PRESS RELEASE

ALLEGED SHOOT TO KILL INSTRUCTION

Dear Colleagues of all Media Houses

The recent happenings in the Bwabwata National Park combined with the ongoing struggle to deal with the scourge of poaching in the Etosha National Park and other places including commercial farms is a cause for grave concern. It appears that a lot of emphasis is placed on the fact that poachers were shot and killed by members of the Namibian Police Force. The printed as well as social media seem to be abound with these reports. In discussing these problems we need to look at the legal provisions in place that can cover the mentioned aspects.

The Namibian Constitution under Article 6 protects the right to life. In particular the Article states the following:

"The right to life shall be protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia."

The Namibian Constitution being the supreme law, no other law can be above the Constitution, thus any law that is in conflict with the Constitution is of no force or effect.

The Criminal Procedure Act, Act No. 51 of 1977 as amended under section 49 makes provision for a arrester to use force in affecting an arrest if need be. The section states as follows:

(1) If a person authorized under this Act to arrest or assist in arresting another, attempts to arrest such person and such person-

(a) Resists the attempt and cannot be arrested without the use of force; or
(b) Flees when it is clear that an attempt to arrest him is being made, or resists such attempt and flees,

The person so authorized may, in order to effect the arrest, use such force as may in the circumstances be reasonably necessary to overcome the resistance or to prevent the person concerned from fleeing.

(2) Where the person concerned is to be arrested for an offence referred to in Schedule 1 or is to be arrested on the ground that he is reasonably suspected of having committed such an offence, and the person authorized under this Act to arrest or to assist in arresting him cannot arrest him or prevent him from fleeing by other means than by killing him, the killing shall be deemed to be justifiable homicide.

The Police Act 1990, Act No. 19 of 1990 under Section 13 sets out the functions of the Namibian Police Force. The section in particular states the following:

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;
(d) The prevention of crime; and
(e) The protection of life and property.

With regard to the last stated function, the Force is tasked with the protection of life and property, in that regard the question may be asked; to what extend can life and property be protected? Equally how far can an officer go in the prevention of crime, or the maintenance of law and order?

Should one adopt the approach of an armchair pundit, everything would be ideal. All things will take place in a controlled atmosphere. The reality on the ground is however far different from that. No criminal will ever inform you that he is about to go and commit whatever offence. Even in the event that the Police detected a person had engaged in criminal conduct, in more cases than not will that person try and evade capture, such is the reality of the situation.

Thus it is not always possible to have prior knowledge of a situation in which a crime is committed.

Law enforcement officers operate in various precarious and difficult circumstances and within a blink of an eye, an officer is expected to take a critical decision. We are not infallible and therefore bound to make mistakes under the circumstances.

In closing, therefore, in any event and where a matter is under Police investigation, it must be understand that, the due process of the law must be allowed to take its course, and whoever has special interest in the matter (without making an attempt to restrain any ones freedom of speech)
avoid to prejudge the issue. Ultimately, the court is the only competent entity to express itself on matters such as these.

I thank you.

Major-General J. B. Tjivikua
Deputy Inspector-General for Operations
Namibian Police Force