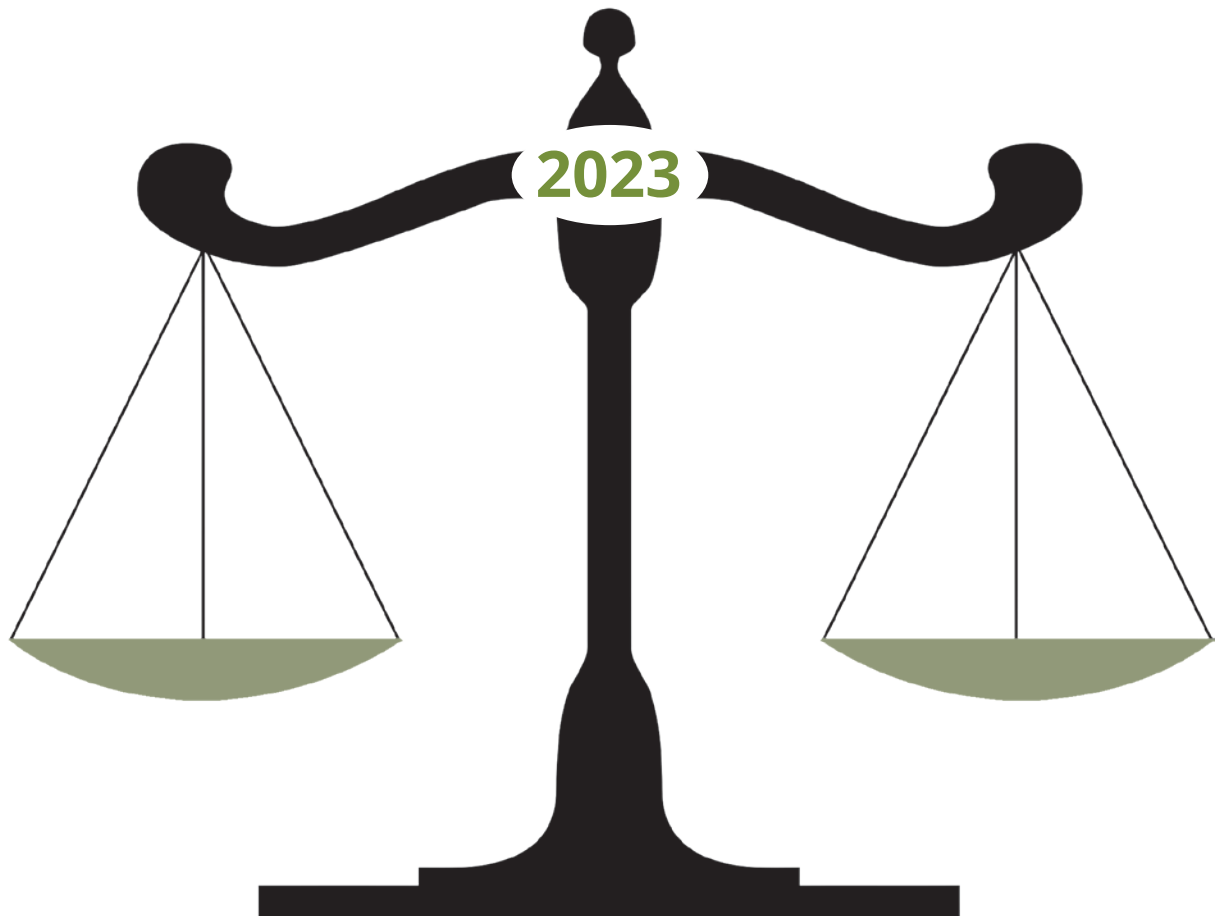


LEARN ABOUT THE LAW: STATUTE SUMMARIES



THREE BRANCHES OF GOVERNMENT

EXECUTIVE BRANCH:

President and High-Level Executive Appointees, Public Service, Public Enterprises

LEGISLATIVE BRANCH:

Parliament

JUDICIAL BRANCH:

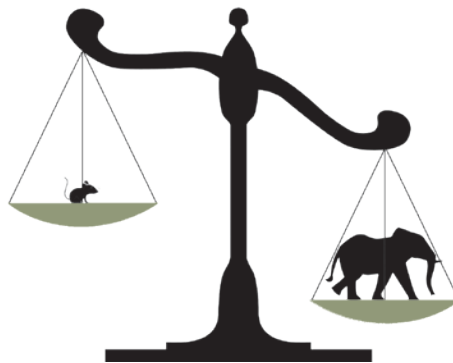
Supreme Court, High Court, Magistrate's Courts, Community Courts





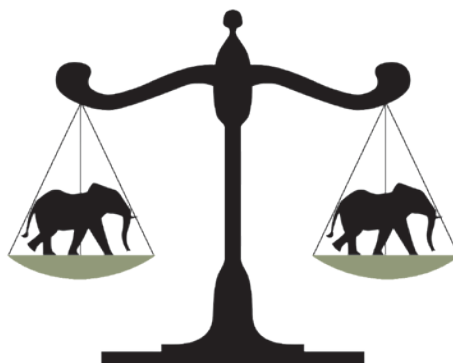
What is this symbol?

The illustration shows the “scales of justice”, which is a symbol that is often associated with law. It shows a piece of equipment used to measure how much something weighs, or to compare two things to see which one weighs more.



If you put things that have different weights (like an elephant and a mouse) on each side of the scale, the heavier item will pull the scale lower on that side.

If the things on both sides weigh about the same (like two elephants that are about the same size), the scale will stay level.



This kind of scale is often used to illustrate **fairness in the law**. It shows that each side of a case will be considered fairly by a court. It shows that the law and the courts are not biased, because this kind of scale works the same no matter who uses it and no matter who or what is being weighed.



LIST OF STATUTE SUMMARIES

THREE BRANCHES OF GOVERNMENT

EXECUTIVE BRANCH

- **CONSTITUTIONAL FRAMEWORK**
- **PRESIDENT AND HIGH-LEVEL EXECUTIVE APPOINTEES**
 - Presidential Remuneration and Other Benefits Act
 - Former Presidents' Pension and Other Benefits Act
 - ◆ Conferment of Status of Funding Father Act
 - Special Advisers and Regional Governors Appointment Act
 - Public Office-Bearers (Remuneration and Benefits) Commission Act
- **PUBLIC SERVICE**
 - Public Service Commission Act
 - Public Service Act
 - ◆ Namibia Institute of Public Administration and Management Act
 - ◆ Decentralisation Enabling Act
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LEGISLATIVE BRANCH

- **CONSTITUTIONAL FRAMEWORK**
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 - Powers, Privileges and Immunities of Parliament Act

JUDICIAL BRANCH

- **CONSTITUTIONAL FRAMEWORK**
- **COURTS**
 - Judiciary Act
 - Judicial Service Commission Act
 - Magistrates Act
 - Supreme Court Act
 - High Court Act
 - Magistrates' Courts Act
 - Community Courts Act



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PUBLIC PROTESTS**



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THREE BRANCHES OF GOVERNMENT

Before looking at the statutes that relate to the three branches of Government, we will first look at the framework for the three branches set out in the Namibian Constitution.

Separation of powers

The Namibian Constitution creates three different branches of government:

- (1) the Executive Branch (the President and Cabinet)
- (2) the Legislative Branch (Parliament)
- (3) the Judicial Branch (the courts).



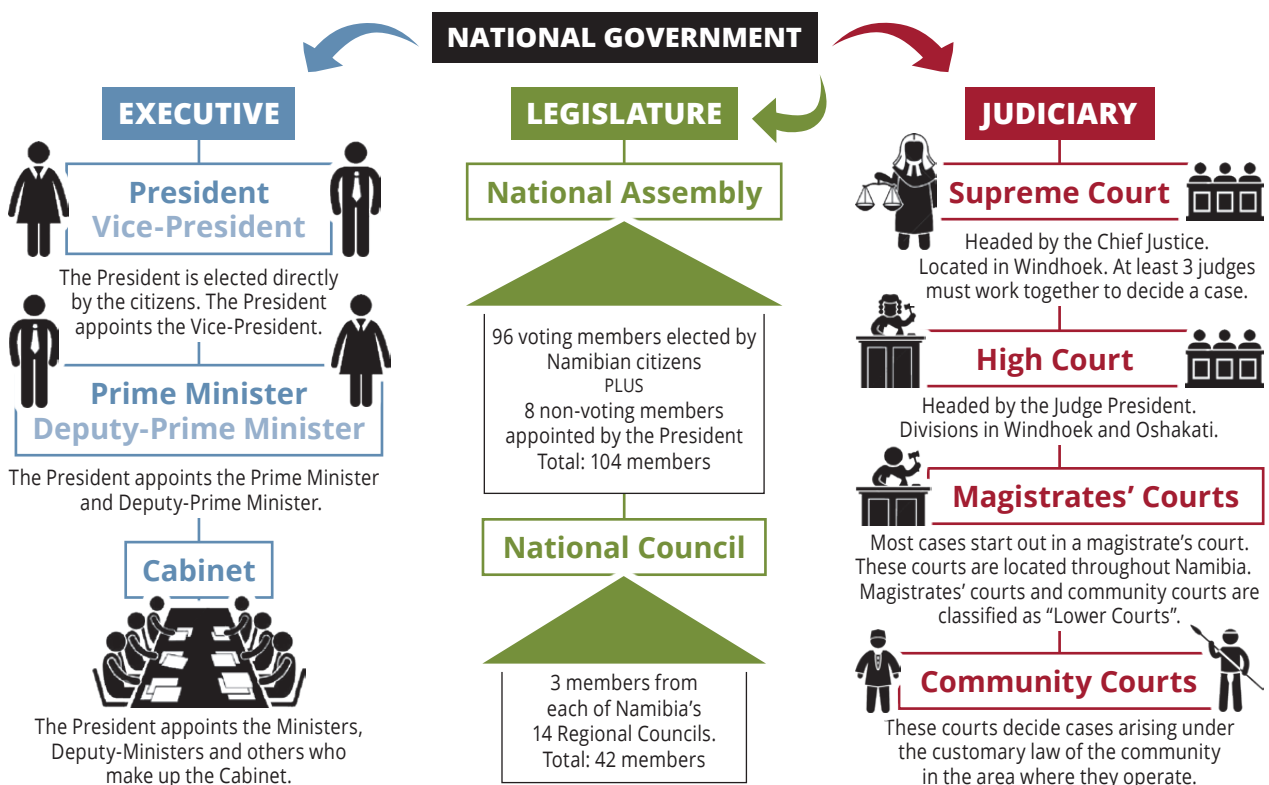
NAMIBIAN CONSTITUTION

Article 1: Establishment of the Republic of Namibia and Identification of its Territory

- (1) The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of **democracy**, the **rule of law** and **justice for all**.
- (2) All **power** shall vest in the **people of Namibia** who shall exercise their sovereignty through the democratic institutions of the State.
- (3) The main organs of the State shall be the **Executive**, the **Legislature** and the **Judiciary**.

The division of government powers amongst three different branches prevents abuses of power. Each branch has some independent powers, but the three different branches also monitor and limit each other. This creates a system of checks and balances. This system helps to make sure that no one person or institution becomes too strong or controlling. The separation of powers helps to protect the rights of the people of Namibia. Most democracies have a similar separation of powers.

SEPARATION OF POWERS INTO THREE BRANCHES OF GOVERNMENT



CHECKS AND BALANCES

How each branch of government monitors and limits the others

EXECUTIVE BRANCH: The President and Cabinet *implement* laws.

Checks on Judicial Branch

- The President **appoints judges** on the recommendation of the Judicial Service Commission.
- The President may **remove a judge from office** on the recommendation of the Judicial Service Commission, but *only* for mental incapacity or gross misconduct.
- The President has the power to **pardon** convicted offenders.

Checks on Legislative Branch

- The President and Ministers **propose bills** for consideration by Parliament.
- The President can **refuse to sign a bill passed by Parliament** (but cannot withhold consent to a bill passed by a 2/3 majority in the National Assembly).
- The President **nominates eight non-voting members** to the National Assembly.
- The President can **dissolve the National Assembly** on Cabinet's advice if the government is unable to govern effectively (which leads to new elections for National Assembly and President within 90 days).

LEGISLATIVE BRANCH: Parliament *makes* laws.

Checks on Executive Branch

- Parliament **approves the budget** for government.
- The National Assembly can force the President to **remove a member of Cabinet** by a majority vote of no confidence.
- Parliament **can impeach the President** by a 2/3 vote in the case of serious misconduct.
- If the National Assembly **passes a bill by a 2/3 majority**, the **President cannot withhold consent** to that bill.
- The National Assembly can **disapprove an action of the President** and review, reverse or correct it by a 2/3 vote.

Checks on Judicial Branch

- Parliament **enacts statutes which govern the operation of the courts.**
- Parliament can **amend statutes** if it disagrees with an interpretation of the statute by the court.
- Parliament can **amend the Constitution** by a 2/3 vote if it disagrees with a court's interpretation of the Constitution (as long as this does not weaken any of the fundamental rights and freedoms).

JUDICIAL BRANCH: The Courts *interpret and apply* laws.

Checks on Legislative Branch

- Courts **interpret laws passed by Parliament.**
- Courts **apply laws to specific cases.**
- Courts can **invalidate a law passed by Parliament on the grounds that the law is unconstitutional.**

Checks on Executive Branch

- Courts **interpret laws passed by Parliament**, and so guide government agencies on how to implement those laws.
- Courts **can declare actions of the Executive unconstitutional.**
- The **Attorney-General can refer a matter to the Supreme Court for decision**, to guide the Executive Branch.

Constitutional framework

The structure and the powers of each of the three branches of government is set out in the Namibian Constitution, which is the Supreme Law of Namibia. Statutes passed by Parliament provide more detail about some aspects of the operation of each of the three branches. So, before looking at the statutes that apply to each branch, the constitutional framework for each branch will be summarised.



Examples of checks and balances

The **Stock Theft Act** was passed by **Parliament** and signed by the **President**. In 2017, the **Supreme Court** found that some of the minimum sentences were unconstitutional because they were so severe that they were out of proportion to the crime. The Court held that this violated the constitutional rule against cruel, inhuman or degrading punishment, so it ruled that these minimum sentences are no longer valid. **Parliament** can still amend this law in future, if the amendments are consistent with the Constitution.

The **Immigration Control Act 7 of 1993** was passed by Parliament and signed by the **President**. It is implemented by the **Immigration Control Board**. In 2001, the **Supreme Court** found that the constitutional right to administrative justice means that this Board must give reasons for its decisions. **Parliament** can still amend this law in future, if the amendments are consistent with the Constitution.



