



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

R0,90

WINDHOEK — 3 December 1990

No. 113

CONTENTS

Page

GOVERNMENT NOTICE

| | | |
|--------|---|---|
| No. 83 | Promulgation of Police Act, 1990 (Act 19 of 1990), of the National Assembly | 1 |
|--------|---|---|

Government Notice

OFFICE OF THE PRIME MINISTER

No. 83

1990

**PROMULGATION OF ACT OF
THE NATIONAL ASSEMBLY**

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

No. 19 of 1990: Police Act, 1990.

ACT

To provide for the establishment, organization and administration of the Namibian Police Force; to regulate the powers and duties of the Force and to prescribe the procedures in order to secure the internal security of Namibia and to maintain law and order; to regulate the discipline, appointment, promotion and discharge of members of the Force; and to provide for incidental matters.

(Signed by the President on 26 November 1990)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Definitions.

1. In this Act, unless the context otherwise indicates -

“auxiliary member” means any auxiliary member referred to in section 12(1)(b);

“Inspector-General” means the Inspector-General appointed under Article 142 or 32(4)(c)(bb) of the Namibian Constitution, as the case may be;

“member” means an officer and non-officer of the Namibian Police appointed as such under section 4(1) and includes, except for the purposes of any provision of this Act in respect of which the Inspector-General may, subject to the directions of the Minister, otherwise prescribe, any member of the Reserve Force while serving in the Force and any temporary and auxiliary member;

“Minister” means the Minister of Home Affairs;

“misconduct” means -

(a) any contravention of this Act; or

(b) the commission of any other offence;

“prescribe” or “prescribed” means prescribe or prescribed by regulation, and in the case of any power exercised by the Inspector-General, prescribe or prescribed by rules;

“regulation” means any regulation made or in force under this Act;

“Reserve Force” means the Reserve Police Force referred to in section 11;

“temporary member” means any temporary member referred to in section 12(1)(a);

“the Force” means the Namibian Police Force established under section 2; and

“this Act” includes the regulations, rules and directions made or in force thereunder.

CHAPTER I

ESTABLISHMENT, ORGANIZATION AND ADMINISTRATION OF THE FORCE

Establishment and composition of the Namibian Police Force.

2. (1) There is hereby established a police force to be known as the Namibian Police and which shall, in addition to the Inspector-General, consist of the other officers and non-officers appointed under this Act as members of the Namibian Police and includes, except for the purposes of any provision of this Act in respect of which the Inspector-General may, subject to the directions of the Minister, otherwise prescribe, any member of the Reserve Force while serving in the Force and any temporary and auxiliary member.

(2) A person who was a member of the South West African Police immediately before the commencement of this Act, shall, with due recognition of his or her previous period of service as a member of the South West African Police, be deemed to have been appointed under this Act as a member of the Namibian Police, and to have been

assigned to the duties in which he or she is serving at that date and any training undergone or service performed by any such person in the South West African Police prior to such date shall be deemed to have been undergone or performed under this Act.

Head of the Force.

3. (1) The Inspector-General is the head of the Force and shall, subject to the provisions of this Act, have the command, superintendence and control of the Force.

(2) The Inspector-General may, subject to the provisions of this Act, make such rules as he or she may deem expedient for the efficient command, superintendence and control of the Force.

Appointment as officers and non-officers and promotion, discharge or demotion of members.

4. (1) The Inspector-General shall, subject to the regulations, appoint fit and proper persons to be members of the Force, and shall appoint such members as officers or non-officers, as the case may be.

(2) Any document in the prescribed form signed by the Inspector-General and certifying that any person has been appointed as a member, shall be *prima facie* proof that such person has been so appointed.

(3) The Inspector-General may, subject to the provisions of this Act, promote, discharge or reduce in rank any member.

Granting of commission.

5. The President may from time to time grant under his or her hand or bearing a replica of his or her signature, commission to any member who has been appointed as officer.

Resignation of officers.

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

(2) Any such notice shall take effect upon the expiration of a period of 3 calendar months after the date upon which it is lodged with such officer's commanding officer or on such earlier date as may be approved by the Inspector-General.

(3) The Inspector-General shall only resign from the Force after consultation with the President.

Discharge of members on account of ill-health.

7. (1) Any member may be discharged from the Force by the Inspector-General if, after enquiry by a board of enquiry in the prescribed manner as to his or her state of health, the Inspector-General is of the opinion that he or she is by reason of ill-health unfit to remain in the Force.

(2) Any member discharged from the Force in terms of subsection (1) may in the prescribed manner appeal to the Minister against such discharge, who may thereupon set aside or confirm his or her discharge.

Discharge or reduction in rank of non-officers on account of inefficiency.

8. (1) Any non-officer 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 period of 12 months from the date of appointment of such non-officer has not elapsed, it shall not be necessary to hold an enquiry by a board of enquiry.

(2) Notwithstanding the provisions of subsection (1), the Inspector-General may discharge any such non-officer from the Force in the absence of any such enquiry if the non-officer has been sentenced to imprisonment without the option of a fine.

