



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 43 1999

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 3 of 1999: Police Amendment Act, 1999.

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Police Act, 1990, so as to provide for the accountability of the Inspector-General to the Minister; to prescribe the procedure for the removal of the Inspector-General from office; to provide for a disqualification for the appointment of members; to empower the Minister to impose certain restrictions on the powers, duties and functions of members serving in a particular division of the Force; to further regulate the procedure relating to disciplinary proceedings; to increase penalties for certain offences; to provide for the submission of criminal statistics; to establish a Police Advisory Board; to provide for the establishment of municipal police services; and to provide for matters incidental thereto.

(Signed by the President on 15 March 1999)

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

Substitution of section 3 of Act No. 19 of 1990

1. The following section is hereby substituted for section 3 of the Police Act, 1990 (hereinafter referred to as the principal Act):

“Command of the Force and functions of the Inspector-General

3. (1) The Inspector-General is in command of the Force and shall perform the functions entrusted to him or her by this Act.

(2) The functions of the Inspector-General shall include the power or duty to -

- (a) develop a plan setting the priorities of policing of the Force;
- (b) determine the fixed establishment of the Force and the number and grading of posts;
- (c) determine the distribution of the numerical strength of the Force;
- (d) organise or reorganise the Force into various components, units and groups;
- (e) establish and maintain training institutions or centres for the training of members;
- (f) determine the type of training that members shall undergo;
- (g) establish and maintain bureaus, depots, quarters, workshops or any other institution which may be expedient for the general management, control and maintenance of the Force;

- (h) appoint any member to be in charge of members in any place;
- (i) order any member appointed under paragraph (h) to carry out the orders of the Inspector-General in all matters connected with the discipline, internal administration and training of the members in his or her charge;
- (j) perform any act which may be lawfully performed on behalf of the Force; and
- (k) make such rules as he or she may consider expedient for the -
 - (i) efficient command, superintendence and control of the Force;
 - (ii) prevention of dereliction of duty in the Force; and
 - (iii) promotion of efficiency and discipline of members in the Force.

(3) The Inspector-General shall submit an annual report to the Minister in such form as the Minister may determine on the exercise of the Inspector-General's powers and the performance of his or her functions, on the functions and efficiency of the Force, on the maintenance of discipline in the Force and on such other matters as are relevant to policing issues."

Insertion of sections 3A and 3B in Act No. 19 of 1990

2. The following sections are hereby inserted in the principal Act after section 3:

"Powers of the Minister

3A. (1) Notwithstanding anything contained in this Act or any other law, the Minister may, in writing -

- (a) issue instructions or directives to the Inspector-General in relation to the exercise of any power or performance of any duty by the Inspector-General; or
- (b) set aside or vary any decision or action taken by the Inspector-General or any member to whom any power or function may have been delegated or assigned.

(2) The Minister may, in writing, delegate any of the powers referred to in subsection (1) to the Deputy Minister of Home Affairs or to the Permanent Secretary: Home Affairs, on such conditions as the Minister considers fit.

Removal of Inspector-General

3B. (1) The President may exercise the power conferred by Article 117 of the Namibian Constitution to remove the Inspector-General from office, either on his or her own motion or after consultation with the Security Commission.

(2) Where the President in terms of subsection (1) consults the Security Commission on the removal of the Inspector-General from office, the Security Commission shall make a recommendation to the President as to whether or not the Inspector-General should be removed.

(3) If the Security Commission is of the view that the Inspector-General ought to be removed from office, the Commission shall before making a recommendation to that effect to the President -

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- (a) notify the Inspector-General, in writing, of the grounds on which it is considered he or she ought to be removed from office; and
- (b) provide the Inspector-General with an opportunity to make representations either orally or in writing or both; and
- (c) consider any representations made by the Inspector-General.

(4) The President may, after considering the recommendations of the Security Commission, accept or reject the recommendations and shall inform the Inspector-General of his or her decision."

Amendment of section 4 of Act No. 19 of 1990

3. Section 4 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

"(2A) Any member appointed in terms of subsection (1) shall be on probation for the first 12 months of his or her service or such longer period as the Inspector-General may determine in a particular case.

(2B) Any person who has been convicted of any offence set out in Schedule 1 to this Act shall not qualify to be appointed as a member."

Amendment of section 6 of Act No. 19 of 1990

4. Section 6 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) Subject to the provisions of subsection (3), [an officer] a member may by notice in writing tender the resignation of [his or her commission or] his or her appointment.