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.¹

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.²

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

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

² [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.)³

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.⁴

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.⁵ 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.⁶

Powers and duties of the President

The President's highest duty is to "uphold, protect and defend the Constitution as the Supreme Law".⁷ 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.⁸ The President is also the Commander-in-Chief of the Defence Force.⁹

³ *Namibian Constitution*, Articles 29(1) and (3), and 134(3).

⁴ *Namibian Constitution*, Article 33.

⁵ *Namibian Constitution*, Article 29(2).

⁶ *Namibian Constitution*, Articles 29(4) and 34.

⁷ *Namibian Constitution*, Article 32(1).

⁸ *Namibian Constitution*, Articles 27 and 32(1).

⁹ *Namibian Constitution*, Article 27(1).



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.



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.¹⁰

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".¹¹ 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.¹² 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.¹³

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.¹⁴

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*.

¹⁰ *Namibian Constitution*, Article 27(3).

¹¹ *Namibian Constitution*, Article 32(3)(g).

¹² *Namibian Constitution*, Articles 32(1) and (3)(i)(dd).

¹³ *Namibian Constitution*, Articles 32(3)(i)(dd) and 37.

¹⁴ *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”.¹⁵ 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.¹⁶

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

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.¹⁸

Security Commission

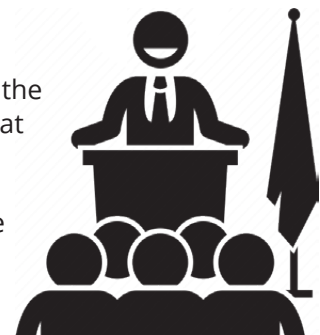
The Constitution and the *Security Commission Act 18 of 2001* set up the Security Commission. It is made up of the Chairperson of the Public Service Commission, the Chief of the Defence Force, the Inspector-General of Police, the Head of the Intelligence Service, the Commissioner-General of the Correctional 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.¹⁹

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.²⁰



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.²¹

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.²²

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

¹⁵ [Namibian Constitution](#), Article 32(5)(c).

¹⁶ [Namibian Constitution Third Amendment Act 8 of 2014](#).

¹⁷ [Namibian Constitution](#), Article 32(8).

¹⁸ [Namibian Constitution](#), Article 32(6).

¹⁹ [Namibian Constitution](#), Article 32(9)-(10).

²⁰ [Namibian Constitution](#), Articles 32(3)(a) and 57.

²¹ [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.

²² [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.²³

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.²⁴ 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.²⁵ 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.²⁶

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”²⁷ – 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.²⁸

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.

²³ *Namibian Constitution*, Article 56.

²⁴ *Namibian Constitution*, Article 64.

²⁵ *Namibian Constitution*, Article 32(3)(e).

²⁶ *Namibian Constitution*, Article 32(3)(c).

²⁷ *Namibian Constitution*, Article 32(3)(f).

²⁸ *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.²⁹

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.³⁰ 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.³¹
- 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”.³²

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.



²⁹ *Namibian Constitution*, Article 26(1)-(4).

³⁰ *Namibian Constitution*, Articles 24(1) and (3), and 26(5).

³¹ *Namibian Constitution*, Article 26(6).

³² *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.³³

The procedure for giving pardons and reprieves has been fleshed out by legislation, first the *Prisons Act 17 of 1998*³⁴ and now the *Correctional Service Act 9 of 2012*.³⁵ 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”.³⁶

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”.³⁷

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.

³³ 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.

³⁴ *Prisons Act 17 of 1998*, section 93.

³⁵ *Correctional Service Act 9 of 2012*, section 108.

³⁶ *Namibian Constitution*, Article 32(3)(h).

³⁷ *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.³⁸

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”.³⁹



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.⁴⁰

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.⁴¹

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.⁴²

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.⁴³

While acting as President, the Vice-President has the same immunity as the President.⁴⁴

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

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

⁴⁰ [Namibian Constitution](#), Article 28(2A).

⁴¹ [Namibian Constitution](#), Article 28(2A)(b).

⁴² [Namibian Constitution](#), Article 28(2C).

⁴³ [Namibian Constitution](#), Articles 29(4) and 34.

⁴⁴ [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.⁴⁵

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.⁴⁶

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.⁴⁷

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".⁴⁸

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

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

⁴⁷ [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).

⁴⁸ [Namibian Constitution](#), Article 42.



Oath by Ministers and Deputy-Ministers

Namibian Constitution, Article 38

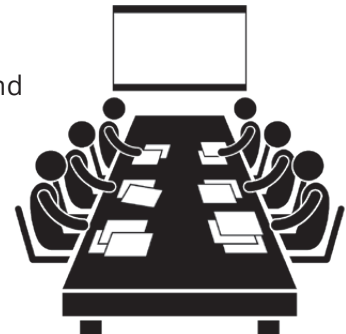
"I do hereby swear/solemnly affirm that I will be faithful to the Republic of Namibia, hold my office as Minister/Deputy-Minister with honour and dignity, uphold, protect and defend the Constitution and faithfully obey, execute and administer the laws of the Republic of Namibia, serve the people of Namibia 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.⁴⁹



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.⁵⁰ 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.⁵¹

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

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

⁵⁰ [Namibian Constitution](#), Article 39.

⁵¹ [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”.⁵²

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.⁵³

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.⁵⁴

Public Service Commission

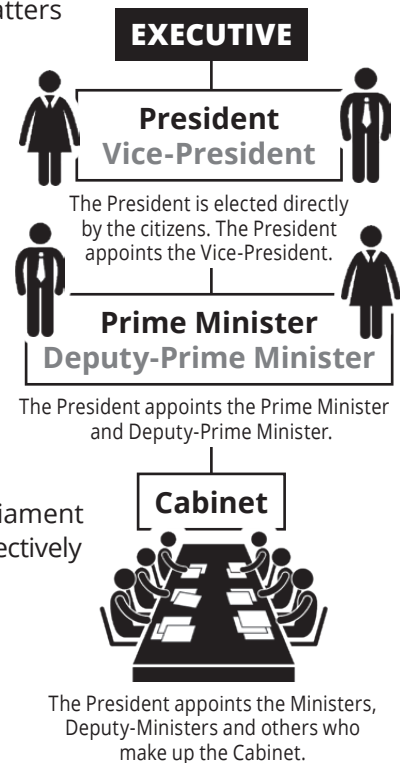
Government employees are called “public servants” because their job is to serve the public. When we talk about all of these employees as a group, we call them the “public service”.



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.⁵⁵

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.⁵⁶



⁵² [Namibian Constitution](#), Article 40.

⁵³ [Namibian Constitution](#), Article 41.

⁵⁴ [Namibian Constitution](#), Article 42.

⁵⁵ [Namibian Constitution](#), Article 112.

⁵⁶ [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.⁵⁷

The Public Service Commission must also carry out any other functions assigned to it by an Act of Parliament.⁵⁸ 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.⁵⁹

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.⁶⁰



⁵⁷ *Namibian Constitution*, Article 113(a)(aa); see also Article 91(b).

⁵⁸ *Namibian Constitution*, Article 113(b).

⁵⁹ *Namibian Constitution*, Articles 32(3)(i)(ee), 79(2), 86 and 87.

⁶⁰ *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*.¹

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.

¹ 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.²

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\$1 525 186.³ 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.⁴

² 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.

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

⁴ 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.⁵

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.⁶ 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.⁷

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

⁶ 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).

⁷ "[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.⁸

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 spouse⁹ – 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.¹⁰

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.¹¹ 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.¹² However, some world leaders receive tax-free allowances in addition to a taxable salary,¹³ and in some cases the rate of tax paid by the Head of State is lower than it would be for private citizens.¹⁴

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

⁸ Debates of the National Assembly, Volume 146, 2 October 2012, page 79.

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

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


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

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

¹³ 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.

¹⁴ 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).¹⁵ 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.¹⁶

| 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 2001.¹⁷

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.¹⁸

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

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.

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

¹⁶ "[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.

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

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

¹⁹ [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.²⁰

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”.²¹ 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”.²²

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).

²⁰ 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.

²¹ Debates of the National Assembly, Volume 77, 22 September 2004, page 342.

²² 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?

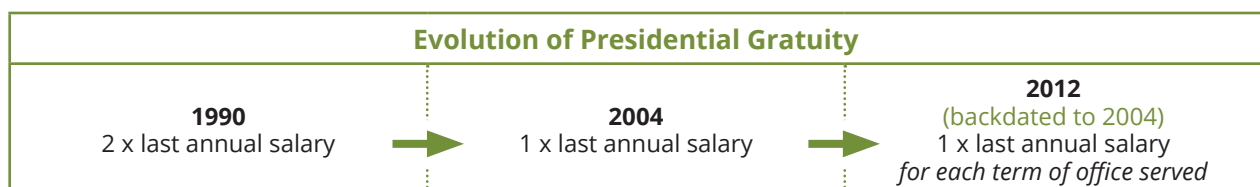


Yes. The definition of “surviving spouse” specifically includes a wife or husband under customary law. This issue gave rise to a heated debate in the National Assembly, with the Attorney-General arguing that customary law rules that allow only men to have multiple spouses offend the right to equality 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.²³ 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\$1 159 250.²⁴

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.



²³ 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.

²⁴ 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.²⁵

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.²⁶

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.²⁷ Similarly, some Parliamentarians also noted that the law's scheme (when read with

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

²⁶ 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.

²⁷ 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.²⁸ 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.²⁹

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.³⁰

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.³¹

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.³²

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

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

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

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

³¹ 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.

³² [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.³³ 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 2022.³⁴

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*.

³³ 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.

³⁴ 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.³⁵ 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.

³⁵ 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.³⁶

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.³⁷

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”.³⁸

COMPARISON OF FUNCTIONS Regional Council Chairperson versus Regional Governor

| Regional Council Chairperson (a member of the Regional Council elected by the Regional Council members) <i>Regional Councils Act 22 of 1992</i> | Regional Governor (any person appointed by the President) <i>Special Advisers and Regional Governors Appointment Act 6 of 1990</i> |
|---|--|
| <ul style="list-style-type: none"> ● serves as the “political head” of the region | <ul style="list-style-type: none"> ● acts as the representative of the central Government in the region |
| <ul style="list-style-type: none"> ● initiates and formulates planning and development policies in consultation with Council | <ul style="list-style-type: none"> ● 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 |
| <ul style="list-style-type: none"> ● closely monitors the implementation of these planning and development policies | |
| <ul style="list-style-type: none"> ● initiates joint business ventures and the commercialisation of services, functions or duties | |
| <ul style="list-style-type: none"> ● supervises the planning and implementing of all development programmes and projects | |
| <ul style="list-style-type: none"> ● is accountable to the Government and to the residents of the region | <ul style="list-style-type: none"> ● generally acts as a link between central Government and the regional council or any local or traditional authority in the region |
| <ul style="list-style-type: none"> ● in consultation with the Regional Council, investigates and tries to solve any issue pertaining to the region | <ul style="list-style-type: none"> ● settles or mediates disputes arising in the region |

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

³⁷ 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.

³⁸ 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*.³⁹

³⁹ 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.

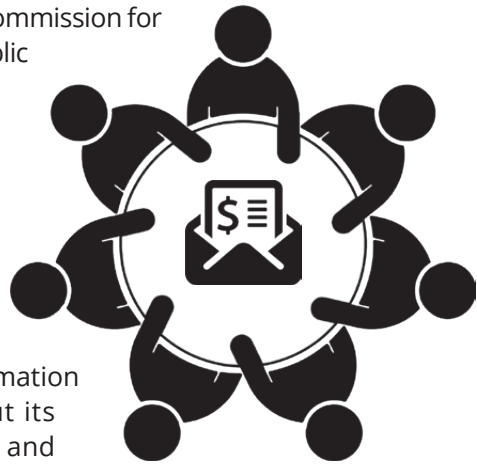
According to the Commission, the Chairperson of the Electoral Commission of Namibia, the Ombudsman, and the Director-General and Deputy Director-General of the Anti-Corruption Commission are public office-bearers under separate laws which guarantee their independence, so they do not fall under this law. 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.⁴⁰

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.

⁴⁰ 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.⁴¹

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.⁴²

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.⁴³

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”.⁴⁴ It made the following comment:

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

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

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

⁴⁴ 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.⁴⁵

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.⁴⁶

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.⁴⁷

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.⁴⁸

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

⁴⁶ 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.

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

⁴⁸ 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.⁴⁹

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

⁴⁹ 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.

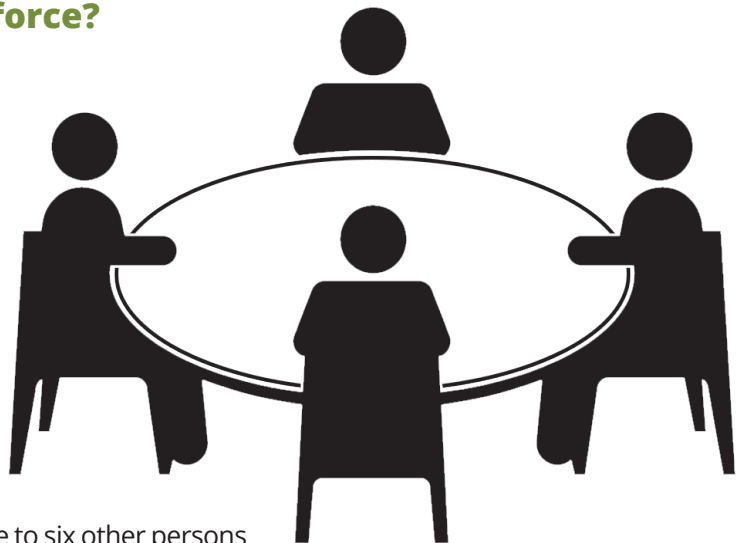
When did the law come into force?

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.¹



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.

¹ [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.²

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.³



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.

² [Namibian Constitution](#), Article 113.

³ [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.⁴ 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.⁵



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.⁶ 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.⁷

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.⁸

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

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.¹⁰

⁴ *Public Service Commission Act 2 of 1990*, sections 3-4.

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

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

⁷ *Public Service Commission Act 2 of 1990*, section 7.

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

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

¹⁰ *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.¹¹

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.¹²

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.

¹¹ *Public Service Commission Act 2 of 1990*, section 10.

¹² 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 members¹³
- staff of local authority councils¹⁴
- employees of parastatals.¹⁵

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.¹⁶

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.¹⁷

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.

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

¹³ *Regional Councils Act 22 of 1992*, sections 23-24.

¹⁴ *Local Authorities Act 23 of 1992*, section 27.

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

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

¹⁷ *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.¹⁸

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.¹⁹

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".²⁰



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

¹⁹ [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.