(3) Any non-officer who has been discharged from the Force in terms of subsection (1) or (2), or who has been reduced in rank in terms of subsection (1), may in the prescribed manner appeal to the Minister against such discharge or reduction, as the case may be, who may thereupon set aside or confirm his or her discharge or reduction in rank, as the case may be.

Discharge of members on account of long absence without leave.

9. A member who absents himself or herself from his or her official duties without the permission of the Inspector-General for a continuous period exceeding thirty days, shall be deemed to have been discharged from the Force on account of misconduct with effect from the date immediately following upon the last day on which he or she was present at his or her place of duty: Provided that if any member absents himself or herself from his or her official duties without such permission and accepts other employment, he or she shall be deemed to have been so discharged even if he or she has not yet so absented himself or herself for a month: Provided further that if a member deemed to have been so discharged, again reports for duty,

the Inspector-General may, notwithstanding anything to the contrary contained in any law, reinstate him or her in his or her former post or appoint him or her to any other post or appointment in the Force on such conditions as the Inspector-General may deem fit, and in that event the period of his or her absence from his or her official duties shall be deemed to have been absence on vacation leave without pay, or leave on such other conditions as the Inspector-General may determine.

Employment of Force in times of emergency.

10. (1) The President may in any regulations which he or she may make under the provisions of Article 26(5) of the Namibian Constitution, during the state of emergency or national defence contemplated in that Article, make provision for the employment of the Force or any part thereof to assist in countering any such emergency or in the defence of Namibia, and may place the Force or any part thereof, while so employed, under the orders and directions of such person as the President may for that purpose appoint.

(2) The Force or the said part thereof shall while so employed, be subject to the laws governing the discipline, command and control of the Namibia Defence Force when on active or military service, but shall not thereby be excluded from the operation of this Act: Provided that no member of the Force shall be prosecuted for an offence under this Act as well as under the laws governing the discipline, command and control of the said Defence Force.

Reserve Police Force.

11. (1) There shall be a Reserve Police Force which shall consist of persons appointed on such conditions as the Inspector-General may prescribe.

(2) The Inspector-General may order any member of the Reserve Force to report for service in the Force at a specified time and place, and any such member who fails to comply with such order shall be guilty of an offence and liable on conviction to the penalties prescribed in section 17.

(3) The Inspector-General may, notwithstanding the provisions of section 7 or 8, at any time discharge from the Force any member of the Reserve Force.

Appointment and discharge of temporary and auxiliary members.

12. (1) If it is necessary for the proper performance of the functions of the Force, the Inspector-General may temporarily appoint so many fit and proper persons in a full-time or part-time capacity as he or she may deem expedient -

- (a) in posts constituting part of the fixed establishment which have not been permanently filled, to act as temporary members; or
- (b) in posts additional to the fixed establishment if there are not sufficient ordinary members to perform police duties in any locality, to act as auxiliary members.

(2) The Inspector-General may, notwithstanding the provisions of sections 7 or 8, at any time discharge from the Force any such temporary or auxiliary member.

CHAPTER II

FUNCTIONS OF FORCE AND POWERS AND DUTIES OF MEMBERS

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.

Powers and duties of members.

14. (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 in the Force.

(2) Every member shall be competent to serve or execute any summons, warrant or other process authorized by law, and if the member who originally has had to serve or execute the summons, warrant or other process, is unable to serve or execute such summons, warrant or other process, such summons, warrant or process may be served or executed by any other member, and every such last-mentioned member shall have the same rights, powers and authorities for and in the service or execution of such summons, warrant or process which the member had who originally has had to serve or execute the summons, warrant or other process.

(3) The Inspector-General may, in consultation with the Attorney-General, require any member generally or in any particular instance, to appear on behalf of the State in any criminal case, including the holding of a preparatory examination, in any lower court referred to in Article 78 of the Namibian Constitution.

(4) (a) Notwithstanding anything to the contrary in any other law contained, any member may, in the performance of the functions referred to in section 13, when such member has reasonable grounds to believe that an act has been performed which threatens the internal security of Namibia or the maintenance of law and order or which relates to the committing of any offence, and where delay in obtaining a warrant to search any person, premises, other place, vehicle, vessel or aircraft or any receptacle of whatever nature carries with it the danger of prejudicing the objects of the search and if -

(i) such search is not excessively intrusive in the light of the threat or offence; and

(ii) the person concerned is informed (if he or she is present) of the objectives of the search,

without warrant search any person, premises, other place, vehicle, vessel or aircraft or any receptacle of whatever nature, at any place in Namibia within a distance of ten kilometres of any border between Namibia and any foreign State or territory and seize anything which relates to such search, found by him or her upon such person or upon or at or in such premises, other place, vehicle, vessel, aircraft or receptacle.

