

**REPUBLIC OF NAMIBIA**

**NATIONAL ASSEMBLY**

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**NAMIBIAN CONSTITUTION  
THIRD AMENDMENT BILL**

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*(As read a First Time)*

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*(Introduced by the Minister of Presidential Affairs and Attorney-General)*

**[B. 9 - 2014]**

**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.

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**BILL**

**To amend the Namibian Constitution to provide for the Presidency; provide for run offs for presidential elections; create a Vice-President to be appointed by the President to deputise the President; provide for the appointment by the President of the Head of the Intelligence Service; provide that the national character must be considered in the appointment of the Vice-President; further regulate the hierarchy of succession; further provide that the appointment of the Deputy-Prime Minister is not mandatory; insert the Vice-President as a person who can assign functions to the Secretary to Cabinet; to provide that Parliamentary staff need not be part of the public service; and to provide for the creation of a Parliamentary Service Commission; increase the size of the National Assembly; provide for an increase in the number of Presidential appointees to the National Assembly; provide for qualified voting rights of Presidential appointees to the National Assembly; amend the quorum requirements of the National Assembly; increase the size of the National Council; insert an Article providing for the Secretary of the National Council; provide for the role of the Secretary during the election of the Chairperson and Vice-Chairperson of the National Council; further regulate the review powers of the National Council in relation to bills providing for the levying of taxes and appropriations; amend the quorum requirements of the National Council; provide for the Judiciary as a self-accounting organ of the State; provide for a Deputy-Chief Justice; provide for Deputy Judges-President; provide for the Magistrates Commission and other lower courts' commissions; provide for a tribunal to investigate the misconduct of judicial officers; change the composition of the Judicial Service Commission; provide for a tribunal to investigate the misconduct of the Prosecutor-General; provide for a tribunal to investigate the misconduct of the Ombudsman; change the title of the Director and Deputy Director of the Anti-Corruption Commission to Director-General and Deputy Director-General respectively; insert an Article on the Electoral Commission of Namibia; insert an Article creating the Boundaries Delimitation and Demarcation Commission to substitute for the Delimitation Commission; substitute the term Delimitation Commission with the term Boundaries Delimitation and Demarcation Commission; provide for Regional Governors and their powers and functions; clarify the advisory functions of the public service Commission; provide for the Head of the Intelligence Service as a member of the Security Commission; establish the Intelligence Service, provide for the Head of the Intelligence Service and outline his or her functions; introduce terminology referring to the Minister responsible for finance; provide for multiple Deputy-Governors of the Central Bank and amend the functions of the Central Bank; provide for the National Planning Commission within**

**the Presidency; substitute Schedule 2; amend Schedule 4 to provide for the resolution of ties by lot; and to provide for incidental matters.**

**BE IT ENACTED** by the Parliament of the Republic of Namibia, in accordance with Article 132 of the Namibian Constitution, as follows:

#### **Insertion of Article 27A of the Namibian Constitution**

1. The following Article is inserted after Article 27 of the Namibian Constitution:

##### **“Article 27A Composition of the Presidency**

The Presidency shall consist of the President and the Vice-President, who shall be served by Ministers, Special Advisers and such other persons as the President may appoint as well as such staff members from the public service as may be appointed for that purpose in accordance with the laws regulating appointments in the public service.”

#### **Amendment of Article 28 of the Namibian Constitution**

2. Article 28 of the Namibian Constitution is amended by –

(a) the insertion of the following sub-Article after Sub-Article (1):

“(1A) A Vice-President shall be appointed by the President from the elected members of the National Assembly, in accordance with the provisions of this Constitution.”

(b) the substitution for paragraph (b) of Sub-Article (2) of the following paragraph:

“(b) conducted in accordance with principles and procedures to be determined by Act of Parliament: provided that no person shall be elected as President unless he or she received more than fifty (50) per cent of the valid votes cast and **[the necessary number of ballots for the candidates with the two (2) highest percentages of the valid votes cast shall be conducted until such result is reached]** if no candidate received more than fifty (50) percent of the votes, a second ballot shall be conducted in which the two (2) candidates who have received the most votes in the previous ballot shall participate and the candidate who received the most votes in the second ballot shall be duly elected.”

