



Republic of Namibia
Annotated Statutes

Namibian Constitution Second Amendment Act 7 of 2010

(GG 4480)

This Act came into force on its date of publication: 7 May 2010,
with some exceptions (section 17 of Act 7 of 2010):

- Sections 6 and 12 commenced “on the date the term of office of the existing members of the National Council ends”, referring to the members of the National Council in office when Act 7 of 2010 was enacted.

There is some uncertainty about what this date actually was. Article 70(1) of the Namibian Constitution, as it stood prior to amendment by the Namibian Constitution Second Amendment Act 7 of 2010, stated that members of the National Council “shall hold their seats for six (6) years from the date of their election”.

This is somewhat inconsistent with 26(2) of the Regional Councils Act 22 of 1992, which states that a regional council member elected to the National Council “shall become a member of the National Council... with effect from the date following the date on which the period of office of the existing members expires”. There are also different methods for counting “years”.

ACT

To amend the Namibian Constitution so as to extend a waiting period required for acquiring Namibian citizenship by marriage from a period of not less than two years to a period of not less than ten years of ordinarily residing in Namibia as spouse subsequent to such marriage; to extend a waiting period required for non-Namibian citizens who may apply for Namibian citizenship by naturalisation from a period of not less than five years to a period of not less than ten years of continuous residence in Namibia; to decrease the limit of tenure of members of the National Council from six years to five years; to subject the appointment of non-Namibian citizens as judges to a fixed term contract of employment; to delete the word “corruption” from the functions of the Ombudsman; to insert an Article on Anti-Corruption Measures; to decrease the term of office of members of Management Committee from three years to two years and six months; to substitute the terms “correctional service” and “Commissioner-General of Correctional Service” for the terms “prison service” and “Commissioner of Prisons”; and to provide for incidental matters.

(Signed by the President on 23 April 2010)

Namibian Constitution Second Amendment Act 7 of 2010**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.

[This explanatory note appears above the long title of the Act in the *Government Gazette*. It has been moved below the long title here, which is the more usual position.]

ARRANGEMENT OF SECTIONS

1. Amendment of Article 4 of Namibian Constitution
2. Amendment of Article 9 of Namibian Constitution
3. Amendment of Article 23 of Namibian Constitution
4. Amendment of Article 32 of Namibian Constitution
5. Amendment of Article 47 of Namibian Constitution
6. Amendment of Article 70 of Namibian Constitution
7. Amendment of Article 82 of Namibian Constitution
8. Amendment of Article 91 of Namibian Constitution
9. Substitution of Article 93 of Namibian Constitution
10. Insertion of Article 94A of Namibian Constitution
11. Substitution of Article 107 of Namibian Constitution
12. Amendment of Article 109 of Namibian Constitution
13. Substitution of Article 114 of Namibian Constitution
14. Substitution of Chapter 15 of Namibian Constitution
15. Substitution of Article 142 of Namibian Constitution
16. Savings and transitional provisions
17. Short title and commencement

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

Amendment of Article 4 of Namibian Constitution

1. Article 4 of the Namibian Constitution is amended -
 - (a) by the substitution for subparagraph (bb) of paragraph (a) of Sub-Article (3) of the following subparagraph:

“(bb) subsequent to such marriage have ordinarily resided in Namibia as the spouse of such person for a period of not less than [**two (2)**] ten (10) years; and”;
 - (b) by the substitution for paragraph (b) of Sub-Article (5) of the following paragraph:

“(b) have been so resident in Namibia for a continuous period of not less than [**five (5)**] ten (10) years [**(whether before or after the date of Independence)**]; and”.

Amendment of Article 9 of Namibian Constitution

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

“(c) any labour required of members of the defence force, the police force and the [prison] correctional service in pursuance of their duties as such or, in the case of persons who have conscientious objections to serving as members of the defence force, any labour which they are required by law to perform in place of such service;”.

[This section is reproduced above as it appears in the *Government Gazette*, but the paragraph which is being amended is actually Sub-Article (3)(c) rather than Sub-Article (1)(c).]

Amendment of Article 23 of Namibian Constitution

3. Article 23 of Namibian Constitution is amended by the substitution for Sub-Article (2) of the following Sub-Article:

“(2) Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of discriminatory laws or practices, or for achieving a balanced structuring of the public service, the defence force, the police force, [the defence force,] and the [prison] correctional service.”.

Amendment of Article 32 of Namibian Constitution

4. Article 32 of the Namibian Constitution is amended by the substitution for subparagraph (cc) of paragraph (c) of Sub-Article (4) of the following subparagraph:

“(cc) the Commissioner-General of [Prisons] Correctional Service.”.