- (b) If a woman is searched under paragraph (a), the search shall be made by a woman only, with strict regard to decency, and if there is no woman who is a member available for such search, the search may be made by any woman specially designated for such purpose by a member.
- (c) The provisions of section 30 of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall *mutatis mutandis* apply in respect of anything seized under paragraph (a).
- (d) To the extent that the provisions of this section authorize the interference with the privacy of a person's correspondence or home by conducting any search under those provisions, such interference shall be authorized only on the grounds of public safety, the prevention of disorder or crime and for the protection of the rights or freedom of others as contemplated in Article 13(1) of the Namibian Constitution.
- (5) (a) Notwithstanding anything to the contrary in any other law contained, but subject to the provisions of subsection (4), any member may, in the performance of the functions referred to in section 13, search without warrant any vehicle on any public road or railway in Namibia, or any vessel or aircraft in Namibia, or any receptacle of whatever nature in, on or attached to the vehicle, and seize any article referred to in section 20 of the Criminal Procedure Act, 1977 (Act 51 of 1977), found in, on or attached to the vehicle, vessel or aircraft, or in the receptacle.
- (b) For the purposes of exercising the powers conferred by paragraph (a), a member may by means of an appropriate indication or direction, or in any other manner order the driver of a vehicle on a public road or railway to bring that vehicle to a stop and may, notwithstanding anything to the contrary in any law contained, display, set up or erect on or next to the road or railway such sign, barrier or object as is reasonably necessary to bring the order to the attention of the driver and to ensure that the vehicle will come to a stop.
- (c) A person who refuses or neglects to stop a vehicle in accordance with an order under paragraph (b)

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(d) The provisions of the Criminal Procedure Act, 1977 (Act 51 of 1977), with regard to the disposal of an article referred to in section 30 of that Act and seized under the provisions of that Act, shall *mutatis mutandis* apply in respect of an article seized under paragraph (a).

(e) To the extent that the provisions of this subsection authorize any limitation on a person's right to move freely throughout Namibia in that a member may order any driver of a vehicle on a public road or railway to bring that vehicle to a stop and to set up or erect any barrier or object for that purpose under those provisions, such limitation shall be authorized only on the grounds of national security, public order or the incitement to an offence.

(6) Notwithstanding anything to the contrary in any other law contained, the Inspector-General may, in the performance of any function referred to in section 13, publish or cause to be published, or in any other manner display or cause to be displayed any photograph or sketch of any person.

(7) If the Inspector-General deems it necessary for the purposes of the performance of the functions of the Force he or she may, with the approval of the Minister, direct any member to perform service at any place outside Namibia: Provided that in circumstances determined by the Minister, the Inspector-General may, without such approval, direct any member to perform service at any place outside Namibia.

(8) A member in respect of whom a direction has been issued in terms of the provisions of subsection (7), shall perform service in accordance with such direction.

Right of entry in case of fire.

15. Any member may, without the consent of any person, break into and enter upon any premises being or appearing to be on fire, or any premises or land adjoining or adjacent thereto, and may do everything necessary to

extinguish such fire, or for protecting such premises or land or for rescuing any person or property thereon from such fire.

Traffic barriers and
cordons.

16. (1) Without derogating from the functions referred to in section 13 and notwithstanding the provisions of any other law any officer may, when he or she considers it necessary for the maintenance of law and order or for the prevention and detection of crime -

- (a) erect or place or cause to be erected or placed barriers, or cause a cordon to be formed in or across any road, street or any other public place in such manner as he or she may think fit;
- (b) cause a cordon to be formed in, across or around any private property in such manner as he or she may think fit, and for that purpose it shall be lawful for the members forming the cordon, without the consent of any person, to enter any property and do any act or thing necessary for the effective formation of the cordon.

(2) Where a barrier has been erected or placed or a cordon formed under the provisions of subsection (1)(a), any member may take all reasonable steps to prevent any person from passing or any vehicle from being driven past such barrier or cordon.

(3) The driver of any vehicle who fails to comply with any reasonable signal of a member requiring such driver to stop his or her vehicle before reaching any barrier or cordon referred to in subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 6 months, or to both such fine and such imprisonment.

(4) To the extent that the provisions of this section authorize the interference with the privacy of a person's home or the limitation of a person's right to move freely throughout Namibia by causing a cordon to be formed in or across any private property and to enter any such property or preventing any person from passing or any vehicle from being driven past such barrier or cordon under those provisions, as the case may be, such interference or limitation of a person's right, shall be authorized only -

- (a) in the case of such interference, on the grounds of the prevention of crime or the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution; or
- (b) in the case of such limitation of a person's right, on the grounds of national security, public order or the incitement to an offence.

CHAPTER III

DISCIPLINE

Contravention of Act by members.

17. Any member who contravenes or fails to comply with any provision of this Act or any order issued in terms of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 6 months or to both such fine and such imprisonment.

Disciplinary proceedings against non-officers.

- 18.** (1) (a) Notwithstanding the provisions of section 17, disciplinary proceedings may be instituted against any non-officer for a contravention or non-compliance of any provision of this Act or any order issued in terms of this Act, before any officer -
- (i) under whose command such non-officer is serving; or
 - (ii) who has been generally or specially authorized thereto by the Inspector-General.
- (b) Any officer referred to in paragraph (a) shall, upon conviction of such non-officer in respect of any such contravention or non-compliance, have jurisdiction to impose such disciplinary measures or penalties prescribed.
- (2) Any proceedings referred to in subsection (1) shall be conducted as prescribed.
- (3) Any officer who imposes disciplinary measures or penalties under this section, shall forthwith transmit the record of the proceedings in the case to an officer

designated by the Inspector-General, and such designated officer may confirm or quash the conviction and disciplinary measures or penalties, or confirm or alter the conviction and set aside or reduce the disciplinary measures or penalties, as the case may be.