(2) [Any such notice] The notice referred to in subsection (1) shall take effect upon the expiration of a period of [3] one calendar [months] month after the date upon which it is lodged with such [officer's] member's commanding officer or on such earlier date as may be approved by the Inspector-General on the request of a member."

Substitution of section 8 of Act No. 19 of 1990

5. The following section is hereby substituted for section 8 of the principal Act:

"Discharge or reduction in rank of members on account of inefficiency

8. (1) A member may be discharged from the Force or reduced in rank by the Inspector-General if, after enquiry by a board of enquiry in the prescribed manner as to his or her fitness to remain in the Force or to retain his or her rank, the Inspector-General is of the opinion that he or she is incapable of performing his or her duties efficiently: Provided that if a member is still serving his or her probation period in terms of section 4 such a prior enquiry shall not be required, but such member shall be afforded an opportunity to be heard prior to any discharge.

(2) A member who has been discharged from the Force or reduced in rank by the Inspector-General in terms of subsection (1), may in the prescribed manner appeal to the Minister against the decision of the Inspector-General, and the Minister may set aside or confirm such decision."

Substitution of section 13 of Act No. 19 of 1990

6. The following section is hereby substituted for section 13 of the principal Act:

“Functions of the Force

13. The functions of the Force shall be -

- (a) the preservation of the internal security of Namibia;
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence; **[and]**
- (d) the prevention of crime; and
- (e) the protection of life and property.”

Amendment of section 14 of Act No. 19 of 1990

7. Section 14 of the principal Act is hereby amended -

- (a) by the substitution for subsection (1) of the following subsection:

“(1) A member shall exercise such powers and perform such duties as are by this Act or any other law conferred or imposed upon such member, and shall, in the execution of his or her office, obey all lawful orders which he or she may from time to time receive from his or her **[superiors] seniors** in the Force: Provided that the Minister may, by notice in the Gazette, in relation to members serving in any specified division of the Force -

- (a) exclude from their functions any of the powers or duties so conferred or imposed by this Act or such other law; or
- (b) limit their functions to such powers or duties as are specified or described in the notice.”;

- (b) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) Notwithstanding anything to the contrary in any other law contained, a member may, where it is reasonably necessary for a purpose referred to in section 13, without warrant search any person, premises, place, vehicle, vessel or aircraft or any receptacle if the delay in obtaining a warrant would defeat the object of the search, providing -

- (i) such search is not excessively intrusive in the light of the threat or offence; and
- (ii) the person concerned, if he or she is present, is informed of the object of the search,

and such member may seize anything found in the possession of such person or upon or at or in such premises, other place, vehicle, vessel, aircraft or receptacle which in his or her opinion has a bearing on the purpose of the search.”; and

(c) by the addition of the following subsections:

“(9) Any person, not being a member, employed in the Force to perform duties in connection with the examination of scenes of crime may, in the execution of his or her duties, exercise the powers conferred on police officials by section 22 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and such person shall be deemed to be a police official for the purposes of section 28 of that Act.

(10) Any member may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of an offender or suspected offender or persons unlawfully at large.

(11) Notwithstanding the provisions of subsection (4) or anything to the contrary contained in any other law, it shall not be lawful for a member in the purported exercise of the powers conferred on him or her under this Act to seize an item subject to legal privilege.

(12) For the purposes of subsection (11), “an item subject to legal privilege” means -

- (a) communication between a legal practitioner and a client or any person representing a client, made in connection with the giving of legal advice to the client;
- (b) communication between a legal adviser and a client or any person representing a client or between such adviser or his or her client or any such representative and any other person, made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed in or referred to in the communications referred to in paragraphs (a) and (b) and made -
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possess them,

but does not include items held with the intention of furthering a criminal or fraudulent purpose.”.

Substitution of section 18 of Act No. 19 of 1990

8. The following section is hereby substituted for section 18 of the principal Act:

“Disciplinary proceedings against members

18. (1) Notwithstanding the provisions of section 17, a member who is accused of misconduct may be charged with misconduct by the Inspector-General in the manner prescribed.

(2) Disciplinary proceedings shall be conducted, in such manner as may be prescribed, before -

- (a) an officer in the Force, not being subordinate in rank to the accused, who has been generally or specifically designated by the Inspector-General for the purpose; or
- (b) any legally qualified staff member in the Public Service, designated by the Minister, after consultation with the Attorney-General.