Amendment of Article 47 of Namibian Constitution

5. Article 47 of the Namibian Constitution is amended by the substitution for paragraph (b) of Sub-Article (2) of the following paragraph:

“(b) the public service shall be deemed to include the defence force, the police force, the [prison] correctional service, para-statal enterprises, Regional Councils and Local Authorities.”.

Amendment of Article 70 of Namibian Constitution

6. Article 70 of the Namibian Constitution is amended by the substitution for Sub-Article (1) of the following Sub-Article:

“(1) Members of the National Council shall hold their seats for [~~six (6)~~] five (5) years from the date of their election and shall be eligible for re-election.”.

Amendment of Article 82 of Namibian Constitution

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7. Article 82 of the Namibian Constitution is amended by the substitution for Sub-Article (4) of the following Sub-Article:

“(4) All Judges, except Acting Judges, appointed under this Constitution shall hold office until the age of sixty-five (65) but the President shall be entitled to extend the retiring age of any Judge to seventy (70)[. **It shall also be possible by Act of Parliament to make provision for retirement at ages higher than those specified in this Article**]; provided that non-Namibian citizens are appointed as Judges under a fixed term contract of employment.”.

Amendment of Article 91 of Namibian Constitution

8. Article 91 of the Namibian Constitution is amended by the substitution for paragraphs (a), (b) and (f) of the following paragraphs:

- “(a) the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether central or local), manifest injustice, [**or corruption**] or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society;
- (b) the duty to investigate complaints concerning the functioning of the Public Service Commission, administrative organs of the State, the defence force, the police force and the [**prison**] correctional service in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access by all to the recruitment of such services or fair administration in relation to such services;
- (f) the duty to investigate vigorously all instances of alleged or suspected [**corruption and the**] misappropriation of public monies by officials and to take appropriate steps, including reports to the Prosecutor-General and the Auditor-General pursuant thereto;”.

Substitution of Article 93 of Namibian Constitution

9. The following Article is substituted for Article 93 of the Namibian Constitution:

“Article 93 Meaning of “Official”

For the purposes of this Chapter the word “official” shall, unless the context otherwise indicates, include any elected or appointed official or employee of any organ of the central or local Government, any official of a para-statal enterprise owned or managed or controlled by the State, or in which the State or the Government has substantial interest, or any officer of the defence force, the police force or the [**prison**] correctional service, but shall not include a Judge of the Supreme Court or [**the**] High Court or, in so far as a complaint concerns the performance of a judicial function, any other judicial officer.”.

[The amendment markings do not reflect the removal of the word “the” before the term “High Court”.]

Namibian Constitution Second Amendment Act 7 of 2010**Insertion of Article 94A of Namibian Constitution**

10. The following Article is inserted after Article 94 of the Namibian Constitution:

“CHAPTER 10A
ANTI-CORRUPTION MEASURES

Article 94A Anti-Corruption Measures

- (1) The State shall put in place administrative and legislative measures necessary to prevent and combat corruption.
- (2) There shall be established by an Act of Parliament an Anti-Corruption Commission with its powers and functions provided for in such Act.
- (3) The Anti-Corruption Commission shall be an independent and impartial body.
- (4) The Anti-Corruption Commission shall consist of a Director, a Deputy Director and other staff members of the Commission.
- (5) The National Assembly shall appoint the Director of the Anti-Corruption Commission and the Deputy Director upon nomination by the President.
- (6) The Director of the Anti-Corruption Commission and the Deputy Director shall be appointed for a period of five years and their qualifications for appointment and conditions and termination of service shall be determined in accordance with an Act of Parliament.”.

Substitution of Article 107 of Namibian Constitution

11. The following Article is substituted for Article 107 of the Namibian Constitution:

“Article 107 Remuneration and Allowances and Other Benefits of Members of Regional Councils

[The remuneration and allowances to be paid to members of Regional Councils shall be determined by Act of Parliament] Members of Regional Councils are entitled to such remuneration and allowances and other benefits as determined in accordance with an Act of Parliament.”.

Amendment of Article 109 of Namibian Constitution

12. Article 109 of the Namibian Constitution is amended by the substitution for Sub-Article (3) of the following Sub-Article:

- “(3) The Chairperson and the members of the Management Committee shall hold office for [**three (3)**] two (2) years and six (6) months and shall be eligible for re-election.”.