(4) No conviction or disciplinary measures or penalties imposed by an officer shall have any force or effect unless it has been confirmed.

(5) Any non-officer who has been convicted and in respect of whom disciplinary measures or penalties have been imposed by an officer, may in the prescribed manner and within the period prescribed, appeal to the Inspector-General against the conviction and disciplinary measures or penalties, who may thereupon confirm or quash the conviction and disciplinary measures or penalties, or confirm or alter the conviction and set aside, increase, reduce or otherwise alter the disciplinary measures or penalties as he or she may deem necessary in the interest of justice.

(6) In the event of an appeal under subsection (5), the execution of the disciplinary measures or penalties imposed in respect of the conviction which is the subject of the appeal, shall be suspended pending the Inspector-General's decision on the appeal.

(7) The Inspector-General may, if he or she deems it necessary, restrict the jurisdiction conferred to any officer by this section.

(8) If any non-officer has been convicted and disciplinary measures or penalties have been imposed under this section, the Inspector-General may, if he or she thinks fit, direct that the record of the proceedings in the case be submitted to him or her for review, and he or she may thereupon act in respect of the conviction and disciplinary measures or penalties imposed, as provided by subsection (5).

(9) If the Inspector-General sets aside a conviction and disciplinary measures or penalties which have been imposed under subsection (5) or (8) on the ground that -

(a) the officer who convicted the non-officer was not competent to do so; or

- (b) that the charge sheet on which the non-officer was convicted, was invalid or defective in any respect; or
- (c) that there has been any other technical irregularity or defect in the procedure,

proceedings under subsection (1) in respect of the same offence to which the conviction and the disciplinary measures or penalties referred, shall, if the Inspector-General so directs, again be instituted either on the original charge, suitably amended where necessary, or upon any other charge as if disciplinary proceedings have not previously been instituted against such non-officer: Provided that the officer before whom the original proceedings took place, shall not conduct the proceedings so directed by the Inspector-General.

Misconduct by officers.

19. (1) Notwithstanding the provisions of section 17, the Inspector-General may in the manner prescribed, charge any officer with misconduct and request him or her to submit, within such period and in such manner as may be prescribed, a written admission or denial of the charge and any written explanation he or she may wish to offer in connection with the alleged misconduct.

- (2) (a) After the expiration of the said period the Inspector-General may appoint a board of enquiry to investigate the charge in question.
- (b) Such board shall consist of one or more officers of a rank equal or higher than the officer charged.

(3) Where an officer 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 by any person, be admissible in evidence before the board of enquiry investigating the charge, and a certified copy of the charge and conviction in question shall, on its mere production by any person to such board, be *prima facie* proof of the commission of such offence by such officer.

(4) After considering the evidence adduced at the enquiry and affording the officer charged, or his or her legal adviser, an opportunity of addressing the board of enquiry, the board shall find the officer charged guilty or

not guilty of the misconduct with which he or she has been charged and inform him or her of its finding: Provided that if the officer charged admits, pursuant to a request under subsection (1), or to the board, that he or she is guilty of the misconduct in question, he or she may be found guilty without any evidence having been adduced.

(5) After a board of enquiry has found an officer guilty of misconduct -

- (a) the board shall make recommendations to the Minister in regard to any punishment which may be imposed upon such officer under subsection (7); and
- (b) the Inspector-General may make recommendations to the Minister in regard to any finding or recommendation of the board:

Provided that the officer concerned shall, for the purposes of his or her appeal or representations referred to in subsection (6), be notified of the recommendation of the board of enquiry and of the Inspector-General.

(6) Any officer found guilty of misconduct may within such period and in such manner as may be prescribed, appeal to the Minister against the finding of the board of enquiry or make representations in writing to the Minister in regard to the imposition of punishment, or both so appeal and make representations.

(7) (a) The Minister may, after considering the record of the proceedings before the board of enquiry, the recommendations of such board and of the Inspector-General and the grounds of appeal of and any representations made by the officer charged (if any) -

- (i) set aside the finding of the board of enquiry;
or
- (ii) direct that the officer concerned be cautioned or reprimanded; or
- (iii) impose upon the officer concerned a fine not exceeding R500 which may be recovered by way of deductions from his or her salary or allowances; or

- (iv) direct that the salary of the officer concerned be reduced to such extent as may be recommended; or
 - (v) direct that the matter be referred to the Inspector-General to take appropriate steps regarding the discharge or reduction in rank of the officer concerned.
- (b) Any decision of the Minister made under subparagraph (i), (ii), (iii) or (iv) of paragraph (a), shall be deemed to be a decision of the Inspector-General.

Witnesses before officers and boards of enquiry.

