



# EXECUTIVE BRANCH

## Constitutional Framework

The Executive Branch is one of Namibia's three branches of government. Its primary task is to put laws into action. The Executive Branch consists mainly of the President, Vice-President, Prime Minister, Deputy-Prime Minister and Cabinet. The Executive Branch does its work with the help of members of the public service.



### Presidency

The Namibian Constitution sets out the basic powers and duties of the President and the Vice-President. It also explains the qualifications for holding either of these offices. These two officials together make up the Presidency. They are assisted by Special Advisers and other persons appointed by the President, as well as by staff members from the public service.



#### NAMIBIAN CONSTITUTION The Presidency

##### Article 27A:

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.

### President

#### Qualifications

The President must be a Namibian citizen by birth or descent who is at least 35 years old, and must also have the same qualifications required for eligibility for election to the National Assembly.<sup>1</sup>

#### Election

The President is elected directly by the citizens of Namibia. A candidate must receive more than a 50% majority of the votes cast in the election for President. If there are more than two candidates running for President, it is possible that no candidate will reach this level of votes. In that case, there must be a second run-off election between the top two candidates.<sup>2</sup>

#### Term of office

A President serves for a term of five years. No individual may serve more than two terms. (The Namibian Constitution was amended in 1998 to make an exception for Namibia's first President, Sam Nujoma. He was

<sup>1</sup> [Namibian Constitution](#), Article 28(3). The qualifications for election to the National Assembly are discussed in a separate overview of the Legislative Branch.

<sup>2</sup> [Namibian Constitution](#), Article 28(2).



able to serve for three terms instead of two, because he was elected for his first term by the Constituent Assembly that approved the Namibian Constitution, rather than being elected directly by the people. All other Presidents can serve only two terms of office.)<sup>3</sup>

### Conditions of service

Parliament is required to enact a law that provides for remuneration and allowances for the President and for the payment of pensions to former Presidents, and to their surviving spouses upon their death.<sup>4</sup>

### Removal from office (impeachment)

The National Assembly can remove a President from office if the President disobeys the Constitution or is guilty of a serious violation of any other law, or because of gross misconduct or ineptitude (lack of skills or ability to carry out the job of being President). Two-thirds of the members of the National Assembly must decide that the President should be removed, and the decision must be confirmed by two-thirds of the members of the National Council.<sup>5</sup> This process is called impeachment. The power to remove the President is one of the ways that the Legislative Branch keeps a check on the power of the Executive Branch.

### Succession

What happens if a President dies or resigns, or is removed from office by the legislature? The course of action depends on the length of the unexpired term. If the next regularly-scheduled election is in a year or less, the Vice-President will serve as President for the remainder of the term. If the next regularly-scheduled election is more than a year away, then a new Presidential election must be held within 90 days, with the Vice-President serving as President until a new President is elected. If the Vice-President is not available, the Prime Minister or the Deputy-Prime Minister will step into the President's shoes in the same way. If none of these officials is available, then the President (if still living) will select a member of Cabinet to serve in his or her place. The same line of replacement is followed if the President is unable to fulfil the duties of the office for any reason.<sup>6</sup>

### Powers and duties of the President

The President's highest duty is to "uphold, protect and defend the Constitution as the Supreme Law".<sup>7</sup> The President is the Head of State and Government – which places him or her, acting along with Cabinet, in charge of the Executive Branch of government.<sup>8</sup> The President is also the Commander-in-Chief of the Defence Force.<sup>9</sup>



## NAMIBIAN CONSTITUTION The President

### Article 27:

#### Head of State and Government

- (1) The President shall be the **Head of State** and of the Government and the **Commander-in-Chief of the Defence Force**.
- (2) The **executive power** of the Republic of Namibia shall vest in the **President and the Cabinet**.
- (3) Except as may be otherwise provided in this Constitution or by law, the President shall in the exercise of his or her functions be obliged to act in **consultation with the Cabinet**.

### Article 32:

#### Functions, Powers and Duties

- (1) As the **Head of State**, the President shall **uphold, protect and defend the Constitution as the Supreme Law**, and shall **perform with dignity and leadership all acts necessary, expedient, reasonable and incidental to the discharge of the executive functions of the Government**, subject to the overriding terms of this Constitution and the laws of Namibia, which he or she is constitutionally obliged to protect to administer and to execute.

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<sup>3</sup> *Namibian Constitution*, Articles 29(1) and (3), and 134(3).

<sup>4</sup> *Namibian Constitution*, Article 33.

<sup>5</sup> *Namibian Constitution*, Article 29(2).

<sup>6</sup> *Namibian Constitution*, Articles 29(4) and 34.

<sup>7</sup> *Namibian Constitution*, Article 32(1).

<sup>8</sup> *Namibian Constitution*, Articles 27 and 32(1).

<sup>9</sup> *Namibian Constitution*, Article 27(1).



## Oath by the President Namibian Constitution, Article 30

*"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; and*

*That I will endeavour to the best of my ability to ensure justice for all the inhabitants of the Republic of Namibia."*

The President must generally carry out his or her duties in consultation with Cabinet, unless the Constitution provides otherwise.<sup>10</sup>

### Appointments

The President chooses the **Vice-President**, the **Prime Minister**, the **Deputy-Prime Minister**, the **Attorney-General**, the **Director-General of Planning** and the **Head of the Intelligence Service**.

The President has the power to set up or dissolve departments and ministries, in line with what the President views at any particular time as being "necessary or expedient for the good government of Namibia".<sup>11</sup> The President appoints people from the members of the National Assembly to serve as **Ministers**. Ministers may be chosen from either the voting members of the National Assembly seated as a result of national election, or from the non-voting members of the National Assembly appointed by the President.<sup>12</sup> The President appoints people from the members of the National Assembly or the National Council to be **Deputy-Ministers**. Deputy-Ministers chosen from the National Assembly may be selected either from the voting or non-voting members.<sup>13</sup>

The President, acting on the recommendation of the Judicial Service Commission, appoints the **Chief Justice**, the **Judge-President of the High Court**, the **other judges** of the Supreme Court and the High Court, the **Ombudsman** and the **Prosecutor-General**.

The President, acting on the recommendation of the Public Service Commission, appoints the **Auditor-General** and the **Governor and the Deputy-Governors of the Central Bank**. The President, acting in consultation with Cabinet and on the recommendation of the Public Service Commission, may also create new offices in the public service of Namibia not otherwise provided for by any other law and appoint persons to these offices.<sup>14</sup>

### Judicial Service Commission

The Constitution and the *Judicial Service Commission Act 18 of 1995* set up the Judicial Service Commission. It is made up of the Chief Justice, the Deputy-Chief Justice, the Attorney-General and two members of the legal profession chosen by the President from persons nominated by professional organisations representing the interests of the legal profession in Namibia.

### Public Service Commission

The Constitution sets up the Public Service Commission. It is made up of a Chairperson and three to six other persons nominated by the President and appointed by the National Assembly. Some of its powers and duties are set out in the *Public Service Act 13 of 1995*.

<sup>10</sup> *Namibian Constitution*, Article 27(3).

<sup>11</sup> *Namibian Constitution*, Article 32(3)(g).

<sup>12</sup> *Namibian Constitution*, Articles 32(1) and (3)(i)(dd).

<sup>13</sup> *Namibian Constitution*, Articles 32(3)(i)(dd) and 37.

<sup>14</sup> *Namibian Constitution*, Article 32(7).



The President, acting on the recommendation of the Security Commission, appoints the **Chief of the Defence Force**, the **Inspector-General of Police** and the **Commissioner-General of the Correctional Service**.

The President also has the power to appoint up to eight persons as **non-voting members of the National Assembly** on the basis of their “special expertise, status, skill or experience”.<sup>15</sup> The Constitution originally allowed the President to appoint a maximum of six non-voting members of the National Assembly, but the number was increased to eight in 2014 when the National Assembly was enlarged.<sup>16</sup>

All of these key Presidential appointments must be announced in Presidential proclamations that are published in the *Government Gazette*.<sup>17</sup>

Any person appointed by the President can be removed by the President through the same process that applied to the appointment, as long as the Constitution and any relevant laws are followed.<sup>18</sup>

### Security Commission

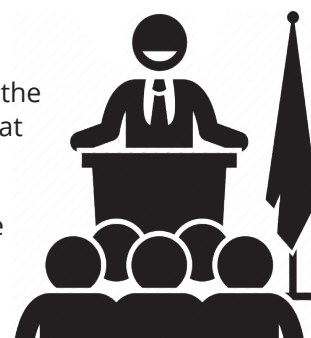
The Constitution and the *Security Commission Act 18 of 2001* set up the Security Commission. It is made up of the Chairperson of the Public Service Commission, the Chief of the Defence Force, the Inspector-General of Police, the Head of the Intelligence Service, the Commissioner-General of the Correctional Service and two members of the National Assembly appointed by the President on the recommendation of the National Assembly.

The *Government Gazette* is a regular government publication that anyone can subscribe to. You can find all of Namibia's *Government Gazettes* on the [LAC website](#).

### The President and the other branches of government

Any action taken by the President can be reviewed, reversed or corrected by the National Assembly if two-thirds of the National Assembly members think that this is necessary.<sup>19</sup>

On the other hand, the President, acting on the advice of Cabinet, has the power to dissolve the National Assembly in a situation where the Government is unable to govern effectively. If this happens, a national election for a new National Assembly and a new President must take place within 90 days.<sup>20</sup>



The President also has the power to summon the National Assembly for a special session (for example, to deal with some urgent matter), to decide when a special session will take place, and to interrupt or discontinue it.<sup>21</sup>

These rules are part of the balance of power between the Executive Branch and the Legislative Branch.

When it comes to legislation, the President has the power to initiate bills (proposed laws) for consideration by the National Assembly.<sup>22</sup>

Legislation that is passed by Parliament generally requires Presidential assent before it becomes law. The President has the power to withhold agreement to any bill that was approved by less than two-thirds of the members of the National Assembly. If the President refuses to sign such a bill, it must go

<sup>15</sup> *Namibian Constitution*, Article 32(5)(c).

<sup>16</sup> *Namibian Constitution Third Amendment Act 8 of 2014*.

<sup>17</sup> *Namibian Constitution*, Article 32(8).

<sup>18</sup> *Namibian Constitution*, Article 32(6).

<sup>19</sup> *Namibian Constitution*, Article 32(9)-(10).

<sup>20</sup> *Namibian Constitution*, Articles 32(3)(a) and 57.

<sup>21</sup> *Namibian Constitution*, Articles 32(3)(b) and 62(1)(c). The word “prorogue” used in Article 32(3)(b) means to suspend or end a legislative session.

<sup>22</sup> *Namibian Constitution*, Article 32(5)(b).

back to the National Assembly for re-consideration. If it then receives the support of at least two-thirds of the National Assembly, it will go forward. If not, it lapses.<sup>23</sup>

The President can also refuse to sign a bill if he or she believes that it is in conflict with the Constitution. In this case, the Attorney-General must refer the matter to a competent court for a decision on the constitutional issue. If the court finds the bill constitutional, then the President MUST agree to the bill if it was passed by a majority of at least two-thirds of the members of the National Assembly. If the Bill had a lower level of support, it must go back to the National Assembly for reconsideration as in the case of a normal veto. If the court rules that the bill is NOT constitutional, then it cannot go forward.<sup>24</sup> Here, we see the balance of power between all three branches of government at work.

### **International powers and duties**

The President may negotiate and sign international agreements, or delegate that power to others.<sup>25</sup> The President welcomes and accredits ambassadors. Accrediting ambassadors means formally recognising them as official representatives of their countries or their international organisations in Namibia. The President also appoints ambassadors and other diplomatic representatives and officers to represent Namibia internationally.<sup>26</sup>

### **War, martial law and state of emergency**

The President has the power to declare war, which is referred to in the Constitution as “a state of national defence”. This may be done only “if it is necessary for the defence of the nation”<sup>27</sup> – which means that Namibia may never be the aggressor in a war.

The President has the power to proclaim or terminate martial law if Namibia is in a state of national defence involving another country or if there is a civil war in Namibia. Martial law is not defined in the Namibian Constitution, but it generally involves the temporary substitution of military authority for civilian rule. During a state of martial law, civil laws can be suspended and military authorities can make and enforce laws. A proclamation of martial law falls away unless it is approved “within a reasonable time” by a resolution passed by a two-thirds majority of all the members of the National Assembly.<sup>28</sup>

The President has the power to declare a state of emergency in Namibia, or in any part of Namibia, by issuing a proclamation that is published in the *Government Gazette*. This power can be exercised because of national disaster, war or a “public emergency threatening the life of the nation or the constitutional order”. A Presidential proclamation declaring a state of emergency falls away unless it is approved by a two-thirds majority of all the members of

#### **Constitutional rights that can never be suspended**

Some constitutional rights can NEVER be suspended, not even during a state of emergency or national defence:

- Article 5: Protection of Fundamental Rights and Freedoms
- Article 6: Protection of Life
- Article 8: Respect for Human Dignity
- Article 9: Slavery and Forced Labour
- Article 10: Equality and Freedom from Discrimination
- Article 12: Fair Trial
- Article 14: Family
- Article 15: Children’s Rights
- Article 18: Administrative Justice
- Article 19: Culture
- Article 21(1)(a): freedom of speech and expression, including freedom of the press and other media
- Article 21(1)(b): freedom of thought, conscience and belief, including academic freedom in institutions of higher learning
- Article 21(1)(c): freedom to practise any religion
- Article 21(1)(e): freedom of association, including freedom to form and join associations or unions (including trade unions and political parties)
- The right of access to legal practitioners and courts.

<sup>23</sup> *Namibian Constitution*, Article 56.

<sup>24</sup> *Namibian Constitution*, Article 64.

<sup>25</sup> *Namibian Constitution*, Article 32(3)(e).

<sup>26</sup> *Namibian Constitution*, Article 32(3)(c).

<sup>27</sup> *Namibian Constitution*, Article 32(3)(f).

<sup>28</sup> *Namibian Constitution*, Article 26(7).



the National Assembly – within 7 days if the National Assembly is sitting or has been summoned to meet, or otherwise within 30 days. A state of emergency may continue for a maximum of six months, unless extensions are approved for no more than six months at a time by a two-thirds majority of all the members of the National Assembly. The National Assembly may also revoke a state of emergency by resolution at any time.<sup>29</sup>

During a state of emergency or a state of national defence, the President has temporary law-making power. The President may make regulations by Proclamation as necessary “for the protection of national security, public safety and the maintenance of law and order”. This power includes the power to suspend other laws, or to suspend all but certain rights protected by the Constitution, for the purpose of dealing with the situation which has given rise to the emergency.<sup>30</sup> There are several safeguards to this temporary law-making power involving the other two branches of government:

- Any regulations made by the President in this situation fall away unless they are approved by a resolution of the National Assembly, no later than 14 days from the date when the National Assembly next sits after the regulations came into force.<sup>31</sup>
- There are special rules that apply if the President makes regulations that provide for detention without trial, designed against the backdrop of the horrifying misuse of this power during the apartheid era.
  - Within 5 days after a detention begins, any person who is detained must be given a written document stating the reasons for the detention.
  - Within 14 days after a detention begins, a notice must be published in the *Government Gazette* listing any persons detained and giving details of the provision of law which authorises their detention.
  - Within one month after a detention begins, and at intervals of not more than three months after that, each case of detention must be reviewed by an Advisory Board. This Advisory Board must be appointed by the President on the recommendation of the Judicial Service Commission. It must be made up of 3 to 5 persons, including at least three judges (or persons who are qualified to be judges). The Advisory Board must order the release of persons from detention if it is satisfied that their continued detention is not reasonably necessary for the purposes of the emergency.
  - Detained persons must be given an opportunity to make representations about their detention as far as “desirable or expedient in the circumstances, having regard to the public interest and the interests of the detained persons”.<sup>32</sup>

### WAR, MARTIAL LAW AND STATES OF EMERGENCY IN PRACTICE, 1990-2021

From the date of independence up to the end of 2022, Namibia has never declared a state of national defence or martial law. There were four states of emergency during this time period:

- (1) **2-26 August 1999:** The President declared a state of emergency to address a **secession attempt in the Caprivi Region** (as the Zambezi Region was then called) and issued emergency regulations that allowed for detention without trial. The required Advisory Board was appointed with respect to the state of emergency, and lists of persons detained under the emergency regulations were published. The state of emergency and the emergency regulations were revoked as soon as the crisis had passed.
- (2) **28 June to 28 December 2016:** The President declared a state of emergency in all regions of Namibia because of the persisting national disaster of **drought**. No emergency regulations were issued. This state of emergency expired after six months without further emergency-related enactments.
- (3) **6 May to 6 November 2019:** The President again declared a state of emergency in all regions of Namibia because of the persisting national disaster of **drought**. No emergency regulations were issued. This state of emergency expired after six months without further emergency-related enactments.
- (4) **17 March to 17 September 2020:** The President declared a state of emergency to deal with the national disaster of the **COVID-19 pandemic**. This state of emergency involved a number of regulations and directives, but there was no provision for detention. It expired after six months, with Covid-related regulations issued under the normal legal authority of the *Public and Environmental Health Act 1 of 2015* taking the place of the various emergency regulations.



<sup>29</sup> *Namibian Constitution*, Article 26(1)-(4).

<sup>30</sup> *Namibian Constitution*, Articles 24(1) and (3), and 26(5).

<sup>31</sup> *Namibian Constitution*, Article 26(6).

<sup>32</sup> *Namibian Constitution*, Article 24(2).

## Pardons

The President has the power to pardon or reprieve offenders, either unconditionally or subject to such conditions as the President may deem fit. The terms “pardon” and “reprieve” are not defined. In practice, the President has pardoned certain categories of offenders, by declaring them to be free of their remaining sentences. The President has also issued reprieves, which have typically shortened the sentences of certain categories of offenders by periods of three or six months. Offenders who committed serious crimes such as murder and rape have been excluded from these pardons and reprieves.<sup>33</sup>

The procedure for giving pardons and reprieves has been fleshed out by legislation, first the *Prisons Act 17 of 1998*<sup>34</sup> and now the *Correctional Service Act 9 of 2012*.<sup>35</sup> The current statute empowers the Minister responsible for the correctional service to recommend individual prisoners or categories of prisoners to the President for pardon or reprieve, on the recommendation of the National Release Board and the Commissioner-General. The criteria are (a) that the offenders have displayed commendable conduct, self-discipline, responsibility and industry during their term of imprisonment so far; (b) that they are unlikely to present an undue risk to society by re-offending after their release; and (c) that their release will contribute to their reintegration into society as law-abiding citizens. The *Correctional Service Act* also requires that the names of all individual offenders who are pardoned or reprieved must be published.

## Honours

The President may give special honours to “citizens, residents and friends of Namibia”, in consultation with “interested and relevant persons and institutions”.<sup>36</sup>

## State of the Nation (SONA)

The Constitution requires the President and Cabinet to attend Parliament each year during the consideration of the official budget. During that session, the President must **address Parliament on the state of the nation** and the future policies of the Government, report on the policies of the previous year and **be available to respond to questions**. This signals “the responsibility of the executive branch of government to the legislative branch”.<sup>37</sup>

## Immunity

A sitting President can be sued in *civil* proceedings for acts which are part of his or her official duties. In this kind of case, it is actually the State that is being sued (represented by the President as the Head of State) and not the President as an individual. But a sitting president may *not* be held civilly liable for any action which falls *outside* his or her official duties. A sitting President also enjoys complete immunity from *criminal* prosecution whilst in office.

To understand presidential immunity, keep in mind that there are two categories of legal actions: **civil cases**, which seek to hold someone accountable for the harms caused by a wrongful act (usually by paying damages for the loss or injury suffered), and **criminal cases**, where someone is put on trial for allegedly committing a crime and sentenced to appropriate penalties (such as payment of a fine or imprisonment) if convicted.

<sup>33</sup> A Presidential spokesperson stated in 2020: “The practical implications of a pardon is that the sentenced offender is relieved of his sentence under certain conditions while reprieve translates into a reduced sentence.” Maria Amakali, [“Geingob pardons over 1 000 petty offenders”](#), *New Era Live*, 22 May 2020.

<sup>34</sup> *Prisons Act 17 of 1998*, section 93.

<sup>35</sup> *Correctional Service Act 9 of 2012*, section 108.

<sup>36</sup> *Namibian Constitution*, Article 32(3)(h).

<sup>37</sup> *Namibian Constitution*, Article 32(2); see also Office of the Attorney-General, [“Frequently Asked Legal Questions”](#), Volume 3, April 2017, section 1.2.

After leaving office, a former President is immune from civil lawsuits for *official actions*, and almost entirely immune from civil and criminal liability for anything done *in his or her personal capacity* while in office. The only instance where proceedings may be brought against a former President for actions done in a personal capacity is where Parliament has voted by a two-thirds majority to remove the President from office for serious misconduct (“impeachment”) *and* passed a resolution determining that a court case against the President would be in the public interest.<sup>38</sup>

## Vice-President

### Appointment

The President chooses a Vice-President from the elected members of the National Assembly. In other words, the Vice-President may *not* be one of the non-voting members of the National Assembly appointed by the President. In appointing a Vice-President, the President is charged by the Namibian Constitution to have “due regard for the need to obtain a balanced reflection of the national character of the people of Namibia”.<sup>39</sup>



The Vice-President serves “at the pleasure of the President”, meaning that the President can dismiss the Vice-President at will. If the Vice-President dies, resigns, is dismissed, or can no longer serve due to incapacity, the President must choose a replacement.

The Vice-President may not be a member of the National Assembly. This means that the Vice-President must resign from Parliament once he or she is chosen to become the Vice-President. It is also prohibited for the Vice-President to act as Prime Minister, Deputy-Prime Minister, Minister or any other government office-bearer while holding the office of Vice-President.

The conditions of service and salary of the Vice-President must be set out in an Act of Parliament.<sup>40</sup>

### Powers and duties

The Vice-President assists and advises the President, and deputises for the President in the President’s absence. The Vice-President is accountable to the President.<sup>41</sup>

### Acting as President

If the person who is elected as President is unable to assume office due to death, incapacity or some other reason, then the Vice-President who was appointed by the outgoing President will act as the President until a new election can be held.<sup>42</sup>

Also, as already noted above, the Vice-President will serve as President for the remainder of the President’s term if a sitting President dies, resigns or is removed from office by the legislature – as long as the next regularly-scheduled election is no more than a year away.<sup>43</sup>

While acting as President, the Vice-President has the same immunity as the President.<sup>44</sup>

<sup>38</sup> [Namibian Constitution](#), Article 31. For more information about Presidential immunity, see Legal Assistance Centre, “Namibia’s Perplexing Presidential Immunity”, 2018.