(c) the insertion of the following Sub-Articles after Sub-Article (2):

“(2A) The Vice-President shall –

(a) serve at the pleasure of the President;

- (b) deputise, assist and advise the President, in the performance of his or her duties as may be required by the President, to whom he or she shall be accountable;
  - (c) cease to be a member of Parliament, when he or she is appointed as Vice-President;
  - (d) not at the same time be the Prime Minister, Deputy-Prime Minister, a Minister or any other office bearer in the Government of Namibia;
  - (e) be subject to the conditions of service, remuneration as may be provided by Act of Parliament;
  - (f) while acting as President has the same immunity as provided in Article 31 and after he or she has acted as President also has the same immunity as the President has after leaving office; and
  - (g) in the event of resignation, dismissal, death or incapacity be replaced by a person appointed by the President under this Constitution.
- (2B) Before formally assuming office, the Vice-President shall make and subscribe to an oath or solemn affirmation before the Chief Justice, the Deputy-Chief Justice or another Judge designated by the Chief Justice, in terms set out in Schedule 2 hereof.
- (2C) A person who is a candidate to be elected for President shall in the manner prescribed by an Act of Parliament, nominate a Candidate Vice-President within a period before the election which period shall also be prescribed by Act of parliament.
- (2D) The candidate Vice-President shall assume the office of Vice-President on the same day the President assumes office.
- (2E) If the President-Elect is unable to assume office due to his or her death, incapacity, disqualification or other reason, the Vice-President appointed by the President whose term is due to expire, shall make the oath or affirmation contained in Article 30 of this Constitution before the Chief Justice, the Deputy-Chief Justice or another Judge designated by the Chief Justice and assume the Office of President in an acting capacity until the assumption of office by the President elected in the subsequent presidential by-election as contemplated in Article 29(4)(b).”.

### **Amendment of Article 30 of the Namibian Constitution**

**3.** Article 30 of the Namibian Constitution is amended by the substitution for the words preceding the text of the oath of the following words:

“Before formally assuming office, a President-elect shall make the following oath or affirmation which shall be administered by the Chief Justice, the Deputy-Chief Justice or a Judge designated by the Chief Justice for this purpose:”.

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### **Amendment of Article 32 of the Namibian Constitution**

4. Article 32 of the Namibian Constitution is amended by –
- (a) the substitution for paragraph (i) of Sub-Article (3) of the following paragraph:
- “(i) appoint the following persons:
- (aa) the Vice-President;
  - (bb) the Prime Minister;
  - (cc) the Deputy-Prime Minister;
  - (dd) Ministers and Deputy-Ministers;
  - (ee) the Attorney-General;
  - (ff) the Director-General of Planning;
  - (gg) the Head of the Intelligence Service;
  - (hh) any other person or persons who are required by any other provision of this Constitution or any other law to be appointed by the President.”.
- (b) the insertion of the following Sub-Article after Sub-Article (3):
- “(3A) In the appointment of the Vice-President, the President shall have due regard for the need to obtain a balanced reflection of the national character of the people of Namibia.”;
- (c) the substitution for subparagraph (bb) of paragraph (b) of Sub-Article (4) of the following subparagraph:
- “(bb) the Governor and [**deputy-Governor**] Deputy-Governors of the Central Bank;”.

### **Amendment of Article 34 of the Namibian Constitution**

5. Article 34 of the Namibian Constitution is amended by –
- (a) the substitution for Sub-Article (1) of the following Sub-Article:
- “(1) If the office of President becomes vacant or if the President is otherwise unable to fulfil the duties of the office, the following persons shall in the order provided for in this Sub-Article act as President for the unexpired portion of the President’s term of office or until the President is able to resume office, whichever is the earlier:

- (a) the Vice-President;
  - (b) the Prime Minister;
  - (c) the Deputy-Prime Minister; and
  - (d) a person appointed by the President from the members of Cabinet in terms of Sub-Article (2).”;
- (b) by the substitution for Sub-Article (2) of the following Sub-Article:

“(2) In the absence of the Vice-President, Prime Minister or Deputy-Prime Minister and [Where] if it is regarded as necessary or expedient that a person deputise for the President because of a temporary absence from the country or because of pressure of work, the President shall be entitled to [nominate] appoint any other person enumerated in Sub-Article (1) hereof to act in his or her stead [deputise for him or her] in respect of such specific occasions or such specific matters and for such specific periods as in his or her discretion may be considered wise and expedient [, subject to consultation with the Cabinet].”.

#### **Substitution of Article 35 of the Namibian Constitution**

6. The following Article is substituted for Article 35 of the Namibian Constitution:

##### **“Article 35 Composition**

- (1) The Cabinet shall consist of the President, the Vice-President, the Prime Minister, Deputy-Prime Minister (if that office is filled) and such other Ministers from the members of the National Assembly, including members nominated under Article 46(1)(b) hereof, for the purposes of administering and executing the functions of the Government.
- (2) The President may, if he or she considers it to be necessary or expedient, also appoint a Deputy-Prime Minister to perform such functions as may be assigned to him or her by the President, the Vice-President or the Prime Minister.
- (3) The President or, in his or her absence, the Vice-President, the Prime Minister, Deputy-Prime Minister or other Minister designated for this purpose by the President, shall preside at meetings of the Cabinet.”.

#### **Substitution of Article 36 of the Namibian Constitution**

7. The following Article is substituted for Article 36 of the Namibian Constitution:

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**“Article 36 Functions of the Prime Minister**

The Prime Minister shall be the leader of Government business in Parliament, shall co-ordinate the work of the Cabinet as head of administration, and shall perform other functions as may be designated by the President or the Vice-President.”.

