

# POLICE

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## 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.

Note that the original GG 113 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.*”

**Repeals:** The Act repeals the *Police Act 7 of 1958* ([SA GG 6015](#)), which repealed the *Police Act 14 of 1912* ([SA GG 246](#)) – which was amended and made applicable to SWA by section 1 of the *Police (South-West Africa) Act 19 of 1939* ([SA GG 2635](#)) as from 1 June 1939 in terms of the Incorporation of the South West Africa Police Proclamation 100 of 1939 ([SA GG 2642](#)).

**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.

Act 3/2023 ([GG 8136](#)) amends section 1 and inserts section 14A.

**Savings:** Section 45(2) of the Act contains a general savings clause:

Any regulation, direction, rule, notice, approval or appointment made, issued or given or anything done under any provision of any law repealed or amended by subsection (1), shall be deemed to have been made, issued, given or done under the corresponding provision of this Act.

Section 45(3)-(4) provides some rules of construction for all surviving regulations and makes some amendments to specific regulations which initially survived pursuant to this provision but have since been repealed.

Section 36(2) of the repealed *Police Act 7 of 1958* contained a savings clause in respect of acts done under the repealed *Police Act 14 of 1912*:

Any regulation made or anything done under any provision of a law repealed by sub-section (1), shall be deemed to have been made or done under the corresponding provision of this Act.

**Regulations:** The following regulations were made under the current 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](#)), GN 238/2014 ([GG 5616](#)) (which withdraws GN 56/2011) and GN 391/2022 ([GG 7969](#)).<sup>295</sup>

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.)

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<sup>295</sup> As noted above, these regulations withdraw the Regulations for the South African Police contained in GN R.203/1964 ([RSA GG 719](#)), with the exception of regulation 58(32) which was subsequently declared unconstitutional. In *Minister of Safety and Security & Others v Longer* 2020 (4) NR 1048 (SC), footnote 1 erroneously states that these regulations are contained in “GG 299”.

**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 124/2003 ([GG 2997](#)), as amended by GN 198/2022 ([GG 7850](#)) which substitutes regulations 39-40. These regulations replaced the ones contained in GN 201/2002 ([GG 2862](#)).

When considering regulations which may remain in force, it should be noted that the relevant transfer proclamation was the **Executive Powers (Police) Transfer Proclamation 169 of 1980** ([RSA GG 7207](#)), which came into force on **1 September 1980**. However, that transfer proclamation excluded most of the references to the “Minister”, the “State President” and the “*Government Gazette*” in the *Police Act 7 of 1958* – which had the effect that the power to make regulations under the Act was not transferred to SWA on 1 September 1980, but only on **1 April 1981** by the Police Amendment Proclamation contained in AG GN 9/1981 ([OG 4434](#)).

**Regulation 58(32)**, the only surviving regulation of the **Regulations for the South African Police**, contained in RSA Government Notice R.203/1964 ([RSA GG 719](#), republished in [OG 2542](#)) and made under the previous *Police Act 7 of 1958*,<sup>296</sup> remained in force under the current Act but 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).

The following additional regulations made under the *Police Act 7 of 1958* have not been explicitly repealed:

**Regulations for the Control and Award of Decorations, Orders and Medals to the South African Police** are contained in RSA GN R.990/1963 ([RSA GG 547](#)), as corrected by R.1130/1963 ([RSA GG 567](#)) and as amended by R.1035/1979 ([RSA GG 6451](#)) – which was amended by RSA GN R.424/1980 ([RSA GG 6874](#)). However, these regulations may be superseded by the **Regulations made under the Police Act, 1958 (Act 7 of 1958); Decorations and Medals** contained in AG GN 155/1981 ([OG 4558](#)), as amended, and by the **Regulations relating to the award of decorations and medals to members of the Namibian Police Force**, made under the current Act, originally contained in GN 201/2002 ([GG 2862](#)), and since replaced by GN 124/2003 ([GG 2997](#)).

**Regulations for the Reserve Police Force** are contained in RSA GN R.1016/1962 ([RSA GG 275](#)), as amended by RSA GN R.1285/1962 ([RSA GG 309](#)), R.1543/1964 ([RSA GG 918](#)), R.1880/1967 ([RSA GG 1899](#)), R.2353/1968 ([RSA GG 2244](#)), R.1507/1971 ([RSA GG 3238](#)), R.1682/1973 ([RSA GG 4023](#)), R.993/1975 ([RSA GG 4714](#)) and R.2728/1979 ([RSA GG 6765](#)).<sup>297</sup> These regulations seem to remain in force, as no regulations have been promulgated under the current Act to replace them.

