

Namibia

## Public Gatherings Proclamation, 1989

### Proclamation AG23 of 1989

Legislation as at 21 July 1989

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Public Gatherings Proclamation, 1989

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## Public Gatherings Proclamation, 1989 Proclamation AG23 of 1989

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### PROCLAMATION

by the

ADMINISTRATOR-GENERAL FOR THE TERRITORY OF SOUTH WEST AFRICA

PROVISION FOR THE PROTECTION OF THE PUBLIC PEACE AND ORDER AT PUBLIC GATHERINGS

Under the powers vested in me by Proclamation 181 of 19 August 1977, I hereby make the laws set out in the Schedule.

L. A. PIENAAR

Administrator-General

Windhoek, 18 July 1989

### SCHEDULE

#### 1. Definitions

In this Proclamation, unless the context otherwise indicates -

“**commander**”, in relation to a police station, includes a police officer acting under the authority of the commander of that police station;

“**Commissioner**” means the Commissioner of the South West African Police, and includes any other police officer of or above the rank of brigadier;

“**gathering**” means any gathering, meeting, concourse or procession -

- (a) for the purposes of sections 2 and 3, at which more than 20 persons are present at any time;

(b) for the purposes of sections 4, 5 and 6 of any number of persons;

“**office hours**” means any day, except a Saturday, a Sunday or a public holiday, between 08h00 and 16h00;

“**organisation**” includes any association, group or body of persons irrespective of whether or not any such association, group or body has been incorporated and whether or not it has been established or registered in accordance with any law;

“**police officer**” means a member of the Force as defined in section 1 of the Police Act, 1958 (Act [No. 7 of 1958](#));

[**The Police Act 7 of 1958 has been replaced by the Police Act 19 of 1990.**]

“**public gathering**” means any gathering in or on a public place;

“**public place**” includes -

- (a) any premises or place to which the public, or any section of the public, ordinarily or at specific times or for the purposes of a specific gathering, has access, whether as of a right or by virtue of express or implied consent, irrespective of whether or not the right of admission to the premises or place is reserved and whether or not payment is required for such admission; and
- (b) any premises or place occupied by the State or any government institution established by or under any law, or any educational institution or the controlling body of an educational institution;

“**Territory**” means the territory of South West Africa.

## 2. Notification of public gatherings

- (1) Subject to subsections (3) and (4), no person shall hold, preside or otherwise officiate at, or address a public gathering unless he, or another person, has given notice in writing to the commander of the police station nearest to the place where the gathering is to be held of -
  - (a) the place and time at which the gathering is to be held;
  - (b) the nature of the gathering;
  - (c) the person or organisation by or in the name, on behalf or in the interests of whom or which the gathering is to be held; and
  - (d) the names and addresses of the persons who will preside and otherwise officiate at and address the gathering.
- (2) The notice referred to in subsection (1) shall be handed in duplicate at least three days before the date of the gathering during office hours to the commander referred to in subsection (1), and he shall acknowledge receipt on the duplicate of the notice.
- (3) If the notice referred to in subsection (1) is handed to the commander referred to in subsection (1) less than three days before the date of a public gathering, but more than 24 hours before the commencement of the gathering, the commander may, with the concurrence of the Commissioner, authorise the gathering in writing.
- (4) After a person has given notice in terms of subsection (1) of a gathering, he may at any time, before the time indicated in terms of subsection (1)(a), by means of a similar notice alter any of the particulars given in his original notice: Provided that the gathering concerned shall not be held in accordance with those altered particulars unless the commander concerned has, with the concurrence of the Commissioner, authorised the contemplated changes in writing.
- (5) The provisions of subsection (1) shall not apply to a public gathering -
  - (a) for the purpose of a bona fide church service or a funeral;
  - (b) in connection with the domestic affairs of any household;

- (c) of the members of a statutory body of persons, held exclusively for the purposes of transacting any business of that body;
  - (d) for the purpose of education in terms of any law;
  - (e) held as a bona fide sports gathering or for entertainment;
  - (f) of any assembly, council, committee or other body established by or under any law;
  - (g) for official administrative or judicial purposes.
- (6) Any person who -
- (a) contravenes or fails to comply with any provision of this section;
  - (b) holds, presides or otherwise officiates at or addresses a public gathering contrary to a statement contained in the relevant notice in terms of subsection (1), or an altered notice referred to in subsection (4);
  - (c) in a notice in terms of subsection (1) makes a false statement knowing it to be false or without having reasonable grounds for believing it to be true,
- 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 two years or to both such fine and such imprisonment.

### 3. Imposition of conditions for holding of public gatherings

- (1) If the Commissioner has reason to think that -

**[There is no full stop after the section number "3" in the Official Gazette. It has been added here for consistency with the format of other legislation.]**

- (a) the public peace would be seriously endangered;
- (b) the public order would be threatened;
- (c) any person would be killed or seriously injured or valuable property would be destroyed or seriously damaged;
- (d) feelings of hostility between different sections of the population of the Territory would be caused, encouraged or fomented; or
- (e) any person would be compelled to abstain from doing or to do an act which that person is legally entitled to do or to abstain from doing,

by or at a particular public gathering or any public gathering of a particular nature, class or kind at a particular place or in a particular area or wheresoever in the Territory, he may direct that that particular gathering or any other public gathering with the same purpose, or any public gathering of such a nature, class or kind at that place or in that area or wheresoever in the Territory, shall be held only in accordance with such conditions as he may determine in the direction concerned which are reasonably necessary to prevent any result referred to in paragraph (a), (b), (c), (d) or (e).