20. (1) For the purposes of any disciplinary proceedings before an officer referred to in section 18(1) or enquiry by a board of enquiry appointed in terms of section 19(2), the officer or board concerned may -

- (a) in the manner prescribed, subpoena any person to appear as a witness at the time and place specified in the subpoena before the officer or board concerned in order to answer questions or to produce any document or any thing under his or her control and which relates to the matter in question; and
- (b) call any person present at the disciplinary proceedings or enquiry as a witness and administer an oath or affirmation to him or her, or admonish him or her to tell the truth.

(2) At such proceedings or enquiry the provisions of the Criminal Procedure Act, 1977 (Act 51 of 1977), relating to evidence and witnesses which are applicable in connection with criminal proceedings in a magistrate's court, except paragraph (a) of the proviso to section 217(1) of that Act, shall *mutatis mutandis* apply.

- (3) (a) A witness at such proceedings or enquiry who -
- (i) having been duly subpoenaed under subsection (1)(a), fails to appear at the time and place specified in the subpoena or fails to remain in attendance at the proceedings or enquiry concerned until he or she has been lawfully excused from further attendance;

- (ii) refuses to take an oath or to make an affirmation administered to him or her under subsection (1)(b);
- (iii) refuses or fails to answer all questions which have lawfully been put to him or her; or
- (iv) 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 that failure or refusal, be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or imprisonment for a period not exceeding 3 months or to both such fine and such imprisonment.

- (b) Any such witness who at any such proceedings or enquiry, having taken an oath, having made an affirmation or having been admonished as contemplated in subsection (1)(b), makes any false statement knowing such statement to be false, shall be guilty of an offence and liable on conviction to the penalties which may be imposed under any law for the crime of perjury.

Representation of accused person 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 legal adviser.

Members absolved from prosecution under other laws after trial under this Act.

22. Nothing in this Act contained shall be construed as preventing a member from being prosecuted other than under the provisions of this Act in all cases in which he or she would be liable to be so prosecuted, but no member who has been acquitted or convicted of any offence under this Act, shall be liable to be again tried for any offence arising from the same facts and circumstances.

Suspension of members.

23. (1) The Inspector-General may suspend any member from his or her office pending his or her trial, or disciplinary proceedings, or after his or her conviction of any offence, whether under this Act or otherwise, or pending any enquiry at which a charge of misconduct against him or her, or his or her fitness to remain in the Force or to retain his or her rank is being investigated, and shall so suspend any member during any period during

which he or she is under arrest or detention, or is serving a term of imprisonment, but such member shall not by reason of such suspension cease to be a member.

(2) During the suspension of a member the powers, functions and authority vested in him or her as such member shall be in abeyance, 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.

(3) The Inspector-General may at any time terminate the suspension of a member.

Salary, allowances, privileges and benefits of suspended member.

24. (1) Any member who has been suspended from office shall, in respect of the period of his or her suspension, be entitled to any salary, wage, 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.

(2) If a member who was suspended is, pursuant to any trial, disciplinary proceedings or enquiry, reduced in rank, he or she shall in respect of the period of his or her suspension, be paid the salary or wages and allowances applicable to the rank to which he or she is reduced, but if in respect of such period he or she was in terms of subsection (1) paid any salary, wages or allowances in excess of the salary or wages and allowances applicable to the rank to which he or she is reduced, the Minister may, in consultation with the Treasury, allow such member to keep the excess.

CHAPTER IV

GENERAL

Remuneration of members and conditions of service of certain members.

25. (1) All members, except members of the Reserve Force who by agreement receive no remuneration for their services, shall be paid salaries, wages or allowances in accordance with the provisions of the Public Service Act, 1980 (Act 2 of 1980).

(2) Notwithstanding the provisions of subsection (1) and of any other law, the Inspector-General may -

(a) after consultation with and on the recommendation of the Public Service Commission; and

(b) with the approval of the Treasury,

pay to any member a higher salary, wage or allowance than the salary, wage or allowance so payable to him or her.

(3) The Inspector-General may, subject to the regulations and notwithstanding the fact that members of the Reserve Force receive no remuneration for their services -

(a) on the recommendation of the Public Service Commission; and

(b) with the approval of the Treasury,

prescribe conditions of service (including remuneration for certain services rendered), in respect of the Reserve Force and temporary and auxiliary members.

(4) Members of the Reserve Force who receive no remuneration for their services in the Force shall not by reason of the fact that they receive no such remuneration, be regarded as not being in the service of the State.

Salary or allowance may not be assigned or attached.

26. A member shall not, without the approval of the Inspector-General, assign any salary or allowance payable to him or her in terms of this Act, or any portion thereof, and such salary, allowance or portion thereof shall not be liable to be seized or attached under or by virtue of any judgement or order of any court, other than a garnishee order, nor shall the same pass under or by virtue of any order made for the sequestration of the estate of any such member.

Members to place all their time at disposal of State.

27. (1) Unless otherwise provided in this Act -

(a) every member shall place all his or her time at the disposal of the State;

(b) no member shall perform or engage himself or herself to perform any remunerative work outside his or her employment in the Force; and

(c) no member may claim as of right additional remuneration in respect of any official duty or

work which he or she is required by any competent authority to perform.

(2) Notwithstanding the provisions of subsection (1), the Minister may grant permission to a member to perform or engage himself or herself to perform remunerative work outside his or her employment in the Force.