**Amendment of Article 38 of the Namibian Constitution**

8. The following Article is substituted for Article 38 of the Namibian Constitution:

**“Article 38 Oath or affirmation**

Before formally assuming office, a Minister or Deputy-Minister shall make and subscribe to an oath or solemn affirmation before the President, the Vice-President or a person designated by the President for this purpose, in the terms set out in Schedule 2 hereof.”.

**Amendment of Article 43 of the Namibian Constitution**

9. Article 43 of the Namibian Constitution is amended by the substitution for Sub-Article (1) of the following Sub-Article:

“(1) There shall be a Secretary to the Cabinet who shall be appointed by the President and who shall perform such functions as may be determined by law and such functions as are from time to time assigned to the Secretary by the President, the Vice-President or the Prime Minister. Upon appointment by the President, the Secretary shall be deemed to have been appointed to such office on the recommendation of the public service Commission.”.

**Amendment of Article 46 of the Namibian Constitution**

10. Article 46 of the Namibian Constitution is amended by –

(a) the substitution for Sub-Article (1) of the following Sub-Article:

“(1) The composition of the National Assembly shall be as follows:

(a) ninety-six (96) members to be elected by the registered voters by general, direct and secret ballot;

(b) not more than eight (8) persons appointed by the President under Article 32(5)(c) hereof, by virtue of their special expertise, status, skill or experience.”;

(b) by the insertion of the following Sub-Articles after Sub-Article(1):

“(1A) Every Namibian citizen who has the qualifications described in Article 17 hereof shall be entitled to vote in the elections for members of the National Assembly referred to in Sub-Article (1)(a) and, subject to Article 47 hereof, shall be eligible for candidature as a member of the National Assembly.

- (1B) Subject to Sub-Article (1C), the members of the National Assembly referred to in Sub-Article (1)(b) are entitled to vote on any matter and their votes are considered to determine any majority.
- (1C) A member of the National Assembly referred to in Sub-Article (1)(b) is not entitled to vote and the vote of such member is not taken into account if the vote in question relates to any matter for which a two-thirds majority is required by this Constitution.”.

### **Amendment of Article 52 of the Namibian Constitution**

11. Article 52 of the Namibian Constitution is amended by –

(a) the substitution for Sub-Article (1) of the following Sub-Article:

“(1) Subject to the [**provisions of the laws pertaining to the public service**] laws of Namibia regulating the employment of Parliamentary staff and the directives of the National Assembly, the Speaker shall appoint a person [(**or designate a person in the public service made available for that purpose**),] if such laws prescribe a different procedure for the appointment of the Secretary, designate the person holding the appropriate post as the Secretary of the National Assembly, who shall perform the functions and duties assigned to such Secretary by this Constitution or by the Speaker.”.

(b) the substitution for Sub-Article (3) of the following Sub-Article:

“(3) The Secretary shall be assisted by officers of the National Assembly who [**shall be persons in the public service made available for that purpose**] shall be appointed in accordance with the laws referred to in Sub-Article (1).”.

(c) by the insertion of the following Sub-Article after Sub-Article (3):

“(4) The laws referred to in Sub-Article (1) and Article 73A(1), shall create a Parliamentary Service Commission which shall be composed in such a manner, perform such functions and exercise such powers as may be prescribed by such laws.”.

### **Substitution of Article 53 of the Namibian Constitution**

12. The following Article is substituted for Article 53 of the Namibian Constitution:

#### **“Article 53 Quorum**

(1) Subject to Sub-Article (2), the presence of at least fifty-three (53) members of the National Assembly [**entitled to vote**], other than the Speaker or the presiding member, shall be necessary to constitute a meeting of the National Assembly when any voting is required.



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- (2) The presence of at least twenty-eight (28) members of the National Assembly, other than the Speaker or the presiding member, shall be sufficient to constitute a meeting of the National Assembly when no voting on any matter is required.”.

#### **Amendment of Article 55 of the Namibian Constitution**

13. The following Article is substituted for Article 55 of the Namibian Constitution:

##### **“Article 55 Oath or Affirmation**

Every member of the National Assembly shall make and subscribe to an oath or solemn affirmation before the Chief Justice, the Deputy-Chief Justice or a Judge designated by the Chief Justice for this purpose, in the terms set out in Schedule 3 hereof.”.

#### **Amendment of Article 69 of the Namibian Constitution**

14. Article 69 of the Namibian Constitution is amended by the substitution for Sub-Article (1) of the following Sub-Article:

- “(1) The National Council shall consist of [~~two (2)~~] three (3) members from each region referred to in Article 102 hereof, to be elected from amongst their members by the Regional Council for such region.”.