<sup>39</sup> [Namibian Constitution](#), Articles 28(1A), and 32(3)(i)(aa) and (3A).

<sup>40</sup> [Namibian Constitution](#), Article 28(2A).

<sup>41</sup> [Namibian Constitution](#), Article 28(2A)(b).

<sup>42</sup> [Namibian Constitution](#), Article 28(2C).

<sup>43</sup> [Namibian Constitution](#), Articles 29(4) and 34.

<sup>44</sup> [Namibian Constitution](#), Article 28(2A)(f).





## Oath by the Vice-President, Prime Minister and Deputy-Prime Minister Namibian Constitution, Articles 28(2B) and Schedule 2

*"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."*

## Prime Minister and Deputy-Prime Minister

The President appoints the Prime Minister. Appointment of the Prime Minister is worded as a power rather than a duty – but the Constitution gives specific duties to the Prime Minister, which indicates that this post is expected to be filled. The Prime Minister is the leader of Government business in Parliament. He or she coordinates the work of the Cabinet as head of the administration and performs any other functions assigned by the President or the Vice-President.<sup>45</sup>

The appointment of a Deputy-Prime Minister is clearly optional. The Constitution says that the President "may, if he or she considers it to be necessary or expedient", appoint a Deputy-Prime Minister to perform any functions assigned to him or her by the President, the Vice-President or the Prime Minister.<sup>46</sup>

No qualifications for the Prime Minister or the Deputy-Prime Minister are set out in the Constitution. Neither is restricted from holding any other government post while serving as Prime Minister or Deputy-Prime Minister.

## Ministers and Deputy-Ministers

### Appointment

The President appoints a Minister for each government ministry. The President may appoint Deputy-Ministers as he or she wishes "to exercise or perform on behalf of Ministers any of the powers, functions and duties" that have been assigned to them. Ministers must be members of the National Assembly, and Deputy-Ministers must be members of the National Assembly or the National Council.<sup>47</sup>

### Preventing conflicts of interest

Ministers cannot hold any other "paid employment" while serving as members of Cabinet. They are also forbidden to "engage in activities inconsistent with their positions as Ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interests as Ministers and their private interests".<sup>48</sup>

<sup>45</sup> [Namibian Constitution](#), Articles 32(3)(i)(bb) and 36.

<sup>46</sup> [Namibian Constitution](#), Articles 32(3)(i)(bb) and 35(2).

<sup>47</sup> [Namibian Constitution](#), Articles 32(3)(i)(bb) and (dd), 35(1)-(2), 37 and 41. As noted above, there is no set number of ministries. The President has the power to establish and dissolve ministries at will. [Namibian Constitution](#), Article 32(3)(g).

<sup>48</sup> [Namibian Constitution](#), Article 42.



## Oath by Ministers and Deputy-Ministers

### Namibian Constitution, Article 38

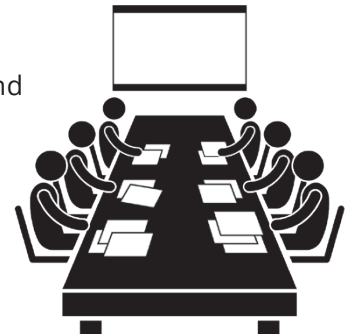
*"I ..... do hereby swear/solemnly affirm that I will be faithful to the Republic of Namibia, hold my office as Minister/Deputy-Minister with honour and dignity, uphold, protect and defend the Constitution and faithfully obey, execute and administer the laws of the Republic of Namibia, serve the people 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."*

## Cabinet

Cabinet is a group of government officials who advise the President and administer and execute the functions of the Government.

### Members

The members of the Cabinet are the President, the Vice-President, the Prime Minister, the Deputy-Prime Minister and the Ministers appointed by the President.<sup>49</sup>



If more than half of the members of the National Assembly vote that they have no confidence in one of the people whom the President has chosen as a member of Cabinet, then the President must remove that person.<sup>50</sup> This is an example of the balance of power between the Executive Branch and the Legislative Branch.

### Secretary to Cabinet

The President must appoint a Secretary to Cabinet. The functions of the Secretary will be assigned by the President, the Vice-President or the Prime Minister. Additional functions may be determined in legislation. The Secretary must also preserve Cabinet records, minutes and related documents.<sup>51</sup>

### Powers and duties

The powers and duties of the Cabinet are –

- to direct, coordinate and supervise the activities of ministries, Government departments and parastatal enterprises
- to issue notices, instructions and directives to facilitate the implementation and administration of laws by the executive, in line with the Constitution and other laws
- to attend meetings of the National Assembly, and to be available for any queries and debates about "the legitimacy, wisdom, effectiveness and direction of Government policies"
- to initiate bills (proposed laws) for consideration by the National Assembly
- to review and advise the President and the National Assembly on subordinate laws or regulations, and on orders pertaining to parastatal enterprises, with a view to serving the public interest
- to establish economic organisations, institutions and parastatal enterprises on behalf of the State by law
- to advise the President on which international agreements Namibia should adopt, and to report to the National Assembly on this issue

<sup>49</sup> [Namibian Constitution](#), Articles 27(2) and 35(1).

<sup>50</sup> [Namibian Constitution](#), Article 39.

<sup>51</sup> [Namibian Constitution](#), Article 43.

- to advise the President on the state of national defence and the maintenance of law and order, and to inform the National Assembly on these issues
- to carry out any other functions assigned to Cabinet or its members by law.

Cabinet also has a duty to formulate, explain and assess certain matters for the National Assembly:

- the State budget and economic development plans
- the goals of Namibian foreign policy and international relations
- the directions and content of foreign trade policy.

In addition, Cabinet has a duty “to remain vigilant and vigorous for the purposes of ensuring that the scourges of apartheid, tribalism and colonialism do not again manifest themselves in any form in a free and independent Namibia and to protect and assist disadvantaged citizens of Namibia who have historically been the victims of these pathologies”.<sup>52</sup>

### Accountability

Each Minister is individually accountable to the President and to Parliament for the administration of his or her ministry, and the Ministers are collectively accountable for the administration of the work of the Cabinet.<sup>53</sup>

### Preventing conflicts of interest

No Cabinet members may use their positions or use confidential information entrusted to them as members of Cabinet, to enrich themselves directly or indirectly.<sup>54</sup>

### Public Service Commission

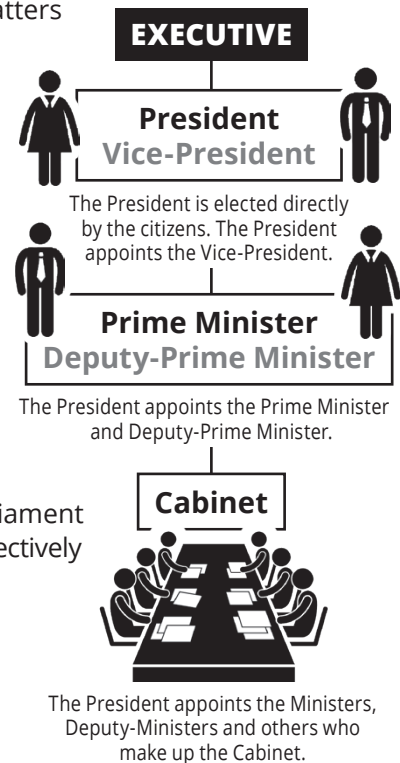
Government employees are called “public servants” because their job is to serve the public. When we talk about all of these employees as a group, we call them the “public service”.



The employees of government ministries and agencies are selected by the **Public Service Commission**, which is composed of a Chairperson and three to six other persons nominated by the President and appointed by the National Assembly for five-year terms. Members are eligible for reappointment. The Public Service Commission must be independent and act impartially.<sup>55</sup>

The functions of the Public Service Commission are –

- to advise the President and the Government on the appointment of suitable persons to specified categories of employment in the public service
- to exercise adequate disciplinary control over public service employees, and to assure the fair administration of personnel policy
- to set the salary and benefits for public service employees
- to address all other matters that relate to the public service in terms of any law
- if requested by the President, to advise on the identity, availability and suitability of persons under consideration for Presidential appointment.<sup>56</sup>



<sup>52</sup> [Namibian Constitution](#), Article 40.

<sup>53</sup> [Namibian Constitution](#), Article 41.

<sup>54</sup> [Namibian Constitution](#), Article 42.

<sup>55</sup> [Namibian Constitution](#), Article 112.

<sup>56</sup> [Namibian Constitution](#), Article 113.

The Public Service Commission is constitutionally required to pay special attention to the balanced structuring of the public service. This means that the Commission must ensure that the public service is a mixture of men and women, and people of all races and ethnic groups in Namibia.<sup>57</sup>

The Public Service Commission must also carry out any other functions assigned to it by an Act of Parliament.<sup>58</sup> Other functions set out in the *Public Service Act 13 of 1995* are discussed in the separate summary of that law.

### Attorney-General

The Constitution provides for an Attorney-General appointed by the President. No specific qualifications are set for this post. The Attorney-General is the principal legal adviser to the President and Government and charged with the duty to take all action necessary for the protection and upholding of the Constitution. The Attorney-General must also exercise the final responsibility for the office of the Prosecutor-General and carry out other functions and duties assigned to the Attorney-General by a law passed by Parliament. The Attorney-General also has the power to refer issues directly to the Supreme Court for decision.<sup>59</sup>

### Auditor-General

The Auditor-General is an independent official appointed by the President on the recommendation of the Public Service Commission in terms of the Namibian Constitution. The Auditor-General is appointed for a five-year term and is eligible for reappointment. However, the Auditor-General is *not* a member of the public service and can be dismissed before the end of a term only by a two-thirds majority of all the members of the National Assembly, and only on the grounds of mental incapacity or serious misconduct. The function of the Auditor-General is to audit the State Revenue Fund and carry out any other functions assigned by Government or by a law enacted by Parliament. The Auditor-General must provide an annual report to the National Assembly. The provision for an independent Auditor-General is an important check on the power of the Executive Branch.<sup>60</sup>



<sup>57</sup> [Namibian Constitution](#), Article 113(a)(aa); see also Article 91(b).

<sup>58</sup> [Namibian Constitution](#), Article 113(b).

<sup>59</sup> [Namibian Constitution](#), Articles 32(3)(i)(ee), 79(2), 86 and 87.

<sup>60</sup> [Namibian Constitution](#), Article 127.



# Statutes relating to the President and High-Level Executive Appointees

## Presidential Remuneration and Other Benefits Act 5 of 2016

### What does the law do?

This law provides for the payment of a salary to the President and the Vice-President and allowances to their spouses. It also covers some other benefits for these persons and their family members.

### What is the purpose of the law?

Article 33 of the Namibian Constitution requires Parliament to pass an Act providing for the payment of remuneration and allowances for the President out of the State Revenue Fund. (This provision of the Constitution does not mention the Vice-President or presidential spouses.) Salaries and benefits for public officials come from taxpayers' money. This law informs the public about what is being paid.



### When did the law come into force?

21 June 2016. It replaced the *Presidential Remuneration and Other Benefits Act 15 of 2012*, which in turn replaced the *Presidential Emoluments Act 17 of 1990*.<sup>1</sup>

### What is covered by this law?

This law covers the salary of the President and the Vice-President and allowances for their spouses. It authorises possible additional benefits for Presidential spouses. It also provides for medical aid coverage for the President, the Vice-President, their spouses, and their dependent children.

A "dependent child" for the purposes of this law is a biological child, a child who has been legally adopted or a step-child (which means a biological child of the spouse). These children are dependants only if they are below age 18 and unmarried. But children over age 18 can be dependants for the purposes of this law if they are full-time students at a university or some other institution of higher education. Children over age 18 can also be dependants for the purposes of this law if they are unable to be self-supporting due to a physical or mental disability.

<sup>1</sup> The 1990 law was originally called the "*Presidential Emoluments and Pension Act*". The name of the law was changed to the "*Presidential Emoluments Act*" in 2004.





## Does the law cover multiple polygamous spouses?

Yes. The definition of “Presidential spouse” means a person who is the wife or husband of the President or the Vice-President, and it specifically includes a wife or husband under customary law. The possibility of multiple spouses gave rise to some debate in Parliament, due to different views on whether it would be appropriate for a President to have multiple spouses.<sup>2</sup>

## What salary is paid to the President and Vice-President?

This law does not set actual salary amounts. Instead, it contains general principles about salary. It says that the President must get a salary that is 15 percent more than the salary of the Vice-President, while the Vice-President must get a salary that is 15 percent more than the salary of the Prime Minister. The Prime Minister’s salary is governed by the *Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005*, which is summarised below.

As of late 2022, the last Proclamation that was issued in regard to Presidential salary, dated 10 March 2017, set the President’s salary at N\$1 753 964 per year and the Vice-President’s salary at N\$1 525 186.<sup>3</sup> This does not appear to include other benefits such as housing, transportation or entertainment allowances, or subsistence and travel (S&T) allowances.

## What payments are made to Presidential spouses?

The spouse of the President is paid a monthly allowance equal to the monthly salary of the Executive Director of a ministry, and the spouse of the Vice-President is paid a monthly allowance equal to the monthly salary of the Deputy Executive Director of a ministry.

There is one provision concerning spouses in this law that seems odd. A President may grant additional benefits to his or her spouse beyond what is set by the law. This seems like a conflict of interest. The safeguard provided is that this may be done only on the recommendation of the Public Office-Bearers (Remuneration and Benefits) Commission.

The **Public Office-Bearers Commission**, a body consisting of seven persons appointed by the President, is set up under the *Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005* to make recommendations on the remuneration, benefits and other conditions of office of public office-bearers.

## What about medical aid benefits?

All “medical costs” for the President, the Vice-President, their spouses and their legally-dependent children are wholly covered by the State.



## Are these salaries and benefits taxed?



No. All of the salaries, allowances and benefits covered by this law are exempt from income tax. Some Members of Parliament questioned whether the tax exemption should be applied to the spouse of the President when the previous *Presidential Remuneration and Other Benefits Act 15 of 2012* was passed, but the tax exemption for the spouse remained in that law and the current law which replaced it.<sup>4</sup>

<sup>2</sup> See, for example, Ndanki Kahiurika, “[MPs seek clarity on Presidential bill](#)”, *The Namibian*, 12 May 2016, reporting on the National Council debate on the bill.

<sup>3</sup> Proclamation 4 of 2017 ([Government Gazette 6259](#)), issued in terms of the *Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005*.

<sup>4</sup> See Debates of the National Assembly, Volume 146, 2 October 2012, page 81.

## What was the position before this law was passed?

The *Presidential Emoluments Act 17 of 1990*, which came into force on the date of independence, provided that the President's salary would be N\$180 000 per year, tax-free. Under this law, there was no allowance for the President's spouse. This law provided that the President would be covered by the usual medical aid scheme for government employees, but without having to pay any contributions for the coverage.



This law was replaced by the *Presidential Remuneration and Other Benefits Act 15 of 2012*, which set the President's remuneration at 15% above the remuneration of the Prime Minister and provided that the spouse of the President would receive a monthly allowance equal to the monthly salary of the Deputy Permanent Secretary of a ministry – with the payment to both the President and the President's spouse being tax-free. This law provided medical aid benefits for the President and the President's spouse, but there were no benefits for dependent children.

After the Vice-President was added to the Presidency by the *Namibian Constitution Third Amendment Act* in 2014, the salary of the Vice-president was initially set at 10 per cent above the remuneration payable to the Prime Minister.<sup>5</sup>

## Why should a President be paid a salary?

Suppose that a President or a Vice-President has enough income to live on from other sources, such as past income or investments – why should they be paid? Paying these officials signals their accountability to the public, since the salary is paid with public money. Also, an unpaid President and Vice-President might be tempted to engage in corrupt practices. There are other considerations as well. If Presidents were not paid a salary, only wealthy people could afford to run for that office. Also, if there were no salary, Presidents and Vice-Presidents might feel compelled to focus their attention on outside businesses and investments instead of devoting their energy to public service. The idea is that an official who is financially independent is more likely to act in the public interest, without taking personal profit into consideration. A President or a Vice-President who did not need the salary would be free to donate all or part of it to charity, as some of Namibia's Presidents have done.

## Why should a President's salary be set by law?

Setting up rules about the President's salary in a law provides transparency about the use of public funds. Having clear rules about income and benefits also insulates these decisions from day-to-day politics, at least to some extent. A legal framework ensures that the salary and benefits of top officials cannot be changed secretly, behind the scenes.

## Is it usual for a Presidential spouse to be paid an allowance?

No. For example, spouses of Presidents and Vice-Presidents in the United States do not receive any salary or personal allowances.<sup>6</sup> The introduction of formal salaries for the spouses of the President and Vice-President in Ghana in 2021 gave rise to such a public outcry that both spouses later announced that they would refund their salaries.<sup>7</sup>

<sup>5</sup> Proclamation 32 of 2015 ([Government Gazette 5838](#)), issued in terms of the *Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005*.

<sup>6</sup> However, the US President's spouse has his or her own office and staff. The widow or widower of a former US President receives an annual allowance of US\$20,000. *Former Presidents Act* (3 U.S.C. § 102 note).

<sup>7</sup> "[Ghana: Salaries for presidential spouses spark outrage](#)", *AfricaFeeds*, 7 July 2021; "[Mixed reactions over payment of salaries, allowances to presidential spouses](#)", GBC Ghana, 8 July 2021; "[Ghana: Salaries for Presidential spouses spark outrage](#)", *The Maravi Post*, 7 July 2021; "[First Lady of Ghana Salary: Rebecca Akufo-Addo, Samira Bawumia go refund allowance as wife of President of Ghana and VP](#)", *BBC Pidgin*, 13 July 2021.

It has been pointed out that spouses are typically active in championing social causes, as well as being expected to appear at State functions. They may find that they have to give up their own jobs if these are not compatible with their official schedules or living arrangements. On the other hand, spouses are not themselves elected public officials with specific duties. Also, even without a personal salary or allowance, spouses typically benefit from free accommodation, free travel around the world, a personal security detail and staff funded by the State, as well as entitlement to some benefits after the President or the Vice-President leaves office or dies.

In the Parliamentary debates about the 2012 version of the law, it was argued that the First Lady plays an important role in Namibia and the African continent and functions as an “Ambassador of Peace”, and that these roles should be appreciated by the payment of an allowance.<sup>8</sup>

In the Parliamentary debates around the 2016 Act, one opposition Member of Parliament supported benefits for the spouse of the President, but not the spouse of the Vice-President, given the lack of any clear responsibilities for this spouse<sup>9</sup> – while the counterargument offered was that this spouse plays a role by supporting the Vice-President, emphasising that the spousal benefits are allowances rather than salaries.<sup>10</sup>

## Is it an international norm for presidential salaries to be tax-free?

No. The Head of State pays tax in many countries. For instance, in the United States, Presidents and Vice-Presidents pay income tax on their salaries like anyone else. In the United Kingdom, the late Queen of England paid income tax after 1993, at her own request, and the Prime Minister’s salary is taxed like anyone else’s.<sup>11</sup> The President and Vice-President of South Africa have been liable to pay taxes on their income since 1994, when the income tax law was revised to remove tax exemptions for these top officials at the request of President Nelson Mandela.<sup>12</sup> However, some world leaders receive tax-free allowances in addition to a taxable salary,<sup>13</sup> and in some cases the rate of tax paid by the Head of State is lower than it would be for private citizens.<sup>14</sup>

## How does Namibia’s presidential salary compare to salaries in the rest of the world?

Meaningful comparisons are difficult, given that countries have different populations, different levels of wealth and different social and political contexts. In 2021, one analyst looked at presidential salaries in 127 countries, all translated into US dollars for the sake of comparison. At that time, the highest annual presidential salary was in Singapore (US\$1,442,000) and the lowest was in Cuba (US\$360). The US dollar value of the Namibian President’s annual salary at that stage was US\$99,241, somewhat higher than the median value of US\$65,794. It was lower than the presidential salary in South Africa

<sup>8</sup> Debates of the National Assembly, Volume 146, 2 October 2012, page 79.

<sup>9</sup> Debates of the National Assembly, Volume 180, 10 March 2016, pages 244-245, 249.

<sup>10</sup> Debates of the National Assembly, Volume 180, 10 March 2016, pages 254-256.


<sup>11</sup> [Royal Finances](#) [UK], “Taxation”; UK Government Transparency Data, [“Prime Minister’s Schedule of taxable sources of income and gains”](#).

<sup>12</sup> National Assembly, [Question for Written Reply](#), Question Number 60, 3 February 2006.

<sup>13</sup> For instance, the Chancellor of Germany receives a taxable salary, supplemented by a tax-free allowance. See German Federal Parliament, [“The Office of the Federal Chancellor: Individual questions about remuneration and other benefits”](#), 30 July 2020, page 3.

<sup>14</sup> An example here is Singapore: In 2011, the Prime Minister of Singapore acknowledged public concerns over the present salaries of government leaders, which were deemed too high. While the salaries were reduced and are subject to taxation, the Prime Minister’s salary is taxed at a lower rate than other taxpayers would be liable to pay. See Public Service Division of the Prime Minister’s Office, FAQ, [“Remuneration for Ministers and Members of Parliament”](#), accessed on 27 July 2022; White Paper, [“Salaries for a Capable and Committed Government”](#), 10 January 2012, at page 11; and Roy Ngerng, [“The Crazy Rich Salaries of Singapore’s Ministers Versus the Poor Peasants Who Support Them”](#), *The News Lens*, 31 August 2018.

(US\$223,500) and higher than the presidential salary in Botswana (US\$65,760).<sup>15</sup> In 2022, Namibia's presidential salary level was reportedly amongst the top ten highest in Africa – but only just making the list at number ten.<sup>16</sup>

ANNUAL SALARY/ALLOWANCES FOR NAMIBIA'S PRESIDENT AND VICE-PRESIDENT AND THEIR SPOUSES, 2022		
President	Salary of N\$1 753 964	
President's Spouse	Allowance equal to salary of Executive Director	
Vice-President	Salary of N\$1 525 186	
Vice-President's Spouse	Allowance equal to salary of Deputy Executive Director	

## Procedures and safeguards in Namibia and around the world

In the United States, the salary of the President is determined by Congress. The President's salary cannot be changed during his or her own term of office. The salary of the US President has been adjusted by Congress only five times since it was first set in 1789, most recently in 2001.<sup>17</sup>

In South Africa, the salary of the President is determined by the National Assembly, which must take into consideration the recommendations of the Independent Commission for the Remuneration of Public Office Bearers; the role, status, duties, functions and responsibilities of the President; the affordability of different levels of remuneration of political office bearers; current principles and levels of remuneration in society generally; and inflationary increases.<sup>18</sup>

In India, the President's income and allowances are decided by Parliament, but may not be diminished during the President's term in office.<sup>19</sup>

In Namibia, the President's salary is determined by Parliament, in line with Namibia's constitutional requirements. However, since the salary of the President is anchored to that of the Prime Minister, the remuneration of the President rises when the salary of the Prime Minister rises – and, as will be seen further on in the discussion of the *Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005*, the President plays a role in determining the remuneration of public office bearers, including the Prime Minister. This means that the President has the ability to influence his or her own salary. Unlike the position in many other countries, Namibia's Parliament has not set a specific level of Presidential remuneration but has rather set out rules for its determination. This is arguably problematic in terms of the division of powers between the different branches of government.

