

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Regulations: Regulations made in terms of the repealed *Police Act 7 of 1958* survive pursuant to section 45(2) of the Police Act 19 of 1990. Pre-independence regulations have not been comprehensively researched.

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 However, GN 167/1994 ([GG 919](#)) repealed and replaced these regulations, *with the exception of* regulation 58(32).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

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 Shivute & Several Other Cases* 1991 NR 433 (HC) at 439
S v Boois; S v Thomas 1991 NR 455 (HC)
S v Eigowab 1994 NR 192 (HC) (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) (sections 35(1) and 35(2)(a))
S v Diergaardt 2000 NR 78 (HC) (section 35(1))
Dresselhaus Transport CC v Government of the Republic of Namibia 2003 NR 54 (HC)(section 13); 2005 NR 214 (SC)
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)
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)
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 put forward, but the Court ruled that the issue can be raised 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).

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).

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).

Commentary:

Clinton Light, *Namibian Police Human Rights Manual*, Legal Assistance Centre, 1999, available at www.lac.org.na

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)

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 at www.lac.org.na

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).