Rights Manual*, Legal Assistance Centre, 1999, available [here](#)
Chuks Okpaluba, “State liability for acts and omissions of police and prison officers: recent developments in Namibia” 46 (2) *The Comparative and International Law Journal of Southern Africa* 184 (2013)

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], available [here](#)

Clemens Artz, “Constitutionalism, Rule of Law and Preventive Powers of Police in Namibia”, *Namibian Law Journal*, Volume 11, Issue 1, 2019

Legal Assistance Centre, “Use of force by law enforcement officials in Namibia”, 2019, available [here](#)
See the entry for the Correctional Service Act 9 of 2012 (CORRECTIONAL FACILITIES) for commentary on conditions in police cells.

APPOINTMENTS

Appointment of First Inspector-General of Police, Proc. 8/1990 ([GG 46](#)).

Appointment of Inspector-General of Police, Proc. 35/1997 ([GG 1765](#)).

Appointment of Inspector-General of Police, Proc. 7/2005 ([GG 3450](#)).

See also Security Commission Act 18 of 2001 (**CONSTITUTION**).

See also **DISASTERS** (involvement of uniformed forces in disaster situations).