²⁰ [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.²¹

| 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”.²²

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

²² [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.²³

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

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.²⁵

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.²⁶

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.²⁷

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.²⁸

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

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

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

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

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

²⁸ [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.²⁹



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.³⁰

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.³¹



Executive Directors

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

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

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.³⁵

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.³⁶

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.³⁷

²⁹ *Public Service Act 13 of 1995*, section 7.

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

³¹ *Public Service Act 13 of 1995*, section 10.

³² *Public Service Act 13 of 1995*, section 19.

³³ *Public Service Act 13 of 1995*, section 19A.

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

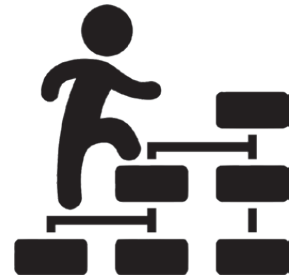
³⁵ *Public Service Act 13 of 1995*, section 11.

³⁶ *Public Service Act 13 of 1995*, section 12.

³⁷ *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.³⁸



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

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.⁴²

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.⁴³ 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.⁴⁴

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.⁴⁵

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.⁴⁶

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.⁴⁷

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

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

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

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

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

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

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

⁴⁵ [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.

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

⁴⁷ [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.⁴⁸

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.⁴⁹

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.⁵⁰ 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.⁵¹



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.⁵²



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.⁵³



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.⁵⁴

⁴⁸ *Public Service Act 13 of 1995*, section 14.

⁴⁹ *Public Service Act 13 of 1995*, section 15.

⁵⁰ *Public Service Act 13 of 1995*, section 17.

⁵¹ 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.

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

⁵³ *Public Service Act 13 of 1995*, section 24(4).

⁵⁴ *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.⁵⁵

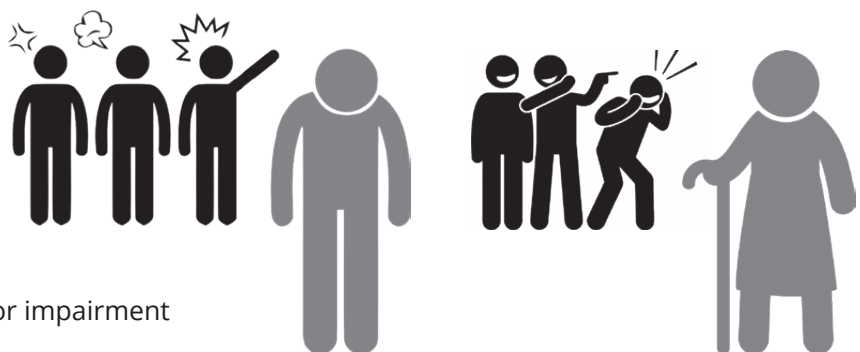


Additional rules of conduct are contained in the regulations issued under the *Public Service Act* and in the *Public Service Code of Conduct, Integrity and Ethics*. Some key regulations and rules of conduct are summarised in the following sections.

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.⁵⁶



⁵⁵ *Public Service Act 13 of 1995*, section 25.

⁵⁶ *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.⁵⁷



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.⁵⁸

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.)⁵⁹

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

⁵⁷ *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).

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

⁵⁹ *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.⁶⁰

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.⁶¹ 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.⁶²

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.⁶³



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.⁶⁴



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.⁶⁵

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.

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

⁶¹ [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).

⁶² [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).

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

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

⁶⁵ [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.⁶⁶



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.⁶⁷

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.

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

⁶⁷ [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.⁶⁸

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."⁶⁹

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.⁷⁰ 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.⁷¹



⁶⁸ *Public Service Act 13 of 1995*, section 30.

⁶⁹ "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.

⁷⁰ 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.

⁷¹ 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.⁷²



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.⁷³

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)

⁷² 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.

⁷³ “[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).⁷⁴

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.⁷⁵ 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*.⁷⁶

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.⁷⁷ 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.⁷⁸

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.⁷⁹

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".⁸⁰

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.⁸¹

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

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

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

⁷⁷ *Public Service Act 13 of 1995*, section 34.

⁷⁸ *General Regulations made under the Public Service Act, 1995*, regulation 26.

⁷⁹ *Medical Aid Funds Act 23 of 1995*, section 2.

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

⁸¹ 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.⁸² 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.⁸³

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.⁸⁴

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.⁸⁵

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

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.⁸⁷



NIPAM
NAMIBIA INSTITUTE OF PUBLIC
ADMINISTRATION AND MANAGEMENT

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

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

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

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

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

⁸⁷ *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.⁸⁸



⁸⁸ *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”.¹ The Constitution also gives Cabinet the functions of establishing, co-ordinating and supervising parastatal enterprises.² 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.³

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).

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

² [Namibian Constitution](#), Article 40(a) and (f).

³ 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.⁴

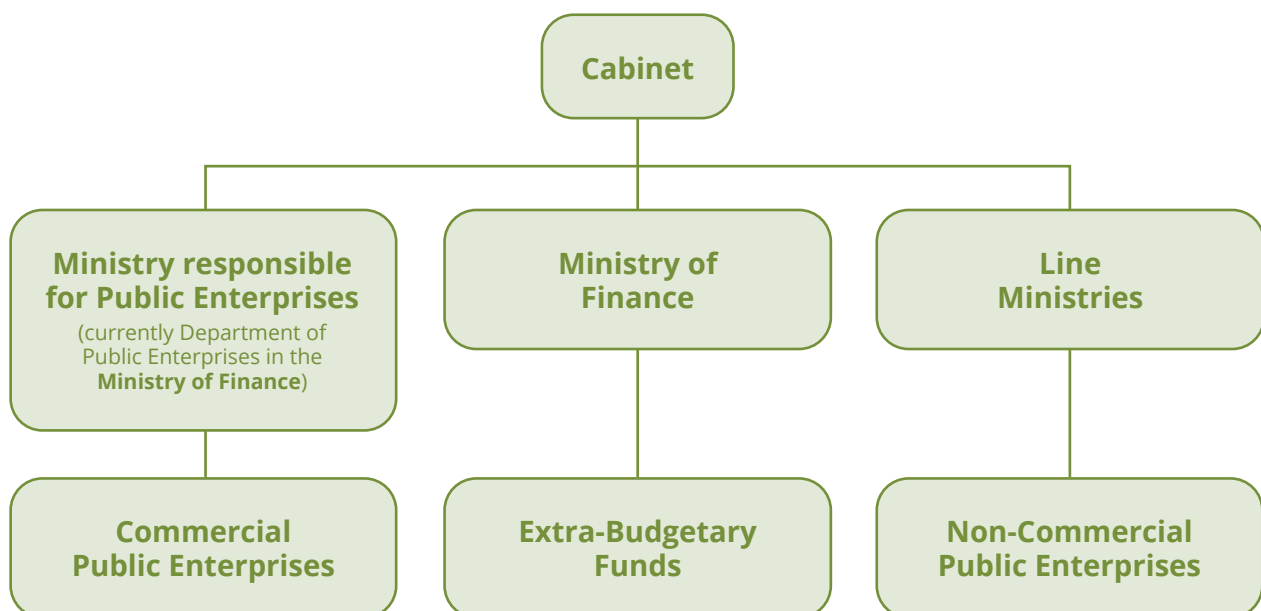
Ministry of Public Enterprises

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.⁵

Namibian Hybrid Model for Public Enterprises



⁴ 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.

⁵ *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*.⁶

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*.⁷

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

⁷ [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.⁸ 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.⁹

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.¹⁰

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.¹¹

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

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

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

¹¹ *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 <i>(which has since been dissolved)</i> | 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.¹²

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.¹³

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.¹⁴

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.¹⁵

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.¹⁶

Appointments to the boards of any kind of public enterprise must be announced in the *Government Gazette*.¹⁷ 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.¹⁸

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.¹⁹

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

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

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

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

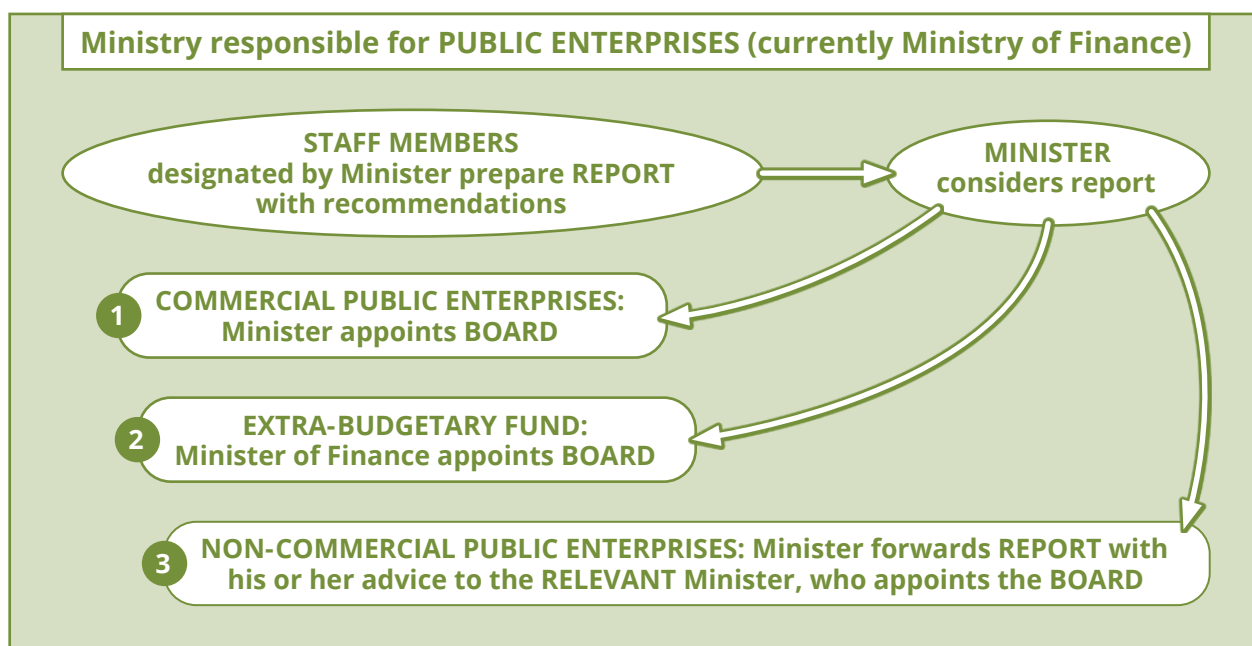
¹⁶ [Public Enterprises Governance Act 1 of 2019](#), section 8.

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

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

¹⁹ [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.²⁰

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

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.²² 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.²³ 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.²⁴

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

²¹ *Public Enterprises Governance Act 1 of 2019*, section 18(1).

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

²³ *Public Enterprises Governance Act 1 of 2019*, section 20.

²⁴ *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.²⁵

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.²⁶

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.²⁷

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

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

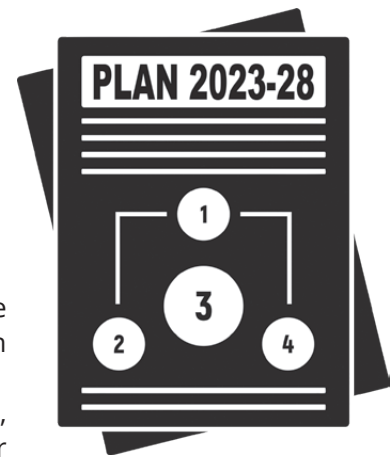
²⁷ [Public Enterprises Governance Act 1 of 2019](#), section 17.

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.²⁸



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

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.³⁰

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.³¹

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.³²

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.³³



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.³⁴

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

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

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

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

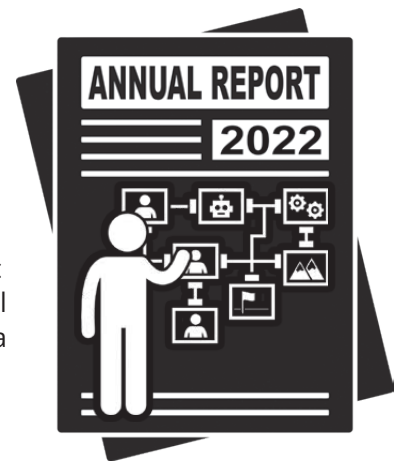
³² [Public Enterprises Governance Act 1 of 2019](#), section 23.

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

³⁴ [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.³⁵

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.

³⁵ *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.

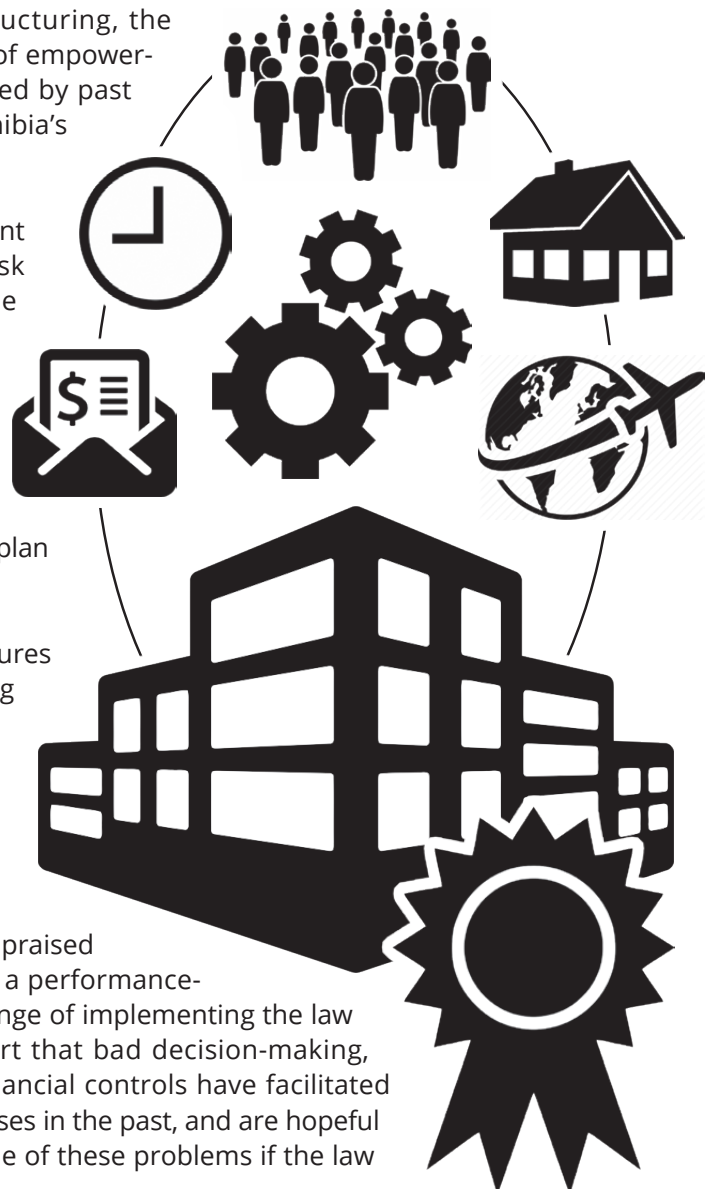
The Minister can impose various interim measures while the restructuring is in progress, including changing the functions of the public enterprise, giving directions to the board or even changing the composition of the board in some cases.³⁶

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.