(3) A person before whom disciplinary proceedings are conducted in terms of subsection (2) may, upon conviction of the member concerned of misconduct and after the member concerned has been given an opportunity of being heard as to the penalty to be imposed, impose any punishment as prescribed, but subject to any restriction which the Inspector-General may impose in a particular case.

(4) Upon conclusion of any disciplinary proceedings, the person who presided at such proceedings shall transmit the record of the proceedings in the case to the Inspector-General or any officer in the Force designated by the Inspector-General for that purpose, and the Inspector-General or such officer may -

- (a) confirm, alter or quash the conviction; or
- (b) confirm, set aside or alter the punishment imposed, which may include the increase of any penalty imposed.

(5) Where a member is charged with misconduct which constitutes an offence in respect of which he or she has been convicted by a court of law, a certified copy of the record of the trial in question shall, on its mere production to the person presiding at the disciplinary proceedings conducted in terms of subsection (2), be admissible in evidence, and a certified copy of the charge and conviction in question shall, on its mere production to the person so presiding be *prima facie* proof of the commission of such offence by such member.

(6) No conviction or punishment imposed by a person referred to in subsection (2) shall be of any effect unless it has been confirmed or altered by the Inspector-General or the officer referred to in subsection (4).

(7) The Inspector-General may, if he or she thinks fit, direct that the record of the proceedings in any case in which the conviction and punishment has been confirmed or altered by an officer referred to in subsection (4) be submitted to him or her for review, and the Inspector-General may thereupon act in accordance with the provisions of that subsection as if the matter had been submitted to him or her for purposes of confirmation of the conviction and punishment.

(8) A member may, within the period and in the manner as prescribed, appeal to the Minister against any conviction and punishment which became of effect in respect of him or her in terms of subsection (6) or (7).

(9) Upon the consideration of an appeal in terms of subsection (8), the Minister may -

- (a) confirm, quash or alter the conviction; or
- (b) confirm, set aside or alter any punishment imposed, which may include the increase of such punishment.

(10) In the event of an appeal under subsection (8), the enforcement of any punishment imposed in respect of the conviction which is the subject of the appeal, shall not be suspended pending the determination of the appeal.

(11) No penalty shall be increased under subsection (4), (7) or (9) unless the member concerned has been given an opportunity of being heard.

(12) If a conviction and punishment are set aside under subsection (4), (7) or (9) on the ground -

- (a) that the officer who convicted the member was not competent to do so; or
- (b) that the charge sheet on which the member was convicted was invalid or defective in any respect; or
- (c) that there was any other technical irregularity or defect in the procedure,

the Inspector-General may again within a period of thirty days charge the member concerned upon the same facts, and in such event a person other than the person before whom the initial proceedings took place shall be designated under subsection (2) to conduct the disciplinary proceedings.

(13) Notwithstanding anything contained in this section, the Inspector-General may, in respect of any charge of misconduct in terms of subsection (1), which in his or her opinion does not warrant a more severe punishment, stipulate in the charge sheet -

- (a) an amount, not exceeding N\$200 which may be paid by the member concerned as an admission of guilt fine before a specified date, should he or she admit his or her guilt; and
- (b) that any member who pays the admission of guilt fine referred to in paragraph (a) shall not be subject to any disciplinary proceedings in respect of the charge of misconduct concerned."

Repeal of section 19 of Act No. 19 of 1990

9. Section 19 of the principal Act is hereby repealed.

Substitution of section 20 of Act No. 19 of 1990

10. The following section is hereby substituted for section 20 of the principal Act:

"Powers of person conducting disciplinary proceedings

20. (1) For the purposes of any disciplinary proceedings or enquiry held in terms of this Act, the person presiding at such proceedings or enquiry may -

- (a) in the manner prescribed, subpoena any person to appear as a witness at such proceedings or enquiry at the time and place specified in the subpoena in order to answer questions or to produce any document or thing under his or her control which is relevant to the matter in question; and
- (b) call any person present at such proceedings or enquiry as a witness and administer an oath or affirmation to him or her.

(2) At any disciplinary proceedings or enquiry referred to in subsection (1) the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to evidence and witnesses which are applicable in connection with criminal

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proceedings in a magistrate's court, except paragraph (a) of the proviso to section 217(1) of that Act, shall *mutatis mutandis* apply.