<sup>15</sup> Mark Mutingwende, "[President Salaries – Everything You Need to Know](#)", *The Human Capital Hub*, 20 July 2021 (updated 7 June 2022).

<sup>16</sup> "[Top 10 Highest Paid Presidents in Africa 2022](#)", GH students, Ghana. This article cites the top ten Presidential salaries as being Cameroon, Morocco, South Africa, Algeria, Kenya, Equatorial Guinea, Somalia, Comoros, Republic of Congo and Namibia. See also "[Top 10 Highest Paid Presidents in Africa \(2022\)](#)", *NaijaQuest.Com*, where another slightly different list also puts Namibia at the number 10 spot: Cameroon, Morocco, South Africa, Kenya, Uganda, Algeria, Equatorial Guinea, Zimbabwe, Comoros, Namibia.

<sup>17</sup> US Constitution, Article II, Section 1; [President of the United States: Compensation](#), Congressional Research Service, 17 October 2008.

<sup>18</sup> [Remuneration of Public Office Bearers Act 20 of 1998](#), Section 2.

<sup>19</sup> [Constitution of India](#), Article 59(3)-(4).

# Former Presidents' Pension and Other Benefits Act 18 of 2004

## What does the law do?

This law provides for the payment of a pension and other benefits to former Presidents, their spouses and their dependent children. (It does not cover former Vice-Presidents.) It was indicated during a 2019 Parliamentary discussion that a new bill on benefits for former Presidents and a separate new bill on benefits for current and former Vice-Presidents were in process.<sup>20</sup>

## What is the purpose of the law?

Article 33 of the Namibian Constitution requires Parliament to pass an Act providing for the payment of pensions to former Presidents and, in the case of their deaths, to their surviving spouses. These benefits come from taxpayers' money, so this law informs the public about what is being paid.



The bill was motivated in Parliament on the basis that former Presidents are “sons and daughters who would continue to play a role in public life long after retiring from the Office of the President”. It was also stated that former Presidents “would continue to play a torch-bearer role with a view to guiding the new generation of political leaders to continue to maintain the original aims and objectives of the Namibian nation”.<sup>21</sup> A subsequent budget allocation under this law was motivated on the basis of “the vital role that the founding President, and indeed the future former Presidents of our Republic will continue to play in consolidating the culture of democracy, the rule of law and constitutionalism in our country”.<sup>22</sup>

## When did the law come into force?

18 December 2004. Pension and other retirement benefits for former Presidents were previously covered by the *Presidential Emoluments and Pension Act 17 of 1990*.

Interestingly, the current law was amended in 2012 to increase the gratuity paid to former Presidents from a single gratuity to a gratuity in respect of each term of office served. This change was backdated to 18 December 2004. In other words, increased payments for Namibia's first President were introduced retroactively in 2012 (while Namibia's second President was in office).

## Who is covered by this law?

This law provides benefits for former Presidents which pass to their surviving spouses and dependent children after their death. It covers any person who has held the office of President of the Republic of Namibia, and who has died in office or stopped holding the office of President for any other reason – including simply reaching the maximum term limit. The only exception is that some of the benefits provided by the law do not apply to a President who is impeached (removed from office by Parliament for violation of the Constitution, a serious violation of any other law, gross misconduct or ineptitude – which refers to the lack of skills or ability to carry out the job of being President).

<sup>20</sup> Responses by Hon Martin Andjaba to Questions Posed by Hon. McHenry Venaani Regarding Benefits of the Former Vice-President. 14 March 2019, pages 3-4.

<sup>21</sup> Debates of the National Assembly, Volume 77, 22 September 2004, page 342.

<sup>22</sup> Budget Speech by the Honourable Dr Albert Kawana, MP, Minister of Presidential Affairs, National Assembly, Vote 01, Office of the President, 4 April 2013, page 4. A similar statement was made in the Budget Motivation Speech by the Honourable Frans Kapofi, MP, Minister of Presidential Affairs, Vote 01, Office of the President, 17 April 2015, page 8.



A “dependent child” for the purposes of this law is a biological child, a child who has been legally adopted or a step-child (which means a biological child of the spouse), where they are under age 21 and wholly or substantially dependent upon the deceased former President for their livelihood at the time of that former President’s death. (The age of 21 is used in this law because that was the age of majority when this law was enacted. The age of majority has since been lowered to age 18.)

## Does the law cover multiple polygamous spouses?

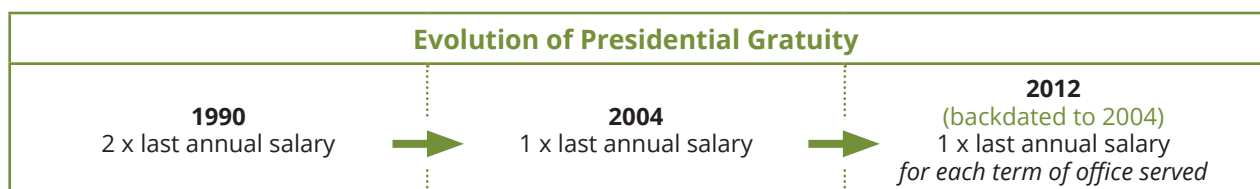


Yes. The definition of “surviving spouse” specifically includes a wife or husband under customary law. This issue gave rise to a heated debate in the National Assembly, with the Attorney-General arguing that customary law rules that allow only men to have multiple spouses offend the right to equality in the Namibian Constitution. A Minister speaking as the trustee of the Political Office Bearers’ Pension Fund said that the pensions of political office bearers are generally divided equally in cases of multiple surviving spouses, and reported that the fund was known to have paid as many as seven wives of a political office-bearer in the past.<sup>23</sup> The provision for multiple spouses remained in the law despite the debate.

## What benefits are provided to former Presidents?

A former President receives a **monthly pension** equal to either the monthly salary that he or she was last receiving as President, or 80% of the *current* President’s monthly salary – whichever amount is greater. However, the law provides a special arrangement for the first former President, who receives a monthly pension equal to either the monthly salary he or she was last receiving as President, or *100%* of the *current* President’s monthly salary – whichever amount is greater. These monthly pensions are paid from the day the President leaves office up until the date of his or her death. The annual pension amount for former President Sam Nujoma is N\$1 376 085 and the annual pension amount for former President Pohamba is N\$1 159 250.<sup>24</sup>

Any former President also receives a one-off payment for each term of office that he or she served as President, based on the annual salary he or she last received as President. This is referred to in the law as a “**gratuity**” (a term which generally refers to a voluntary tip in addition to a payment that is due). The 2004 law initially provided only a single payment of this nature, regardless of how many terms were served. Furthermore, the gratuity initially provided by this law was half of what had been set by the provisions of the 1990 law it replaced: The 1990 law provided for a gratuity equal to *two times* the President’s annual salary, while the initial 2004 law provided for a gratuity exactly *equal to* the President’s annual salary. However, the 2004 law was amended in 2012 to provide for a payment equal to the President’s annual salary *for each term of office*, with this amendment being backdated to 2004. This means, for example, that former President Sam Nujoma received a gratuity payment equal to *three times* his last annual salary as President in addition to his monthly pension, while former President Hifikepunye Pohamba received a payment equal to *two times* his last annual salary as President in addition to his monthly pension.



<sup>23</sup> Lindsay Dentlinger, “[Questions of polygamy, bigamy trip up law on package for presidents](#)”, *The Namibian*, 14 October 2004; Debates of the National Assembly, Volume 78, 13 October 2004, pages 291-297.

<sup>24</sup> Proclamation 4 of 2017 ([Government Gazette 6259](#)), issued in terms of the *Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005*.

Any former President *who was not impeached* also receives the following **additional benefits**:

**Staff:** A former President is entitled to at least ten security personnel, and more as needed, as long as Cabinet considers this necessary. A former President is also entitled to three drivers, two private secretaries, two personal assistants and two office attendants. The total personal staff component thus includes at least 19 people.



**Office and equipment:** A former President is entitled to office accommodation with telephones, computers, office furniture and other office equipment and materials as decided upon by Cabinet. The Government covers telephone, water and electricity in respect of the office.



**Housing and household:** A former President is entitled to a furnished official residence in Windhoek.

- The Government covers telephone, water and electricity in respect of the official residence.
- Alternatively, a former President may choose to take a housing allowance determined by the Cabinet, a private residence purchased or built at any place of his or her choice in Namibia, or a payment equivalent to the value of such a private residence. An allowance for telephone, water and electricity at a private residence will be provided. A private residence for a former President may not be larger than “a reasonably sized house with five bedrooms, a guest wing with three bedrooms, a study, a swimming pool, two guardrooms and four garages”.
- Any residential accommodation, official or private, includes three domestic workers, two gardeners, two cooks, two waiters and two laundry persons – for a total of 11 household staff.



**Medical aid:** Free medical aid coverage is provided to a former President and his or her spouse and dependent children under the medical aid scheme that applies to the public service, without requiring the payment of any contributions.



**Travel benefits:** A former President and his or her spouse will continue to be entitled to diplomatic passports. A former President is entitled to private first class air travel or first-class travel by rail within Namibia, up to a maximum of six trips each year. The same arrangement applies to private first class international air travel, up to a maximum of four trips per year. A spouse is covered if he or she travels with the former President on any of these trips.



**Transport:** A former President is entitled to three vehicles – one sedan (Mercedes Benz S500 Series or similar), one four-wheel drive station wagon or similar and one pick-up van. These vehicles must



be replaced at the same intervals as the vehicles of members of Cabinet. Vehicles for the security personnel and other staff serving a former President are also provided, in the numbers determined by Cabinet. Government covers fuel and maintenance costs for all of these vehicles.



**Other Benefits:** A former President is entitled to an entertainment allowance determined by Cabinet.

## What happens to the benefits when a former President dies?

*If a former President dies*, then his or her surviving spouse must be paid a **monthly pension** equal to 75% of the monthly pension amount that would have been payable to the deceased former President. The surviving spouse will receive this payment until he or she dies or remarries. If there is no surviving spouse, then this payment will go to a dependent child of the deceased former President and be paid until the dependent child dies or reaches age 21 (whichever comes first). If there is a surviving spouse who dies or remarries, then the monthly pension will continue to be paid to a dependent child until that child dies or reaches age 21.

*If a President dies during his or her term of office*, the **monthly pension** paid to the surviving spouse or dependent child is the same as for a former President who dies after leaving office – but in this case the **gratuity** that would have been paid to that President had he or she not died before leaving office will also be paid to the surviving spouse or to a dependent child.

*If a former President was living in an official residence*, then suitable State accommodation must be provided after his or her death to any surviving spouse (until death or remarriage) or if there is no surviving spouse, to any dependent child (until that child dies or reaches age 21).

## What if there is more than one surviving spouse or dependent child?

The basic rule is that the benefits are equally divided between multiple spouses or dependent children. The total benefit amount does not change.

## Are these benefits taxable?

No, they are all tax-free.

## Criticism

There was wide public debate and discussion in the media surrounding this law (both before and after it was passed), with some expressing concerns about the abundant exit package for the country's first President. For instance, some criticised the lump sum gratuity payment in addition to the monthly pension, free house and multiple cars that former Presidents enjoy.<sup>25</sup>

First President Sam Nujoma allegedly had his family home upgraded at State expense (at a cost of N\$70 million according to some, while the State maintained that the cost was actually N\$43 million), despite having received a cash payout in lieu of the cost of a private house. After news about Nujoma's house upgrade had leaked, some senior officials called on him to repay the cash he had received for housing purposes. In the case of former President Hifikepunye Pohamba, the construction of his retirement home reportedly cost about N\$35 million.<sup>26</sup>

Some Members of Parliament noted the absence of specific monetary amounts or upper limits in the law, expressing concerns that Parliament was agreeing to a "blank cheque" for former Presidents and their spouses.<sup>27</sup> Similarly, some Parliamentarians also noted that the law's scheme (when read with

<sup>25</sup> ["Underpaid Nujoma got N\\$14m"](#), *The Namibian*, 29 March 2019; Sakeus likela, ["Venaani wants ex-presidents' benefits cut"](#), *The Namibian*, 10 June 2019.

<sup>26</sup> Shinovene Immanuel and Okeri Ngutjinazo, ["Nujoma double-dips on housing benefit"](#), *The Namibian*, 22 March 2019; Shinovene Immanuel, ["Nujoma's house cost N\\$43m"](#), *The Namibian*, 27 March 2019; Sakeus likela, ["Venaani wants ex-presidents' benefits cut"](#), *The Namibian*, 10 June 2019; Shinovene Immanuel, ["Cash or mansion for Geingob"](#), *The Namibian*, 12 August 2022.

<sup>27</sup> Debates of the National Assembly, Volume 78, 6 October 2004, pages 212-214.

the law on presidential remuneration and benefits) gives power over decisions on the amount of the presidential pension to the Executive Branch, outside the control of Parliament. There was concern that this could contradict Article 33 of the Namibian Constitution, which states that Parliament must enact a law that makes provision for the payment of remuneration and allowances for the President, as well as the payment of pensions to former Presidents and their surviving spouses.<sup>28</sup> The reply from the Minister of Justice was that the requirement *to make provision for* remuneration, allowances and benefits is not the same as requiring Parliament to decide on *specific* salaries and benefits.<sup>29</sup>

Some Members of Parliament questioned the scope of the benefits for former Presidents (such as the number of security personnel and other staff, the need for multiple vehicles, and the number of private international trips that a former President and his or her spouse should be entitled to), and asked why a gratuity is necessary on top of the President's monthly pension.<sup>30</sup>

The current law does not cover the pension and benefits of former Vice-Presidents. However, as of mid-2022, the government was working on a separate law on the pension and benefits of Vice-Presidents and former Vice-Presidents.<sup>31</sup>

### Conferment of Status of Funding Father Act 16 of 2005

This law states simply that the status of "Founding Father of the Namibian Nation" is conferred on the first President of the Republic of Namibia, His Excellency Dr Sam Nujoma. The reasons for this status, cited in the Preamble to the law, are the first President's contributions to the attainment of Namibian Independence, the achievement of national reconciliation, peace and national unity and the promotion of the well-being of the people of Namibia.



## Special Advisers and Regional Governors Appointment Act 6 of 1990

### What does the law do?

This law provides for the appointment of special advisers and regional governors by the President and set out the functions of these officials.

### What is the purpose of the law?

The Namibian Constitution, from the beginning, has given the President power to appoint people to a range of specified positions, as well as the power to appoint persons required by any other law to be appointed by the President.<sup>32</sup>

This law was initially enacted to give the President power to appoint Special Advisers and regional representatives, who were not specifically mentioned anywhere in the Constitution at that stage. The

<sup>28</sup> Debates of the National Assembly Volume 78, 5 October 2004, page 175; 6 October 2004, pages 316-317.

<sup>29</sup> Debates of the National Assembly Volume 78, 12 October 2004, pages 255-257.

<sup>30</sup> Debates of the National Assembly Volume 78, 6 October 2004, pages 208-225.

<sup>31</sup> Responses by Hon. Martin Andjaba to questions posed by Hon. McHenry Venaani regarding benefits of the Former Vice-President, National Assembly, 14 March 2019; information confirmed with Ministry of Justice, 2022.

<sup>32</sup> [Namibian Constitution](#), Article 32(3)(i)(h).

law was amended in 2010 to provide for the appointment of Regional Governors instead of regional representatives.

Before 2010, the Chairpersons of Regional Councils – who are elected by the Council members – also served as Regional Governors in terms of the *Regional Councils Act 22 of 1992*. But the *Regional Councils Act* was amended in 2010 to separate the functions of Regional Governors and Regional Council Chairpersons.

As a result of the changes to these two laws, the Chairperson of a Regional Council and the Regional Governor are now entirely separate positions. The Chairperson of a Regional Council is a member of the Regional Council elected by the Regional Council members. The Regional Governor is appointed by the President and has no seat on the Regional Council.

The Namibian Constitution was amended in 2014 to endorse the approach already taken by the amendments to these two laws.

## When did the law come into force?

13 June 1990. The law was initially called the “*Special Advisers and Regional Representatives Appointment Act*”. However, the parts of the law on the appointment of regional representatives were removed in 1992. Then in 2010, when new provisions were added to the statute on the appointment of Regional Governors, the title was amended to refer to “Regional Governors” instead of “Regional Representatives”.

## Amended constitutional provisions

The 2014 constitutional amendments added new provisions on Special Advisers and Regional Governors that entrenched the approach already taken by the statute.

Article 27A, added to the Constitution in 2014, says that the President and the Vice-President may be served by Special Advisers and other persons that the President may appoint. (The Constitution does not provide any additional details, leaving this statute as the sole authority on the functions of Special Advisers.)

Article 110A, also added to the Constitution in 2014, introduced the concept of Regional Governors to the Constitution for the first time. This constitutional provision says that the President must appoint Regional Governors as political heads of each region, to serve at the pleasure of the President. The Constitution gives Regional Governors the duty to oversee the exercise of any executive function of Government in their regions, and to serve as “the link between the central Government and the Regional Council, Local Authorities and Traditional Leaders in the region concerned”.

Article 110A further requires that Regional Governors must attend a meeting of the Regional Council in their regions at least once every year, after the President’s State of the Nation address, to make a statement on the State of the Region and to report on central Government’s activities and plans for the region. They must make themselves available to answer questions after this address.

The Constitution says that Regional Governors can insist that the Regional Council of their region must meet in an urgent special session to address any matter identified by the Regional Governor.

The Constitution also gives Regional Governors a duty to report to the President, and states that the President or the Minister responsible for regional government may assign further functions to them.





## Special Advisers

### What are the qualifications of Special Advisers?

No qualifications are set out in the Constitution or the statute. The President may appoint any persons whom he or she deems fit and dismiss them at will. There is no limit on the number of Special Advisers who can be appointed. Appointments must be announced by the President by a proclamation published in the *Government Gazette*.

The *Government Gazette* is a regular government publication that anyone can subscribe to. You can find all of Namibia's *Government Gazettes* on the [LAC website](#).

### What are the functions of Special Advisers?

Special Advisers may be appointed to serve the President, the Cabinet, any Minister designated by the President or any Regional Governor. The general functions of a Special Adviser are –

- to advise the government official in question on any matter referred to the Special Adviser for investigation and advice, or on any matter identified by the Special Adviser
- to perform other functions and duties as directed by the government official in question
- to attend Cabinet meetings on invitation, but without being permitted to vote at such meetings.



### What are the conditions of service of Special Advisers?

There is no set term of office. Special Advisers serve “at the President’s pleasure”. The President is free to set any conditions of service, including remuneration and allowances, without limit. Special Advisers are designated as “public office-bearers”, so the Public Office-Bearers Commission makes recommendations to the President on their payment and benefits in terms of the *Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005* (discussed below).

### Criticism

Some commentators have expressed concerns that the appointment of Special Advisers unnecessarily increases the government wage bill, since the roles of Special Advisers sometimes duplicate the roles of other Presidential appointees (such as Ministers) who also have a duty to advise the President. Since Special Advisers can also be appointed to advise Ministers and Regional Governors, there can be numerous persons in these advisory positions. For example, it was reported in 2015 that all 14 Regional Governors had their own Special Advisers – but as of July 2022 these positions had been abolished.<sup>33</sup> With respect to Ministerial Special Advisers, by 2022 the majority had retired without being replaced. In 2015, the President appointed five Special Advisers, and there were still five Special Advisers to the President in place in 2022.<sup>34</sup>

## Regional Governors

### What are the qualifications of Regional Governors?

The Constitution says that the President must appoint a Regional Governor for every region. No qualifications are set out in the Constitution or the statute. The President may appoint any person whom he or she deems fit, and dismiss that person at will. Appointments must be announced by the President by a proclamation in the *Government Gazette*.

<sup>33</sup> Immanuel Shinovene & Tileni Mongudhi, “Govt teems with advisers”, *The Namibian*, 10 July 2015; communication with the Public Office-Bearers Commission Secretariat, dated 26 July 2022, on file with the Legal Assistance Centre.

<sup>34</sup> Debates of the National Assembly, Response to questions by Hon Venaani by Hon Kapofi, Volume 176, 24 September 2015, page 227; communication with the Public Office-Bearers Commission Secretariat, dated 26 July 2022, on file with the Legal Assistance Centre.

## What are the functions of Regional Governors?

The functions of a Regional Governor are –

- to act as the representative of the central Government in the region
- at the request of the President or the Minister responsible for regional or local government, to investigate and report on any matter relating to the region
- to stay informed of all matters relating to the region, and to bring any matter to the attention of the President or the relevant Minister as the Regional Governor considers advisable
- to settle or mediate disputes arising in the region
- generally to act as a link between central Government and the regional council, or between central Government and any local or traditional authority in the region.



The *Regional Councils Act 22 of 1992* also discusses the role of Regional Governors. This law says that a Regional Governor must be informed of every meeting of the Regional Council and the Management Committee and has the right to attend and participate in any of these meetings – but no right to vote. (The Management Committee is a subcommittee of Regional Councillors elected by all the members of that Regional Council to oversee management issues.)

## What are the conditions of service of Regional Governors?

There is no set term of office. Regional Governors serve “at the pleasure of the President”. The President is free to set any conditions of service, including remuneration and allowances, without limit. Regional Governors may be assisted by staff members of the Ministry responsible for regional government who are appointed for this purpose. The President may appoint any number of Special Advisers to serve Regional Governors.

## Reasoning behind the change of approach and some criticism

Before 2010, a Regional Governor was a member of the Regional Council who was elected to serve as the Chairperson of that Regional Council. These three roles – attending to regional issues as the Regional Governor, serving voters in the relevant constituency as a Council member, and undertaking administrative tasks as the Council Chairperson – were difficult to balance. One reason behind the separation of these roles in 2010 was to make it possible for each set of tasks to receive sufficient attention. There was also concern that it might be a conflict of interest for a single person to be concerned with the interests of an entire region at the same time as representing the interests of a particular constituency.