³⁶ *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.³⁷

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.³⁸



³⁷ 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.

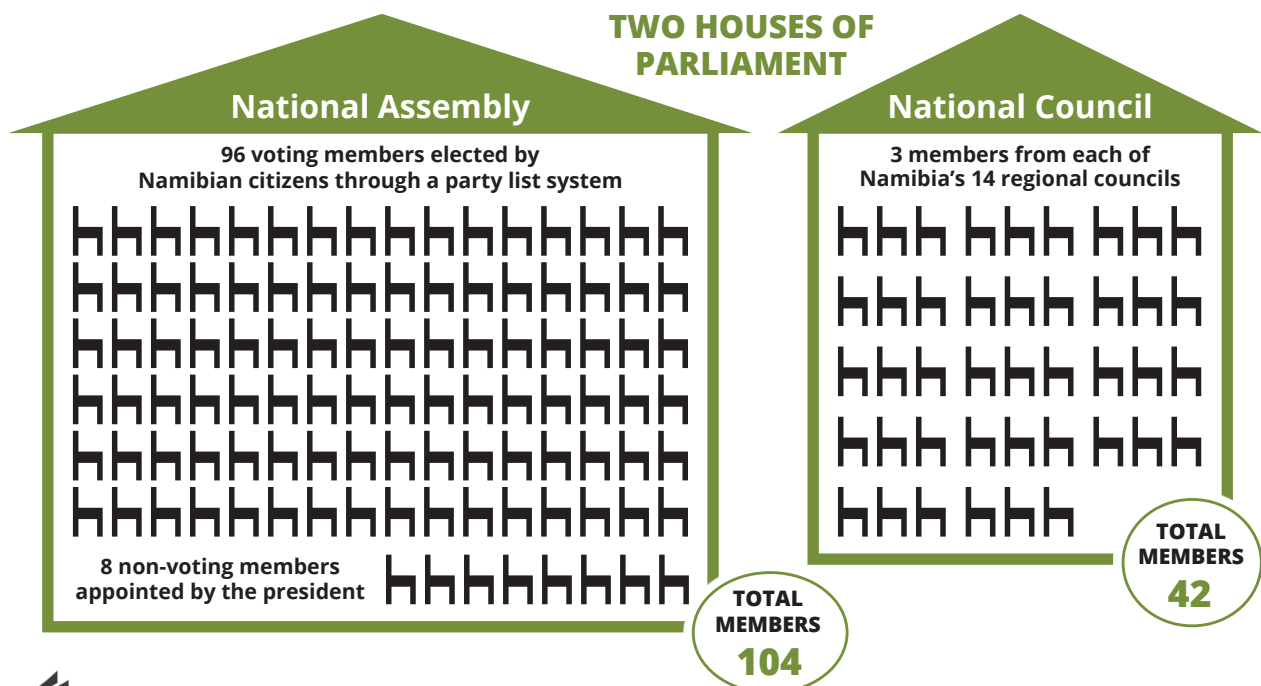
³⁸ Adv Kapache Victor, "It's time to get Serious about SOE Boards", *The Namibian*, 14 October 2022.



LEGISLATIVE BRANCH

Constitutional Framework

The Legislative Branch is one of Namibia's three branches of Government. Its primary task is making laws. It has two parts: the National Assembly and the National Council. Together, they are called Parliament.



Oath by Members of the National Assembly and the National Council

Namibian Constitution, Articles 55 and 71

"I do hereby swear/solemnly affirm that I will be faithful to the Republic of Namibia and its people and I solemnly promise to uphold and defend the Constitution and laws of the Republic of Namibia to the best of my ability."

The Namibian Constitution also says that all members of both Houses of Parliament have a duty to maintain the **dignity and image of the House** both during its meetings and in their activities outside Parliament. It also charges members of both Houses of Parliament to "regard themselves as **servants of the people of Namibia** and desist from any conduct by which they seek improperly to enrich themselves or alienate themselves from the people".¹

¹ [Namibian Constitution](#), Articles 60(1) and 74(4).



National Assembly

The National Assembly is Namibia's "principal legislative authority".² It is composed of **96 members who represent political parties chosen by the voters**, and **8 non-voting members appointed by the President** on the basis of their special expertise, status, skill or experience.³ The members must represent all the people of Namibia. They must be guided in their decisions by the Constitution, by the public interest and by their own consciences.⁴

The **National Assembly** originally had 72 voting members and 6 non-voting members appointed by the President, for a total of 78 members. The **National Council** originally had 2 members from each of 13 regions, for a total of 26 members. Both Houses of Parliament were enlarged by a 2014 amendment to the Constitution.

Namibia was divided into 13 regions at independence. In 2013, the Kavango Region was divided into Kavango East Region and Kavango West Region so that Namibia now has 14 regions. This change also increased the size of the National Council. Members of both houses serve for terms of 5 years.

Term of office

Members of the National Assembly normally hold office for **five-year terms**, unless the President, acting on the advice of Cabinet, exercises the constitutional power to dissolve it sooner "if the Government is unable to govern effectively".⁵ There is no prohibition on serving multiple terms of office.

Qualifications

Individuals may NOT be members of the National Assembly if any of the following situations apply.⁶

(1) Certain criminal convictions: A person is disqualified from being a member of the National Assembly if they have been convicted of certain crimes committed before or after independence.

- *Since Independence*, they have been convicted of a crime in Namibia, or a crime outside Namibia in respect of conduct that would also be a crime in Namibia, AND sentenced to death or imprisonment of more than 12 months without the option of a fine.⁷ However, this disqualification falls away if the person in question has received a free pardon. It also falls away if the sentence of imprisonment for the crime expired at least ten years before the date of election to the National Assembly. This disqualification does not apply if an appeal is still underway in the criminal case, or if the time period for filing an appeal has not yet expired.
- *Before Independence*, they were convicted of a crime for conduct that would also be a crime in independent Namibia AND sentenced to death or imprisonment for more than 12 months without the option of a fine. Again, this disqualification falls away if the person in question has received a free pardon, or if the sentence of imprisonment for the crime expired at least ten years before the date of election to the National Assembly. There is also another **exception**: No person will be disqualified from serving in the National Assembly if the crime in question was committed in connection with the struggle for the independence of Namibia.

² [Namibian Constitution](#), Articles 44 and 63(1).

³ [Namibian Constitution](#), Articles 46(1) and 49.

⁴ [Namibian Constitution](#), Article 45.

⁵ [Namibian Constitution](#), Articles 50 and 57(1). More specifically, Article 50 says that "every National Assembly shall continue for a maximum period of five (5) years".

⁶ [Namibian Constitution](#), Article 47.

⁷ Namibia no longer has the death sentence, which is now forbidden by Article 6 of the Namibian Constitution. But a serious crime committed in another country might still attract a death sentence.

Why does the Constitution refer to the sentence imposed instead of the nature of the crime?

Convictions for serious crimes often disqualify persons from holding public offices, although not every country makes this a rule. In the Namibian Constitution, the sentences imposed are intended to indicate the seriousness of the crime, as opposed to providing a list of specific crimes that might become outdated over time. However, several Namibian politicians have been convicted of corruption-related crimes and allowed to keep their seats in the National Assembly because they were offered fines as alternatives to prison sentences. So it might make more sense to have a rule that anyone convicted of crimes involving elements of bribery, fraud or corruption – as well as anyone convicted of financial or election-related crimes – is disqualified from serving in Parliament permanently or for a specified time period, regardless of the sentence imposed.⁸



- (2) **Unrehabilitated insolvents:** An “unrehabilitated insolvent” is someone who has, in layperson’s terms, declared bankruptcy because their debts are greater than their assets. In this situation, the person’s assets can be taken over for fair distribution between all creditors, under the supervision of the Master of the High Court. When the creditors have been satisfied, then the insolvent person can apply to be considered “rehabilitated” – which allows them to once again take control of their assets and engage in financial transactions. Rehabilitation also happens automatically after a significant amount of time has passed (currently 10 years).

Why should inability to pay one’s debts be a barrier to holding a seat in Parliament?

Bankruptcy is a common disqualification for public office. One reason may be that financial recklessness is considered to be a moral failing that is incompatible with holding a high public office, on the theory that persons holding offices of responsibility should be people of stability and integrity. Another concern is that this extreme degree of financial disaster may make an office-holder vulnerable to corruption. Also, some view filing for bankruptcy as a mechanism to escape financial responsibilities; when bankruptcy is declared, creditors often have to accept a lesser amount (such as 50 cents for every dollar owed) and the ultimate result is that the debtor’s slate is wiped clean of all past debts. But it can also be argued that bankruptcy sometimes results from circumstances entirely outside an individual’s control, and that financial difficulties are not the only motivation for corruption. Some say that insolvency should not be a disqualification for public office unless it is accompanied by dishonesty, incompetency or irresponsibility.⁹



- (3) **Being of unsound mind:** This applies only where the person has been formally declared by a court as being a person of unsound mind. The general standard is that the person is not competent to manage their legal affairs because of diminished mental capacity – which could result from mental illness, intellectual disability, brain injury, disease, stroke, dementia or incapacity related to ageing. The reasoning behind this disqualification is obvious.

⁸ For more information, see Legal Assistance Centre, “[Criminal Convictions as a Disqualification for Public Office](#)”, ProBono #47, 2020.

⁹ For more information on this topic, see Melanie Roestoff, “[Insolvency Restrictions, Disabilities and Disqualifications in South African Consumer Insolvency Law: A Legal Comparative Perspective](#)”, *Journal of Contemporary Roman-Dutch Law*, Vol 81, pages 393-417, 2018.

- (4) **Holding certain other public positions:** This disqualification applies to paid members of the public service and to members of the National Council, a Regional Council or a Local Authority. For this purpose, the “public service” includes the defence force, the police force, the correctional service, a parastatal enterprise, a Regional Council or a Local Authority. The rationale for this disqualification is to prevent the risk of conflict between the responsibilities that go with the different positions, and to avoid watering down the checks and balances between different offices or branches of government.

Vacancies

According to the Namibian Constitution, members of the National Assembly vacate their seats in the following circumstances:

- (a) if they cease to have the qualifications to be members of the National Assembly (detailed above)
- (b) if the political party which nominated them informs the Speaker of the National Assembly that they are no longer members of that political party
- (c) if they give a written resignation to the Speaker
- (d) if they are removed by the National Assembly in terms of its rules and standing orders
- (e) if they are absent during sittings of the National Assembly for 10 consecutive sitting days, without special leave of the National Assembly on grounds set out in its rules and standing orders.¹⁰

If a seat in the National Assembly is vacated for any of these reasons, the political party that nominated the member can fill the vacancy by nominating any person on the party's last election list or, if there is no one on that list to take the seat then by nominating any member of the party.¹¹

The seat would obviously also become vacant if the member dies, although the Constitution does not mention this. The same procedure for filling the vacancy would probably apply.

Functions

The National Assembly has the power to make or repeal laws “for the peace, order and good government of the country in the best interest of the people of Namibia”, as long as its actions are not in conflict with the Constitution.¹²

The National Assembly also has the following additional powers and duties:

- to approve **budgets** “for the effective government and administration of the country”
- to provide for **revenue** (government income) and **taxation**
- to take steps **to uphold and defend the Constitution and the laws of Namibia** and to advance the objectives of Namibian independence
- to consider and decide whether or not to join **international agreements entered prior to Independence** by previous non-democratic administrations
- to decide whether or not to join **international agreements negotiated and signed by the President**
- to receive **reports on the activities of the Executive Branch, including parastatals**, and to require any senior officials to appear before committees of the National Assembly to explain their acts and programmes
- to decide to hold a **referendum** on matters of national concern
- to debate on and **to advise the President** on any matters that the President is authorised to deal with under the Constitution
- **to make sure that apartheid, tribalism and colonialism do not return to Namibia, and to decide how to protect and assist people who suffered from these wrongs in the past**
- to exercise **any other functions and powers** assigned to it by the Constitution or any other law.¹³

¹⁰ [Namibian Constitution](#), Article 48(1).

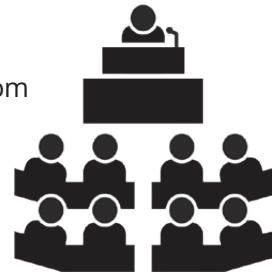
¹¹ [Namibian Constitution](#), Article 48(2).

¹² [Namibian Constitution](#), Article 63(1).

¹³ [Namibian Constitution](#), Article 63(2).

Speaker and Deputy-Speaker of National Assembly

A newly-elected National Assembly must elect a Speaker and a Deputy-Speaker from amongst its members. The Speaker chairs the National Assembly meetings and makes sure that the discussion and debate are orderly. The Deputy-Speaker chairs the meetings if the Speaker is not present. If neither one of them is present, the National Assembly, will elect a member to act as Speaker, with the Secretary acting as Chairperson temporarily for this election process.



If either the Speaker or the Deputy-Speaker stops being a member of the National Assembly, they can no longer serve in these posts. They can also be removed from their posts by resolution of the National Assembly, or give a written resignation to the Secretary of the National Assembly. If either post becomes vacant for any reason, the National Assembly must elect a replacement from amongst its members.¹⁴

Secretary and staff of National Assembly

The Secretary is chosen by the Speaker. The Secretary is not a member of the National Assembly. He or she can be a person already employed by Parliament, or a new person appointed for this purpose. The Secretary carries out his or her functions and duties under the control of the Speaker. The Secretary is assisted by officers of the National Assembly appointed in terms of laws or National Assembly directives regulating the employment of Parliamentary staff.¹⁵



Parliamentary Service Commission

The Namibian Constitution (as amended in 2014) says that there must be a Parliamentary Service Commission set up in terms of a law passed by Parliament, or by a directive of the National Assembly, to appoint Parliamentary staff and determine their remuneration and conditions of service. As of 2022, a Parliamentary Service Commission Bill was in process but had not yet been tabled in Parliament. The idea is to take Parliamentary staff out of the public service, to maintain the separation of powers between the Executive and Legislative Branches.