(3) Any person who has been subpoenaed to appear or to produce any document or thing at any disciplinary proceedings or enquiry referred to in subsection (1) and who -

- (a) fails to appear at the time and place specified in the subpoena or fails to remain in attendance at the proceedings or enquiry until he or she has been lawfully excused from further attendance;
- (b) refuses to take an oath or to make an affirmation at the request of the person presiding at the proceedings or enquiry;
- (c) refuses or fails to produce a document or thing which he or she has been lawfully required to produce,

shall, unless he or she shows sufficient cause for such failure or refusal, be guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(4) Any witness at any disciplinary proceedings or enquiry who, having been duly sworn or having made an affirmation, gives a false answer to any question put to him or her or makes a false statement knowing such answer or statement to be false, shall be guilty of an offence and liable on conviction to the penalty that may be imposed for perjury."

Substitution of section 21 of Act No. 19 of 1990

11. The following section is hereby substituted for section 21 of the principal Act:

"Representation at disciplinary proceedings or enquiry

21. At any disciplinary proceedings or enquiry held in terms of this Act the member in respect of whom the proceedings or enquiry is held, may be assisted and represented by [his or her] a legal [adviser] practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 33 of 1995)."

Substitution of section 23 of Act No. 19 of 1990

12. The following section is hereby substituted for section 23 of the principal Act:

"Suspension of members

23. (1) Subject to subsections (2) and (3), the Inspector-General may suspend any member from his or her office -

- (a) pending his or her trial for a criminal offence;
- (b) pending an enquiry under section 8(1) as to his or her fitness to remain in the Force or to retain his or her rank;
- (c) pending the institution of disciplinary proceedings against him or her in terms of section 18; or

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- (d) after his or her conviction of an offence, whether under this Act or otherwise.

(2) The Inspector-General shall suspend a member from office during any period which he or she is under arrest or detention or is serving a term of imprisonment.

(3) Except in a case contemplated in subsection (2), or where it is in the interest of the Force that the member be immediately suspended, the Inspector-General shall, at least seven days before suspension of a member, conduct a hearing at which the member concerned shall be given an opportunity to make representations as to why he or she should not be suspended.

(4) During his or her suspension a member shall be deprived of the powers, functions and authority vested in him or her as a member, but he or she shall continue to be subject to the same responsibilities, discipline and penalties as if he or she had not been suspended.

(5) The Inspector-General may at any time terminate the suspension of a member, other than a member referred to in subsection (2), if -

- (a) in his or her opinion, the reasons for the suspension have lapsed; or
- (b) in his or her opinion, no valid cause exists for the suspension; or
- (c) the commanding officer of the member has recommended to the Inspector-General the termination of the suspension,

but the termination of the suspension shall not affect any proceedings instituted against a member on a charge of misconduct or on a criminal charge.

(6) Where the conviction of a member suspended in terms of subsection (1) or (2) is reversed on appeal or review, the Inspector-General may -

- (a) reinstate such member with full remuneration with effect from the date of his or her suspension; or
- (b) cause an inquiry to be instituted in terms of section 8(1) into the suitability of reinstating such member."

Amendment of section 24 of Act No. 19 of 1990

13. Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any member who has been suspended from office shall in respect of the period of his or her suspension, not be entitled to any salary, allowance, privilege or benefit to which he or she would otherwise have been entitled as a member if he or she had not been suspended, except to the extent as the Minister may at the request of such member direct otherwise."

Substitution of section 33 of Act No. 19 of 1990

14. The following section is hereby substituted for section 33 of the principal Act:

“Offences in connection with members and membership of Force**33. Any person who -**

- (a) impersonates a member or makes any statement or does any act calculated falsely to suggest that he or she is a member;
 - (b) induces or attempts to induce, or does any act calculated to induce any member to withhold his or her service or to do an act in conflict with his or her duties or to commit a breach of discipline; or
 - (c) causes or attempts to cause or does any act calculated to cause disaffection amongst members,
- shall be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”

Substitution of section 35 of Act No. 19 of 1990

15. The following section is hereby substituted for section 35 of the principal Act:

“Interference with members

35. (1) Any person who assaults a member in the execution of his or her duty or functions, or a person assisting a member in the execution of his or her duty or functions, shall be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

(2) Any person who -

- (a) resists or wilfully hinders or obstructs a member in the execution of his or her duty or functions, or a person assisting a member in the execution of his or her duty or functions; or
- (b) in order to compel a member to do, or to abstain from doing, any act concerning his or her duties or functions, or on account of such member having done or abstained from doing such an act, threatens or suggests the use of violence against, or restraint upon, such member or any of his or her relatives or dependants or any other person, or threatens or suggests any injury to the property of such member or any of his or her relatives or dependants or any other person,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.”