However the separation of roles did not necessarily have to entail Presidential appointment of Regional Governors. The main argument in favour of having Presidential appointees serve as Regional Governors is that this maintains national unity and strengthens the links between central and regional government. As President Geingob stated in 2020, the Regional Governors are his direct representatives in the regions and accountable to him.<sup>35</sup> It has been pointed out that this may be particularly important where a Regional Council is composed entirely of political parties other than the ruling party. Another argument in favour of the current approach is that it strengthens regional government by creating a direct channel from the region to the President.

<sup>35</sup> Mandisa Rasmeni, “[Geingob Appoints Regional Governors, Consisting Mostly Of New Appointees](#)”, *Namibia Economist*, 8 April 2020.

On the other hand, some believe that Regional Governors should be democratically elected, rather than appointed by the President, to make them directly accountable to the persons they govern. Some believe that this system of Presidential appointees may have been intended to counteract the power of opposition parties in the regions. Some have expressed concerns that appointed governors may struggle to get respect from their regions – especially where the ruling party does not control the Regional Council – because they might be seen as “political impostors” who have been imposed on the region.

It has also been argued that presidential appointment of Regional Governors is contrary to Namibia’s policy of decentralisation – which advocates gradually delegating more central government functions to regional and local governments, to bring government closer to the people and thus give citizens more direct opportunities to influence decision-making. Arguably the current system of presidential appointment does not make the Regional Governors accountable to those they govern.<sup>36</sup>

Yet another concern is that the current system creates the potential for conflict between the appointed governors and the elected councillors, which could end up undermining efficiencies in regional government. It has also been noted that this system could strengthen political patronage, where political positions are allocated as rewards for supporters instead of going to the most qualified persons.<sup>37</sup>

One analysis has suggested that the decline in voter turnout in regional elections since 2010 may be related to the new system of appointed regional governors which was introduced that year, saying that voters “may perceive regional elections as having minimal interest since they have little influence in the appointment of the regional governors”.<sup>38</sup>

### COMPARISON OF FUNCTIONS Regional Council Chairperson versus Regional Governor

<b>Regional Council Chairperson</b> (a member of the Regional Council elected by the Regional Council members) <i>Regional Councils Act 22 of 1992</i>	<b>Regional Governor</b> (any person appointed by the President) <i>Special Advisers and Regional Governors                      Appointment Act 6 of 1990</i>
● serves as the “political head” of the region	● acts as the representative of the central Government in the region
● initiates and formulates planning and development policies in consultation with Council	● stays informed of all matters relating to the region, and brings any matter to the attention of the President or the relevant Minister as the Regional Governor considers advisable ● at the request of the President or the Minister responsible for regional or local government, investigates and reports on any matter relating to the region
● closely monitors the implementation of these planning and development policies	
● initiates joint business ventures and the commercialisation of services, functions or duties	
● supervises the planning and implementing of all development programmes and projects	● generally acts as a link between central Government and the regional council or any local or traditional authority in the region
● is accountable to the Government and to the residents of the region	
● in consultation with the Regional Council, investigates and tries to solve any issue pertaining to the region	● settles or mediates disputes arising in the region

<sup>36</sup> Julia Heita and Andrew Kathindi, “Regional Governors ... Geingob Defends Right To Appoint Governors”, Eagle FM, 2 Sep 2021.

<sup>37</sup> For a summary of opinions from various sources, see Nangula Shejvali, “Regional Governors: The Good, The Bad And The Ugly Do The Benefits Of Appointment By The President Outweigh The Loss Of Democratic Representation?”, Election Watch, *Briefing Paper No. 2*, IPPR, 2015. See also Confidence Musariri “A tale of two governors”, *The Villager*, 11 March 2013.

<sup>38</sup> Selma el Obeid & John Mendelsohn, *SWAPO: The Beginning of the Political Challenge*, French Institute of International Relations (Ifri), 2022, page 11.

# Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005

## What does the law do?

This law sets up a “Public Office-Bearers Commission” to investigate and consider the remuneration, benefits and other conditions of office of public office-bearers. It authorises the President to issue proclamations declaring a person to be a public office-bearer and determining the remuneration (salary) and benefits for public office-bearers.

## What is the purpose of the law?

Before this law came into force, the payments and other conditions of service for public office-bearers were determined by Cabinet, which created a conflict of interest. The purpose of the law was to ensure greater independence and transparency in payments to public office-bearers, by establishing an independent body to undertake regular investigations into these matters and to make recommendations to the President.

## When did the law come into force?

3 August 2005.

## Who is a “public office-bearer”?

A “public office-bearer” is a **Member of Parliament**, a **member of a Regional Council**, and any other person that the President has identified as a public office-bearer by proclamation in the *Government Gazette*.

As of 2022, the President had identified the persons holding the **following additional offices** as office-bearers:

- Vice-President
- Prime Minister
- Deputy-Prime Minister
- Auditor-General
- Attorney-General
- Speaker: National Assembly
- Chairperson: National Council
- Deputy-Speaker: National Assembly
- Vice-Chairperson: National Council
- Ministers
- Deputy-Ministers
- Director-General: Namibia Central Intelligence Service
- Director-General: National Planning Commission
- Regional Governors
- Chairperson: Regional Councils
- Chairperson: Public Service Commission
- members of the Public Service Commission
- Special Advisors: Presidential
- Special Advisors: Ministerial
- any other Special Advisors appointed in terms of the *Special Advisers and Regional Representatives Appointment Act 6 of 1990*.<sup>39</sup>

<sup>39</sup> Proclamation 6 of 2008 ([Government Gazette 3983](#)), Proclamation 30 of 2015 ([Government Gazette 5838](#)), and Proclamation 12 of 2021 ([Government Gazette 7476](#)) as amended by Proclamation 12 of 2022 ([Government Gazette 7805](#)). Proclamation 6 of 2008 initially included the Secretary to Cabinet, the Inspector-General of Police, the Chief of the Defence Force and the Commissioner of Prisons, but these positions were withdrawn by Proclamation 16 of 2013 ([Government Gazette 5188](#)). See also Proclamation 32 of 2015 ([Government Gazette 5838](#)), which refers to the determination of the remuneration payable to the Prime Minister by the President on the recommendation of the Commission in terms of this Act.

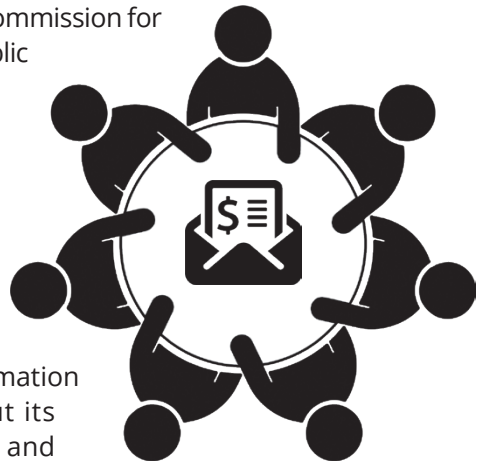
According to the Commission, the Chairperson of the Electoral Commission of Namibia, the Ombudsman, and the Director-General and Deputy Director-General of the Anti-Corruption Commission are public office-bearers under separate laws which guarantee their independence, so they do not fall under this law. Similarly, judges resort under the Judicial Service Commission and so are not covered. Communication with the Public Office-Bearers Commission Secretariat, dated 26 July 2022, on file with the Legal Assistance Centre.

## Who serves on the Public Office-Bearers Commission?

The President appoints seven persons to serve part-time on the Commission for three-year terms. Members are eligible for re-appointment. Public office-bearers may not serve as members of the Commission, since this would be a conflict of interest.

## What does the Commission do?

The Commission's main function is to advise the President on remuneration for public office-bearers. The Commission may act on its own initiative, or on instructions from the President. It may conduct or commission research or get information from any public body or institution to enable it to carry out its functions. After making any investigations it finds necessary, and after consulting with the Minister of Finance, the Commission makes recommendations to the President on payments and benefits for public office-bearers.



The Commission must meet at least once a year. It is also required to submit an annual report to the President on its activities during the past year. The President must submit a copy of the report to the National Assembly and the National Council each year.

## How does the President set payments and benefits after considering the Commission's recommendations?

The President is ultimately responsible for setting payments and benefits for public office-bearers, after considering:

- the Commission's recommendations
- the role and functions of different categories of public office-bearers
- the financial means of the State
- the current principles and levels of remuneration in society in general
- inflation rates.

The President may set different rates of payment and benefits for different categories of public office-bearers. The final decisions on payments and benefits for public office-bearers must be announced by proclamation in the *Government Gazette*.

According to the Commission, benefits include pension, medical aid, housing, utilities, transportation allowances and the use of official vehicles.<sup>40</sup>

## What principles guide the work of the Commission?

In its 2012 report, the Commission set out the principles that it used to guide its work on public officer-bearer remuneration at that time. These are not set out in the law, but were developed by the Commission.

- The remuneration should provide a reasonable standard of living to attract and retain persons with high levels of skills and talent to public office.
- In light of the high unemployment and poverty prevalent in the country, increases in public office-bearer remuneration should not be of a nature that enriches public office bearers.

<sup>40</sup> Public Office-Bearers Commission, [Preliminary First Review Report 2012](#), page 11.



- Care should be taken to avoid setting a precedent that will lead to excessive pay demands from the rest of the public sector.
- Public office-bearer remuneration should encourage the viability of public office and contribute to good governance.
- Public office-bearer remuneration should take into account the availability of resources to ensure sustainability and should not overburden the state.
- Public office-bearer remuneration should be easy to administer.
- Public office-bearer remuneration must be appropriate for the powers, duties and responsibilities of public office, and should be justifiable to an informed member of the public.
- Public office-bearer remuneration must be fair, and there should be parity between similar organs of state.

## Criticism and recommendations

The Public Office-Bearers Commission summarised some of the debates around the payment and benefits of government officials in its first “review report” published in 2012:

Public office bearer pay is a subject that evokes strong emotions. At the one extreme is the view that the political establishment exists for no good purpose except to siphon public resources for own benefit. The other extreme is represented by the view that public officials’ pay must be comparable to private sector executives. Both views have their adherents. The former view is driven principally by the media, who feel that public office bearer pay is nothing but a ‘gravy train’. The latter view is somewhat more optimistic in that it advocates competitive remuneration for public office bearers.

The first view is problematic and too simplistic... . The second view loses sight of the fact that there is a public service side to political office that makes the blanket comparison with private sector pay unpalatable and indefensible. Whatever one’s predisposition, the reality is that the Constitution creates the executive and legislative arms of government as important machinery for the orderly governance of the nation. They are thus important symbols of our democracy. But they do not come without a cost... . Without preferring one view over the other, in this Report the Commission seeks to deal with the matter in a dispassionate way guided by three considerations: the reasonable expectations of public office bearers; international good practice; and affordability.<sup>41</sup>

The Commission took note of media criticism that public office-bearers do not provide sufficient “value for money” and that public sector pay is excessive in relation to the poverty suffered by the majority of the people of Namibia. They also referenced media reports stating that Namibia’s civil service is too “bloated” and consumes too many public resources.<sup>42</sup>

The Commission’s response was that public office-bearers should receive reasonable remuneration in light of their duties and responsibilities and the prevailing cost of living, keeping in mind Namibia’s economic and social context. It made its recommendations after considering Namibia’s economic situation and outlook, and taking into consideration the remuneration paid by the private sector in Namibia as well as the approach taken to payment of public office-bearers in a range of other countries.<sup>43</sup>

Speaking about the responsibilities of public office-bearers, the Commission stated that they “must provide transparent, effective, accountable and coherent governance that observes a high standard of professional ethics and a sense of public mission”.<sup>44</sup> It made the following comment:

<sup>41</sup> Public Office-Bearers Commission, [Preliminary First Review Report 2012](#), page 11.

<sup>42</sup> Public Office-Bearers Commission, [Preliminary First Review Report 2012](#), page 34.

<sup>43</sup> Public Office-Bearers Commission, [Preliminary First Review Report 2012](#), pages 9, 17-ff.

<sup>44</sup> Public Office-Bearers Commission, [Preliminary First Review Report 2012](#), page 9.

Democracy comes at a cost. The Rule of Law requires well-functioning institutions and incorruptible officials. To the extent that material benefits can assist in achieving these objectives every effort must be made to do so within the framework of aligning duties and responsibilities to fair remuneration. People are motivated if they are content in their working environment and have the means to cater for their reasonable needs. They become less interested in doing their work if their very existence is nothing more than a daily struggle for survival. They are tempted to find illegal means to gain access to resources if they cannot make ends meet lawfully.<sup>45</sup>

In its second “review report”, dated 2017 (but released only in 2022), the Commission concluded that Namibia is in need of a coherent, policy-driven, evidence-based framework for public sector remuneration overall, including remuneration of public office-bearers, based on the following main pillars:

- High-level political oversight of the public sector wage bill to preserve national solvency
- Depoliticisation of public sector remuneration and benefits through the creation of a quasi-judicial pay review mechanism
- Institutionalising relativity throughout the public sector
- Sustaining public confidence in the governance process by institutionalising performance standards in the public sector.<sup>46</sup>

### Combating Corruption by Public Office-Bearers

The Institute for Public Policy Research has made some recommendations on tools to combat corruption by public office-bearers, including the following suggestions:

- mechanisms for the declaration of financial interests by public office-bearers and for managing conflicts of interest that come to light
- disclosure of gifts made to public office-bearers in a Gifts Register that is accessible to the public, to discourage attempts by business to bribe or influence public office-bearers.<sup>47</sup>

In December 2021, the Anti-Corruption Commission released a *National Anti-Corruption Strategy and Action Plan 2021-2025* which calls for “concerted efforts to maintain a ‘healthy’ nation premised on ethics, accountability, transparency and well maintained, high integrity systems for accelerated sustainable national development”. The Strategic Objectives of this Plan include “Increasing the level of political accountability and transparency” and “Preventing corruption in government offices, ministries and agencies, public enterprises, regional councils, local and traditional authorities”.

Some measures identified to move towards these ends include:

- annual reports on compliance by Members of Parliament with the rules on asset disclosure
- training courses and periodic seminars for Members of Parliament and their staff on corruption-related issues
- strengthening parliamentary and public oversight and follow-up measures
- periodic reviews of service delivery by public institutions
- assessments of corruption risk management by public bodies
- Integrity Committees and integrity pledges in public institutions
- specific anti-corruption and transparency policies and procedures in the public service.<sup>48</sup>

<sup>45</sup> Public Office-Bearers Commission, [Preliminary First Review Report 2012](#), page 35.

<sup>46</sup> Public Office Bearers Commission, *Second Review Report Concerning Namibia's Public Sector Remuneration Framework: The Case for Reform and Improving Public Office-Bearer's Tools of Trade and Related Benefits*, at pages 15-16 and 24, as quoted in communication with the POBC dated 26 July 2022, on file with the LAC.

<sup>47</sup> Johan J Coetzee, “[The Role of the Private Sector in Tackling Corruption](#)”, IPPR, April 2018.

<sup>48</sup> Anti-Corruption Commission, Directorate of Public Education and Corruption Prevention, [National Anti-Corruption Strategy and Action Plan 2021-2025](#), December 2021. See pages 9, 20, 22-26 and 43 (Strategic Objectives (1) and (2)).

## Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999

This law establishes a pension fund for Members of Parliament and other office-bearers. It replaces the Members of Parliament and other Office-bearers Pensions Act 21 of 1990.



## Medical Scheme for Members of the National Assembly, Judges and other Office Bearers Act 23 of 1990

This law extends membership of the medical scheme established for the public service under the Public Service Act 2 of 1980 to members and former members of the National Assembly, judges and former judges of the Supreme Court and the High Court, and certain other office-bearers and other persons, and to the surviving spouses of all these officials.

## Annual salary and benefits for key members of the Executive Branch, 2022 (other than President and Vice-President)

As of 2022, the most recent amendments to the salaries and benefits of key officials in the Executive Branch had been announced in the *Government Gazette* in 2017. No transport allowance is provided for the officials listed in the table because they are entitled to use official transport.<sup>49</sup>

	Basic Salary	Water & Electricity	Housing Allowance	Telephone Allowance	Total Remuneration
<b>Prime Minister</b>	N\$1 040 518	Total usage at Government's expense	N\$222 376	Total usage at Government's expense	<b>N\$1 326 248</b>
<b>Deputy-Prime Minister</b>	N\$850 243	Total usage at Government's expense	N\$222 376	Total usage at Government's expense	<b>N\$1 083 723</b>
<b>Minister</b>	N\$809 809	N\$55 560	N\$222 376	N\$1 440	<b>N\$1 089 185</b>
<b>Attorney-General</b>	N\$809 809	N\$55 560	N\$222 376	N\$1 440	<b>N\$1 089 185</b>
<b>Auditor-General</b>	N\$809 809	N\$55 560	N\$222 376	N\$1 440	<b>N\$1 089 185</b>
<b>Special Advisor to President</b> (most senior)	N\$809 809	N\$55 560	N\$222 376	–	<b>N\$1 087 745</b>
<b>Deputy-Minister</b>	N\$579 824	N\$48 240	N\$159 222	N\$1 080	<b>N\$788 366</b>
<b>Regional Governor</b>	N\$579 824	N\$48 240	N\$159 222	N\$1 080	<b>N\$788 366</b>
<b>Chairperson: Public Service Commission</b>	N\$579 824	N\$48 240	N\$159 222	N\$1 080	<b>N\$788 366</b>

<sup>49</sup> Proclamation 4 of 2017 ([Government Gazette 6259](#)).



# Statutes relating to the Public Service

## Public Service Commission Act 2 of 1990

### What does the law do?

This law sets up the Public Service Commission, which manages and regulates Government employees. These employees as a group are referred to as the “public service” because their job is to serve the public.

### What is the purpose of the law?

The law implements the provisions of the Namibian Constitution on the Public Service Commission and provides additional detail on its powers, functions and duties.

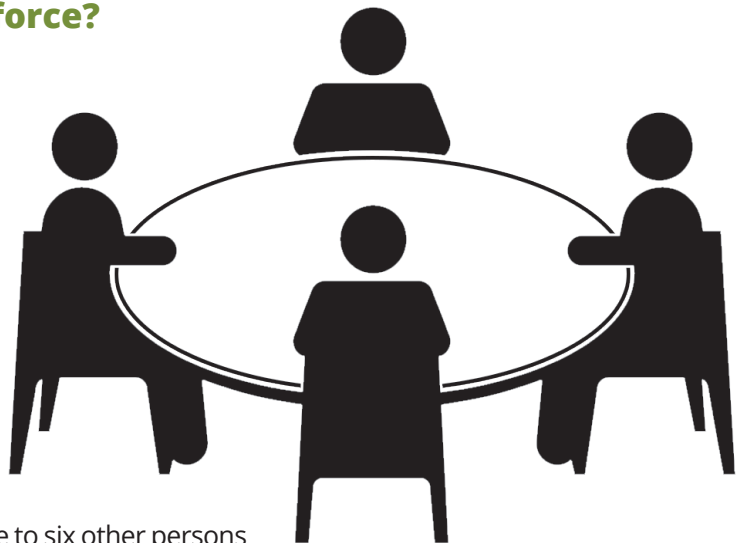
### When did the law come into force?

8 June 1990.

### Constitutional provisions

The Constitution provides the basis for the establishment of the public service. It also establishes the Public Service Commission and sets out its key functions.

As explained in the summary of the constitutional framework for the Executive Branch, the **Public Service Commission** must be made up of a Chairperson and three to six other persons nominated by the President and appointed by the National Assembly for five-year terms. Members are eligible for reappointment. The Public Service Commission must be independent and act impartially.<sup>1</sup>



The **functions** of the Public Service Commission are to advise the President and the Government on:

- the appointment of suitable persons to specified categories of employment in the public service
- adequate disciplinary control over public service employees, to assure the fair administration of personnel policy
- the salary and benefits of public service employees
- other matters relating to the public service in terms of any law.

<sup>1</sup> [Namibian Constitution](#), Article 112; [Public Service Commission Act 2 of 1990](#), section 2.

The Commission also has the power to carry out any other functions assigned to it by any other law and to advise on Presidential appointments if it is asked for input by the President.<sup>2</sup>

The Public Service Commission is constitutionally required to pay special attention to the **balanced structuring of the public service**. This means that the Commission must ensure that the public service is a mixture of men and women, and people of all races and ethnic groups in Namibia.<sup>3</sup>



## NAMIBIAN CONSTITUTION: CHAPTER 13 The Public Service Commission

### Article 112: Establishment

- (1) There shall be established a Public Service Commission which shall have the function of advising the President on the matters referred to in Article 113 hereof and of reporting to the National Assembly thereon.
- (2) The Public Service Commission shall be independent and act impartially.
- (3) The Public Service Commission shall consist of a Chairperson and no fewer than three (3) and no more than six (6) other persons nominated by the President and appointed by the National Assembly by resolution.
- (4) Every member of the Public Service Commission shall be entitled to serve on such Commission for a period of five (5) years unless lawfully removed before the expiry of that period for good and sufficient reasons in terms of this Constitution and procedures to be prescribed by Act of Parliament. Every member of the Public Service Commission shall be eligible for reappointment.

### Article 113: Functions

The functions of the Public Service Commission shall be defined by Act of Parliament and shall include the power:

- (a) to advise the President and the Government on:
  - (aa) the appointment of suitable persons to specified categories of employment in the public service, with special regard to the balanced structuring thereof;
  - (bb) the exercise of adequate disciplinary control over such persons in order to assure the fair administration of personnel policy;
  - (cc) the remuneration of any such persons;
  - (dd) all other matters which by law pertain to the public service;
- (b) to perform all functions assigned to it by Act of Parliament;
- (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.

## What are the qualifications of the members of the Public Service Commission?

Both the Constitution and the *Public Service Commission Act* are silent on this issue.

## What are the conditions of service of the members of the Public Service Commission?

The salaries and other conditions of service of Commission members are set by the President, but their salaries cannot be reduced except by a statute passed by Parliament. This prevents a President from using the power to set the conditions of service as a mechanism to influence the Commission's decisions.

<sup>2</sup> [Namibian Constitution](#), Article 113.

<sup>3</sup> [Namibian Constitution](#), Article 113(a)(aa); see also Article 91(b).



Members of the Commission are not allowed to do outside work unless the President has given permission for this. This rule helps prevent conflicts of interest.