#### **Amendment of Article 73 of the Namibian Constitution**

15. The following Article is substituted for Article 73 of the Namibian Constitution:

##### **“Article 73 Chairperson**

- (1) At the first sitting of a newly elected National Council, the National Council, with the Secretary acting as Chairperson, shall elect a member as Chairperson.
- (2) The National Council shall then elect another member as Vice-Chairperson.
- (3) Subject to Sub-Article (4), the Chairperson, or in his or her absence the Vice-Chairperson, shall preside over sessions of the National Council.
- (4) If neither the Chairperson nor the Vice-Chairperson is present at any session, the National Council, with the Secretary acting as Chairperson, shall elect a member to act as Chairperson.”.

#### **Insertion of Article 73A of the Namibian Constitution**

16. The following Article is inserted after Article 73 of the Namibian Constitution:

**“Article 73A Secretary and other Officers**

- (1) Subject to the laws of Namibia regulating the appointment of Parliamentary staff, and the directives of the National Council, the Chairperson shall appoint or if such laws prescribe a different procedure for the appointment of the Secretary, designate the person holding the appropriate post as the Secretary of the National Council, who shall perform the functions and duties assigned to such Secretary by this Constitution or by the Chairperson.
- (2) Subject to the laws governing the control of public monies, the Secretary shall perform his or her functions and duties under the control of the Chairperson.
- (3) The Secretary shall be assisted by officers of the National Council who shall be persons appointed in accordance with the laws referred to in Sub-Article (1).”.

**Amendment of Article 75 of the Namibian Constitution**

17. Article 75 of the Namibian Constitution is amended by the insertion of the following Sub-Article after Sub-Article (4):

- “(4A) Sub-Article (4) shall *mutatis mutandis* apply to bills dealing with the levying of taxes or the appropriation of public monies subject thereto that the National Council may only propose corrections to such bills for consideration by the National Assembly and that any reference in Sub-Article (4) hereof to ‘amendments’ shall be construed to refer to ‘corrections’.”.

**Amendment of Article 76 of the Namibian Constitution**

18. The following Article is substituted for Article 76 of the Namibian Constitution:

**“Article 76 Quorum**

- (1) Subject to Sub-Article (2), the presence of a majority of the total number of members of the National Council as required by Article 69, shall be necessary to constitute a meeting of the National Council for the exercise of its powers and the performance of its functions when any voting is required.
- (2) The presence of at least a third of the total number of members of the National Council as required by Article 69, shall be sufficient to constitute a meeting of the National Council when no voting on any matter is required.”.

**Amendment of Article 78 of the Namibian Constitution**

19. Article 78 of the Namibian Constitution is amended by the insertion of the following Sub-Articles after Sub-Article (4):

- “(5) The financial and other administrative matters of the High Court and Supreme Court shall be performed in such a manner that the independence of the Judiciary can be effectively and practically promoted and guaranteed by means of appropriate legislative and administrative measures.
- (6) In accordance with the relevant laws, an accounting officer shall be designated who shall subject to the direction and control of the Chief Justice, perform the functions of an accounting officer as head of the administration of the Judiciary with the assistance of such other staff members designated from the public service for such purpose.
- (7) The Chief Justice shall supervise the Judiciary, exercise responsibility over the Judiciary, and monitor the norms and standards for the exercise of the judicial functions of all Courts.”.

#### **Amendment of Article 79 of the Namibian Constitution**

**20.** Article 79 of the Namibian Constitution is amended by the substitution for Sub-Article (1) of the following Sub-Article:

- “(1) The Supreme Court shall consist of a Chief Justice, a Deputy-Chief Justice who shall deputise the Chief Justice in the performance of his or her functions under this Constitution or any other law, and such additional Judges as the President, acting on the recommendation of the Judicial Service Commission, may determine.”.

#### **Amendment of Article 80 of the Namibian Constitution**

**21** Article 80 of the Namibian Constitution is amended by the substitution for Sub-Article (1) of the following sub-Article:

- “(1) The High Court shall consist of a Judge-President, who shall be the Deputy-Chief Justice referred to in Article 79(1) hereof and an *ex officio* Judge of the Supreme Court, such Deputy Judges-President and such additional Judges as the President, acting on the recommendation of the Judicial Service Commission, may determine.”.

#### **Amendment of Article 83 of the Namibian Constitution**

**22.** Article 83 of the Namibian Constitution is amended by the insertion of the following Sub-Articles after Sub-Article (2):

- “(3) A Magistrates Commission, responsible for the transfer, discipline, removal, remuneration and other conditions of service of Magistrates, subject to this Constitution, shall be established by Act of Parliament which Act shall further describe its powers, functions and duties.

- (4) Further commissions may be established by Act of Parliament to regulate matters relating to such other Lower Courts as may be established by Act of Parliament.”.