Namibian Constitution, Article 52(4)

Procedure

Meetings of the National Assembly must be **open to the public** unless two-thirds of the members of the National Assembly decide that the meetings must be closed for a time, or while a specific issue is being discussed.¹⁶

The Namibian Constitution sets a two-tiered **quorum** for a meeting of the National Assembly. The “quorum” is the minimum number of members needed for the meeting to take place. The non-voting members appointed by the President are not ever counted for a quorum. The two-tiered quorum makes a distinction according to

Sessions and sittings

- A “**Parliament**” refers to the group of Members of Parliament who hold office from one election to the next. For example, the Members of Parliament who took office at Independence were Namibia’s “First Parliament”. The Parliament elected in 2019 was Namibia’s “Seventh Parliament”.
- A Parliament is usually subdivided into several “**sessions**”. The Namibian Constitution requires the National Assembly to sit for at least two sessions in each year. It may also hold special sessions if this is required by a Proclamation issued by the President.
- A “**sitting**” is the daily meeting of either House of Parliament. At the end of each sitting, the House adjourns (pauses) until the next sitting.

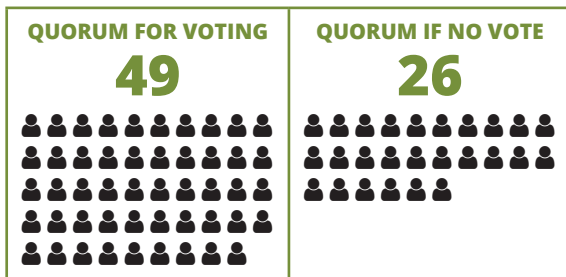
Namibian Constitution, Article 62

¹⁴ [Namibian Constitution](#), Article 51.

¹⁵ [Namibian Constitution](#), Article 52. See also Mathias Haufiku & Tileni Mongudhi, “[Parliament's long walk to freedom](#)”, *The Namibian*, 23 September 2015; George Sanzila, “[National Assembly says budget 'inadequate'](#)”, *New Era*, 19 April 2022.

¹⁶ [Namibian Constitution](#), Article 61.

the purpose of the meeting. *If voting is required* on any matter in the meeting, the quorum is 49 members who are entitled to vote, not counting the Speaker or other member who is presiding over the meeting – in other words, a little more than half of the 96 members who have voting powers. *If no voting is required*, the quorum is 26 members who are entitled to vote, not counting the Speaker or other member who is presiding over the meeting – which is slightly more than one-fourth of the members who have voting powers.¹⁷



The number of **votes** required depends on the decision being taken. Some decisions require a majority vote, which means more than 50% of the members who are present and voting – excluding abstentions, which is where a Member who is present and entitled to vote chooses not to vote either for or against the matter being decided. Other decisions require a vote of two-thirds of all the members who are entitled to vote. For example, it normally requires a majority vote to pass a law or a resolution, and a two-thirds majority of all the members for unusual decisions, such as approving a State of Emergency, impeaching the President or deciding on an amendment to the Constitution.¹⁸ If there is a tie vote on a majority decision, the Speaker or the Deputy-Speaker or other presiding member has an extra casting (tie-breaking) vote.¹⁹

To supplement the rules set in the Constitution, the National Assembly has the power to make **rules of procedure** for the conduct of its business and proceedings, and for the operation of National Assembly committees. It also has the power to make **standing orders**.²⁰ The word “standing” means that these orders do not fall away at the end of each session of the National Assembly, but remain in place until changed. In practice, the National Assembly has a set of “**Standing Rules and Orders**” that is amended from time to time.²¹

The quorum for any meeting of the National Assembly was originally 37 members who are entitled to vote, not counting the Speaker or other presiding officer. The new two-tiered quorum was introduced when the Constitution was amended in 2014 to increase the size of the National Assembly from 72 voting members to 96 voting members. When the initial quorum of 37 voting members applied, meetings of the National Assembly often had to be postponed due to a lack of a quorum. The new “working quorum” of only 26 members allows the National Assembly to continue debating issues even if many members are absent. This approach was inspired by practices in other Commonwealth countries. However, some were critical of the lower “working quorum”, pointing out that Parliamentarians are paid the same whether or not they are present in Parliament and expressing concerns that lowering the quorum might lower the standard of the National Assembly.

[“No problems foreseen with quorum during Sixth Parliament”](#),
The Namibian, 16 January 2015;

Brigitte Weidlich,
[“Lower quorum in NA ‘would lower standards’”](#),
The Namibian, 7 October 2009 and
[“Quorum for parliamentarians unchanged”](#),
The Namibian, 19 March 2010;

Debates of the National Assembly 2014, Volume 163,
page 410 and Volume 164, pages 68, 73, 200 and 252.

The Namibian Constitution specifies that the vote of the presiding member is not counted in the National Council to determine whether there is a majority. There is no similar rule for the National Assembly in the Constitution, but its *Standing Rules and Orders* say that the vote of the presiding member is not counted to determine if there is a majority.

Namibian Constitution, Article 67 compared to Article 77

¹⁷ [Namibian Constitution](#), Article 53.

¹⁸ [Namibian Constitution](#), Article 67. Other provisions of the Namibian Constitution set higher majorities for certain issues.

¹⁹ [Namibian Constitution](#), Article 54.

²⁰ [Namibian Constitution](#), Article 59(1).

²¹ The current rules for the National Assembly are the [Standing Rules and Orders and Internal Arrangements](#) adopted in 2014 and last amended in 2016.

Committees

The National Assembly has the power to set up committees as needed. It has some “standing committees” which remain in place permanently. It can also set up other committees with limited lifespans for specific purposes. These are

sometimes referred to as “select committees”. There are also some “in-house committees” that focus on internal matters. Any committee of the National Assembly has the power to subpoena persons to appear before it to give evidence, or to produce any documents the committee requires.²²



National Assembly Standing Committees, 2022

STANDING COMMITTEES (Portfolio Committees)

- Standing Committee on Constitutional and Legal Affairs
- Standing Committee on Economics and Public Administration
- Standing Committee on Foreign Affairs, Defence and Security
- Standing Committee on Gender Equality, Social Development and Family Affairs
- Standing Committee on Human Resources and Community Development
- Standing Committee on Information, Communication, Technology and Innovation
- Standing Committee on Natural Resources
- Standing Committee on Public Accounts

ADMINISTRATIVE COMMITTEES (“In-house” Committees)

- Standing Committee of Privileges
- Standing Committee on Standing Rules and Orders & Internal Arrangements.²³

Disclosure of financial interests

The Namibian Constitution requires the National Assembly to provide in its rules and procedures for “appropriate” disclosure of the financial or business affairs of its members.²⁴ This requirement is intended to bring to light any conflicts of interest.



Disclosure of personal financial interests by Members of the National Assembly

The rules on this issue are contained in a *Code of Conduct and Declaration of Interests for Members of the National Assembly*. Declarations of personal financial interests are administered by the National Assembly’s Standing Committee of Privileges.

The *Code of Conduct* requires all Members of Parliament to declare their personal financial interests, including shares, land or other property, private work, board memberships, consultancies, gifts, hospitality, sponsorships, services, discounts or any other material benefits. The declaration must also cover details of the financial interests of a spouse, dependent child or permanent companion – as far as these are known to the Member of Parliament. This declaration must take place within 30 days of the opening of a new Parliament and by 30 April for each year after that,

²² *Namibian Constitution*, Article 59(3).

²³ National Assembly *Standing Rules and Orders and Internal Arrangements* adopted in 2014 and last amended in 2016; Parliament website: www.parliament.na/standing-committees/ (information confirmed with National Assembly in October 2022).

²⁴ *Namibian Constitution*, Article 59(2).

unless the Committee decides otherwise. The information is recorded in a “Registrar of Members’ Interests” which is open in part to the public; the confidential part of the register mainly concerns the amounts involved. The Registrar is required to publish the public part of the Register annually in a manner determined by the Committee.²⁵

Where a possible conflict of interest arises, the Member of Parliament involved must make this known to the person presiding over the session. There are two possible courses of action in this case: (1) The Member can withdraw from the discussions and refrain from voting on the issue. (2) The Member can apply to the Standing Committee of Privileges for permission to take part in the discussion and voting on the grounds that the personal interest does not actually create a conflict.²⁶

Parliamentary observers have pointed to problems of non-compliance and lax enforcement of the declaration requirements.²⁷

Dissolution

The President, acting on the advice of Cabinet, may dissolve the National Assembly “if the Government is unable to govern effectively”. In this case, there must be a national election for both a new National Assembly and a new President within 90 days.²⁸ The fact that dissolution of the National Assembly by the President leads to a new election for the President as well as the National Assembly helps to ensure that this power will not be used lightly.

Code of Conduct for Members of the National Assembly, 2022

The Code of Conduct contains provisions about the personal conduct of Members of National Assembly as well as rules on declarations of personal financial interests (discussed above).

PREAMBLE

“The Members of the National Assembly, as elected representatives, shall regard themselves as servants of the people of Namibia and have a duty to –

- Maintain the dignity and image of the National Assembly both during the sittings of the National Assembly as well as in their acts and activities outside the National Assembly;
- Desist from any conduct from which they seek to improperly enrich themselves or alienate themselves from the people;
- Maintain the public trust placed in them;
- Maintain high standards of ethical behaviour;
- Work diligently and with integrity;
- Use influence gained as elected office-bearers to advance the common good of the people of Namibia;
- Respect the law and the institution of the National Assembly and
- Foster an understanding of parliamentary decision-making.”

²⁵ *Code of Conduct and Declaration of Interests for Members of the National Assembly*, dated October 2013, provided by the National Assembly in October 2022; see Chapter 6.

²⁶ *Code of Conduct and Declaration of Interests for Members of the National Assembly*, dated October 2013, provided by the National Assembly in October 2022; see Chapter 4.

²⁷ Frederico Links & Bradley Tjongarero, “[Non-compliance and lax enforcement – State of MPs’ assets register remains concerning](#)”, *Perspectives on Parliament*, Issue No. 15, Institute for Public Policy Research, April 2022; Ellison Tjirera & Frederico Links, “[Nothing to Disclose: Critiquing Namibia’s passive approach to conflict of interest](#)”, Institute for Public Policy Research, May 2011

²⁸ *Namibian Constitution*, Article 57.

PERSONAL CONDUCT (Rule 3.1)

"A Member must:

- a) act in good faith at all times;
- b) act in the interests of the Namibian people and their Parliament. In doing so, a Member has a duty to uphold the Constitution and law of Namibia and to act in conformity with the rules of the Parliament;
- c) be accessible to the people in order to serve and to represent their interests conscientiously;
- d) avoid any behaviour that may compromise his/her standing in public, such as: criminal behaviour, sexual harassment, insolvency, and dishonesty;
- e) strive to foster national unity and reconciliation in the presentation of any issue before the House and take decisions in terms of the broader public interest;
- f) not intentionally misrepresent any facts to the House or to committees;
- g) conduct all hearings in a fair, honest, non-partisan, apolitical and transparent manner;
- h) disclose to the Registrar his/her financial interests;
- i) report to the Committee of Privileges any unethical behaviour of another Member or Members; and
- j) promote and support the aforementioned principles through exemplary leadership and to maintain and strengthen the public's trust and confidence in the integrity of the Parliament and its members in conducting public business."

Complaints procedure

Any member of the public may make a complaint to the National Assembly's **Standing Committee of Privileges** about a breach of the Code of Conduct by any Member of the National Assembly. The complaint must be in writing, and it must contain a factual and detailed description of the allegations. The Committee will investigate any complaint from the public that is not frivolous (lacking in seriousness), vexatious (intended just to annoy) or offensive. It can also investigate complaints from one Member of the National Assembly about another Member, and it can initiate investigations on its own even if it has not received any complaint.



After making its investigation and giving the Member who is the subject of the complainant a chance to respond, the Committee will prepare a report with its findings and recommendations. The report can recommend any of the following penalties:

- a reprimand
- a fine that is not more than the value of 30 days' salary, or twice the value of any benefit that was obtained unethically, whichever is greater
- a reduction of salary or allowances for a period of up to 15 days
- suspension of a Member for a period of up to 15 days.

The report goes to the **Standing Committee on Standing Rules and Orders and Internal Arrangements**. This second Standing Committee must discuss the first Committee's report and either accept it and refer it to the National Assembly, or refer the matter back to the first Committee for further consideration.

The **National Assembly** must either accept or reject the recommendations in the report. If it accepted the Committee's recommendation, the Speaker must implement the decision right away.²⁹

²⁹ *Code of Conduct and Declaration of Interests for Members of the National Assembly*, dated October 2013, provided by the National Assembly in October 2022.

National Council

The main task of the National Council is to review legislation passed by the National Assembly. It is composed of **3 members from each of the 14 regions of Namibia**, for a total of **42 members**. If Government increased or decreased the number of regions in the future, then the size of the National Council would automatically change.³⁰

“In the law-making process the National Assembly dominates due to its assigned role detailed in the Constitution as the first receiver of draft legislation. The National Council’s primary role is to comprehensively review every bill that is passed by the National Assembly. Therefore the National Council is also often referred to as ‘The House of Review’. Hence, in theory, the Council is acting as a check and balancing body on the powers of the executive and the National Assembly.”

“[What is the National Council?](#)”, *IPPR Election Watch*, Issue No. 4, 2015, page 2

The residents of each region elect people from their region to the Regional Council. The members of each Regional Council then elect three Council members to serve on the National Council. While the members of the National Assembly represent people in every part of Namibia, the members of the National Council represent only the people in their region. This system helps to balance the interests of each part of the nation against the interests of the nation as a whole.

Term of office

Members of the National Council hold their seats for five years from the date of their election and are eligible for re-election.³¹ Before 2010, the term of office for the National Council was six years. This was changed to five years by 2010 amendments to the Constitution so that regional elections could be held at the same time as the national election – primarily as a cost-saving measure, but also to fight voter apathy that might arise from frequent elections.³²

Qualifications

Most of the disqualifications that apply to members of the National Assembly also apply to members of the National Council (certain criminal convictions, being an “unrehabilitated insolvent” or being of unsound mind).

These grounds for disqualification are explained in detail in the discussion of the National Assembly above.

Members of the National Council cannot be members of the National Assembly at the same time, and they may not be elected members of a local authority council. However, unlike the members of the National Assembly (who cannot also be members of a Regional Council), the members of the National Council *must* be members of one of Namibia’s Regional Councils.³³

Vacancies

If a seat on the National Council becomes vacant because of death or resignation, or because the member no longer fulfils the qualifications to be a member of the National Council, the Regional Council affected must elect another one of its member to fill the vacancy. But if the end of the National Council’s term is less than 6 months away, then the vacancy need not be filled.³⁴

³⁰ [Namibian Constitution](#), Articles 69, 102-104.

³¹ [Namibian Constitution](#), Article 70(1).

³² Debates of the National Assembly 2009, Volume 116, pages 51-ff.