(3) (a) Where a member receives any remuneration, allowance or other reward whatsoever in connection with the performance of his or her work in the Force, other than in accordance with the provisions of this Act or in contravention of the provisions of subsection (1)(b), such member shall pay to the Force an amount equal to the amount of such remuneration, allowance or reward or, where it does not consist of money, the value thereof, as determined by the Inspector-General, and if he or she fails to do so, the Inspector-General may recover it by way of legal proceedings or in such other manner as the Inspector-General may deem fit: Provided that -

(i) there shall be a right of appeal to the Minister against such determination by the Inspector-General; and

(ii) the Minister may approve the retaining by a member of the whole or a portion of that remuneration, allowance or reward.

(b) If in the opinion of the Inspector-General a member has received any remuneration, allowance or other reward as contemplated in paragraph (a), and such remuneration, allowance or reward is still in his or her possession or under his or her control or in the possession or under the control of some other person on his or her behalf or, if it is money, has been deposited in any bank, the post office savings bank or any building society or other financial institution in his or her name or in the name of some other person on his or her behalf, the Inspector-General may in writing require such member or such other person or such bank, the post office or such building society or financial institution not to dispose thereof or, if it is money, to retain a corresponding sum of money, as the case may be,

pending the outcome of any legal steps for the recovery of such remuneration, allowance or reward or the value thereof.

- (c) Any person who fails to comply with any requirement under paragraph (b), shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Missing members.

28. (1) If a member is missing and the Inspector-General is satisfied that his or her absence arose from the performance of his or her functions in terms of this Act, such member shall for all purposes be deemed to be still employed by the Force from the first day after the day on which such absence commenced until the day on which -

- (a) he or she again reports for duty; or
- (b) in the opinion of the Inspector-General, he or she should have reported for duty; or
- (c) a competent court issued an order whereby the death of such member is presumed.

(2) The salary or wages and allowances accruing to a member during his or her absence contemplated in subsection (1) shall, subject to the provisions of subsection (4), be paid to his or her spouse or, if he or she has no spouse, to his or her other dependants, or to any person who, in the opinion of the Inspector-General, is competent to receive and administer such salary or wages and allowances on behalf of his or her spouse or such other dependants or his or her heirs.

(3) Payment of any salary or wages and allowances in terms of subsection (2), shall for all purposes be deemed to be payment thereof to the member concerned, and an amount so paid shall not be recoverable by the State from any person.

(4) Notwithstanding the provisions of subsection (2), the Inspector-General may in his or her discretion direct that only a portion of the salary or wages and allowances of a member be paid in terms of the said subsection or that no portion thereof be so paid.

Act No. 19, 1990

POLICE ACT, 1990

Reward for extraordinary diligence or devotion.

29. The Inspector-General may, with the approval of the Minister, award to any person who is or was a member, for extraordinary diligence or devotion in the performance of his or her duties as such member, such monetary or other reward as he or she considers appropriate in the circumstances.

Establishment of decorations and medals for members.

30. The President may establish and introduce decorations and medals, as well as bars, clasps and ribbons in respect of such decorations and medals, which may be awarded by him or her, subject to such conditions as may be prescribed, to any person who is or was a member in respect of his or her services as such member or to any person who has rendered exceptional services to the Force.

Offences in respect of decorations and medals.

31. Any person who wears or uses any decoration, medal, bar, clasp or ribbon referred to in section 31, unless he or she is the person to whom such decoration, medal, bar, clasp or ribbon was awarded or has been bequeathed, or who, without the written permission of the Inspector-General uses such decoration, medal, bar, clasp or ribbon, or who wears or uses anything so closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

False representations as to association with Force.

32. Any person who, without the approval of the Minister, in connection with any activity carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or to convey or calculated or likely to lead other persons to believe or infer that such activity is carried on under or by virtue of the provisions of this Act or under the patronage of the Force, or is in any manner associated or connected with the Force, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Offences in connection with members and membership of Force.

33. Any person -

- (a) not being a member, who by words, conduct or demeanour pretends that he or she is a member;
or

(b) who -

- (i) persuades any member to omit to carry out his or her duty or to do any act in conflict with his or her duty; or
- (ii) is an accomplice to the commission of any act whereby any lawful order given to a member, or any provision of this Act, may be evaded,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Wearing of uniforms, badges or buttons of the Force.

34. Any person who wears any uniform, distinctive badge or button of the Force or anything so closely resembling any such uniform, badge or button as to be calculated to deceive, shall, unless -

- (a) he or she is a member entitled by reason of his or her appointment, rank or designation to wear such uniform, badge or button; or
- (b) he or she has been granted permission by the Inspector-General to wear such uniform, badge or button,

be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Interference with members.

35. (1) Any person who assaults any member in the exercise of his or her powers or the performance of his or her duties or functions, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(2) Any person who -

- (a) resists or wilfully hinders or obstructs any member in the exercise of his or her powers or the performance of his or her duties or functions or, in the exercise of his or her powers or the

performance of his or her duties or functions by a member, wilfully interferes with such member or his or her uniform or equipment or any part thereof; or

- (b) in order to compel any such member to do or to abstain from doing any act in respect of the exercise of his or her powers or the performance of 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 to, or threatens or suggests any injury to the property of such member or of any of his or her relatives or dependants,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Exemption from tolls.