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<sup>296</sup> The Regulations for the South African Police were 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 subsequently declared unconstitutional by the Supreme Court case of *Kauesa v Minister of Home Affairs* 1995 NR 175 (SC). Prior to being struck down on constitutional grounds, this regulation read as follows:

**Offences against Duty and Discipline**

**58.** A member shall be guilty of an offence and may be dealt with in accordance with the provisions of Chapter II of the Act and these regulations if he -

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(32) comments unfavourably in public upon the administration of the Force or any other Government department.

<sup>297</sup> These regulations were further amended in South Africa after the relevant date of transfer and prior to Namibian independence by RSA Government Notices R.2169/1981, R.257/1983, R.1183/1986, R.1517/1987 and R.2852/1989.

**Regulations for the Police Reserve** are contained in RSA GN R.1931/1973 ([RSA GG 4053](#)), as amended by RSA GN R.2147/1973 ([RSA GG 4081](#)), RSA GN R.1595/1975 ([RSA GG 4824](#)), RSA GN R. 140/1976 ([RSA GG 4972](#)), RSA GN R.2333/1978 ([RSA GG 6224](#)).<sup>298</sup> These regulations seem to remain in force as no regulations have been promulgated under the current Act to replace them.<sup>299</sup>

**Regulations made under the Police Act, 1958 (Act 7 of 1958); Decorations and Medals** are contained in AG GN 155/1981 ([OG 4558](#)), as amended by AG GN 44/1986 ([OG 5181](#)) and AG GN 45/1986 ([OG 5181](#)). However, these regulations may be superseded by the **Regulations relating to the award of decorations and medals to members of the Namibian Police Force**, made under the current Act, originally contained in GN 201/2002 ([GG 2862](#)), and since replaced by GN 124/2003 ([GG 2997](#)).

**Notices:** Decorations and Medals for the South West African Police are set out in AG GN 156/1981 ([OG 4558](#)), as supplemented and amended by AG GN 46/1986 ([OG 5181](#)).

**Warrants:** Pre-independence warrants relating to the award of decorations and medals have not been recorded.

**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)
- 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; 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

<sup>298</sup> These regulations were further amended in South Africa after the relevant date of transfer and prior to Namibian independence by RSA Government Notice RSA GN R.835/1988 ([RSA GG 11278](#)).

<sup>299</sup> **Regulations relating to Municipal Police Units** were contained in RSA GN R.2167/1989 ([RSA GG 12124](#)), but these regulations were promulgated after the date of transfer of the administration of the Police Act to SWA and were not made expressly applicable to SWA. They would, in any event, be superseded by the **Regulations for Municipal Police Services** issued under the current Act.

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*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 section 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); overruled on appeal without discussion of this Act in *Minister of Safety and Security & Others v Mahupelo* 2019 (2) NR 308 (SC)

*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)

Great challenges facing our communities include the growing sexual violence especially against women and children. The sexual transgressions denude a sexual offence victim of her or his dignity and also violate her or his physical, emotional and moral status. This case shows that, although there are a number of progressive legal policies and legal instruments developed to protect rape or sexual offence victims, the investigative processes are still not up to scratch as police officials seem not to be adequately equipped to deal with the challenges regarding sexual offences more effectively. The systemic failures including those illustrated in this judgment engender the persistent sexual exploitations across gender lines to grow. The case also highlights potential human rights violations and statutory breaches that require the investigative agents, especially members of the police services, to pay more attention in compliance with their constitutional and statutory investigative obligations. Anything short of these constitutional imperatives may not only bring the system of criminal justice into disrepute but may also result in a travesty of justice. (para 1)

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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)

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

*Minister of Safety and Security & Others v Longer* 2020 (4) NR 1048 (SC) (section 8(2); resignation to avoid disciplinary proceedings does not constitute a dismissal)

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

*Keramen 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)

*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) (declared unconstitutional **Regulation 58(32)**, the only surviving regulation of the **Regulations for the South African Police**, contained in RSA Government Notice R.203/1964 (RSA GG 719, republished in OG 2542) and made under the previous *Police Act 7 of 1958*).<sup>300</sup>

#### **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](#)

Office of the Attorney-General, “Frequently Asked Legal Questions”, Volume 3, April 2017, available [here](#) (section 5.1 discusses the powers of the police under the Act in relation to public gatherings)

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](#)).

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<sup>300</sup> The Regulations for the South African Police were amended by GN 16/1991 (GG 159), but then GN 167/1994 (GG 919) repealed all the regulations promulgated under RSA GN R.203/1964 *except* regulation 58(32).

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

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