The President can remove members of the Commission if they are suffering from continued ill-health, if they have committed misconduct, or if they are for any reason unfit for the duties of their office or incapable of carrying out their duties efficiently. The President can also remove members of the Commission to promote efficiency, even if there is no unfitness or incapacity on their part.

If the President removes a member of the Commission, the decision and the reasons for it must be communicated to the National Assembly within 14 days (or, if the National Assembly is not in session at the time, on the first day of its next session). The National Assembly must then ratify the President's decision within 21 days of receiving the communication. If it fails to do so, then the President must reinstate the member.<sup>4</sup> This is an example of the checks and balances between the Executive and Legislative Branches of government.

## Powers, functions and duties of the Public Service Commission

In addition to the duties set out in the Namibian Constitution, the Commission may advise the President and the Government generally on the employment, remuneration or other conditions of service of persons paid out of State funds. This includes the staff or office-bearers of any councils, boards, institutions or other bodies, including (if requested by the President) parastatals. Where a matter has been referred to the Commission for advice, it has the power to inspect official documents and records to inform itself of the relevant facts.<sup>5</sup>



The Commission also has the power to hold enquiries and to summon people to an enquiry to give information or to provide relevant documents. For example, it can use this power to investigate complaints of corruption in the hiring process, or complaints by specific public service employees about unfair treatment.<sup>6</sup> It is a crime to hinder or prevent anyone from obeying a summons issued by the Commission. It is also a crime to give false information in an enquiry.<sup>7</sup>

The Commission may establish committees to assist and advise it on any aspect of its functions and duties. Such committees can be made up of members of the Commission plus up to three additional committee members appointed by the Commission because of their expert knowledge.<sup>8</sup>

The Commission also has the power to exercise powers, functions and duties conferred on it by the President for the promotion of efficient administration.<sup>9</sup>

Other functions of the Public Service Commission are described in the *Public Service Act 13 of 1995*, which is summarised below.

With a few exceptions, the members of the Commission can delegate their power, duties and functions to staff members of the Commission. The exceptions concern carrying out key constitutional duties, compiling annual reports, advising on requests for permission to do outside work, and advising the Prime Minister on employment decisions.<sup>10</sup>

<sup>4</sup> *Public Service Commission Act 2 of 1990*, sections 3-4.

<sup>5</sup> *Public Service Commission Act 2 of 1990*, section 6; *Namibian Constitution*, Article 40(a).

<sup>6</sup> See, for example, US State Department, *Namibia 2016 Human Rights Report*, page 11.

<sup>7</sup> *Public Service Commission Act 2 of 1990*, section 7.

<sup>8</sup> *Public Service Commission Act 2 of 1990*, section 6(4).

<sup>9</sup> *Public Service Commission Act 2 of 1990*, section 6(5).

<sup>10</sup> *Public Service Commission Act 2 of 1990*, section 8.



## Annual reports

The Commission must compile an annual report on its activities, which must be provided to the National Assembly. It can also compile special reports as it sees fit.<sup>11</sup>

## Criticism

Some have suggested that the Public Service Commission should have **more independent control** over the public service, as opposed to the present approach where its primary role is to present advice and recommendations for approval by the Prime Minister or the President. Some say that the current system creates a duplication of roles and thus wastes resources and dilutes disciplinary control. Thus, some have called for law reform to give the Commission more direct enforcement powers as an oversight body.

It has also been suggested that the Commission's duty to act independently and impartially would be enhanced if it had an **independent secretariat and an independent budget vote**, like the Anti-Corruption Commission and the Electoral Commission of Namibia, instead of resorting under the Office of the Prime Minister.

Some have pointed to the need for **more specifics about the role of the Secretary to Cabinet** who is the head of the public service in terms of the Namibian Constitution, subject to the control and directions of the Prime Minister, who is the head of administration.<sup>12</sup>

# Public Service Act 13 of 1995

## What does the law do?

This law governs the management of the public service, which refers to Government employees. It also provides for the employment, conditions of service, discipline, retirement and discharge of Government employees.

## What is the purpose of the law?

The public service is Namibia's largest employer. The law sets out rules and procedures for the employment relationship with Government. It supplements the *Labour Act 11 of 2007*, with the goal of creating an efficient and effective public service.

## When did the law come into force?

1 November 1995. It replaced the *Public Service Act 2 of 1980*, which was originally named the *Government Service Act 2 of 1980*.

## Who is included in the public service?

The public service includes all persons employed by Government, whether they are employed permanently or temporarily, and whether they work on a full-time or part-time basis. It also covers persons who are employed in terms of contracts. Public service employees also include "members of the services", which means members of the Namibian Defence Force, the Namibian Police Force and the Correctional Service.

<sup>11</sup> *Public Service Commission Act 2 of 1990*, section 10.

<sup>12</sup> See, for example, Wezi Tjaronda, "[Pressure to Reform Public Service Commission](#)", *New Era*, 22 May 2007.

The following employees are *not* part of the public service:

- staff of regional councils – although some provisions of the *Public Service Act* are made applicable to these staff members<sup>13</sup>
- staff of local authority councils<sup>14</sup>
- employees of parastatals.<sup>15</sup>

## What does the Namibian Constitution say about the public service?

The Constitution provides the basis for the establishment of a public service. It provides for the appointment of the Prime Minister and the Secretary to the Cabinet – which is relevant because the Secretary to the Cabinet is the head of the public service, subject to the control and directions of the Prime Minister, who is the head of administration.<sup>16</sup>

**Cabinet** is a group of government officials who advise the President and administer and execute the functions of the Government. Its members are the President, the Vice-President, the Prime Minister, the Deputy-Prime Minister and the Ministers appointed by the President.

The Constitution sets out the President's powers to appoint certain persons in the public service. The President, acting in consultation with Cabinet and on the recommendation of the Public Service Commission, may constitute any office in

The **Public Service Commission** is made up of a Chairperson and three to six other persons nominated by the President and appointed by the National Assembly. It has a duty to be independent and impartial. The *Public Service Commission Act 2 of 1990* is summarised above.

the public service that does not already exist, appoint persons to such offices and determine their conditions of service. Such appointments must be announced in a Proclamation published in the *Government Gazette*. Persons appointed by the President to the public service can be removed by the same process.

To provide a check and balance of power between the Legislative and Executive Branches, the National Assembly can review, reverse or correct any action taken by the President in respect of such appointments. This requires a resolution proposed by at least one-third of all the members of the National Assembly and passed by a two-thirds majority of all its members.<sup>17</sup>

### OVERVIEW OF NAMIBIA'S PUBLIC SERVICE

"The Constitution of Namibia provides the framework for service delivery in the country. At national level, the provision of an efficient and effective public service was provided for in the [*Public Service Act 13 of 1995*]. Part 1 of the Act provides for an impartial and professional public service characterised by efficiency and effectiveness in providing service to the government in policy formulation and evaluation. The Act further states that the public service should be prompt in executing government policies and directives to serve the Namibian people and to promote their welfare and lawful interests. To further strengthen the effectiveness and efficiency of public service delivery functions of government, some functions have been delegated to regional and local governments.

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The Government has carried out several reforms to enhance the productivity of the public service at all levels. The first institutional reforms implemented shortly after independence aligned the public service with the Constitution and set up an independent Public Service Commission to recruit, appoint, promote and discipline public servants. Subsequent reforms focused on capacity enhancements, including the

<sup>13</sup> *Regional Councils Act 22 of 1992*, sections 23-24.

<sup>14</sup> *Local Authorities Act 23 of 1992*, section 27.

<sup>15</sup> See *Public Enterprises Governance Act 1 of 2019*, section 4(1)(e).

<sup>16</sup> *Namibian Constitution*, Articles 36 and 43; *Public Service Act 13 of 1995*, section 10.

<sup>17</sup> *Namibian Constitution*, Article 32.

establishment of the Namibia Institute of Public Administration and Management (NIPAM), to equip public servants with needed skills, knowledge and expertise. Efforts have also been made to automate office processes through deployment of ICT facilities in Offices, Ministries and Agencies, regional government and local authority offices. However, in engagements with stakeholders, the review team was made aware of dissatisfaction with the performance of the public service. This is said to be one of the reasons for the low execution of budget targets and poor delivery of services witnessed in some parts of the country. Government has tried to address the capacity issue in several ways, including introducing performance contracts, an initiative which is still being rolled out across Offices, Ministries and Agencies.

There is a perceived increase in the level of corruption in the public sector despite the establishment of the Anti-Corruption Commission, Ombudsman Office and the Public Procurement Board... the Ombudsman's Office is limited in coverage to the capital and a few regions. The Anti-Corruption Commission has a mixed record of performance and appears more capable of dealing with less powerful people. Many of those Namibians who engaged the review team considered the procurement system as being rigged to favour the powerful, educated, well-connected and willing givers rather than being genuinely competitive, transparent and fair."

African Union, African Peer Review Mechanism, [Namibian Review Report: Key Highlights](#), 2022, pages 6 and 13

## International obligations relating to the public service

Namibia is a party to the **African Charter on Values and Principles of Public Service and Administration**. This Charter covers the duties of public servants to provide equal and non-discriminatory access to public services, with respect for the human rights of all users. It also promotes access to information related to service delivery, and efficient and quality service. The Charter includes a *Code of Conduct for Public Service Agents*, covering professionalism, ethical behaviour, conflicts of interest, the declaration of assets and steps to prevent and combat corruption. In addition, it guarantees the rights of public service employees to equality and non-discrimination, freedom of expression and association (with due consideration of their status as public servants) and a safe working environment free of threats, insults, harassment, aggression and sexual harassment. It calls for a coherent and harmonised pay system based on qualifications, responsibilities, performance and tenure, as well as guaranteeing rights to leave, social security and retirement benefits.<sup>18</sup>

Namibia is also a party to **ILO Convention No. 51 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service**. This Convention is designed to protect public service employees from anti-union discrimination, to protect their rights to establish independent public employees' organisations, and to encourage negotiation between Government and employee organisations on the terms and conditions of employment in the public service. It also encourages the use of mechanisms such as mediation, conciliation and arbitration to settle employment disputes concerning public servants. It further states that public employees have the same entitlement to the right of freedom of association and related rights as employees in other sectors, except where this interferes with the obligations arising from their status and functions.<sup>19</sup>

## Mission of the public service

The law says that the public service must be "impartial and professional in its effective and efficient service to the Government in policy formulation and evaluation and in the prompt execution of Government policy and directives so as to serve the people of the Republic of Namibia and promote their welfare and lawful interests".<sup>20</sup>



<sup>18</sup> [African Charter on Values and Principles of Public Service and Administration](#), which became binding on Namibia on 23 July 2016.

<sup>19</sup> [ILO Convention No. 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service](#), which became binding on Namibia on 20 September 2019.

<sup>20</sup> [Public Service Act 13 of 1995](#), section 2.

## Organisation of the public service

The public service is organized into offices, ministries and agencies. The President determines the functions of these bodies. Each must have an executive director as its administrative head.<sup>21</sup>

ORGANISATION OF THE PUBLIC SERVICE, 2022			
Offices	Ministries		Agencies
1. Office of the President	1. Ministry of Agriculture, Water and Land Reform	11. Ministry of Industrialisation and Trade	1. Anti-Corruption Commission
2. Office of the Prime Minister	2. Ministry of Defence and Veteran Affairs	12. Ministry of Information and Communication Technologies	2. Auditor-General
3. Office of the Judiciary	3. Ministry of Education, Arts and Culture	13. Ministry of International Relations and Co-operation	3. Electoral Commission of Namibia
	4. Ministry of Environment, Forestry and Tourism	14. Ministry of Justice	4. Namibia Central Intelligence Services
	5. Ministry of Finance	15. Ministry of Labour, Industrial Relations and Employment Creation	5. National Assembly
	6. Ministry of Fisheries and Marine Resources	16. Ministry of Mines and Energy	6. National Council
	7. Ministry of Gender Equality, Poverty Eradication and Social Welfare	17. Ministry of Public Enterprises <i>(still listed as a Ministry in the Act, but in practice transformed into a department in the Ministry of Finance in 2022)</i>	7. National Planning Commission
	8. Ministry of Health and Social Services	18. Ministry of Sport, Youth and National Service	8. Regional Councils
	9. Ministry of Higher Education, Technology and Innovation	19. Ministry of Urban and Rural Development	
	10. Ministry of Home Affairs, Immigration, Safety and Security	20. Ministry of Works and Transport	

### Public Service Commission

The Public Service Commission plays an important role in providing advice and recommendations about matters related to the public service. However, the President may reject or adapt any of its “recommendations” and the Prime Minister may reject any of its “advice”.<sup>22</sup>

<sup>21</sup> [Public Service Act 13 of 1995](#), section 3(3).

<sup>22</sup> [Public Service Act 13 of 1995](#), section 9. The terms “recommendation” and “advice” seem to have different meanings. The Act refers to “recommendations” made to the Prime Minister on some issues, and “advice” to the Prime Minister on other issues – with “advice” to the Prime Minister involving a far more limited set of decisions than “recommendations”.



## Prime Minister

The Prime Minister, who is appointed by the President, directs the public service.<sup>23</sup>

The Prime Minister is responsible for appointments, promotions, transfers and discharges of members of the public service.<sup>24</sup>

The Prime Minister also decides on:

- the number and grading of posts in the public service
- categories of employment in the public service, the designations of various posts and ranks, and the re-grading and conversion of posts and ranks
- salary scales and allowances for different posts and ranks
- qualifications for appointment, promotion or transfer (such as age, education, language qualifications, training or experience), where these are not set by any law
- conditions for overtime work
- levels of staffing
- personnel and career development
- conditions of service, including the establishment of a pension fund for staff members and their dependants
- the use of private consultants, private persons and private contractors to carry out work for the public service.

The Prime Minister can alter the organisational components of offices, ministries or agencies, adjust the assignments of functions within these bodies, and advise the President on the transfer or abolishment of functions. All of these decisions must be carried out on the recommendation of the Commission.<sup>25</sup>

The Prime Minister also has certain duties which do not require recommendations from the Public Service Commission:

- to provide training that may be required for any appointment, promotion or transfer, including examinations or tests
- to keep records of staff members in the public service
- to co-ordinate the performance of the functions of the Government by the public service
- to promote efficiency by improving procedures or supervision, simplifying work or eliminating unnecessary work, co-ordinating work, limiting the number of staff members in the public service or utilising the services of staff members more effectively, employing labour-saving aids such as machinery and computers, and ensuring cost-effective utilisation of State facilities and properties.<sup>26</sup>

The Prime Minister has the power to make enquiries into the efficient functioning of offices, ministries and agencies and their staff members. This may include summoning staff members to provide information or accessing official documents.<sup>27</sup>

The Prime Minister has the authority to make regulations under the Act on matters such as conditions of service, disciplinary procedures and procedures for dealing with staff grievances. Regulations may also provide for the establishment and management of a medical aid scheme for staff members, negotiation and collective bargaining with recognised trade unions and a code of conduct for staff members.<sup>28</sup>

<sup>23</sup> [Namibian Constitution](#), Article 32(3)(i)(bb); [Public Service Act 13 of 1995](#), section 5(2).

<sup>24</sup> [Public Service Act 13 of 1995](#), section 5(1).

<sup>25</sup> [Public Service Act 13 of 1995](#), section 5(2)-(3).

<sup>26</sup> [Public Service Act 13 of 1995](#), section 5(2)-(3).

<sup>27</sup> [Public Service Act 13 of 1995](#), section 6.

<sup>28</sup> [Public Service Act 13 of 1995](#), section 34.

The Prime Minister may delegate his or her powers and duties under this law – except the power to make regulations – to staff members.<sup>29</sup>



### Secretary to the Cabinet

The Secretary to the Cabinet, who is appointed by the President from a list of candidates submitted by the Prime Minister, is the head of the public service, subject to the control of the Prime Minister.<sup>30</sup>

It is the duty of the Secretary to the Cabinet to be responsible to the Prime Minister for the efficiency and effectiveness of the public service, to co-ordinate the executive directors, and to ensure that technical and administrative support is provided to the Commission.<sup>31</sup>



### Executive Directors

Executive directors are appointed by the Prime Minister from a list of candidates submitted by the Secretary to the Cabinet.<sup>32</sup>

Executive directors are appointed under fixed-term contracts for periods of five years or less.<sup>33</sup> This requirement was added to the law in 2018, to facilitate meaningful performance evaluations.<sup>34</sup>

Executive directors have the following functions, subject to the direction and control of the President:

- to advise the President, Prime Minister or the relevant minister on policy formulation and implementation, and to brief them on all major issues falling within their areas of responsibility
- to be accountable for the efficient management and administration of their office, ministry or agency, including the proper training and utilisation of its staff members, discipline of its staff members, and proper use and care of the property under its control.<sup>35</sup>

Until 2018, “**Executive Directors**” were known as “Permanent Secretaries”. The change of terminology was intended to end the misconception that these officials are appointed to serve permanently.

Brandon van Wyk,  
“[Govt Explains Dropping of Permanent Secretary Title](#)”,  
*The Namibian*, 31 January 2019

Executive directors can delegate their functions to staff members.<sup>36</sup>

## Are employees in the public service covered by the Labour Act?

Yes. Employees in the public service are covered by the *Labour Act 11 of 2007*, which sets out basic conditions of employment, as well as being additionally regulated by the *Public Service Act*. If there is a conflict between the two laws, the rule that is more favourable to the employee applies.<sup>37</sup>

<sup>29</sup> *Public Service Act 13 of 1995*, section 7.

<sup>30</sup> *Namibian Constitution*, Article 43; *Public Service Act 13 of 1995*, sections 10(a) and 19(b).

<sup>31</sup> *Public Service Act 13 of 1995*, section 10.

<sup>32</sup> *Public Service Act 13 of 1995*, section 19.

<sup>33</sup> *Public Service Act 13 of 1995*, section 19A.

<sup>34</sup> Kuzeeko Tjitemisa, “[Bill proposes fixed contracts for permanent secretaries](#)”, *New Era*, 22 November 2018.

<sup>35</sup> *Public Service Act 13 of 1995*, section 11.

<sup>36</sup> *Public Service Act 13 of 1995*, section 12.

<sup>37</sup> *Labour Act 11 of 2007*, sections 2(4)-(5) and 9.



## Appointments, transfers and promotions

A permanent staff member is required to be a Namibian citizen who is free from any disease or physical or mental defect that could interfere with the performance of their duties, as well as being generally suitable for permanent appointment.<sup>38</sup>



Suitability for public service posts must be based solely on qualifications, experience, level of training, merit, efficiency and suitability.<sup>39</sup> In other words, personal factors such as political beliefs should not be taken into account – but the goal of balanced structuring may be considered.<sup>40</sup> Posts should be filled by promotion or transfer of a staff member if possible, in preference to the appointment of a new person.<sup>41</sup>

Appointments, transfers and promotions will normally be subject to a 12-month probation period, but the Prime Minister can approve a shorter probation period or dispense with probation altogether, on the recommendation of the Commission.<sup>42</sup>

A staff member can be transferred to another post of a lower or higher grade under certain conditions, as long as this does not involve a reduction of salary that he or she has not consented to. A transfer can be made at the request of the staff member, or whenever it is in the interest of the public service.<sup>43</sup> Even though a public service employee can be transferred without his or her consent, the employee has a right to be heard before the decision is made.<sup>44</sup>

A staff member can also be seconded for service in another office, ministry, agency or body. If the staff member is seconded to a body outside government, any extra remuneration or benefits received must be paid over to the State unless the Prime Minister decides that the staff member may keep the benefit, based on the recommendation of the Commission. Unlike transfer, secondment requires the consent of the staff member.<sup>45</sup>

## Salaries and allowances



The law outlines the principles for the salary and allowances of staff members in the public service, with decisions on these issues being determined or approved by the Prime Minister on the basis of recommendations from the Commission.

Salaries are determined by scales that apply to particular posts or ranks. Each salary scale sets the minimum and maximum rates attached to a post or rank, and the rates of progression on the scale. Different conditions of service may be applied to different posts and ranks.<sup>46</sup>

A staff member can be paid a higher salary, be specially advanced within the applicable salary scale, or be otherwise rewarded in recognition of exceptional abilities, qualifications or services, if this is in the interest of the public service.<sup>47</sup>

<sup>38</sup> [Public Service Act 13 of 1995](#), section 18(2).

<sup>39</sup> [Public Service Act 13 of 1995](#), section 18(3).

<sup>40</sup> [Public Service Act 13 of 1995](#), section 18(6).

<sup>41</sup> [Public Service Act 13 of 1995](#), section 18(4).

<sup>42</sup> [Public Service Act 13 of 1995](#), section 22.

<sup>43</sup> [Public Service Act 13 of 1995](#), section 23(1)-(2).

<sup>44</sup> Office of the Attorney-General, "[Frequently Asked Legal Questions](#)", Volume 2, May 2016, paragraphs 4.1.8-4.1.10.

<sup>45</sup> [Public Service Act 13 of 1995](#), section 23(4)-(5) ; Office of the Attorney-General, "[Frequently Asked Legal Questions](#)", Volume 2, May 2016, paragraphs 4.1.8-4.1.10.

<sup>46</sup> [Public Service Act 13 of 1995](#), section 13(3).

<sup>47</sup> [Public Service Act 13 of 1995](#), section 13.

Reduction of salary is prohibited. The salary of a staff member cannot be reduced without his or her consent, except on the basis of misconduct.<sup>48</sup>

Staff members do not have a right to claim any extra payments for being required to do work additional to their ordinary official duties, as long as this take place during normal working hours.<sup>49</sup>

## Prohibition on private work

Members of the public service must place the whole of their time at the disposal of the Government. This means that they are not allowed to do any remunerative work outside their employment in the public service (including self-employment or any role in a private business operation) without permission. Permission is generally the decision of the relevant Executive Director. However, if the work in question is related to the official duties of the employee, or will interfere with the performance of his or her official duties, permission may be granted only by the Prime Minister in consultation with the President or the relevant Minister.<sup>50</sup> The rationale for these rules is to make sure that working hours are not utilised to attend to private matters, to reduce conflicts of interest between private and work-related matters that can lead to corruption, and to curb private dealings by public employees.<sup>51</sup>



## Retirement

The normal retirement age for members of the public service is 60. A staff member can be employed up to age 67, with his or her consent and with the approval of the Prime Minister on the recommendation of the Commission, if this is considered to be in the interest of the public service. A staff member may choose to retire, or be retired on the decision of the Prime Minister, at age 55 if certain conditions are met.<sup>52</sup>



## Discharge

A staff member may be discharged from the public service for a range of reasons listed in the law, such as:

- continued ill-health
- unfitness or incapacity
- misconduct
- abolishment of a post due to reorganisation
- the promotion of efficiency and economy.<sup>53</sup>



A staff member is automatically discharged if he or she is absent from duty for more than 30 days without permission, or absent from duty for any period because of taking up other work – although the Prime Minister can reinstate a person who was automatically discharged in this way on the recommendation of the Commission.<sup>54</sup>

<sup>48</sup> *Public Service Act 13 of 1995*, section 14.