#### **Amendment of Article 84 of the Namibian Constitution**

23. Article 84 of the Namibian Constitution is amended by –

- (a) the substitution for Sub-Article (3) of the following Sub-Article:

“(3) If the Judicial Service Commission considers that the question of removing a Judge of the Supreme Court or the High Court under this Article ought to be investigated it shall establish a tribunal which –

- (a) shall consist of a Chairperson and not less than two other members, who hold or have held judicial office;
- (b) shall enquire into the matter and report on the facts thereof to the Judicial Service Commission; and
- (c) if the Judicial Service Commission, after due deliberation, advises the President to remove the Judge for any reason referred to in Sub-Article (2), the President must remove such Judge from office.”.

- (b) by the substitution for Sub-Article (5) of the following Sub-Article:

“(5) The Judicial Service Commission may, before establishing a tribunal in terms of Sub-Article (3), recommend to the President to suspend the Judge under investigation from office pending the outcome of the enquiry by the tribunal: Provided that the President may on the recommendation of the Judicial Service Commission, revoke any suspension.”.

#### **Amendment of Article 85 of the Namibian Constitution**

24. Article 85 of the Namibian Constitution is amended by –

- (a) the substitution for Sub-Article (1) of the following Sub-Article:

“(1) There shall be a Judicial Service Commission consisting of the Chief Justice, [**a Judge appointed by the President**] the Deputy-Chief Justice, the Attorney-General and two members of the legal profession nominated in accordance with the provisions of an Act of Parliament by the professional organisation or organisations representing the interests of the legal profession in Namibia.”.

- (b) the insertion of the following Sub-Article after Sub-Article (5):

“(6) A quorum at a meeting of the Judicial Service Commission shall be three members.”.

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### Insertion of Article 88A of the Namibian Constitution

25. Article 88A of the Namibian Constitution is inserted after Article 88:

**“Article 88A Removal from Office of Prosecutor-General**

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| <p>(1) The Prosecutor-General may be removed from office before the expiry of his or her term of office by the President acting on the recommendation of the Judicial Service Commission.</p> <p>(2) The Prosecutor-General may only be removed from office on the ground of incapacity or for gross misconduct, and in accordance with the provisions of Sub-Article (3) hereof.</p> <p>(3) If the Judicial Service Commission considers that the question of removing the Prosecutor-General under this Article ought to be investigated it shall establish a tribunal which –</p> <p style="padding-left: 2em;">(a) shall consist of a Chairperson and not less than two other members, who hold or have held judicial office;</p> <p style="padding-left: 2em;">(b) shall enquire into the matter and report on the facts thereof to the Judicial Service Commission; and</p> <p style="padding-left: 2em;">(c) if after considering that report, the Judicial Service Commission, after due deliberation, recommends that the President removes the Prosecutor-General for any reason referred to in Sub-Article (2), the President <u>must remove the Prosecutor-General from office.”.</u></p> |
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### Amendment of Article 94 of the Namibian Constitution

26. Article 94 of the Namibian Constitution is amended by –

(a) the substitution for Sub-Article (3) of the following Sub-Article:

- “(3) If the Judicial Service Commission considers that the question of removing the Ombudsman under this Article ought to be investigated it shall establish a tribunal which –
- (a) shall consist of a Chairperson and not less than two other members, who hold or have held judicial office;
- (b) shall enquire into the matter and report on the facts thereof to the Judicial Service Commission; and
- (c) if after considering that report, the Judicial Service Commission, after due deliberation, recommends that the President removes the Ombudsman for any reason referred to in Sub-Article (2), the President must remove the Ombudsman from office.”.

(b) the deletion of Sub-Article (4).

**Amendment of Article 94A of the Namibian Constitution inserted by Act No. 7 of 2010**

27. Article 94A of the Namibian Constitution is amended by –
- (a) the substitution for Sub-Article (4) of the following Sub-Article:
- “(4) The Anti-Corruption Commission shall consist of a Director-General, a Deputy Director-General and other staff members of the Commission.”.
- (b) the substitution for Sub-Article (5) of the following Sub-Article:
- “The National Assembly shall appoint the Director-General of the Anti-Corruption Commission and the Deputy Director-General upon nomination by the President.”.
- (c) the substitution for Sub-Article (6) of the following Sub-Article:
- “(5) The Director-General of the Anti-Corruption Commission and the Deputy Director-General shall be appointed for a period of five (5) years and their qualifications for appointment and conditions and termination of service shall be determined in accordance with an Act of Parliament.”.

**Insertion of Article 94B of the Namibian Constitution**

28. The following Chapter is inserted after Chapter 10A of the Namibian Constitution:

**“CHAPTER 10B**

**ELECTORAL COMMISSION OF NAMIBIA**

**Article 94B Electoral Commission of Namibia**

- (1) There shall be an Electoral Commission of Namibia, which shall be the exclusive body to direct, supervise, manage and control the conduct of elections and referenda, subject to this Constitution, and an Act of Parliament shall further define its powers, functions and duties.
- (2) The Electoral Commission of Namibia shall be an independent, transparent and impartial body.
- (3) The Electoral Commission of Namibia shall consist of five Commissioners, including the Chairperson, appointed by the President with the approval of the National Assembly, and such Commissioners shall be entitled to serve for a five (5) year term: Provided that no Commissioner shall serve more than two (2) terms.