36. (1) Any member who in the exercise of his or her powers or the performance of his or her duties or functions finds it necessary to enter, pass through or go over any wharf, landing place, ferry, bridge, toll-bar, gate or door at or in respect of which any toll, fee or due may be lawfully demanded, shall be exempted from the payment of such toll, fee or due in respect of himself or herself, every person under his or her arrest and any animal, means of transport or article of equipment which he or she may require in the exercise of such powers or the performance of such duties or functions: Provided that if such member is not in uniform, he or she shall, upon a request by any person who may demand such toll, fee or due, disclose his or her identity by producing to such person his or her certificate of appointment referred to in section 4(2).

(2) Any person who may demand any such toll, fee or due, and who wilfully subjects any such member, person, animal, means of transport or article of equipment to unreasonable delay or detention in respect of the entry to, passage through or going over any such wharf, landing place, ferry, bridge, toll-bar, gate or door, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Police canteens exempt from certain taxes, duties and fees.

37. (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 of the Force contemplated in subsection (2) or in respect of any article on sale at such canteen.

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

(3) For the purposes of this section "canteen" 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.

Non-liability for acts done under irregular warrant.

38. (1) If any legal proceedings are instituted against any member for any act done in obedience to a warrant purporting to be issued by a magistrate, justice of the peace or other officer authorized by law to issue warrants, that member shall not be liable for any irregularity in the issuing of the warrant or for want of jurisdiction in the person issuing the same, and upon producing the warrant containing the signature of the person purporting to be a magistrate, justice of the peace or such other officer as aforesaid, and upon proof that the acts complained of were done in obedience to the warrant, judgement shall be given in favour of such member.

(2) A member who in good faith performs any act in accordance with or in the enforcement of any provision purporting to be an enactment of a competent legislative authority, shall, notwithstanding any irregularity in the enactment of or defect in such provision or want of jurisdiction on the part of such legislative authority, be exempt from liability in respect of the performance of that act to the same extent and subject to the same conditions as if such irregularity had not occurred or such defect or want of jurisdiction had not existed.

Prescription of actions, notification of proceedings, cause of action, and service of certain process.

39. (1) Any civil proceedings against the State or any person in respect of anything done in pursuance of this Act shall be instituted within 12 months after the cause of action arose, and notice in writing of any such proceedings and of the cause thereof shall be given to the defendant not

less than 1 month before it is instituted: Provided that the Minister may at any time waive compliance with the provisions of this subsection.

(2) If any notice contemplated in subsection (1) is given to the Inspector-General, it shall constitute notification to the defendant concerned.

(3) Any process by which any proceedings contemplated in subsection (1) are instituted and in which the Minister is the defendant or the respondent, may be served on the Inspector-General.

Limitation of liability of the State and members.

40. If any person is conveyed in or makes use of any vehicle, aircraft or vessel which is the property of the State and which is used by or on behalf of the Force, the State or any member shall not be liable to such person or his or her spouse, parent, child or other dependant for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the conveyance of such person in, or the use of such vehicle, aircraft or vessel, unless such person is so conveyed or makes use thereof in or in the interest of the performance of the functions of the State: Provided that the provisions of this section shall not affect the liability of a member who wilfully causes the said loss or damage.

Delegation of powers, duties and functions.

41. (1) The Minister may, on such conditions as he or she may deem fit, delegate any power, duty or function conferred upon him or her by this Act, excluding any power, duty or function referred to in sections 2, 7(2), 8(3), 19(7), 27(3)(a) and 42, to the Inspector-General or any other member.

(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, excluding any power, duty or function referred to in section 18(5) and (8), to any other member.

Regulations.

42. (1) The Minister may make regulations as to -

(a) the minimum academic qualifications for employment as members, the employment, training, promotion, posting, transfer, leave of absence, resignation, discharge, suspension or reduction in rank of members;

- (b) the standards of physical and mental fitness and the medical examination of members and their families;
- (c) the numerical establishment and distribution of the Force, the establishment of police districts and stations, and the various divisions, branches, grades, ranks and designations in the Force;
- (d) the establishment and maintenance of training institutions or centres for recruits, students and other members, and the instruction, training, discipline and control of such recruits, students and other members at such institutions or centres;
- (e) the control and functions of laboratories established for the purposes of the Force;
- (f) the attendance by members of instructional or training courses at institutions or centres other than those established and maintained in terms of this Act;
- (g) the definition of offences against duty and discipline, and generally the control and discipline of the Force;
- (h) the deductions to be made from the salaries, wages or allowances of members;
- (i) the procedure at disciplinary proceedings before officers under this Act and the attendance of witnesses thereat;
- (j) the assemblage of boards of enquiry constituted under this Act, the procedure of such boards and the attendance of witnesses thereat;
- (k) appeals in terms of this Act;
- (l) the charging of officers with misconduct;
- (m) the provision of stores, arms, ammunition, accessories and other equipment, and of means of transport required for the Force, and the care, safe custody and maintenance thereof;