<sup>49</sup> *Public Service Act 13 of 1995*, section 15.

<sup>50</sup> *Public Service Act 13 of 1995*, section 17.

<sup>51</sup> Dennis U Zaire, "Accountability (or the absence thereof) in the Namibian public sector: A look at legislation and policies in place", *Namibia Law Journal*, Volume 6, Issue 1, 2014, pages 59-60.

<sup>52</sup> *Public Service Act 13 of 1995*, section 24(1)-(3).

<sup>53</sup> *Public Service Act 13 of 1995*, section 24(4).

<sup>54</sup> *Public Service Act 13 of 1995*, section 24(5).

## PUBLIC SERVICE CHARTER GENERAL PRINCIPLES

**STANDARDS:** Set, publish and monitor clear standards of service that public servants should uphold.

**COURTESY AND HELPFULNESS:** Provide a courteous and helpful service suitable to the convenience of those entitled to the service.

**ACCOUNTABILITY:** Ensure that public servants are accountable for their actions at all times.

**NON-DISCRIMINATION:** Ensure that services are available and provided equally and fairly to all.

**VALUE FOR MONEY:** Provide efficient, effective and affordable public services.

**INFORMATION:** Provide information about public services in a prompt, straightforward and open manner that is readily understandable.

**CONSULTATION AND PARTICIPATION:** Ensure that there is regular consultation and communication with our service users and, taking their views and priorities into account, provide a choice wherever possible.

**TRANSPARENCY:** Disclose how public services are managed together with the cost and performance of specific services which are open to public scrutiny in all actions taken in public office.

**QUALITY OF SERVICE:** Publicise straightforward feedback procedures. Provide where errors have been made, an apology, full explanation and early correction of the error.

**ACCESSIBILITY:** Ensure accessibility to public service by accommodating the service needs of our service users.

\*\*\*

### Other guiding principles

**Integrity:** Putting the obligations of the Public Service above one's own personal interests.

**Impartiality:** Carrying out official duties fairly and unbiased to all irrespective of gender, race, religion, political affiliation, disability or social status. Choices are based solely on merit.

**Fairness:** Ensure that fairness is maintained at all times in the performance of duties and in dealings with others and the public at large.

**Decency:** Present himself/herself in a respectable manner that conforms to professionally accepted standards in the Public Service.

**Diligence:** Being careful and attentive in carrying out official duties.

**Discipline:** Behave in a manner that conforms to the rules, regulations and code of conduct, integrity and ethics.

**Professionalism:** Demonstrating competency, transparency and impartiality in the performance of duties.

**Selflessness:** Acting out of concern for others wellbeing without expecting anything in return.

**Confidentiality:** Staff members shall not disclose secrecy and confidential or official information which has confidentially been communicated to or has been availed while discharging official duties with due permission.

In addition, the staff member is expected:

- to perform his/her duties with **professionalism** and **integrity** and serve the Public Service **efficiently; to act fairly** and **equitably** in official dealings with colleagues and members of the public;
- to avoid real or apparent **conflicts of interest**;
- to respect the rights of colleagues and the public in the performance of his/her duties; and
- to not bring the Public Service into disrepute in any manner.

*The Public Service Charter and other rules of conduct for public servants can be found in the Public Service Code of Conduct, Integrity and Ethics, PSSR E.X/II, published by the Office of the Prime Minister. The points quoted above are contained in Rule 5.2.*



## Misconduct

The *Public Service Act* contains a list of actions that constitute misconduct:

- violating any provision in the *Public Service Act*
- damaging the administration, discipline or efficiency of any office, ministry or agency
- disobeying a lawful instruction or committing any other form of insubordination
- being negligent or lazy in the performance of official duties
- undertaking private work directly or indirectly related to his or her official duties, or failing to declare that a member of his or her household is engaged in such work, which would be a conflict of interest
- using his or her position, or State property, to promote or prejudice the interests of any political party or any private business or agency
- acting in a disgraceful, improper or unbecoming manner that causes embarrassment to the Government or the public service
- being extremely rude to anyone while on duty
- being unable to carry out official duties efficiently due to alcohol or drug use, or being under the influence of alcohol or drugs during working hours
- disclosing or misusing information gained in the course of his or her official duties
- requesting a bribe of any kind, or failing to report an offer of a bribe
- stealing or misusing State property
- committing a criminal offence relating to the performance of official duties
- being absent from official duties without taking leave or having a valid reason for being away
- intentionally making a false statement to get some advantage, or to cause injury to the Government or any other member of the public service
- violating any of the terms and conditions of his or her employment
- violating an applicable code of conduct.<sup>55</sup>

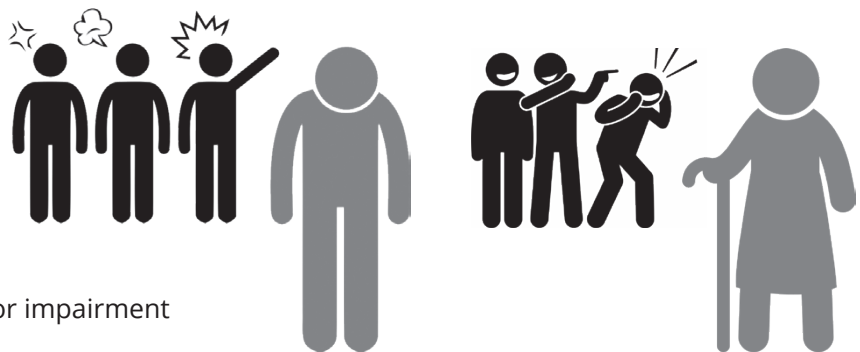


Additional rules of conduct are contained in the regulations issued under the *Public Service Act* and in the *Public Service Code of Conduct, Integrity and Ethics*. Some key regulations and rules of conduct are summarised in the following sections.

## Discrimination, bullying and harassment by staff members

The *Public Service Code of Conduct, Integrity and Ethics* says that a staff member must not discriminate against, bully or harass a colleague or a member of the public. This applies particularly in respect of mistreatment on the basis of:

- political affiliation/opinion
- race/colour/ethnicity
- religion
- gender
- sexual preference
- marital status
- pregnancy
- age
- physical or mental disability or impairment
- position or social standing.<sup>56</sup>



<sup>55</sup> *Public Service Act 13 of 1995*, section 25.

<sup>56</sup> *Public Service Code of Conduct, Integrity and Ethics*, PSSR E.X/II, published by the Office of the Prime Minister, Rule 5.3.5(c).

## Sexual harassment

The *Public Service Code of Conduct, Integrity and Ethics* says that a staff member should not engage in sexual relations at the workplace. Staff members must also avoid verbal or non-verbal conduct that could constitute sexual harassment, including:

- pressuring a fellow staff member for sexual activity or sexual favours
- rape, molestation or any other form of sexual assault
- intentional physical conduct that is sexual in nature, such as unwelcome touching, pinching, patting, grabbing or brushing against another staff member's body or clothes
- sexual innuendoes, gestures, noises, jokes, comments, or remarks to another staff member about their sexuality, body or appearance
- offering preferential treatment, promises or rewards for sexual favours.<sup>57</sup>



## Conflicts of interest and corruption

A conflict of interest refers to a situation where a public official's work could potentially be influenced by his or her outside interests. This is a form of corruption. Corruption can also take many other forms, including bribery, nepotism (favours for family members), sexual favours, abuse of authority and influence peddling. Staff members are expected to guard against all forms of corruption including soliciting, forcing or accepting bribes from anyone using public services now or in the past or the future. Public servants must not do this directly or via some other person. Staff members are also expected to act in a principled and impartial manner in their handling of tenders and other business relationships on behalf of the Government.<sup>58</sup>

Regulations issued under the *Public Service Act* say that staff members must not let their private interests come into conflict with their public duties. They must not use their public position to gain any personal advantage. All staff members must complete a form for their Executive Director that lists information about their private business interests or self-employment activities. Furthermore, they must get permission from their Executive Director for any external business interests or self-employment. (No one is exempt. For Executive Directors, these issues are dealt with by the Secretary to the Cabinet, and the authority for the Secretary to the Cabinet and the Secretary to the President is the Prime Minister.)<sup>59</sup>

### Integrity Committees and Integrity Pledges

Integrity means being honest and truthful in one's actions.

Each Government office, ministry and agency must have an **Integrity Committee** appointed by the Executive Director. This Committee must include a chairperson from management level, a vice-chairperson from middle-management level or higher, and other staff members designated to act as "ethics and integrity champions". The Committee's role is to promote ethical behaviour, transparency and good governance, and to make sure that the rules on ethics and integrity are implemented. It is also charged with identifying and reporting corrupt activities to the Executive Director and implementing awareness programmes for staff members on ethics and integrity, good governance and anti-corruption measures.

All public servants are also expected to sign an **Integrity Pledge**, committing to a set of positive principles and values that will guide ethical conduct, including integrity, honesty, objectivity and impartiality. The pledge also commits them to work together with regulators and law enforcement agencies to create an environment that is free from corruption.

*Public Service Code of Conduct, Integrity and Ethics*, PSSR E.X/II, published by the Office of the Prime Minister, Rule 7.5-7.7

<sup>57</sup> *Public Service Code of Conduct, Integrity and Ethics*, PSSR E.X/II, published by the Office of the Prime Minister, Rule 5.3.5(d).

<sup>58</sup> *Public Service Code of Conduct, Integrity and Ethics*, PSSR E.X/II, published by the Office of the Prime Minister, Rule 5.3.9.

<sup>59</sup> *General Regulations made under the Public Service Act, 1995*, regulation 11; *Public Service Code of Conduct, Integrity and Ethics*, PSSR E.X/II, published by the Office of the Prime Minister, Rule 5.3.9(e)-(f); Ellison Tjirera & Frederico Links, *Nothing to Disclose – Critiquing Namibia's passive approach to conflict of interest*, Institute for Public Policy Research, Anti-Corruption Research Programme, Paper 2, May 2011, page 6 (regulation 11 was added after the IPPR report was published); 10 December 2013; Ellison Tjirera, "Asset Disclosure in Namibia: The Need for Reform and Enforcement", Institute for Public Policy and Research, Anti-Corruption Research Programme, Paper 12, August 2012, page 11.



The regulations also contain procedures aimed at preventing bribery. Staff members are not allowed to accept any gift or benefit related to their post in the public service, unless the Prime Minister has given written approval in advance. If a gift or benefit is offered, the staff member has a duty to report this to the relevant Executive Director.<sup>60</sup>

The *Public Service Code of Conduct, Integrity and Ethics* says that staff members who find that they have some personal, financial or other interest that might influence their official duties must discuss the matter with their supervisor. They must not be involved in any official action or decision-making process that might result in improper personal gain.<sup>61</sup> The *Code* also says that staff members may not use their official positions for financial or other advantages for themselves, their families, their friends or any other person or organisation. Staff members must be honest and accountable in dealing with public funds and resources. They must use Government property and other resources effectively, efficiently, economically and only for authorised official purposes.<sup>62</sup>

The *Code* also prohibits victimisation of staff members who have reported corruption or other wrongdoing. Any kind of retaliation will be grounds for disciplinary action.<sup>63</sup>



## Use of government vehicles by members of the public service

This issue is addressed in regulations issued under the *Public Service Act*. No staff member is allowed to drive a government vehicle without a valid driver's license and appropriate permission. A staff member who has permission to drive must not –

- go outside the authorised route
- take the vehicle home without specific written permission
- take along unauthorised persons or goods
- use the vehicle for anything other than official purposes
- drive the vehicle while under the influence of alcohol or drugs
- start on the trip without making an appropriate entry in the vehicle log book.<sup>64</sup>



The relevant Executive Director must arrange an investigation into the liability of a State employee for any accident involving a Government-owned vehicle. A staff member who is found to be responsible can be ordered to pay Government for the loss or damage. This amount can be recovered by deductions

from the employee's salary or pension account. The situation could also result in a disciplinary hearing for misconduct, or suspension of the employee's ability to drive Government vehicles for a specified period. However, the Executive Director can request the State Treasury to waive recovery of all or part of the amount of the loss or damage even if the employee was at fault.<sup>65</sup>

## Procedure for charges of misconduct

An Executive Director who has reason to believe that a staff member has committed misconduct may issue a charge of misconduct in writing.

<sup>60</sup> [General Regulations made under the Public Service Act, 1995](#), regulation 16.

<sup>61</sup> [Public Service Code of Conduct, Integrity and Ethics](#), PSSR E.X/II, published by the Office of the Prime Minister, Rule 5.3.9(d).

<sup>62</sup> [Public Service Code of Conduct, Integrity and Ethics](#), PSSR E.X/II, published by the Office of the Prime Minister, Rule 5.3.9(a)-(c).

<sup>63</sup> [Public Service Code of Conduct, Integrity and Ethics](#), PSSR E.X/II, published by the Office of the Prime Minister, Rule 5.6.

<sup>64</sup> [General Regulations made under the Public Service Act, 1995](#), regulation 18.

<sup>65</sup> [State Finance Act 31 of 1991](#), section 11; Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 2, May 2016, section 2.2.



A staff member who has been charged with misconduct may be suspended, if the nature of the alleged wrongdoing requires this step or if there is a concern that the staff member may interfere or tamper with witnesses or evidence. There is no entitlement to receive a salary during a period of suspension, unless this is approved by the Prime Minister on the recommendation of the Commission. But if the staff member is not ultimately found guilty of misconduct, or found guilty but given a penalty other than dismissal, then the staff member must be allowed to resume duty and receive full payment for the period of suspension.

If the staff member denies committing misconduct, the Executive Director must establish a disciplinary committee to consider the case. The disciplinary committee must include a member of management (who will be the chairperson of the disciplinary committee), the head of the department responsible for personnel (or his or her representative) and any other staff member who has appropriate expertise. The staff member's direct supervisor and the head of the department where the staff member is employed may *not* be part of the disciplinary committee. A representative of a recognised trade union may sit on the disciplinary committee as an observer if this is requested by the staff member.

The disciplinary committee will hold an enquiry and consider the evidence. The staff member charged with misconduct has a right to present his or her side of the story, to question witnesses and to examine any documents presented as evidence. The chairperson must make sure that there is a record of the enquiry and all the evidence.

The absence of the staff member who has been charged with misconduct does not invalidate the disciplinary proceedings. (This rule prevents a person from evading discipline by simply refusing to attend the disciplinary enquiry.)

If the disciplinary committee finds the staff member guilty of misconduct, it must provide the Executive Director and the Commission with a record of the disciplinary enquiry, along with a written statement of its findings and its recommendation for sanctions.

The possible consequences for misconduct include:

- a caution or reprimand
- a fine not exceeding N\$2000
- a transfer to another post
- a reduction in salary or rank
- a discharge or a call for resignation from the public service.<sup>66</sup>



A staff member may appeal to the Prime Minister against the finding of a disciplinary committee. Before arriving at a decision on the appeal, the Prime Minister must obtain the advice of the Commission.

The law also contains provisions about the procedure to follow in the case of alleged misconduct by an Executive Director, the Secretary to the Cabinet or the Secretary to the President.<sup>67</sup>

## Political rights of staff members

The *Public Service Act* states that a staff member may –

- be a member of a political party
- attend, preside at or speak at a public political meeting
- draw up or publish any written material to promote the interests of any political party
- be an office-bearer in a political party.

<sup>66</sup> [Public Service Act 13 of 1995](#), section 26.

<sup>67</sup> [Public Service Act 13 of 1995](#), sections 27-28; Office of the Attorney-General, "[Frequently Asked Legal Questions](#)", Volume 1, April 2015, section 3.3 (on the time limits for disciplinary procedures).

However, the political rights of staff members are subject to limits. Political rights may not be exercised by staff members at times when they are carrying out their official duties. Also, to protect the impartiality of the public service, a staff member who holds any management post in the public service may not preside at a public political meeting or be an office-bearer of a political party. Staff in management posts are also forbidden to draw up or publish any writing, deliver a public speech, or make a public statement that is intended to promote or prejudice the interest of any political party.

### Freedom of religion for staff members

The *Public Service Code of Conduct, Integrity and Ethics* says that staff members may belong to any religion as long they do not violate any laws – but, since Namibia is a secular state, religious beliefs must not be advocated at the workplace or applied to exclude people of other religions.

The Prime Minister can, on the recommendation of the Commission, extend these restrictions to other posts that involve policy formulation, or to any positions where these forms of political activities might compromise the impartiality of the public service. If the Prime Minister extends the restrictions on political activities, this must be announced in a notice in the *Government Gazette*.

A staff member may accept nomination as a candidate for election as President or as a member of the National Assembly, a Regional Council or a local authority council – but must take leave from the time of the nomination until the election is over. A member of the public service who is elected to a local authority council may keep his or her public service position, but a staff member elected to any other political position will be considered to have resigned from the public service if elected.<sup>68</sup>

## Criticisms



Many commentators have cited concerns about **accountability** in the public service. For instance, one analysis published in 2021 stated: "There is a need to address issues within the broad working culture of the public service and elected representatives pertaining to transparency, accountability and public presence. Many citizens lack trust in government institutions and performance, specifically with regard to maladministration and corruption. This leads to various negative consequences for governance outcomes and the country's

democratic development. An overall focus on raising competence levels, accountability and ethical conduct within the public service should be a national priority."<sup>69</sup>

Looking more specifically at the legal framework, some assert the law's provisions on **oversight and discipline** are seldom implemented, with the result that many civil servants commit serious misconduct without any significant penalty. It has also been noted that there is a public perception that disciplinary action in the public service is very rare, and that dismissal is very unusual.<sup>70</sup> In 2022, a review team for the African Peer Review Mechanism stated that stakeholders reported continuing dissatisfaction with the performance of the public service, citing failure to meet budget targets and poor delivery of services.<sup>71</sup>



<sup>68</sup> *Public Service Act 13 of 1995*, section 30.

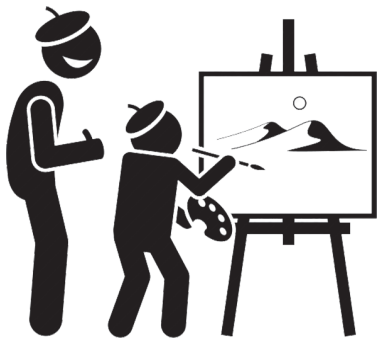
<sup>69</sup> "Research Summary: Keep Your Eyes on the Money, Public Fiscal Management & Oversight in Namibia: The Need for Public Participation and Reform", Institute for Public Policy Research, 2021, page 3.

<sup>70</sup> Dennis U Zaire, "Accountability (or the absence thereof) in the Namibian public sector: A look at legislation and policies in place", *Namibia Law Journal*, Volume 6, Issue 1, 2014, page 60.

<sup>71</sup> African Union, African Peer Review Mechanism, *Namibian Review Report: Key Highlights*, 2022, page 13. The Government's first *Harambee Prosperity Plan 2016/17-2019/20* pointed to the need for a "new culture of efficiency and accountability" (page 5). Accountability and transparency were also cited as key goals in the achievement of effective governance in the second *Harambee Prosperity Plan 2021-2025* (page 20).

Another problematic issue is the **disconnect between the Labour Act 11 of 2007 and the Public Service Act 13 of 1995 on retirement age and severance pay.**

The *Labour Act* says that severance pay must be paid by an employer to an employee who has completed 12 months of continuous service and retires on reaching age 65. In contrast, the *Public Service Act* provides for retirement at age 60 in most cases, or even age 55 in some circumstances, with no separate provision for severance pay. It has been recommended that one or both laws should be amended to eliminate this discriminatory treatment of public servants in respect of retirement, by providing for the payment of severance pay on retirement regardless of the age of retirement.<sup>72</sup>



Another issue that has been raised concerns the role of **teachers**. Some have suggested that teachers should not be part of the general public service, but should rather fall under an independent regulatory body that focuses on education service delivery as is the case in some other countries. The motivation is that the teaching profession has particular complexities and would benefit from separate rules, regulations and governance that could enhance quality education in Namibia. Some think that separating teachers from the general public service might open the door to better ways to recruit and retain qualified teaching staff in rural areas.<sup>73</sup>

Without going this far, the *Basic Education Act 3 of 2020* (which has been passed by Parliament but has not yet come into force as of 2022) will create a “Teaching Service” within the public service that will have its own code of conduct to govern the professional behaviour of teachers and specific procedures for failure to comply with the code. This law will also require the Public Service Commission to establish a Teaching Service Committee, after consultation with the Prime Minister and the ministers responsible for education, to advise and assist the Commission on matters concerning education and the Teaching Service.

### Factors of Concern

“Two factors have dominated public sector employment since independence: Firstly, a pervasive weakness in implementation of policies despite their being well conceived and generously resourced. Secondly, growing corruption, real and perceived, among government staff of both a petty and a grand nature. Generally it is not the Government that has been blamed for this state of affairs and, as with education reforms, support and patience characterise public responses to reforms in this sector. Substantial effort has been put into training measures in both the public and private sectors, but there is still a long way to go and a general failure to target key sectors has hindered progress.

The general shortage of skills is a common feature that characterises most government agencies and establishments in Namibia. At management level, this leads to the bulk of the real work falling to a relatively small number of core employees. This is compounded by the pressures to provide jobs for comrades. Indeed, there is such a level of penetration of government by the ruling party that there is little distinction between party and government.”

Bill Lindeke, “[Conflict resolution by institutional design: Democratic development and state formation in independent Namibia – public service and decentralisation experiences](#)”, 15 *Journal of Namibian Studies* 63 (2014)

<sup>72</sup> Office of the Attorney-General, “[Frequently Asked Legal Questions](#)”, Volume 1, April 2015, section 3.2; Elizabeth Nkole, “[Labour Act vs Public Service Act](#)”, *New Era*, 10 February 2016.

<sup>73</sup> “[Teaching fraternity wants autonomy](#)”, *New Era*, 16 June 2015; Sebedeus !Naruseb, “[Detach Teachers From the Larger Public Service?](#)”, opinion column, *The Namibian*, 14 October 2016.