Substitution of Article 114 of Namibian Constitution

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

“Article 114 Establishment and Functions

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- (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 [Prisons] Correctional Service and such other functions as may be assigned to it by Act of Parliament.
- (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 Commissioner-General of [Prisons] Correctional Service and two (2) members of the National Assembly, appointed by the President on the recommendation of the National Assembly.”.

Substitution of Chapter 15 of Namibian Constitution

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

*“The Defence and Police Forces and the Correctional Service***Article 115 Establishment of the Defence Force**

- (1) There shall be established by Act of Parliament a Namibian Defence Force with prescribed composition, powers, duties and procedures, in order to defend the territory and national interests of Namibia.
- (2) The President shall be the Commander-in-Chief of the Defence Force and shall have all the powers and exercise all the functions necessary for that purpose.

Article 116 Chief of the Defence Force

- (1) There shall be a Chief of the Defence Force who shall be appointed by the President in terms of Article 32(4)(c)(aa) hereof.
- (2) The Chief of the Defence Force shall make provision for a balanced structuring of the defence force and shall have the power to make suitable appointments to the defence force. to cause charges of indiscipline among members of the defence force to be investigated and prosecuted and to ensure the efficient administration of the defence force.

[The full stop which appears after “defence force” in its third use in Sub-Article (2) should be a comma.]

Article 117 Removal of the Chief of the Defence Force

The President may remove the Chief of the Defence Force from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which may prescribe procedures considered to be expedient for this purpose.

Article 118 Establishment of the Police Force

There shall be established by Act of Parliament a Namibian police force with prescribed powers, duties and procedures in order to secure the internal security of Namibia and to maintain law and order.

Namibian Constitution Second Amendment Act 7 of 2010**Article 119 The Inspector-General of Police**

- (1) There shall be an Inspector-General of Police who shall be appointed by the President in terms of Article 32(4)(c)(bb) hereof.
- (2) The Inspector-General of Police shall make provision for a balanced structuring of the police force and shall have the power to make suitable appointments to the police force, to cause charges of indiscipline among members of the police force to be investigated and prosecuted and to ensure the efficient administration of the police force.

Article 120 Removal of the Inspector-General of Police

The President may remove the Inspector-General of Police from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which may prescribe procedures considered to be expedient for this purpose.

Article 121 Establishment of the Correctional Service

There shall be established by Act of Parliament a Namibian correctional service with prescribed powers, duties and procedures.

Article 122 Commissioner-General of Correctional Service

- (1) There shall be a Commissioner-General of Correctional Service who shall be appointed by the President in terms of Article 32(4)(c)(cc) hereof.
- (2) The Commissioner-General of Correctional Service shall make provision for a balanced structuring of the correctional service and shall have the power to make suitable appointments to the correctional service, to cause charges of indiscipline among members of the correctional service to be investigated and prosecuted and to ensure the efficient administration of the correctional service.

Article 123 Removal of the Commissioner-General of Correctional Service

The President may remove the Commissioner-General of Correctional Service from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which may prescribe procedures considered to be expedient for this purpose.”.

Substitution of Article 142 of Namibian Constitution

15. The following Article is substituted for Article 142 of the Namibian Constitution:

“**Article 142 Appointment of the First Chief of the Defence Force, the First Inspector-General of Police and [the] First Commissioner-General of [Prisons] Correctional Service**

The President shall, in consultation with the leaders of all political parties represented in the National Assembly, appoint by Proclamation the first

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Chief of the Defence Force, the first Inspector-General of Police and the first Commissioner-General of [**Prisons**] Correctional Service.”.

[The word “the” before the phrase “First Commissioner of Prisons” is deleted from the heading of Article 42 without being indicated by amendment markings.]

Savings and transitional provisions

16. The Anti-Corruption Act, 2003 (Act No. 8 of 2003), is deemed to have been enacted pursuant to Article 94A, and -

- (a) the Anti-Corruption Commission established by that Act and which exists at the commencement of this Act is deemed to have been established as contemplated in that Article and continues to exist;
- (b) the Director of the Anti-Corruption Commission and the Deputy Director holding office at the commencement of this Act by virtue of their appointment under that Act continue to so hold office and are deemed to have been appointed in terms of that Article;
- (c) anything made or done in terms of or under that Act continues as such and is not affected by this Act.”.

Short title and commencement

17. (1) This Act is called the Namibian Constitution Second Amendment Act, 2010, and commences on the date of its publication in the *Gazette*.

(2) Sections 6 and 12 commence on the date the term of office of the existing members of the National Council ends.