POLICE ACT, 1990

- (n) the exercise of their powers and the performance of their duties and functions by members;
- (o) the design, award (including a posthumous award), use, bequest, care, loss, forfeiture and restoration of any decoration, medal, bar, clasp or ribbon referred to in section 30;
- (p) the dress and clothing of the Force, and the control or disposal of any article or uniform or equipment by any member;
- (q) returns, registers, records, documents, books, forms and correspondence relating to the Force;
- (r) the recovery from a member of any deficiency, loss, damage or expense which he or she has unlawfully caused to the State;
- (s) abandoned, lost or unclaimed property found or taken charge of by, or in the possession of a member;
- (t) the establishment, management and control of the funds of canteens referred to in section 37;
- (u) the control of funds collected or received by members for the benefit of members and ex-members, or their dependants;
- (v) the general government, control and maintenance of the Force;
- (w) the retention of rank on retirement or resignation from the Force and the award of honorary ranks;
- (x) the keeping of registers containing all the necessary information regarding members of the Reserve Force, the duties of officers in charge of police stations regarding members of the Reserve Force, and the nature of service of members of the Reserve Force;
- (y) generally all other matters which are by this Act required or permitted to be prescribed, or which are necessary or expedient to be prescribed in order to achieve the purposes of this Act.

(2) Different regulations may be made with reference to -

(a) members and different classes or categories of members; and

(b) different divisions of the Force.

President may enter into agreements.

43. The President or the Minister, authorized thereto by the President, may enter into agreements with the Head of State or Minister or other person responsible for the police force of a foreign state in regard to co-operation and mutual aid between the Force and the police force of that state.

Application of Act.

44. This Act shall apply to all members, whether such members are serving within or outside Namibia, and if it is necessary to enforce this Act outside Namibia, any sentence, fine or penalty pronounced or imposed for the purpose of such enforcement shall be as valid and effective as if it had been pronounced or imposed in Namibia.

Repeal or amendment of laws, and savings.

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

(2) 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.

(3) For the purposes of this Act -

(a) the regulations -

(i) in force by virtue of the provisions of subsection (2) shall be construed in accordance with the provisions of this Act, in so far as they relate to those provisions, unless it would in any particular case be obviously inappropriate;

(ii) promulgated under Government Notice No. 203 of 1964, as amended, are hereby amended -

- (aa) by the insertion after subregulation (1) of regulation 3 of the following subregulation:

“(2) The number and grading of posts in the various branches or divisions shall, with due regard to the provisions of subregulation (1), be determined by the Inspector-General in consultation with the Minister.”;

- (bb) by the substitution for subparagraphs (i), (ii), (iii) and (iv) of paragraph (a) of subregulation (1) of regulation 8 of the following subparagraphs:

“(i) Inspector-General;

(ii) deputy Inspector-General;

(iii) commissioner;

(iv) deputy commissioner;”;

- (cc) by the deletion of paragraph (a) of subregulation (2) of regulation 8;

- (b) the provisions of subparagraph (ii) of paragraph (a) of this subsection shall be deemed to be regulations made under section 42 of this Act;
- (c) the Inspector-General may adjust any form prescribed or issued under such regulations in so far as it is necessary to give effect to the provisions of this Act.

Interpretation of laws.

46. Subject to the provisions of this Act, any reference in any law in force at the commencement of this Act to -

- (a) the South West African Police, shall be construed as a reference to the Namibian Police;
- (b) the Commissioner of the South West African Police, shall be construed as a reference to the Inspector-General; and

- (c) a member of the South West African Police, shall be construed as a reference to a member of the Namibian Police.

Short title.

47. This Act shall be called the Police Act, 1990.

SCHEDULE

REPEAL OR AMENDMENT OF LAWS (Section 45(1))

| No. and year of law | Short title | Extent of repeal or amendment |
|-----------------------------|--|--|
| Act 19 of 1939 | Police (South West Africa) Act, 1939 | The repeal of so much as is unrepealed. |
| Act 26 of 1956 | Explosives Act, 1956 | The amendment of section 1 by the substitution for the definition of "Minister" of the following definition: " 'Minister' means the Minister of Home Affairs;". |
| Act 7 of 1958 | Police Act, 1958 | The repeal of the whole. |
| Act 75 of 1969 | Arms and Ammunition Act, 1969 | The amendment of section 1 by the substitution for the definition of "Minister" of the following definition: " 'Minister' means the Minister of Home Affairs;". |
| Proclamation AG. 9 of 1981 | Police Amendment Proclamation, 1981. | The repeal of the whole. |
| Proclamation AG. 21 of 1983 | Police Amendment Proclamation, 1983 | The repeal of the whole. |
| Act 16 of 1987 | Second Police Amendment Act, 1987 | The repeal of the whole. |
| Act 20 of 1987 | Police Amendment Act, 1987 | The repeal of the whole. |
| Proclamation AG. 25 of 1989 | Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, 1989 | The amendment of the Annexure by the deletion of the entries relating to the Police Act, 1958. |