Substitution of section 37 of Act No. 19 of 1990

16. The following section is hereby substituted for section 37 of the principal Act:

“Exemption of police clubs from certain taxes, duties and fees

(1) No tax, duty or fee (other than customs, excise or sales duties leviable by law), shall be payable in terms of any law in respect of an approved **[canteen] club** of the Force contemplated in subsection (2) or in respect of any article on sale at such **[canteen] club**.

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(2) The production of an official document signed by the Inspector-General and indicating that the Minister has approved any [canteen] club for the purpose of this section, shall be *prima facie* proof that it is a [canteen] club falling under this section.

(3) For the purposes of this section [“canteen”] “club” means any mess or institution of the Force or any premises temporarily or permanently used for providing recreation, refreshment or necessities mainly for members of the Force [or for civilians employed by the Force], or for the families of such members [or civilians or for persons employed in any work in or in connection with any such mess, institution or premises].”.

Amendment of section 41 of Act No. 19 of 1990

17. Section 41 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Inspector-General may, on such conditions as he or she may deem fit, delegate any power, duty or function conferred upon or entrusted to him or her in terms of this Act, to any other member.”.

Amendment of section 42 of Act No. 19 of 1990

18. Section 42 of the principal Act is hereby amended by the substitution for paragraph (t) of subsection (1) of the following paragraph:

“(t) the establishment, management and control of the funds of the [canteens] clubs referred to in section 37;”.

Insertion of sections 43A, 43B and 43C in Act No. 19 of 1990

19. The following sections are hereby inserted after section 43 of the principal Act:

“Criminal Statistics

43A. (1) The Inspector-General shall, at such times and in such form as the Minister may direct, submit to the Minister such particulars with respect to offences, offenders and the state of crime as the Minister may require.

(2) The Minister shall cause a consolidated abstract of the particulars submitted to him or her under subsection (1) to be laid before the National Assembly once a year.

Police Advisory Board

43B. (1) There shall be a Police Advisory Board for Namibia, whose function shall be to advise the Minister on general questions affecting the Police.

(2) The composition and proceedings of the Police Advisory Board shall be as prescribed by the Minister.

Municipal Police Service

43C. (1) Any local authority council of a category contemplated in subsection (2) may, subject to this Act, establish a municipal police service.

.(2) The Minister may make regulations regarding the establishment of a

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municipal police service, including which categories of local authority councils may establish such a service and the powers and functions of such a service and of the members thereof.

(3) The Minister shall prescribe which provisions of this Act shall apply to a municipal police service established in terms of subsection (1), and may, for the purpose of such application, make such modifications to any such provision as the Minister may consider necessary.

(4) The Inspector-General shall determine the minimum standards of training that the members of a municipal police service shall undergo.

(5) Legal proceedings in respect of any alleged act performed under or in terms of this Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law by a member of a municipal police service, shall be instituted against the local authority council.

(6) The establishment of a municipal police service shall not derogate from the functions of the Force or the powers, duties or functions of a member in terms of this Act or any other law."

Amendment of section 45 of Act No. 19 of 1990

20. Section 45 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of subsection (2), the laws specified in [the] Schedule 2 to this Act are hereby repealed or amended to the extent set out in the third column of the said Schedule."

Insertion of Schedule 1 to Act No. 19 of 1990

21. The Schedule set out in the Appendix to this Act is hereby inserted after section 47 of the principal Act, the existing Schedule becoming Schedule 2.

Short title and commencement

22. This Act shall be called the Police Amendment Act, 1999.

APPENDIX
"SCHEDULE 1
(Section 4(2B))

OFFENCES

Murder

Culpable homicide involving an assault

Malicious damage to property

Public violence

Kidnapping

Child stealing

Rape

Indecent assault

Theft-if a fine of more than N\$100 has been imposed

Illegal hunting of game

Robbery

Assault with intent to cause grievous bodily harm

Arson

Breaking or entering any premises, whether under common law or a statutory provision, with intent to commit an offence

Receiving stolen property knowing it to have been stolen

Fraud

Forgery or uttering a forged document knowing it to have been forged

Any offence relating to coinage

Corruption

Obstructing the ends of justice

An offence under any law relating to illicit dealing in, selling or possession of unwrought precious metals or rough or uncut precious stones

An offence under any law relating to illegal dealing in, possession, conveyance or supply of dependence producing drugs

An offence under the Controlled Game Products Proclamation, 1980 (Proclamation No. AG 42 of 1980)

Any conspiracy, incitement or attempt to commit any offence mentioned in this Schedule".