## Government Institutions Pension Fund (GIPF)

The Government Institutions Pension Fund (GIPF) is not governed by a specific statute. Instead, it is a private pension fund underwritten by Government that falls under the general *Pension Funds Act 24 of 1956*. The GIPF is managed by a Board of Trustees consisting of nine persons: six appointed by Government and three appointed by organised labour (trade unions).<sup>74</sup>

Initially the administration of the GIPF was outsourced to local insurance companies, but it later became self-administered. The GIPF came under fire after it came to light in 2005 that it had to write off large loans made from its funds, leading to criticism of its management capacity as well as concerns about conflicts of interest on the part of some trustees. In 2013, Namibia's Law Reform and Development Commission called for a comprehensive legal and institutional reform of the GIPF.<sup>75</sup> Some of the recommended changes related to the composition of the Board of Trustees and the procedures for removing individual trustees were actioned through 2018 amendments to the *GIPF Fund Rules*.<sup>76</sup>

## Public Service Employee Medical Aid Scheme (PSEMAS)

The *Public Service Act 13 of 1995* gives the Prime Minister power to issue regulations setting up a medical aid scheme for public service employees.<sup>77</sup> Regulations issued in 1995 established a medical aid scheme that was approved by the Prime Minister on the recommendation of the Public Service Commission. It is managed by the Ministry of Finance.

This scheme is designed to defray the costs of medical, para-medical, nursing, surgical, orthopaedic, dental and optical services and appliances, ambulance transport and stays in hospitals, maternity homes or nursing homes. It applies to members of the public service and their dependants.<sup>78</sup>

Private medical aid schemes are regulated by the *Medical Aid Funds Act 23 of 1995*, but this law does not apply to funds established and managed by the Government.<sup>79</sup>

According to an analysis published in 2021 by the Institute of Public Policy Research, PSEMAS "has been plagued by waste, fraud and mismanagement for years, with the result that the scheme has become inefficient and unsustainable".<sup>80</sup>

In March 2022, the Deputy-Minister of Finance reported to Parliament that the Office of the Prime Minister had appointed a consortium of consultants with the task of investigating the most suitable governance and administrative arrangements for PSEMAS, and analysing different options for its sustainability – including "open and closed medical aid options" that provide an option for PSEMAS members to join private medical aid schemes. She noted that the unions will have to be engaged regarding any reforms, since medical aid is an employment benefit that cannot be changed unilaterally without consultation.<sup>81</sup>

<sup>74</sup> See the GIPF Fund Rules as amended, available online [here](#).

<sup>75</sup> Law Reform and Development Commission, *Government Institutions Pension Fund (GIPF) Legal Framework Discussion Paper*, LRDC 26, 2013.

<sup>76</sup> See Rule Amendment No. 3, available online [here](#).

<sup>77</sup> *Public Service Act 13 of 1995*, section 34.

<sup>78</sup> *General Regulations made under the Public Service Act, 1995*, regulation 26.

<sup>79</sup> *Medical Aid Funds Act 23 of 1995*, section 2.

<sup>80</sup> IPPR, "The PSEMAS conundrum", *Procurement Tracker Namibia*, Issue No. 12, May 2021, page 2.

<sup>81</sup> IPPR, "Public procurement in parliament", *Procurement Tracker Namibia*, Issue No. 16, April 2022, page 7.

## Namibia Institute of Public Administration and Management Act 10 of 2010

The Namibia Institute of Public Administration and Management (NIPAM) is a state-owned enterprise with a mission to improve service delivery in Namibia's public service by means of training, research, capacity evaluation and consultancies.<sup>82</sup> More specifically, its purpose is to transform the public service in Namibia by improving management, leadership and professional competence, and fostering positive purpose, values and professional traditions amongst public sector employees.<sup>83</sup>

The **Governing Council of NIPAM**, which is appointed by the Prime Minister, is responsible for the general control and direction of NIPAM. It must include the following persons:

- the Secretary to the Cabinet, who acts as Chairperson
- the Executive Director of NIPAM
- two persons selected by the Prime Minister based on gender balance, academic excellence and relevant experience
- one person nominated by the Namibian Chamber of Commerce and Industry
- one person nominated by the Public Service Commission
- one person nominated by the recognized trade union for public service employees
- one person nominated by the Association of Regional Councils
- one person nominated by the Association of Local Authorities in Namibia
- two persons nominated by NIPAM to represent the capacity building, research or related interests of NIPAM, keeping gender balance in mind.

Members generally hold office for a three-year period and are eligible for reappointment. The Governing Council may also co-opt two persons as non-voting members, on a rotating basis, from countries or international organisations that offer assistance to NIPAM in respect of public sector capacity-building.<sup>84</sup>

The day-to-day management of NIPAM is carried out by an **Executive Director** appointed by the Governing Council, with the approval of the Prime Minister. The Executive Director holds office for a period of five years and is eligible for re-appointment.<sup>85</sup>

NIPAM also has a **Training and Development Board** which is appointed by the Governing Council to focus on training, curricula and qualifications.<sup>86</sup>

The Governing Council has a duty to approve a Strategic Plan and an Annual Business Plan, and to compile an **annual report** for the Prime Minister which must be tabled in the National Assembly.<sup>87</sup>



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<sup>82</sup> See the NIPAM website, "[Mission & Vision](#)"; *Namibia Institute of Public Administration and Management Act 10 of 2010*, sections 2-3.

<sup>83</sup> See the NIPAM website, "[Welcome to NIPAM](#)"; *Namibia Institute of Public Administration and Management Act 10 of 2010*, section 5.

<sup>84</sup> *Namibia Institute of Public Administration and Management Act 10 of 2010*, sections 7 and 10.

<sup>85</sup> *Namibia Institute of Public Administration and Management Act 10 of 2010*, section 26.

<sup>86</sup> *Namibia Institute of Public Administration and Management Act 10 of 2010*, sections 16-17.

<sup>87</sup> *Namibia Institute of Public Administration and Management Act 10 of 2010*, sections 8 and 37.

## Decentralisation Enabling Act 33 of 2000

In 1998, Government adopted a decentralisation strategy to take government services closer to the people, with a view to increasing public participation, encouraging greater accountability and improving Government's capacity to implement sustainable development.

The *Decentralisation Enabling Act 33 of 2000*, which came into force on 5 March 2001, provides for two phases in the decentralisation process: (1) "**delegation**", where a region or a local authority performs functions as an agent of a Ministry, with the budget for these functions remaining in the hands of the Ministry; and (2) "**devolution**", where functions are fully transferred from a Ministry to a region or to a local authority, including full administrative and budgetary control over those functions.

The Minister responsible for regional and local government, in consultation with the Ministry responsible for the functions in question, has the power to publish notices in the *Government Gazette* to delegate or devolve specific functions, or to withdraw previous delegations or devolutions. The law also provides for the decentralisation of functions carried out by Government agencies and bodies other than ministries, by means of a Presidential proclamation published in the *Government Gazette*.

The first delegation took place in 2007. As of October 2022, eight ministries had delegated some functions to regional councils. No central government functions had been delegated to any local authorities, and no functions had been devolved to regions or local authorities.

The slow pace of decentralisation has been attributed to the lack of adequate human, material and financial resources at regional and local levels. Some also point to a lack of political will to progress decentralisation, pointing out that continued oversight from central government – such as through the Presidential appointment of regional governors – has impeded the ability of regional councils to institute development measures independently.<sup>88</sup>



<sup>88</sup> *Decentralisation Enabling Act 33 of 2000*; African Union, African Peer Review Mechanism, *Namibian Review Report: Key Highlights, 2022*, page 14; Kitty McGirr, "*Regional Government in Namibia: Is Decentralisation A Reality?*", Institute for Public Policy Research, 2021.





# Statutes relating to Public Enterprises



*Public enterprises are not part of the public service, but they typically carry out functions that would otherwise be the responsibility of the Executive Branch of Government. They are often controlled or regulated by Government. In fact, for some purposes the Namibian Constitution defines the public service as including “para-statals”.<sup>1</sup> The Constitution also gives Cabinet the functions of establishing, co-ordinating and supervising parastatal enterprises.<sup>2</sup> For these reasons, public enterprises are discussed in connection with the Executive Branch.*



## Public Enterprises Governance Act 1 of 2019

### What does the law do?

This law regulates public enterprises, which were formerly called State-owned enterprises and are also known as “parastatals”. It provides measures for efficient governance, restructuring and performance monitoring.

### What is the purpose of the law?

The law reforms the governance of public enterprises. Since public enterprises carry out functions for the Government, good governance practices are necessary to make sure that they –

- meet their objectives
- are held accountable for their performance
- contribute to Namibia’s economic development in a sustainable way.<sup>3</sup>

### When did the law come into force?

16 December 2019. It replaces the *Public Enterprises Governance Act 2 of 2006*, which was originally named the *State-owned Enterprises Governance Act 2 of 2006*.

### What are “public enterprises”?

Public enterprises, referred to in the Namibian Constitution as “para-statals”, supplement the Executive Branch of Government in the sense that they often carry out functions that would normally be the job of Government. They are sometimes governed by specific statutes. They are often controlled by Government as a majority shareholder.

Just a few of the many examples that could be cited are NamWater, NamPower, TransNamib, the Roads Contractor Company, the Namibia Wildlife Resorts Company and the Namibian Students Financial Assistance Fund (NSFAF).

<sup>1</sup> [Namibian Constitution](#), Articles 57(2)(b) and 93.

<sup>2</sup> [Namibian Constitution](#), Article 40(a) and (f).

<sup>3</sup> See the [Performance Agreement 2021/22](#) between the Government of the Republic of Namibia and the Ministry of Public Enterprises.

Before 2015, public enterprises were governed under a **decentralised model**. Individual ministries were responsible for public enterprises relating to their areas of authority, with additional oversight from the State-owned Enterprise Governance Council headed by the Prime Minister.

In 2015, amendments to the legal framework introduced a **dual governance model**, replacing the State-owned Enterprise Governance Council with the Ministry of Public Enterprises and giving this new Ministry shared responsibility for public enterprises along with the ministry responsible for the sector. This model did not prove effective, because of its overlapping layers of authority and oversight.<sup>4</sup>

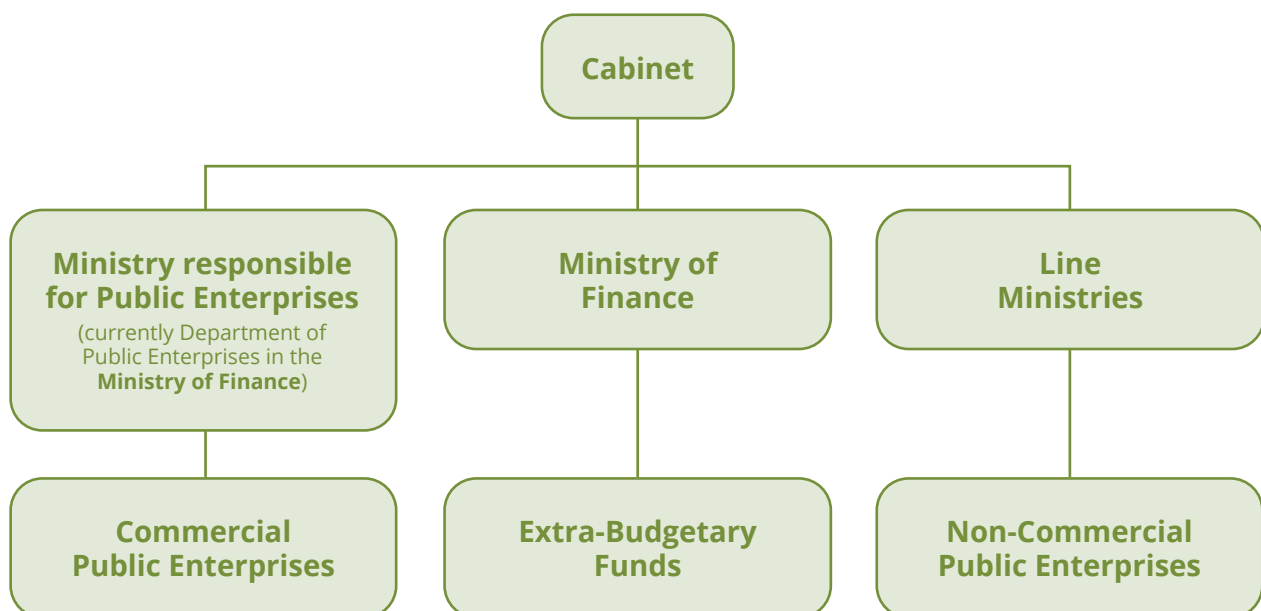
### Ministry of Public Enterprises

The **Ministry of Public Enterprises** was established as a new ministry in 2015 with the mission to provide principled leadership and to create a conducive environment for public enterprises to contribute to Namibia's socio-economic development. In 2022, it was transformed into a **Department of Public Enterprises in the Ministry of Finance**, to allow for more intensive financial supervision. The long-term plan is to create a single public enterprises holding company to be the owner of all commercial public enterprises. This is expected to consolidate and streamline the administration of public enterprises, resulting in substantial cost savings.

So in 2019 Parliament enacted a new legal framework with a **hybrid governance model** based on centralised supervision of all public enterprises. The responsible supervisory body depends on the category of the public enterprise. In addition, the law gives the Ministry that is responsible for public enterprises the power to monitor the performance of all public enterprises, and to restructure them for improved performance if necessary.

Under each of these models, **Cabinet** has a constitutional duty to direct, co-ordinate and supervise para-statal enterprises.<sup>5</sup>

### Namibian Hybrid Model for Public Enterprises



<sup>4</sup> Ministry of Public Enterprises, *Hybrid Governance Model for Namibian Public Enterprises*, 2019, pages 4-8; Ntelamo Ntelamo, "Contrasting Governance Arrangements with the Management of Performance of Public Enterprises in Namibia", 4(1) *Africa Journal of Public Sector Development and Governance* 2021, page 74; R Marenga, "Analysing the performance of public enterprises in Namibia: A challenge for the practice of public administration?", 9(3) *Journal of Governance & Regulation* 2021, page 100.

<sup>5</sup> *Namibian Constitution*, Article 49(a).

## NAMIBIAN CONSTITUTION

### Provisions on Para-statals

#### Article 40

"The members of the **Cabinet** shall have the following functions:

- (a) **to direct, co-ordinate and supervise the activities of Ministries and Government departments including para-statal enterprises, and to review and advise the President and the National Assembly on the desirability and wisdom of any prevailing subordinate legislation, regulations or orders pertaining to such para-statal enterprises, regard being had to the public interest;**

\*\*\*

- (f) **to take such steps as are authorised by law to establish such economic organisations, institutions and para-statal enterprises on behalf of the State as are directed or authorised by law..."**

#### Article 63(2)

"The **National Assembly** shall further have the power and function, subject to this Constitution:

\*\*\*

- (f) **to receive reports on the activities of the Executive, including para-statal enterprises, and from time to time to require any senior official thereof to appear before any of the committees of the National Assembly to account for and explain his or her acts and programmes..."**

#### Article 91

The functions of the Ombudsman shall be defined and prescribed by an Act of Parliament and shall include the following:

- (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 conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society... "

**Article 93** states that the term "**official**" in this context includes "**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**".

## How does an enterprise become a "public enterprise"?

The Minister responsible for public enterprises, acting in consultation with Cabinet, may declare certain kinds of undertakings to be public enterprises. This applies to any State-owned company, any body set up under a law to carry out statutory functions, and any other business that is at least 50% owned by the State. The Minister can also withdraw a designation of a body as a public enterprise, again acting in consultation with Cabinet. These declarations and withdrawals must be published in the *Government Gazette*.<sup>6</sup>

**Cabinet** is a group of government officials who advise the President and administer and execute the functions of the Government. Its members are the President, the Vice-President, the Prime Minister, the Deputy-Prime Minister and the Ministers appointed by the President.

The *Government Gazette* is a regular government publication that anyone can subscribe to. You can find all of Namibia's *Government Gazettes* on the [LAC website](#).

The Minister may also apply the law on public enterprises to any body that carries out functions under any law, if it administers money allocated by Parliament or acquired from a levy imposed by law – with the exception of local authorities and regional councils. This step must also be announced in a notice in the *Government Gazette*.<sup>7</sup>

<sup>6</sup> [Public Enterprises Governance Act 1 of 2019](#), section 2(1), (4) and (5).

<sup>7</sup> [Public Enterprises Governance Act 1 of 2019](#), section 3.

## Three categories of public enterprises

The law provides for three different categories of public enterprises:

- **Commercial:** This category covers public enterprises that provide a product or a service and are in a position to make a sustained profit, but do not perform a regulatory function or administer a fund in the public interest. These public enterprises are supervised by *the Ministry responsible for public enterprises*.
- **Extra-budgetary fund:** This category covers public enterprises that administer public funds intended for a specific purpose. These public enterprises are supervised by *the Ministry of Finance*.
- **Non-commercial:** This category covers any other public enterprise. These public enterprises are supervised by *the Ministry responsible for the topic addressed by the public enterprise*. For example, the Namibia Sports Commission is supervised by the Minister responsible for sport, and the Namibian Competition Commission is supervised by the Minister of Trade and Industry.

At the moment, the **Ministry responsible for public enterprises** (which supervises commercial public enterprises) is the **Ministry of Finance** (which supervises non-commercial public enterprises) – but this might not always be the case.

The various supervising Ministers are referred to in the law with the general term “relevant Minister”.

The categorisation of public enterprises is supposed to be published in the *Government Gazette*, but as of 2022 this had not taken place.<sup>8</sup> However, as of 2022, the website of the Ministry of Public Enterprises listed public enterprises by category as shown in the table on the next page.

## Functions of Minister responsible for public enterprises

In addition to identifying and categorising public enterprises, the Minister responsible for public enterprises has certain duties in respect of *all* categories of public enterprises:

- to establish principles of corporate governance and good practice
- to develop common policy frameworks on issues such as human resources, assets and financial management
- to determine criteria for performance evaluations
- to issue directives on governance agreements and performance agreements
- to issue directives on the remuneration of board members, chief executive officers and senior management staff, and benefits for employees of public enterprises
- to issue directives on the types of contracts that public enterprises are allowed to conclude only after consultation with the relevant Minister
- to advise the relevant Ministers on various governance issues, and to help them assist the strategic business plans, annual financial plans, business plans or annual budgets of a public enterprise
- to facilitate training programmes on corporate governance and efficient management practices for public enterprise board members and management staff
- to approve the annual distribution of profits and the declaration of dividends by public enterprises
- to prepare restructuring plans if necessary, and submit them to Cabinet for decision.<sup>9</sup>

Directives issued by the Minister responsible for public enterprises must either be published online or made available to the public on request.

The Minister also has various powers relating to the appointment of board members for public enterprises, as detailed in the following section.<sup>10</sup>

The Minister must exercise all the powers relating to public enterprises in the best interest of the State and the public enterprise in question, keeping in mind the purpose of the public enterprise.<sup>11</sup>

<sup>8</sup> *Public Enterprises Governance Act 1 of 2019*, section 2(2), (3) and (5); definition of “relevant Minister” in section 1.

<sup>9</sup> *Public Enterprises Governance Act 1 of 2019*, section 4(1) and (8).

<sup>10</sup> *Public Enterprises Governance Act 1 of 2019*, sections 4(2), 8 and 9.

<sup>11</sup> *Public Enterprises Governance Act 1 of 2019*, section 4(6).

PUBLIC ENTERPRISES BY CATEGORY (2022)				
Commercial supervised by the Ministry responsible for public enterprises (currently Ministry of Finance)		Extra-budgetary fund supervised by the Ministry of Finance	Non-commercial supervised by the Ministry responsible for the topic	
Air Namibia (which has since been dissolved)	Namibian Ports Authority (Nampor)	Agricultural Bank of Namibia	Accreditation Board of Namibia	Namibia Qualifications Authority (NQA)
Epangelo Mining Company	National Fishing Corporation of Namibia (Fishcor, under Seaflower Company)	Development Bank of Namibia	Communications Regulatory Authority of Namibia (CRAN)	Namibia Sports Commission (NSC)
Henties Bay Waterfront (Proprietary) Limited	National Petroleum Corporation of Namibia (NAMCOR)	Environmental Investment Fund of Namibia	Diamond Board of Namibia	Namibia Standards Institution (NSI)
Lüderitz Waterfront Company (Proprietary) Limited	Namibia Industrial Development Agency (NIDA)	Game Products Trust Fund	Electricity Control Board	Namibian Statistic Agency (NSA)
Meat Corporation of Namibia (Meatco)	Roads Authority (RA)	Mineral Development Fund	Fisheries Observer Agency	Namibia Tourism Board (NTB)
Mobile and Telecommunications Limited (MTC)	Roads Contractor Company (RCC)	Motor Vehicle Accident Fund	Karakul Board of Namibia	Namibia Training Authority (NTA)
Namibia Airports Company (NAC)	Telecom	Namibia Special Risk Insurance Association	Meat Board of Namibia	Namibia University for Science and Technology (NUST)
Namibia Institute of Pathology (NIP)	TransNamib Holdings	Trust Fund for Regional Development & Equity Provisions	Namibian Agronomic Board (NAB)	Namibia Water Corporation (NamWater)
Namibia Post	Namib Desert Diamonds (Pty) Ltd (NAMDIA)	Namibia National Reinsurance Corporation Limited (NamibRe)	Namibia Board of Trade	National Arts Gallery of Namibia (NAGN)
Namibia Power Corporation (NamPower)	Zambezi Waterfront (Proprietary) Limited	Road Fund Administration (RFA)	Namibia Broadcasting Corporation (NBC)	National Disability Council of Namibia (NDCN)
Namibia Wildlife Resorts Company (NWR)		War Veterans Fund	Namibia College of Open Learning (Namcol)	National Heritage Council (NHC)
			National Commission on Research, Science & Technology	National Housing Enterprises (NHE)
			Namibia Competition Commission (NCC)	National Theater of Namibia (NTN)
			Namibia Estate Agents Board	National Youth Council of Namibia (NYC)
			Namibia Financial Institution Supervisor Authority (Namfisa)	National Youth Service (NYS)
			Namibia Fish Consumption Promotion Trust (NFCPT)	New Era Publication Corporation (NEPC)
			Namibia Institute for Mining Technology (NIMT)	Security Enterprises and Officers Regulation Board (SEORB)
			Namibia Institute of Public Administration & Management (NIPAM)	Social Security Commission (SSC)
			Namibia Press Agency (Nampa)	University of Namibia (UNAM)

## Boards of public enterprises

Every public enterprise must have a board of directors or a similar governing body – referred to in the law as the “board” even if there is actually some other name for the governing body. These boards function like boards of directors in companies.<sup>12</sup>

The Minister will identify staff members in the Ministry responsible for public enterprises to put together a report with recommendations on the number of board members, their terms of office and the expertise required, in cases where the law or other founding document of the public enterprise does not have specific requirements on these issues. The report will also include a recommendation on whether any board members should be “executive members”, which refers to board members who are full-time employees of the public enterprise.<sup>13</sup>

The report must also identify individuals who are qualified and suitable for board positions. There must be more recommended candidates than the number of board members needed, so that the Minister who will appoint the board has room for choice.<sup>14</sup>

The report containing the recommendations on all of these issues will be provided to the Minister responsible for public enterprises, who will consider the recommendations.