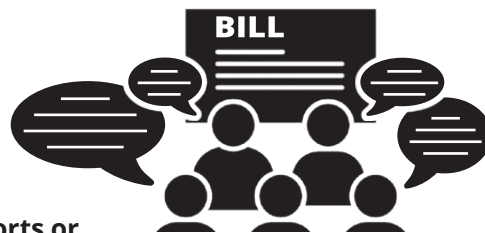
³³ [Namibian Constitution](#), Articles 47(1)(f), 69(1) and 72.

³⁴ [Namibian Constitution](#), Article 70(2).

Functions

The National Council has the following powers and duties:

- to consider **bills passed by the National Assembly** and, if it wishes, propose amendments to those bills for the consideration of the National Assembly
- to **investigate and report on any regulations, rules, reports or documents tabled in the National Assembly** in terms of any law, if the National Assembly refers any of these kinds of documents to the National Council for advice
- to **recommend legislation on matters of regional concern to the National Assembly**
- to perform **any other functions** assigned to the National Council by the National Assembly or any law.³⁵



Chairperson and Vice-Chairperson

The National Council elects one member to be the Chairperson and one to be the Vice-Chairperson at its first sitting. The Chairperson chairs the National Council meetings and makes sure that the discussion and debate are orderly. The Vice-Chairperson chairs the meetings if the Chairperson is not present. If neither is present, the National Council will elect a member to act as Chairperson, with the Secretary acting as Chairperson temporarily for this election process.³⁶

Secretary and staff of National Council

The Secretary is chosen by the Chairperson. The Secretary is not a member of the National Council. He or she can be a person already employed by Parliament, or a new person appointed for this purpose. The Secretary carries out his or her functions and duties under the control of the Chairperson. The Secretary is assisted by officers of the National Council appointed in terms of laws or National Council directives regulating the employment of Parliamentary staff.³⁷

Procedure

The meetings of the National Council are usually **open to the public**, but there are no provisions in the Constitution requiring this. If the National Council decides that debate on a specific issue should be closed to the public, then they have the power to meet in private.

The Namibian Constitution sets a two-tiered **quorum** for a meeting of the National Council. The “quorum” is the minimum number of members needed for the meeting to take place. *If voting is required*, the quorum for a meeting is a majority of all the members (in other words, more than 21 members if there are no vacancies). *If no voting is required*, the quorum is one-third of all the members (in other words, at least 14 members if

Parliamentary Service Commission

The Namibian Constitution (as amended in 2014) says that there must be a Parliamentary Service Commission set up in terms of a law passed by Parliament, or by a directive of the National Council, to appoint Parliamentary staff and determine their remuneration and conditions of service. As of 2022, a Parliamentary Service Commission Bill was in process but had not yet been tabled in Parliament. The idea is to take Parliamentary staff out of the public service, to maintain the separation of powers between the Executive and Legislative Branches.

Namibian Constitution, Article 52(4)

The quorum for any meeting of the National Council was originally a majority of all its members. The new two-tiered quorum was introduced when the Constitution was amended in 2014 to increase the size of the National Council.

³⁵ *Namibian Constitution*, Article 74(1).

³⁶ *Namibian Constitution*, Article 73.

³⁷ *Namibian Constitution*, Article 73A; see also Mathias Haufiku & Tileni Mongudhi, “Parliament's long walk to freedom”, *The Namibian*, 23 September 2015; George Sanzila, “National Assembly says budget ‘inadequate’”, *New Era*, 19 April 2022

there are no vacancies).³⁸ Unlike the provisions on the quorum in the National Assembly, the provisions on the quorum in the National Council do *not* exclude the member who is presiding over the meeting from the count.

The number of **votes** required depends on the decision being taken. Most decisions require a majority of the votes cast by the members who are present at the meeting, not counting the person who is presiding, while a few unusual acts require a vote of two-thirds of all the members of the National Council (impeaching the President or deciding on an amendment to the Constitution).³⁹ If there is a tie vote on a majority decision, the Chairperson or the Vice-Chairperson or other presiding member has an extra casting (tie-breaking) vote.⁴⁰

The Namibian Constitution specifies that the vote of the presiding member is not counted in the National Council to determine whether there is a majority.

Namibian Constitution, Article 77.

To supplement the rules set in the Constitution, the National Council has the power to set **rules and procedures** for the exercise of its powers and the performance of its functions.⁴¹ In practice, the National Council has a set of “**Standing Rules and Orders**” that is amended from time to time.⁴²

Committees

The National Council, like the National Assembly, has the power to establish any committees it needs. All committees are entitled to conduct hearings and collect evidence as necessary for the exercise of the National Council's powers of review and investigation. A committee of the National Council, like a committee of the National Assembly, has the power to subpoena persons to appear before it to give evidence, or to produce any documents the Committee requires.⁴³

National Council Standing Committees, 2022

STANDING COMMITTEES (Portfolio Committees)

- Standing Committee on Agriculture, Environment and Natural Resources
- Standing Committee on Education, Science, Information Communication Technology (ICT) and Youth Development
- Standing Committee on Health, Social Welfare and Labour Affairs
- Standing Committee on Home Affairs, Security, Constitutional and Legal Affairs
- Standing Committee on Implementation and Coordination
- Standing Committee on Public Accounts and Economy
- Standing Committee on Transport, Infrastructure and Housing

ADMINISTRATIVE COMMITTEES (“In-house” Committees)

- Committee on Standing Rules and Orders
- Committee of Privileges of the National Council
- Steering Committee
- Council Component to the Joint-Budget Committee of Parliament.⁴⁴

³⁸ *Namibian Constitution*, Article 76.

³⁹ *Namibian Constitution*, Article 77. Other provisions of the Namibian Constitution set out higher majorities for certain issues.

⁴⁰ *Namibian Constitution*, Article 77.

⁴¹ *Namibian Constitution*, Article 74(2).

⁴² As of October 2022, the National Council operated in terms of the *Standing Rules and Orders of the National Council* as amended to November 2015, but it was in the final stages of reviewing these rules with a view to adopting further amendments.

⁴³ *Namibian Constitution*, Article 74(2).

⁴⁴ Parliament website: www.parliament.na/standing-committees-national-council; additional information from National Council, October 2022.

Disclosure of financial interests

The Namibian Constitution requires the National Council to provide in its rules and procedures for “appropriate” disclosure of the financial or business affairs of its members.⁴⁵ As in the case of the National Assembly, this requirement is intended to bring to light any conflicts of interest.⁴⁶ The National Council has rules similar to those that apply the National Assembly on declarations of interests and dealing with conflicts of interest.⁴⁷

Dissolution

There is no provision for dissolution of the National Council.

Code of Conduct for Members of the National Council, 2022

The Code of Conduct contains provisions about the personal conduct of Members of the National Council as well as rules on declarations of personal financial interests.

“A Member must:

- (1) act in good faith at all times and not misuse or abuse the powers, rights and privileges granted by the Constitution and the Rules, conventions and practices of the Council;
- (2) act in the interests of the Namibian people and the Council;
- (3) uphold the law and act in conformity with the Rules, conventions and practices of the Council;
- (4) be accessible to the people in order to serve and to represent their interests conscientiously;
- (5) avoid any behaviour that may compromise his/her standing in the public arena, such as criminal behaviour, sexual harassment, insolvency, dishonesty etc.;
- (6) strive for national unity and reconciliation in the presentation of any issue before the House and take decisions in terms of the public interest;
- (7) not misrepresent any facts to the House or to committees;
- (8) conduct all hearings in a fair, honest and transparent manner;
- (9) disclose to the Registrar their financial interests;
- (10) report to the Committee on Privileges any unethical behaviour of another Member or Members; and
- (11) promote and support the afore-mentioned principles by leadership and example and to maintain and strengthen the public’s trust and confidence in the integrity of the Parliament and its members in conducting public business.”⁴⁸

Complaints procedure

Complaints about violations of the Code of Conduct can be made to the **Committee of Privileges**, which can also initiate an investigation on its own without a complaint. The Committee is required to give the Member in question a chance to give input and, when the investigation is concluded, to provide a report and recommendations to the National Council. The **National Council** can confirm the report, alter it, refer it back to the Committee or take any disciplinary action it considers appropriate. Similar to the approach taken



⁴⁵ [Namibian Constitution](#), Article 59(2).

⁴⁶ [Namibian Constitution](#), Article 74(3).

⁴⁷ [Standing Rules and Orders of the National Council](#) as amended to November 2015, Rule 162; *Code of Conduct and Disclosure Form of Financial and Business Interests of the Members of the National Council*. In October 2022, the National Council was in the final stages of reviewing its Standing Rules and Orders with a view to adopting further amendments.

⁴⁸ *Code of Conduct & Disclosure of the Financial and Business Interests of the Members of the National Council*, dated October 2005, provided by the National Council in October 2022, Chapter 3.

by the National Assembly, the possible sanctions are a reprimand, a fine, forfeiture of allowances or a temporary suspension from the Council. The Chairperson must implement the National Council's decision right away.⁴⁹

The Law-Making Process

Parliament has the main responsibility for making statute law, but all three branches of Government play a part in this task.

A proposal for a law is called a “bill”. Most bills are proposed by Ministers. If the bill is proposed by a Member of Parliament other than a Minister, it is called a “private member’s bill” and must have the support of at least one-third of all the members of the National Assembly to go forward.⁵⁰

STEP 1: A **proposal** for a law is prepared by the **Ministry** that will have responsibility for administering the law. The proposal is usually discussed with interested persons and groups while it is still in draft stage. A draft bill prepared at this stage is called a “layperson’s draft” because it has not yet been finalised by the Government’s technical legal drafters.



STEP 2: The proposal is examined and approved by the **Cabinet Committee on Legislation**, and then by **Cabinet** as a whole. Once the idea for the statute is approved, **legal drafters in the Ministry of Justice** finalise the wording of the bill. The bill must also be checked by the **Attorney-General**, who has a duty to make sure that all laws passed by Parliament are in line with the Constitution.



Cabinet & Cabinet Committee on Legislation (CCL)

Cabinet has the constitutional duty to initiate bills for submission to the National Assembly.⁵¹

The **Cabinet Committee on Legislation** is an important decision-making body in the process, but its composition and role are not set out in the Constitution or in any law. CCL membership is not fixed, but almost always includes:

- Minister of Justice
- Attorney-General
- Chief Legislative Drafter (Ministry of Justice).

In 2022, the following Government officials were also members:

- Minister in the Presidency
- Director General of National Planning Commission
- Presidential Advisor.

CCL and Cabinet meetings are confidential.

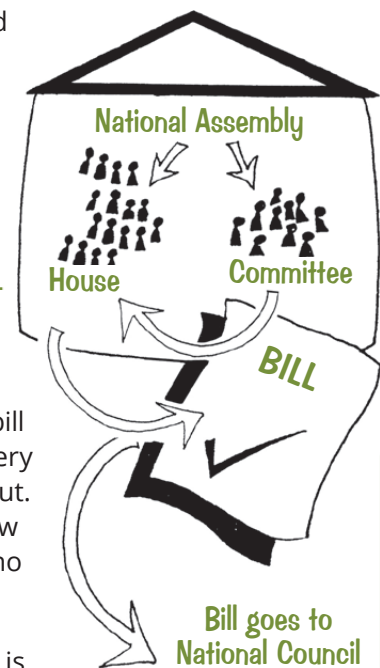
A bill may go back and forth between the relevant Minister, the CCL and Cabinet until all of these decision-makers are satisfied that the bill is ready to go forward.

⁴⁹ *Standing Rules and Orders of the National Council* as amended to November 2015, Rules 162-165; *Code of Conduct & Disclosure of the Financial and Business Interests of the Members of the National Council*, dated October 2005, provided by the National Council in October 2022, Chapter 7. Note that the *Standing Rules and Orders* were under review as of October 2022.

⁵⁰ *Namibian Constitution*, Article 60(2).

⁵¹ *Namibian Constitution*, Article 40(b).

STEP 3: The bill is presented to the **National Assembly**. This is called “tabling” the bill because it is put on the table of the Speaker of the National Assembly. The National Assembly can discuss the bill and make changes to it if it wishes. The bill might be sent to a Parliamentary Committee for special study. The bill must be approved by a majority (more than half) of the members of the National Assembly to go forward.



PROCEDURE IN THE NATIONAL ASSEMBLY

First reading – tabling the bill: The Minister who is proposing the bill tables it in the National Assembly. A copy of the bill is given to every member of the National Assembly, and the title of the bill is read out. There is usually no debate about the bill at this stage. The bill is now a public document and is available to any member of the public who requests it.

Second reading – approving the main ideas: The title of the bill is read out again, and the National Assembly discusses the main ideas in the bill. The member who is proposing the bill will give a speech summarising it and explaining why it is needed. Two things can happen at this stage:

- If the National Assembly agrees with the main idea of the bill, it can go into the committee stage.
- If the National Assembly disagrees with the main idea of the bill, the bill cannot go forward. It can be re-introduced after thirty days in the same form, or with some changes.

Committee stage – examining the bill in detail: The bill may be examined in detail by a committee which will possibly hold public hearings or consultations with stakeholders before making recommendations to the National Assembly. The number and location of committee hearings will depend on the National Assembly's budget and its assessment of the level of public interest. The committee will make a report on the bill, which will be considered by the “Committee of the Whole” (the entire membership of the National Assembly acting as a committee). Alternatively, the bill may go straight to the “Committee of the Whole”. In either case, the “Committee of the Whole” will go through the proposed bill in detail. Anyone Member of the National Assembly can propose an amendment to the bill, including the Member who introduced it. Amendments can be approved only if they are consistent with the principles of the bill agreed upon at the “second reading”.

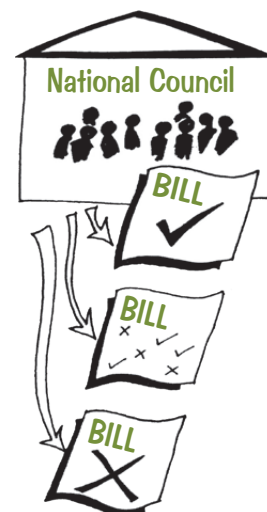
Third reading – deciding on the bill: At the final stage, the title of the bill is read out for the third time and it is passed (or rejected). No more amendments to the bill can be made at this stage. Bills are usually passed by consensus, without taking a vote.⁵²

STEP 4: The National Assembly sends the bill to the **National Council** for advice.⁵³ Since the National Council has members from all of Namibia's different regions, it may have a different perception of the bill. The National Council can take up to three months to study most bills, and it can refer the bill to a committee for special study or public hearings. It can make three kinds of recommendations:

⁵² *Namibian Constitution*, Article 63(1); National Assembly *Standing Rules and Orders and Internal Arrangements* adopted in 2014 and last amended in 2016, Chapter VII.