- (2) When the Commissioner issues a direction under subsection (1) -

- (a) he shall do so -
  - (i) by notice in the Official Gazette;
  - (ii) by notice in a newspaper circulating where the prohibition is to apply;
  - (iii) by causing it to be made known by means of radio or television;
  - (iv) by causing notices to be distributed amongst the public and to be affixed in public or prominent places where the prohibition is to apply; or

- (v) by causing it to be announced orally where the prohibition is to apply, whichever manner is, in his opinion, the most suitable in the circumstances of the case to make the conditions known to all persons concerned;
  - (b) he may, if it is known to him that a particular person is to convene or organise a public gathering to which the direction will be applicable, cause a written notice containing the direction and addressed to that person, to be delivered or tendered to that person.
- (3) The Commissioner may at any time in any like manner withdraw or amend a direction issued by him under subsection (1).
- (4) Any person who -
- (a) holds a public gathering contrary to a condition contained in a direction under subsection (1);
  - (b) attends a public gathering held contrary to any such condition; or
  - (c) attends a public gathering to which such direction is applicable, where such attendance is contrary to any such condition,

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 two years or to both such fine and such imprisonment.

#### 4. Prohibition on carrying of weapons at public gatherings

- (1) Subject to the provisions of subsection (3), no person shall at any public gathering have any weapon with him.
- (2) For the purposes of subsection (1) "weapon" shall include -
- (a) a dagger;
  - (b) an axe or a battle-axe;
  - (c) a pick;
  - (d) a spear, an assegai, a lead, iron or other metal loaded stick or spiked stick or a stick exceeding 2,5 centimetres in diameter;
  - (e) any knife with a blade longer than 10 centimetres;
  - (f) a handle with wire, chain or other heavy substance attached to it;
  - (g) a metal rod or wire exceeding ,5 centimetres in diameter and 20 centimetres in length;
- [The comma before the number 5 appears in the Official Gazette.  
The provision seems to refer to a diameter of 0,5 centimetres.]**
- (h) a knuckleduster;
  - (i) a sandbag;
  - (j) a jumper, a crowbar or hammer;
  - (k) a baton;
  - (l) any imitation of any fire-arm;
  - (m) any fire-arm, but excluding a pistol or revolver carried in a bag, holster or other container in such a manner that it is completely concealed;
  - (n) any other article declared by the Administrator-General by notice in the Official Gazette to be a weapon for the purposes of this section.

- (3) Subsection (1) shall not apply in respect of a police officer serving as such an officer at such a gathering.
- (4) Any person who contravenes subsection (1), 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 two years or to both such fine and such imprisonment.

## **5. Dispersal of riotous public gatherings, and manner of dispersal**

- (1) When any persons attending a public gathering -
  - (a) kill or seriously injure any person, or attempt or show a manifest intention of doing so;
  - (b) destroy or do serious damage to any valuable property, or attempt or show a manifest intention of doing so;
  - (c) advise, encourage, incite, order or in any other manner instigate anyone at that gathering -
    - (i) to cause, encourage or further an insurrection or forcible resistance to a government, administration or authority legally established or recognised in or for the Territory, or vested with authority in respect of the Territory;
    - (ii) to use, or to cause, encourage or further the use of, violence against any person or category of persons or persons generally; or
    - (iii) to destroy or seriously damage any valuable property, or to cause, encourage or further its destruction or serious damage to it,

a police officer of or above the rank of warrant officer may call upon the persons attending the gathering to disperse, and for that purpose he shall endeavour to obtain the attention of those persons by such lawful means as he deems most suitable, and then in a loud voice order them in the Afrikaans or in the English language to disperse and to depart from the place of the gathering within the time specified by him.

- (2) If within the time so specified the persons assembled have not thus dispersed and departed, a police officer of or above the rank aforesaid may order the police under his command to disperse the gathering and may for that purpose order the use of force, including, subject to the provisions of section 6, the use of firearms and the other weapons mentioned in section 6, but the degree of force which may be thus used shall not be greater than is reasonably necessary for dispersing the persons assembled, and the force used shall be moderated and proportionate to the circumstances of the case and the object to be attained.
- (3) Any person who refuses or fails forthwith to obey an order given under 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 two years.

## **6. Restriction as to use of firearms or other lethal weapons to disperse public gatherings**

- (1) Firearms or other weapons likely to cause serious bodily injury or death shall not, by virtue of the power conferred by section 5, be used to disperse a public gathering until weapons less likely to cause such injury or death have been used and the gathering has not been dispersed, or unless or until any persons attending the gathering -
  - (a) kill or seriously injure any person, or attempt or show a manifest intention of doing so; or
  - (b) destroy or do serious damage to valuable property, or attempt or show a manifest intention of doing so.
- (2) Firearms or other weapons likely to cause serious bodily injury or death shall be used for the purposes aforesaid with all reasonable caution, without recklessness or negligence, and so as to

produce no further injury to any person than is reasonably necessary for the attainment of the object aforesaid.

**7. Saving of other laws as to dispersal of riotous gatherings**

Nothing contained in this Proclamation shall be construed as affecting or derogating from any right conferred or duty imposed upon any police officer or any member of the public under any other statute or under the common law to assist in the dispersal of riotous gatherings or in the prevention and suppression of riotous and seditious acts.

**8. Repeal of certain provisions of Act [17 of 1956](#)**

Sections 1, 3, 5, 7, 8 and 9 of the Riotous Assemblies Act, 1956, (Act [No. 17 of 1956](#)), are hereby repealed.

**9. Short title**

This Proclamation shall be called the Public Gatherings Proclamation, 1989.