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- (4) Subject to Sub-Article (3), the Chairperson shall serve in a full-time capacity for a term of five (5) years and shall be eligible for reappointment.
  - (5) The depository of the records, minutes, documents of the Electoral Commission of Namibia, as well as the electoral and referenda material shall be the Chief Electoral and Referenda Officer.
  - (6) The qualifications for appointment, conditions and termination of service for the Chairperson, Commissioners and the Chief Electoral and Referenda Officer shall be determined in accordance with an Act of Parliament.”.

#### **Amendment of Article 103 of the Namibian Constitution**

**29.** Article 103 of the Namibian Constitution is amended –

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

“(1) The boundaries of regions and constituencies shall be determined by the President by Proclamation on the recommendation of the Boundaries Delimitation and Demarcation Commission established by Article 104(1) in accordance with the principles set out in Article 102 (2) hereof.”.

(b) by the substitution for Sub-Article (2) of the following Sub-Article:

“(2) The boundaries of regions and constituencies may be changed, new regions and constituencies may be created and regions and constituencies may be merged but only in accordance with the procedure provided for in Sub-Article (1).”.

#### **Substitution of Article 104 of the Namibian Constitution**

**30.** The following Article is substituted for Article 104 of the Namibian Constitution:

##### **“Article 104 Boundaries Delimitation and Demarcation Commission**

(1) There shall be a Boundaries Delimitation and Demarcation Commission which shall –

- (a) delimit and demarcate the boundaries of Namibia subject to Article 1(4);
- (b) recommend the determination of the boundaries and names of regions, constituencies and local authorities in accordance with this Constitution and the provisions of an Act of Parliament,

and shall report thereon to the President.

- (2) The Boundaries Delimitation and Demarcation Commission shall consist of a full-time Chairperson and other part-time Commissioners as may be appointed by the President with the approval of the National Assembly.
- (3) An Act of Parliament may further regulate any matter not expressly provided for by this Constitution, including the method of arriving at a decision.”.

#### **Substitution of Article 105 of the Namibian Constitution**

**31.** The following Article is substituted for Article 105 of the Namibian Constitution:

##### **“Article 105   Composition of Regional Councils**

Every Regional Council shall consist of a number of persons determined by the **[Delimitation Commission]** in accordance with the procedure provided for in Article 103(1) for the particular region for which that Regional Council has been established, and who are qualified to be elected to the National Council.”.

#### **Amendment of Article 106 of the Namibian Constitution**

**32.** Article 106 of the Namibian Constitution is amended by the substitution of Sub-Article (1) of the following Sub-Article:

##### **“Article 106   Regional Council Elections**

- (1) Each region shall be divided into constituencies the boundaries of which shall be fixed by the **[Delimitation Commission]** Boundaries Delimitation and Demarcation Commission in accordance with the provisions of an Act of Parliament and this Constitution: provided that there shall be no fewer than six (6) and no more than twelve (12) constituencies in each region.”.

#### **Amendment of Article 110 of the Namibian Constitution**

**33.** Article 110 of the Namibian Constitution is amended by its substitution of the following Article:

##### **“Article 110   Administration and Functioning of Regional Councils**

- (1) The holding and conducting of meetings of Regional Councils, the filling of casual vacancies on Regional Councils and the manner of appointing staff members, the method of determining their conditions of service, any other matter relating to their employment availing of staff members in the public service by the public service Commission to [employment of officials by] the Regional Councils, as well as all other matters dealing with or incidental to the administration and functioning of Regional Councils, shall be determined by Act of Parliament.”.



- (2) An Act of Parliament may regulate the employment of staff members to perform work for Regional Councils.
- (3) The Act referred to in Sub-Article (2) may provide for the employment of staff members by regional councils or may provide that staff members are employed in the public service and may provide for the manner in which staff members employed in the public service are made available to Regional Councils.
- (4) The Act referred to in Sub-Article (2) may also provide for the transfer of staff members employed by Regional Councils to the public service and their subsequent making available to Regional Councils.
- (5) The Act referred to in Sub-Article (2) may also provide for any other matter relating to the employment, conditions of service, disciplinary matters of the staff members in question and any matter that is necessary, incidental or ancillary to the employment of the staff members in question.”.