⁵³ *Namibian Constitution*, Article 75(1) and (2).

- (1) The National Council can **APPROVE** the bill as it is. In this case, the Speaker of the National Council sends the bill to the President for signature.
- (2) The National Council can make **SUGGESTIONS FOR AMENDMENTS** to the bill and send it back to the National Assembly. The National Assembly may put in the changes suggested by the National Council, but it is not required to do so. The National Assembly may also propose its own amendments to the bill at this stage. The National Assembly must vote on the bill again after it has considered the National Council's suggestions, regardless of whether or not it has amended the bill. Once the bill is again approved by the National Assembly, the Speaker of the National Assembly sends it to the President for signature.
- (3) The National Council can **OBJECT** to the principle of the bill and send it back to the National Assembly. The "principle" of the bill is the basic idea behind the bill. This means that the National Council does not think that the National Assembly should make the bill into a law. The National Assembly must then reconsider. If two-thirds of the members of the National Assembly still approve the bill, then it can go forward to the President for signature. But if fewer than two-thirds of the members of the National Assembly approve the bill, it cannot become a law.⁵⁴

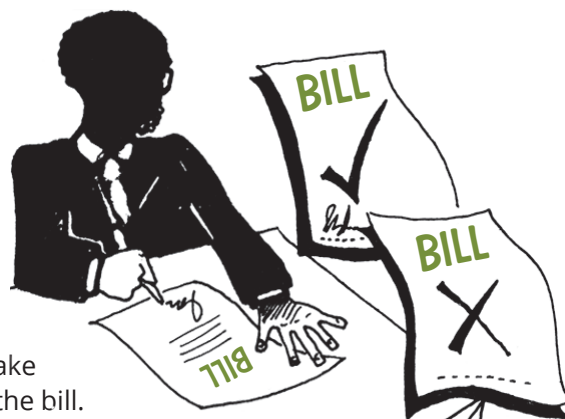


If the National Council objects to the principle of the bill, its report to the Speaker of the National Assembly will indicate whether the objection was supported by a majority of two-thirds of all the members of the National Council. The report of the National Council may include proposals for amendments to the bill in the event that the principle of the bill is confirmed by two-thirds of the members of the National Assembly over the objections of the National Council.

Namibian Constitution, Article 75(5).

STEP 5: All bills must be signed by the **President** (who is part of the Executive Branch of Government) before they can become laws.

- (1) If the President **AGREES** with the bill, then he or she will sign it. The President *must* sign the bill if it has been passed by two-thirds of the members of the National Assembly.
- (2) If the President **DISAGREES** with the bill, then he or she can refuse to sign it. Then the National Assembly must reconsider the bill before it can become law. There are three possibilities at this stage:
 - (a) The National Assembly might decide not to make the bill into a law, or it might make changes to the bill.
 - (b) If the same bill is approved by fewer than two-thirds of the National Assembly members, then the President can still refuse to sign the bill.
 - (c) If the same bill is approved by at least two-thirds of the National Assembly members, then the President cannot make any more objections.⁵⁵



STEP 6 (IN SOME CASES): If the President refuses to sign the bill because he or she believes that it is in conflict with the Constitution, then the **Attorney-General** may decide to send the bill to the courts (which are part of the Judicial Branch of Government).

⁵⁴ *Namibian Constitution*, Article 75; *Standing Rules and Orders of the National Council* as amended to November 2015. See also "What is the National Council?", *IPPR Election Watch*, Issue No. 4, 2015, page 2.

⁵⁵ *Namibian Constitution*, Article 56.



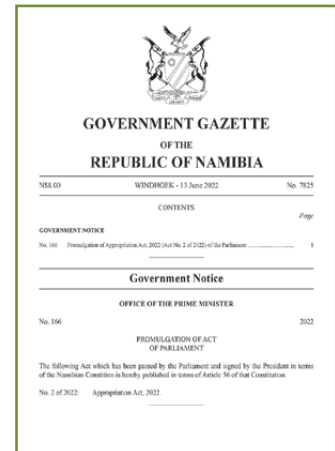
- (1) If the courts decide that the bill is in conflict with the Constitution, then the bill cannot become a law.
- (2) If the courts decide that the bill is not in conflict with the Constitution, then the bill can go forward in the same way as other bills.⁵⁶

Publication of laws

A bill cannot become a law until it has been **passed by Parliament, signed by the President and published in the Government Gazette**.⁵⁷ *The final step of publication is very important. Laws must be available to all members of the public. The Government Gazette is a regular government publication. Anyone can subscribe to the Government Gazette. You can also find all of Namibia's Government Gazettes on the LAC website: www.lac.org.na.*

Authentic copies of laws

A bill becomes a law when it has been passed by Parliament, signed by the President and published in the *Government Gazette*. The Namibian Constitution directs the Secretary of the National Assembly to provide the **Registrar of the Supreme Court** (the person in charge of administrative matters for the court) with two final and correct copies of the new law, in English, to serve as the official, authoritative version of the law. Members of the public have the right to examine these copies, subject to such any regulations made by Parliament to preserve the copies and to avoid inconvenience to the Registrar's staff.⁵⁸



The role of the Judicial Branch in respect of legislation

The High Court and the Supreme Court have the power to test laws passed by Parliament against the Constitution. Anyone who is directly affected by the law can ask the court to decide if the law is consistent with the Constitution. If the court finds that it is not, it can give Parliament time to change the law, or it can declare that all or part of the law is immediately invalid. This is because the Namibian Constitution is Namibia's "Supreme Law".



Supreme Court



High Court



The courts also have the power to apply and interpret the laws passed by Parliament. If Parliament disagrees with a court's interpretation, it can amend the statute to clarify it – as long as the amendment is in line with the Constitution.⁵⁹

Constitutional amendments

The procedure for amending (changing) a law that has already been passed by Parliament is the same as for making the original law. But there are special procedures for amending the Namibian Constitution because of its important status as Namibia's Supreme Law.

⁵⁶ *Namibian Constitution*, Article 64.

⁵⁷ *Namibian Constitution*, Article 65.

⁵⁸ *Namibian Constitution*, Article 65.

⁵⁹ *Namibian Constitution*, Articles 6(1), 25, 79(2), 80(2) and 81.

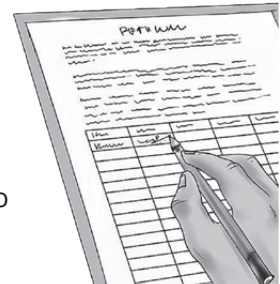
- (1) **Amendment of the Constitution by Parliament requires larger majorities.** An amendment must be approved by two-thirds of all the members of the National Assembly and two-thirds of all the members of the National Council.

Alternatively, if a proposed amendment is approved by two-thirds of all the members of the National Assembly, but fails to secure the approval of two-thirds of all the members of the National Council, the President may issue a proclamation calling for a national referendum. A **referendum** is a way of consulting citizens to find out how they feel about an issue. It is like an election, except that the voters choose an opinion rather than a candidate or a political party. If the bill is approved by two-thirds of all the people who vote in the referendum, then the amendment can be approved by the President.

- (2) **No constitutional amendment can reduce the majorities required for amending the Constitution in Parliament or in a referendum.**
- (3) **No constitutional amendment can weaken the fundamental rights and freedoms set out in the Namibian Constitution.** These rights can be enhanced, but not reduced.⁶⁰

Petitions to Parliament

A “petition” is a letter in a special format which is signed by many people. It is a request to Government or Parliament or some other decision-maker to take a specific action. Petitions are usually organised by civil society groups, but they can be started by any kind of group or even by a single individual. Members of the public may submit petitions to the National Assembly or the National Council. Rules about petitions that are addressed to Parliament are contained in the *Standing Rules and Orders* of the National Assembly, and the *Standing Rules and Orders* of the National Council, which are both amended from time to time. If you are considering organising a petition to either House of Parliament, you should check the latest version of the *Standing Rules and Orders* of each House to make sure that your petition will meet all of the current requirements.



How to find out what a law says

Laws and their amendments are published separately, so it is sometimes difficult to figure out what a statute says if it has been amended over the years. There are resources which can help with this:

- **Namlex:** The Legal Assistance Centre (LAC) publishes *Namlex*, an index of all laws in force and their amendments. *Namlex* is organised by topic and contains brief descriptions of each law as well as references to relevant rules and regulations, court cases and commentary. It is available for free on the LAC website: www.lac.org.na.
- **Annotated laws:** An annotated law is a document showing *the original law as amended up to the present day*, with notes explaining the sources of the amendments or court rulings that have changed the law over time. This is the most convenient way to see exactly what law is in force. Annotated laws (including statutes passed by Parliament and regulations issued under those statutes) have been prepared and updated as a joint project by the Government and LAC, and are available for free on the LAC website: www.lac.org.na.

⁶⁰ *Namibian Constitution*, Articles 131 and 132.



Statutes relating to Parliament

Powers, Privileges and Immunities of Parliament Act 17 of 1996

What does the law do?

This law protects the right of freedom of speech and debate in Parliament, protects Members of Parliament from threats and intimidation, protects Parliament from disruption and guards against conflicts of interest on the part of Members of Parliament. It also establishes a Committee of Privileges to investigate the conduct of Parliamentarians as necessary.



What is the purpose of the law?

Parliaments in any democracy carry out their constitutional duties by means of deliberation and debate. This is possible only if all Members of Parliament are able to express their opinions freely and to carry out their duties without fear of threats or retaliation. To this end, the Namibian Constitution requires Parliament to enact a law providing for the “privileges and immunities” of members of the National Assembly and the National Council.¹ The *Powers, Privileges and Immunities of Parliament Act* is that law.



NAMIBIAN CONSTITUTION

Article 60(3)

Rules providing for the privileges and immunities of members of the National Assembly shall be made by Act of Parliament and all members shall be entitled to the protection of such privileges and immunities.

Article 74(5)

Rules providing for the privileges and immunities of members of the National Council shall be made by Act of Parliament and all members shall be entitled to the protection of such privileges and immunities.

When did the law come into force?

13 August 1996.

What are the “powers, privileges and immunities” of Parliament?

The concept of “privileges and immunities” means giving Members of Parliament protection against civil or criminal liability while they are carrying out their legislative duties. This kind of protection is common in democracies. It is intended to make sure that Members of Parliament can engage in free debate without fear of intimidation or interference, and to give Parliaments the power to control their own internal affairs effectively without intrusion from other branches of Government – although the courts have the power to make sure that Parliament acts within the law and the Constitution.²

¹ *Namibian Constitution*, Articles 60(3) and 74(5).

² *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, section 21; *Swartbooi v The Speaker of the National Assembly*, Supreme Court of Namibia, 2021.



Protection for freedom of speech in Parliament

No member of Parliament can be arrested, imprisoned, charged with any criminal offence or sued in a civil lawsuit for damages because of –

- anything done while exercising the right to freedom of speech in Parliament
- anything contained in a report, petition, bill, resolution or motion in Parliament
- anything said in Parliament or any other communication made while taking part in any proceedings in Parliament.

These rules would protect Parliamentarians from being charged with crimes such as criminal defamation or *crimen injuria* (violation of personal dignity), and from being sued in civil lawsuits for defamation, in respect of their speech in Parliament.

The rationale for immunity for Parliamentary speech

This statement was made by the Supreme Court of Namibia in a 2021 court case.

“The Act provides for privileges and immunities from legal proceedings in connection with parliamentary debates. As a deliberative body, debate, where members enjoy freedom of speech, is an essential component in order for those deliberations to be meaningful and ensure that the principle of representation of all the people embodied in Art 45 [of the Namibian Constitution] is met. The Act, in following the tradition of democracies elsewhere, provides for privileges and immunities for parliamentarians to speak freely in those debates without fear of legal liability or other reprisal.”³

Does the protection for freedom of speech in Parliament apply to all statements made in Parliament?

This question has not yet been considered by the Namibian courts as of 2022. However, courts in some other countries have said that the freedom of speech in Parliament applies only to speech that has some connection to the business of Parliament, and not to statements that have no relation to Parliament’s business. For example, the protection might not apply to conversations, comments or other communications by a Member of Parliament that are not part of any proceeding in Parliament and have no connection to Parliament business.⁴

Insulation from certain court processes

Subpoenas and other court documents cannot be served on anyone within the precincts of Parliament while the House is sitting. Subpoenas and other court documents cannot be served on a Member of Parliament or an officer who is attending a committee meeting, wherever that committee meeting is being held.⁵ This protects Parliamentary proceedings from disruption.

Subpoenas and other court documents can be served on anyone covered by this rule at other places and times. For example, suppose that the spouse of a Member of Parliament wants a divorce. The

³ [*Swartbooi v The Speaker of the National Assembly*](#), Supreme Court of Namibia, 2021.

⁴ There is a discussion of some key cases on this issue decided in South Africa and Canada in [*Dikoko v Mokhatla*](#), South African Constitutional Court, 2006. There is also an overview of the position in various European countries in *A v United Kingdom*, European Court of Human Rights, 2002.

⁵ [*Powers, Privileges and Immunities of Parliament Act 17 of 1996*](#), section 3.

court papers relating to the divorce cannot be served on the Member of Parliament while they are busy with Parliament business, but they could be served on him or her at home.

No member or officer can be required to appear in court in respect of any legal proceedings while they are supposed to be in attendance at Parliament.⁶ This is another rule that prevents disruption of Parliamentary processes. For example, suppose that Parliament was about to vote on an important matter. The outcome of a close vote could be influenced if a Member of Parliament was required to be in court at the time of the vote.

No individual can be held personally liable for damages for anything done under the authority of Parliament.⁷ When persons connected with Parliament are acting legitimately in their official roles, they cannot be held personally liable for the consequences.

These rules help to protect the separation between the Legislative Branch and the Judicial Branch.

Conflicts of interest

Members of Parliament are not allowed to take part in any proceedings where they have any direct or indirect interest that would prevent them from performing their official functions in a fair, unbiased and proper manner.

If it becomes apparent during any Parliamentary proceeding that a Member of Parliament may have a conflict of interest, that Member must disclose the nature of his or her interest immediately. This disclosure must be recorded in the minutes of the proceedings of the House or the minutes of the committee concerned.

There is one exception: Members of Parliament are allowed to take part in deliberations or votes relating to their salary and benefits as Members of Parliament.

A Member of Parliament who fails to follow the rule on disclosure of conflicts of interest may be investigated by the Committee of Privileges (described below) and disciplined on the basis of that Committee's findings, in accordance with the relevant Standing Rules and Orders.