In the case of a commercial public enterprise, the Minister responsible for public enterprises will appoint the board members in consultation with Cabinet. The Minister is not required to appoint the candidates recommended in the report, but must provide reasons to Cabinet if the recommendations are not followed.<sup>15</sup>

In case of a non-commercial public enterprise or an extra-budgetary fund, the Minister responsible for public enterprises will review the report and then forward it to the relevant Minister along with his or her advice. If this advice opposes the appointment of a person who was recommended in the report, the Minister must state the reasons for his or her opinion. The relevant Minister will then appoint the board members, in consultation with Cabinet. The relevant Minister is not bound by the recommendations in the report, or by the advice of the Minister responsible for public enterprises, but must provide reasons to Cabinet for making different choices.<sup>16</sup>

Appointments to the boards of any kind of public enterprise must be announced in the *Government Gazette*.<sup>17</sup> This helps to guarantee transparency.

No individual is allowed to serve on more than two public enterprise boards at the same time, unless the Minister responsible for public enterprises specifically authorises additional board memberships because of a shortage of skills. There is also an exception for cases where one individual serves on more than two boards because of holding a specific office – such as where various laws require the Executive Director of a particular ministry to sit on several boards.<sup>18</sup>

The rules in the *Public Enterprises Act* about boards apply to every public enterprise. If there is a conflict, these rules overrule anything in any other law or document that establishes a specific public enterprise.<sup>19</sup>

<sup>12</sup> [Public Enterprises Governance Act 1 of 2019](#), section 1, definition of “board”; sections 8-9.

<sup>13</sup> [Public Enterprises Governance Act 1 of 2019](#), sections 8 and 9.

<sup>14</sup> [Public Enterprises Governance Act 1 of 2019](#), sections 8 and 9.

<sup>15</sup> [Public Enterprises Governance Act 1 of 2019](#), section 9.

<sup>16</sup> [Public Enterprises Governance Act 1 of 2019](#), section 8.

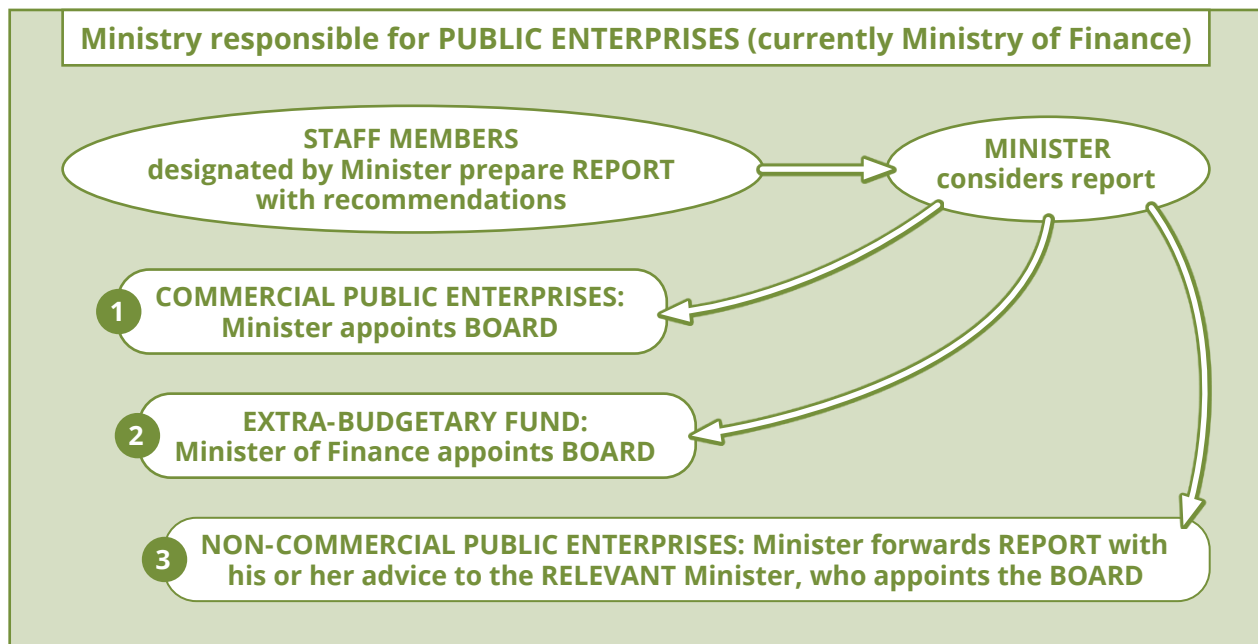
<sup>17</sup> [Public Enterprises Governance Act 1 of 2019](#), section 8(7) and 9(5).

<sup>18</sup> [Public Enterprises Governance Act 1 of 2019](#), sections 7 and 41.

<sup>19</sup> [Public Enterprises Governance Act 1 of 2019](#), section 6.



## PROCEDURE FOR APPOINTING BOARDS OF PUBLIC ENTERPRISES



In addition to this procedure, the Minister responsible for public enterprises, acting in consultation with Cabinet, has the power to set rules on certain issues relating to the boards of public enterprises:

- the number of board members (which may not be less than five)
- the number of executive members to be appointed to boards, if any
- whether to require that alternate members must be appointed
- the qualifications, experience or skills required for appointment as board members
- the terms of office of board members in general, or for board members who hold particular positions on the board.

Any rules on these issues made by the Minister must be published in the *Government Gazette* if they relate to a public enterprise that has been established by a law.<sup>20</sup>

The remuneration and allowances payable to board members must be determined by the relevant Minister, with the agreement of the Minister of Finance.<sup>21</sup>

### Chief Executive Officer

The law does not set rules on how the Chief Executive Officer of a public enterprise will be appointed. A Chief Executive Officer acts under the direct authority of the board and is responsible for the conduct of the business of the public enterprise.<sup>22</sup> A Chief Executive Officer also has a duty to respond to a request from the Minister responsible for public enterprises for information about the business and activities of the public enterprise. It is a crime for the Chief Executive Officer to fail to respond, or to give false or misleading information.<sup>23</sup> So the Chief Executive Officer is accountable in some respects to both the board and the Minister. The remuneration and benefits paid to the Chief Executive Officer and other management staff must be determined by the board, with the agreement of the relevant Minister.<sup>24</sup>

<sup>20</sup> *Public Enterprises Governance Act 1 of 2019*, section 4(2) and (5).

<sup>21</sup> *Public Enterprises Governance Act 1 of 2019*, section 18(1).

<sup>22</sup> *Public Enterprises Governance Act 1 of 2019*, section 1 (definition of “chief executive officer”).

<sup>23</sup> *Public Enterprises Governance Act 1 of 2019*, section 20.

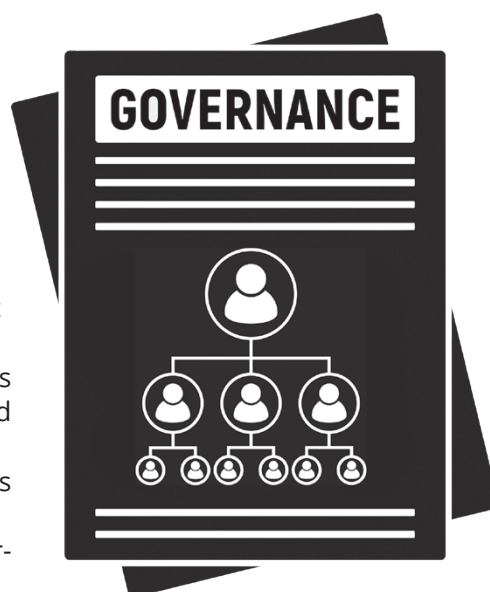
<sup>24</sup> *Public Enterprises Governance Act 1 of 2019*, section 18(3).

## Governance agreements

For every public enterprise, the relevant Minister must enter into a written governance agreement with the board. If the board fails to sign the governance agreement within a reasonable time, this is grounds for removing the board and appointing a new one.

The issues that must be covered in the governance agreement include:

- the State's expectations regarding the public enterprise's scope of business, efficiency and financial performance and achievement of its objectives
- the measures that are necessary to protect the enterprise's financial soundness
- key performance indicators for evaluating the public enterprise's performance



A copy of the governance agreement must be available for inspection by any member of the public at the head office of the public enterprise during business hours.<sup>25</sup>

## Performance agreements

For every public enterprise, the relevant Minister must enter into performance agreements with each board member. Any board member who fails to sign a performance agreement within a reasonable time can be removed from the board.

Certain conditions are understood to be part of every performance agreement, whether or not they are specifically stated:

- Board members must act honestly at all times in carrying out their functions.
- Board members must exercise a reasonable degree of care and diligence in carrying out their functions.
- Board members must not use their positions to gain advantages for themselves or for anyone else, or to cause harm to the public enterprise. This also applies to improper use of information about the public enterprise by board members after they leave office.



A board member who violates any of these general rules or any other part of the performance agreement can be removed from the board. The relevant Minister can also go to court to recover any profit that was made in this way, or to get compensation for any loss to the public enterprise. A board member who violates the general rules of the performance agreement may also find that they have committed a crime or left themselves open to a lawsuit for any damages caused.<sup>26</sup>

The board must enter into a performance agreement with the Chief Executive Officer, and the Chief Executive Officer, in turn, must enter into performance agreements with all senior management staff. Failure to comply with a performance agreement is grounds for dismissal, unless it was caused by some unforeseen circumstances outside the control of the Chief Executive Officer or staff member.<sup>27</sup>

<sup>25</sup> [Public Enterprises Governance Act 1 of 2019](#), section 11.

<sup>26</sup> [Public Enterprises Governance Act 1 of 2019](#), section 12.

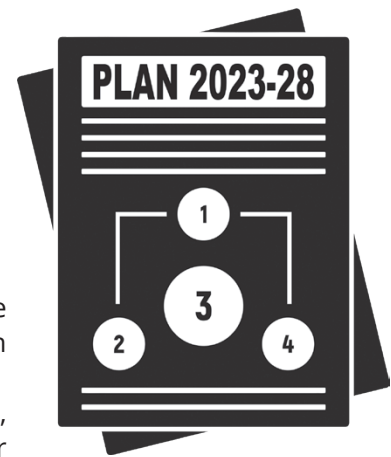
<sup>27</sup> [Public Enterprises Governance Act 1 of 2019](#), section 17.

## Plans and budgets

Every public enterprise must submit a **five-year integrated strategic business plan** to the relevant Minister for input and approval. This plan must cover all the planned businesses and activities of the public enterprise, including investments.

This plan must also include the following elements:

- a statement of the purpose, vision and strategy of the public enterprise
- an explanation of the public enterprise's governance, organisation and management arrangements
- key performance indicators on issues such as financial performance, impact on employment, positive environmental impact, gender balance, and innovation
- a five-year business implementation plan that includes a marketing plan, an operations plan, an investment plan, financial projections, a workforce plan, a skills development plan, a financing plan and a risk management plan.<sup>28</sup>



Every public enterprise must also submit an **annual business and financial plan** to the relevant Minister for input and approval.<sup>29</sup>

Its **annual budget** must be also be agreed with the relevant Minister, and no expenditures outside the budget are allowed unless the Minister responsible for public enterprises gives permission for a change because unforeseen circumstances have arisen since the budget was prepared.<sup>30</sup>

Importantly, the law requires every public enterprise to follow the plans and the budget that have been approved, unless the relevant Minister give written permission to act otherwise – but the law does not set out the consequences of a failure to do so.<sup>31</sup>

The board must also develop an **investment policy** for the input and approval of the relevant Minister, after that Minister consults with the Minister of Finance. This policy must set out the policies, standards and procedures that will guide investment transactions. The board must take all reasonable steps to observe these investment policies – but the law does not explain the consequences of a failure to do so.<sup>32</sup>

The board has a duty to notify the relevant Minister, the Minister responsible for public enterprises and the Minister of Finance of any events that will have a significant impact on the targets in the plans.<sup>33</sup>



The plans and the budget are confidential documents that are not available to the general public, unless they are disclosed with the approval of the board of a public enterprise and the relevant Minister.<sup>34</sup>

<sup>28</sup> [Public Enterprises Governance Act 1 of 2019](#), section 13.

<sup>29</sup> [Public Enterprises Governance Act 1 of 2019](#), section 14.

<sup>30</sup> [Public Enterprises Governance Act 1 of 2019](#), section 15.

<sup>31</sup> [Public Enterprises Governance Act 1 of 2019](#), section 16.

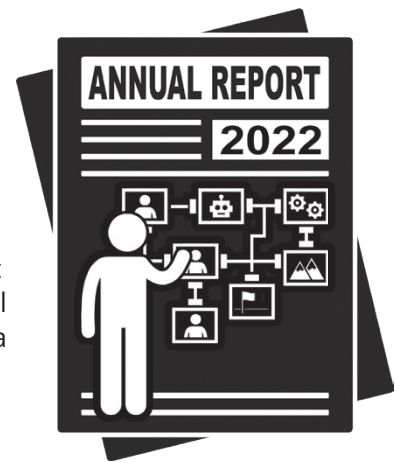
<sup>32</sup> [Public Enterprises Governance Act 1 of 2019](#), section 23.

<sup>33</sup> [Public Enterprises Governance Act 1 of 2019](#), section 19.

<sup>34</sup> [Public Enterprises Governance Act 1 of 2019](#), section 16(3)-(4).

## Annual reports of public enterprises

The board of a public enterprise must submit an annual report to the relevant Minister no later than six months after the end of each financial year. In the case of a non-commercial public enterprise or an extra-budgetary fund, the annual report must go to the Minister responsible for public enterprises. The annual report must include audited financial statements, and information on whether the public enterprise has met its objectives for the financial year. The annual report must be submitted to the National Assembly, which makes it a public document.



## Special investigations



The Minister responsible for public enterprises can initiate a special investigation of a public enterprise if the Minister considers this necessary or desirable. The Minister can appoint a special investigator from inside or outside the Ministry. This special investigator has broad powers to call for information from the board or an employee of the public enterprise. The special investigator may make public statements about the nature and conduct of the investigation, and consider relevant information from any source.

When the special investigation has been completed, the special investigator must submit a report to the Minister responsible for public enterprises with the findings of the investigation and any recommendations. The report must also indicate whether there is evidence of corruption or other criminal activities.

After studying the report, the Minister may refer the matter to the Anti-Corruption Commission or the Inspector-General of the Namibian Police Force for appropriate action.<sup>35</sup>

## Restructuring of public enterprises

The law provides for the restructuring of public enterprises. The Minister responsible for public enterprises, acting in consultation with the Cabinet, may initiate a process for restructuring any public enterprise. The Minister responsible for public enterprises must consult with the relevant Minister and the board of the public enterprise before starting the restructuring process. The board must provide the Minister with a detailed risk and impact assessment report, certified by the auditors of the public enterprise, on the risks and consequences of the proposed restructuring.

The Minister will direct staff members of the Ministry to draw up a proposed plan for the restructuring. For example, a public enterprise that is not already in the form of a company might be converted into a company or a State-owned company. The restructuring might mean that the assets and liabilities of the public enterprise will be transferred to another public enterprise or that the public enterprise will be closed down.

### Anti-Corruption Commission

The Constitution requires Parliament to pass a law setting up an independent and impartial Anti-Corruption Commission with a Director-General and a Deputy Director-General nominated by the President and appointed for five-year terms by the National Assembly. The *Anti-Corruption Act 8 of 2003* provides measures for the prevention, investigation and punishment of corruption by the Anti-Corruption Commission.

<sup>35</sup> *Public Enterprises Governance Act 1 of 2019*, sections 25-31.

Before approving a proposed plan for restructuring, the Minister must give consideration to the issue of empowerment of persons who have been disadvantaged by past discriminatory laws and practices prior to Namibia's independence.

A restructuring plan must also take into account the purpose of the public enterprise, the risk assessment and impact report submitted by the board, the performance of the public enterprise since its establishment, the issue that lead to the restructuring process, representations from any relevant stakeholder and any directives from the Minister.

The Minister must submit the final restructuring plan to Cabinet for a final decision.

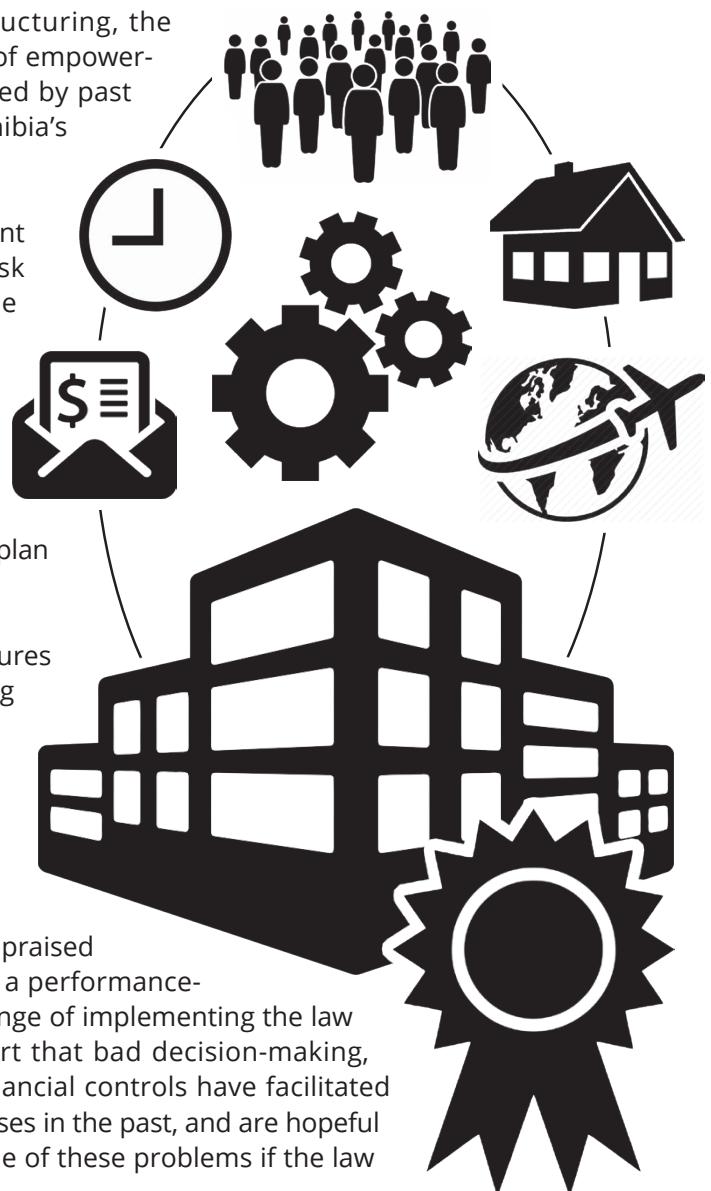
The Minister can impose various interim measures while the restructuring is in progress, including changing the functions of the public enterprise, giving directions to the board or even changing the composition of the board in some cases.<sup>36</sup>

## Comment and criticism

The *Public Enterprise Governance Act* has been praised for introducing reforms aimed at establishing a performance-based governance system, although the challenge of implementing the law effectively have also been noted. Some assert that bad decision-making, weak management, poor planning and lax financial controls have facilitated corruption in some of Namibia's public enterprises in the past, and are hopeful that the reformed approach may root out some of these problems if the law is robustly enforced.

The **"governance agreements"** concluded with boards and the **"performance agreements"** concluded with individual board members are intended to be key tools for monitoring public enterprises. It has been asserted that the law should be more specific about the contents of these documents, instead of merely providing a list of general components such as "the State's expectations" and measures "to protect financial soundness", or requirements to "act honestly" and "exercise a reasonable degree of care and diligence".

Another problem with these agreements concerns responsibility for signing or implementing them. Boards and individual board members can be dismissed if they fail to sign the required agreements, but there are no consequences for a Minister who fails to conclude the agreement on the other side. Similarly, since boards act collectively, where does responsibility lie if some individual board members are prepared to sign the required governance agreement, but are overruled by the majority of the board? In the same vein, the law is also unclear about how individual board members can fairly be held liable for failure to implement their individual performance agreements if, for instance, they are overruled on key issues by the majority of the board.



<sup>36</sup> *Public Enterprises Governance Act 1 of 2019*, sections 32-35.

The law also requires the board to enter into a performance agreement with the Chief Executive Officer, while the Chief Executive Officer must enter into performance agreements with all senior management staff. Failure to comply with these performance agreements is grounds for dismissal, but no consequences are provided for failure to enter into the agreements altogether.

When it comes to the various **plans and budgets** that public enterprises must develop, one problem is that no consequences are spelt out for failure to prepare or adhere to these documents. Another concern is that the law concentrates significant power in the hands of the relevant Minister, who must approve the plans and budget. This could be seen as undermining the role and the authority of the board and the Chief Executive Officer. There is no clear recourse for the possibility of political interference in the public enterprise's decision-making on operational or financial matters.

It has been suggested that the law should provide for regular monitoring and evaluation processes, to allow for prompt changes in approach if the overall performance of the public enterprise seems to be heading in the wrong direction. **Annual reports** provide one form of regular assessment, and regularly inform stakeholders and shareholders about the state of public enterprises. Although the law requires the preparation of annual reports and their submission to the National Assembly, it does not spell out any consequences for failure to produce them.<sup>37</sup>

Another suggestion is that **boards** of public enterprises should be appointed by independent panels of experts instead of by Ministers, to remove the possibility of undue political control and influence. The theory is that this system would produce more independent boards that would be more effective.<sup>38</sup>



<sup>37</sup> Ntelamo Ntelamo, "[Contrasting Governance Arrangements with the Management of Performance of Public Enterprises in Namibia](#)", 4(1) *Africa Journal of Public Sector Development and Governance* 2021| R Marenga, "[Analysing the performance of public enterprises in Namibia: A challenge for the practice of public administration?](#)", 9(3) *Journal of Governance & Regulation* 2020.

<sup>38</sup> Adv Kapache Victor, "It's time to get Serious about SOE Boards", *The Namibian*, 14 October 2022.