#### **Insertion of Article 110A of the Namibian Constitution**

**34.** The following Article is inserted after Article 110 of the Namibian Constitution:

#### **“Article 110A Regional Governors**

- (1) The President shall appoint a Regional Governor as the political head of every region, and an Act of Parliament shall further prescribe their duties and functions.
- (2) Regional Governors shall serve at the pleasure of the President.
- (3) Subject to this Constitution or any other law, a Regional Governor shall oversee the exercise of any executive function of Government in the region for which he or she is the Regional Governor, and he or she shall be the link between the central Government and the Regional Council, Local Authorities and Traditional Leaders in the region concerned.
- (4) In the performance of his or her functions, a Regional Governor may in writing require the Regional Council of the region of which he or she is the Regional Governor to convene urgent special sessions and address any matter.
- (5) A Regional Governor shall attend a meeting of the Regional Council of the region for which he or she is the Regional Governor once every year, which meeting shall occur after the President and Cabinet attend Parliament in terms of Article 32(2) hereof.
- (6) During the meeting referred to in Sub-Article (5), the Regional Governor shall address the Regional Council on the state of

the region, planned activities of the central Government in the region, report on the activities of the central Government of the previous year in the region and be available to respond to questions.

- (7) The President or the Minister responsible for regional government may assign further functions to Regional Governors and Regional Governors shall report to the President'.”.

#### **Amendment of Article 113 of the Namibian Constitution**

**35.** Article 113 of the Namibian Constitution is hereby amended by –

- (a) the substitution for subparagraph (cc) of paragraph(a) of the following sub-paragraph:

“(cc) the remuneration [**and the retirement benefits**] of any such persons;”;

- (b) the substitution for paragraph (c) of the following paragraph:

“(c) to, if requested by the President to do so, advise the President on the identity, availability and suitability of persons to be appointed by the President to offices in terms of this Constitution or any other law.”.

#### **Substitution of Article 114 of the Namibian Constitution as amended by Act No. 7 of 2010**

**36.** The following Article is substituted for Article 114 of the Namibian Constitution:

“(1) There shall be a Security Commission which shall have the function of making recommendations to the President on the appointment of the Chief of the Defence Force, the Inspector-General of Police and the Commissioner-General of Correctional Service, [**and**] such other functions as may be assigned to it by Act of Parliament and to advise the President on any matter on which the President may require its advice and to perform any other function that the President may require it to perform.

(2) The Security Commission shall consist of the Chairperson of the public service Commission, the Chief of the Defence Force, the Inspector-General of Police, the Head of the Intelligence Service, the Commissioner-General of Correctional Service and two (2) members of the National Assembly, appointed by the President on the recommendation of the National Assembly.

(3) No decision of the Security Commission shall be invalid merely as a result of a vacancy on the Commission when that decision has been taken.”.

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### **Substitution of heading of Chapter 15 of the Namibian Constitution**

37. The following heading is substituted for the heading of Chapter 15 of the Namibian Constitution:

**“The Defence and Police Forces, The Intelligence Service and  
The Correctional Service”.**

### **Insertion of Article 120A**

38. The following Article is inserted after Article 120 of the Namibian Constitution:

**“Article 120A Establishment of the Intelligence Service**

- (1) There shall be established by an Act of Parliament, an Intelligence Service with its powers and functions provided for in such Act.
- (2) The Act referred to in Sub-Article (1) may also provide for the title by which the Head of the Intelligence Service shall be known.
- (3) The President shall appoint the Head of the Intelligence Service in terms of Article 32(3)(i)(gg).
- (4) The Head of the Intelligence Service shall serve at the pleasure of the President and shall assume political responsibility for the control and direction of the Intelligence Service.
- (5) The Head of the Intelligence Service shall be the principal advisor to the President and the Government on matters relating to national security and intelligence.”.

### **Amendment of Article 126 of the Namibian Constitution**

39. Article 126 of the Namibian Constitution is amended by the substitution for Sub-Article (1) of the following Sub-Article:

- “(1) The Minister [**in charge of the Department of Finance**] responsible for finance shall, at least once every year and thereafter at such interim stages as may be necessary, present for the consideration of the National Assembly estimates of revenue, expenditure and income for the prospective financial year.”.

### **Amendment of Article 128 of the Namibian Constitution**

40. The following Article is substituted for Article 128 of the Namibian Constitution:

- “(1) There shall be established by Act of Parliament a Central Bank of the Republic of Namibia which shall serve as the State’s principal instrument to control the money supply, the currency, and **[the institutions of finance]** banking institutions and any other financial institutions that may be placed under the supervision of the Central Bank by Act of Parliament, and to perform all other functions ordinarily performed by a central bank.
- (2) The Governing Board of the Central Bank shall consist of a Governor, **[a Deputy-Governor]** Deputy-Governors and such other members of the Board as shall be prescribed by Act of Parliament, and all members of the Board shall be appointed by the President in accordance with procedures prescribed by such Act of Parliament.
- (3) Nothing in this Constitution is construed as to prevent the enactment of any law or as effecting the validity of any law assigning the regulation of institutions that perform financial services to any member of the public by a body other than the Central Bank.”.

#### **Amendment of Article 129 of the Namibian Constitution**

**41.** Article 129 of the Namibian Constitution is amended by the substitution for Sub-Article (1) of the following Sub-Article:

- “(1) There shall be established in the **[office of the President]** Presidency a National Planning Commission, whose task shall be to plan the priorities and direction of national development.”.

#### **Amendment of Article 132 of the Namibian Constitution**

**42.** Article 132 of the Namibian Constitution is amended by the substitution for paragraph (c) of Sub-Article (3) of the following paragraph:

- “(c) If upon the holding of such a referendum the bill containing the proposed repeals and/or amendments is approved by a two-thirds majority of all the valid votes cast in the referendum, the bill shall be deemed to have been passed in accordance with the provisions of this Constitution, and **[deal with it in terms of Article 56 hereof]** the President shall assent to the bill by signing the bill and the bill shall be published as an Act in the *Gazette*.”.

#### **Substitution of Schedule 2 of the Namibian Constitution**

**43.** The following Schedule is substituted for Schedule 2 of the Namibian Constitution:

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**“SCHEDULE 2**

**PART A**

**Oath or Affirmation of The Vice-President,  
Prime Minister and Deputy-Prime Minister**

‘I, ..... do hereby swear/solemnly affirm,

That I will strive to the best of my ability to uphold, protect and defend as the Supreme Law the Constitution of the Republic of Namibia, and faithfully to obey, execute and administer the laws of the Republic of Namibia;

That I will protect the independence, sovereignty, territorial integrity and the material and spiritual resources of the Republic of Namibia;

That I will not divulge directly or indirectly any matters brought before the Cabinet and entrusted to me under secrecy; and

That I will endeavour to the best of my ability to ensure justice for all the inhabitants of the Republic of Namibia, to deputise, assist and advise the President, and to perform the duties of my office and the functions entrusted to me by the President conscientiously and to the best of my ability.’

So help me God. / I so affirm.’

**PART B**

Oath or Affirmation of Ministers And Deputy-Ministers

‘I ..... do hereby swear/solemnly affirm that I will be faithful to the Republic of Namibia, hold my office as Minister/Deputy-Minister with honour and dignity, uphold, protect and defend the Constitution and faithfully obey, execute and administer the laws of the Republic of Namibia, serve the people of Namibia to the best of my ability, not divulge directly or indirectly any matters brought before the Cabinet and entrusted to me under secrecy, and perform the duties of my office and the functions entrusted to me by the President conscientiously and to the best of my ability.

So help me God. / I so affirm.’ ”.

**Amendment of Schedule 4 of the Namibian Constitution**

**44.** Schedule 4 of the Namibian Constitution is hereby amended –

(a) by the substitution for paragraph (1) of the following paragraph:

“(1) For the purpose of filling the [**seventy-two (72)**] ninety-six (96) seats in the National Assembly pursuant to the provisions of Article 46(1)(a) hereof, the total number of valid votes cast in a general election for these seats shall be divided by [**seventy-two (72)**] ninety-six (96) and the result shall constitute the quota of valid votes per seat.”

(b) by the substitution for paragraph (3) of the following:

“(3) Where the formula set out in paragraph (2) yields a surplus fraction not absorbed by the number of seats allocated to the political party concerned, such surplus shall compete with other similar surpluses accruing to any other political party or parties participating in the election, and any undistributed seat or seats (in terms of the formula set out in paragraph (2)) shall be awarded to the party or parties concerned in sequence of the highest surplus. In the event of a tie of surpluses, and as a result of such tie the undistributed seat(s) cannot be awarded, then the undistributed seat(s) will be awarded by lot.”.

### **Transitional provisions**

**45.** (1) The Magistrates Act, 2003 (Act No. 3 of 2003), is deemed to have been enacted in terms of Article 83(3) of the Namibian Constitution.

(2) The Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997) is deemed to have been enacted in terms of Article 120A(1) of the Namibian Constitution.

(3) The Namibia Central Intelligence Service established by that Act and which exists at the commencement of this Act is deemed to have been established as contemplated in Article 120A and continues to exist.

(4) The Director-General of the Namibia Central Intelligence Service holding office at the commencement of this Act by virtue of his appointment under the Act shall continue to so hold office as the Head of the Intelligence Service and shall be deemed to have been appointed in terms of that Article.

### **Short title and commencement**

**46.** (1) This Act is called the Namibian Constitution Third Amendment Act, 2014, and subject to subsection (2), (3) and (4) comes into operation on the date of its publication in the Gazette.

(2) Sections 1, 2(a) and (c) (except in as far as it inserts Article 28(2C)), 4(a) and (b), 5, 6, 7 and 8 come into operation upon the expiry of the term of office of the second President of the Republic of Namibia.

(3) Sections 10, 12 and 43 come into operation after the expiry of the term of office of the existing members of the National Assembly.

(4) Sections 14 and 18 comes into operation after the expiry of the term of office of the existing members of the National Council.

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