The term **"precincts of Parliament"** includes the Chamber where the House holds its proceedings, as well as any galleries, lobbies, offices, or areas that are used in connection with the proceedings of Parliament. It also includes every part of the building where the Chamber is situated, along with any surrounding outdoor area that is used for the purposes of Parliament.

Powers, Privileges and Immunities of Parliament Act 17 of 1996, section 1 (definition of "precincts of Parliament").

The term **"officer"** includes the Secretary of the National Assembly, the Secretary of the National Council, staff in both Houses of Parliament, and any member of the Namibian Police who is on duty within the precincts of Parliament.

Parliamentary staff are currently members of the public service. The Namibian Constitution (as amended in 2014) says that there must be a separate *Parliamentary Service Commission* to appoint Parliamentary staff and determine their remuneration and conditions of service. As of 2022, a Parliamentary Service Commission Bill was in process but had not yet been tabled in Parliament. The idea is to take Parliamentary staff out of the public service, to maintain the separation of powers between the Executive and Legislative Branches.

Powers, Privileges and Immunities of Parliament Act 17 of 1996, section 1 (definition of "officer").

Standing Rules and Orders

Each House of Parliament is empowered by the Constitution to make rules to govern its own proceedings. The Constitution requires that these rules must provide for disclosure of the financial or business affairs of each member, to prevent conflicts of interest, but the contents are otherwise left up to each house of Parliament to decide. These rules are known as "Standing Rules and Orders". The term "Standing" means that the rules remain in force until they are changed. They do not fall away when there is an election for a new Parliament.

⁶ *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, section 4.

⁷ *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, section 5.



Additional rules about disclosure of the financial or business affairs of members of Parliament are contained in the Standing Rules and Orders.

Committee of Privileges

The law sets up a Committee of Privileges for each of Namibia's two Houses of Parliament.

The **Committee of Privileges of the National Assembly** has the following members:

- the Speaker of the National Assembly, who is chairperson of the Committee
- five members of the National Assembly, chosen by the National Assembly



The **Committee of Privileges of the National Council** has the following members:

- the Chairperson of the National Council, who is chairperson of the Committee
- five members of the National Council, chosen by the National Council.⁸

The law does not include any rules on whether the Committee membership must include representatives from multiple political parties. In each case, the members other than the chairpersons remain in place until the next elections, unless they are removed by the National Assembly or the National Council. Vacancies resulting from death or removal are filled by the National Assembly or the National Council.⁹ The members of the Committee must elect one of the Committee's members to serve as Vice-Chairperson. If both the chairperson and vice-chairperson are absent from a meeting of the Committee, the members who are present must elect a Committee member to preside at that meeting.¹⁰ A majority of the members of the Committee (more than half) must be present for a meeting of the Committee to take place.¹¹



The law *requires* each Committee to issue directives about the disclosure of the financial or business affairs of Members of Parliament.¹² Either Committee of Privileges also has the power to conduct investigations into –

- the conduct of any Member of the House within the precincts of Parliament
- possible breaches of the House's Standing Rules and Orders
- failure to disclose a conflict of interest.

The Committee can decide on its own to conduct an investigation into any of these matters. Investigations can be in response to a complaint from the House. If the issue is failure to disclose a conflict of interest, the Committee can act on the basis of a complaint from any person. It can require Members of Parliament to provide any relevant information as part of the investigation process, including documentation of their assets and liabilities. It can also summon any other person to give evidence or provide documents. When the Committee concludes its investigation, it must submit a report to the House on its findings and recommendations.¹³

The National Assembly or the National Council must consider any report and recommendation submitted by its Committee on Privileges and take any disciplinary action that is appropriate in terms of its Standing Rules and Orders.

⁸ *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, section 7.

⁹ *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, section 8.

¹⁰ *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, section 9.

¹¹ *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, section 10.

¹² *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, section 12(a).

¹³ *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, sections 12 and 14.

Crimes

Some of the crimes in the law are aimed at making sure that the Committee of Privileges can carry out its work effectively:

- It is a crime to disobey a summons from a Committee of Privileges without a good reason.
- During an investigation by a Committee of Privileges, it is a crime to refuse to answer a question, to knowingly give a false answer or to provide false documents with the intent to deceive the Committee. It is also a crime to fail to remain in attendance before the Committee without being officially excused.
- It is a crime to try to interfere with the evidence or information that anyone gives to the Committee. This includes tampering with the evidence, discouraging anyone from giving evidence or making threats.¹⁴

Other crimes are aimed at making sure that the work of the Members of Parliament is not affected by improper influence or coercion, and to protect the Parliament process from disturbance or fraud.

- It is a crime for anyone to interfere with Members of Parliament who are in the precincts of Parliament, or in the process of coming or going to Parliament. This includes assaulting them, obstructing them, molesting them, threatening them or insulting them.
- It is a crime to try to influence the views of a Member of Parliament on any issue being considered by Parliament through force, insults or threats.
- It is a crime to interfere with officers of Parliament while they are carrying out their duties.
- It is a crime to create or join in any disturbance which interrupts or is likely to interrupt the proceedings of Parliament.
- It is a crime for a Member or officer of Parliament, or anyone who is taking minutes of Parliamentary proceedings, to give evidence about the contents of the minutes or any document from the meeting without permission from the House.
- It is a crime for anyone other than an officer of Parliament to enter the precincts of Parliament with a firearm or any other object that could cause serious bodily injury in an assault.
- Sittings of Parliament are generally open to the public, but it is a crime for anyone other than a Member or an officer of Parliament to enter the precincts of Parliament in violation of an order by the Speaker of the National Assembly or the Chairperson of the National Council. It is also a crime to refuse to leave the precincts of Parliament after being ordered to leave by the Speaker or the Chairperson, or by any officer of Parliament authorised by them.
- It is also a crime to produce laws, reports or other documents that appear to be official Parliamentary materials but are not actually produced under the authority of Parliament.¹⁵



Any of these crimes can be punished by a fine of up to N\$20,000 or imprisonment for up to five years, or both.¹⁶

Criticism

In some countries, the protections for the privileges and immunities of Parliament are contained in the country's constitution instead of in a statute. One analysis of Namibia's approach notes that the Namibian Constitution gives Parliament total discretion to decide on its privileges and immunities, without providing any directions on their content. The Constitution does not even expressly require that the law on Parliamentary privileges and immunities must protect the freedom of speech and debate in Parliament. This has been identified as a possible weakness in the Namibian approach.¹⁷

¹⁴ *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, section 18.

¹⁵ *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, sections 20, 23 and 24.

¹⁶ *Powers, Privileges and Immunities of Parliament Act 17 of 1996*, section 25.

¹⁷ Mbuzeni Johnson Mathenjwa, & Lindelwa Mhlono, "The Distinctiveness and Interrelatedness of the Privileges and Immunities of Parliament: A Comparison of the Namibian and South African Jurisdictions", 39(3) *Obiter* 2018.

Another point to consider is that the Namibian law might be improved if it specified that the protection for freedom of speech and debate applies only to statements that are validly related to the business of Parliament, to make it clear that personal insults unrelated to the work of Parliament are not covered. This is the approach taken in some other countries.¹⁸

Annual salary and benefits of Parliamentarians, 2022

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

The Public Office-Bearers Commission, which consists of seven persons appointed by the President, makes recommendations on the remuneration, benefits and other conditions of office of public office-bearers – which includes Members of Parliament.

The Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005 is summarised in the “Executive Branch” chapter of these *Statute Summaries*.

As of 2022, the most recent amendments to the salaries of MPs had been announced in the *Government Gazette* in 2017. Ordinary Members of Parliament received the following salaries and benefits:

Annual Salary and Benefits for Ordinary Members of Parliament, 2022 (National Assembly & National Council)

| Basic Salary | Water & Electricity | Transport Allowance | Housing Allowance | Telephone Allowance | Total Remuneration |
|--------------|---------------------|---------------------|-------------------|---------------------|--------------------|
| N\$438 338 | N\$40 320 | N\$94 440 | N\$119 807 | N\$864 | N\$693 769 |

Higher salaries and benefits are paid to Members of Parliaments with special roles to play – such as the Speaker and Deputy-Speaker of the National Assembly, the Chairperson and Vice-Chairperson of the National Council, Ministers and Deputy-Ministers, Standing Committee Chairpersons, Whips (officials of the ruling party and the official opposition that enforce party discipline in Parliament) and Leaders of the Opposition Parties. For example, the total package for a Minister at that stage was N\$1 089 185. The highest packages went to the Speaker of the National Assembly and the Chairperson of the National Council, who both received a total of N\$1 139 282.¹⁹

As of 2022, certain public office-bearers were entitled to **one sedan vehicle for both official and private use**, with monthly fuel usage being limited to 420 litres per month. **Off-road motor vehicles** were allocated to the relevant government ministries, offices or agencies (one each) **for official use** by the same public office-bearers, with monthly fuel usage for the vehicle limited to 640 litres per month. The office-bearers covered by this benefit included some Parliamentarians (the Speaker and Deputy-Speaker of the National Assembly, the Chairperson and Vice-Chairperson of the National Council, Ministers and the Leader of Official Opposition), amongst others.²⁰



¹⁸ To give just one example, in Australia the protection is limited to speech in *proceedings in Parliament*, which means all words and acts that take place in the course of, for the purposes of, or incidental to, the transacting of the business of a House of Parliament or one of its committees. See “[The Privilege of Freedom of Speech](#)”, in *House of Representatives Practice*, 7th edition, Parliament of Australia, 2018.

¹⁹ Proclamation 4 of 2017 ([Government Gazette 6259](#)). To be exact, the Speaker’s total package was listed as being N\$1 139 282, while the Chairperson’s package was valued at N\$1 more.

²⁰ Proclamation 12 of 2021 ([Government Gazette 7476](#)), as amended by Proclamation 12 of 2022 ([Government Gazette 7805](#)), and Proclamation 13 of 2021 ([Government Gazette 7476](#)).

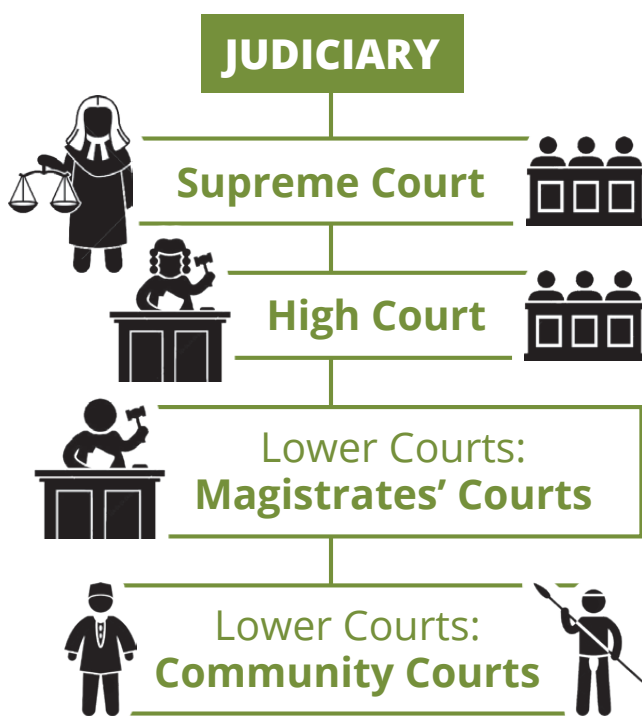


JUDICIAL BRANCH

Constitutional Framework

Three levels of courts

The court system in Namibia has three levels: (1) the Supreme Court (2) the High Court and (3) the Lower Courts (which currently include Magistrates' Courts and Community Courts).¹



NAMIBIAN CONSTITUTION

Article 78: The Judiciary

- (1) The judicial power shall be vested in the Courts of Namibia, which shall consist of:
 - (a) a Supreme Court of Namibia;
 - (b) a High Court of Namibia;
 - (c) Lower Courts of Namibia.
- (2) The Courts shall be independent and subject only to this Constitution and the law.
- (3) No member of the Cabinet or the Legislature or any other person shall interfere with Judges or judicial officers in the exercise of their judicial functions, and all organs of the State shall accord such assistance as the Courts may require to protect their independence, dignity and effectiveness, subject to the terms of this Constitution or any other law.

Article 12: Fair Trial

- (1) (a) In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law...

The role of the courts

In general, the courts decide criminal cases (when someone has been arrested for committing a crime) and civil cases (disputes between two individuals, such as a divorce or an argument about who should pay for a car accident). They also interpret the law by applying legal provisions to specific situations. The High Court and the Supreme Court also interpret and apply the Constitution.

¹ *Namibian Constitution*, Article 78(1).



The independence of the courts

All Namibian courts are independent. This means that they follow only the Constitution and the law. No one can tell the courts how to decide a case, not even someone from one of the other branches of Government. To ensure the court's independence, the Constitution states that the Chief Justice of the Supreme Court must supervise the judicial functions of all courts and take responsibility for final control of their budgets.²

Article 78(2) of the Constitution “makes it absolutely clear that the independent Court is subject only to the Constitution and the law. This simply means that it is also not subject to the dictates of political parties, even if that party is the majority party. Similarly it is not subject to any other pressure group.”

“The prohibition in art 78(3) not to interfere with Judges and judicial officers extends to each and every person, and is not restricted to members of the Legislature or Executive.”

S v Heita, High Court, 1992



Supreme Court

The highest court in Namibia is the Supreme Court. The head of this court is the Chief Justice. There is also a Deputy-Chief Justice who deputises for the Chief Justice. The other judges on the Supreme Court are appointed by the President, on the recommendation of the Judicial Service Commission.³ The Constitution does not set a minimum or maximum number of judges that must be appointed.

According to the Constitution, the Supreme Court considers appeals from decisions made by the High Court – including appeals on the interpretation and implementation of the Constitution. (An appeal is when one party to a court case is unhappy with the outcome and asks another higher court to say if the decision was really correct.) The Supreme Court also deals with matters referred to it for decision by the Attorney-General under the Constitution, and with other matters that it has authority in terms of any Act of Parliament.⁴

At least three judges must normally work together to decide cases in the Supreme Court – although it is acceptable for an Act of Parliament to provide for exceptions to this general rule when a judge dies or is unable to continue for some reason while a case is in progress.⁵

A decision of the Supreme Court must be obeyed by all the other courts and by all people in Namibia. The Supreme Court can change its mind about a previous decision that it made, but this happens very rarely. A Supreme Court decision can also be changed by an Act of Parliament, but only as long as Parliament acts within the boundaries of the Constitution. For example, if the Supreme Court ruled that a provision in a law passed by Parliament violates the Constitution, Parliament could enact another provision in its place, as long as the new provision was consistent with the Supreme Court's interpretation of the Constitution.⁶ This is part of the balance of power between the Legislative and Judicial Branches.

² [Namibian Constitution](#), Article 78(2)-(7).

³ [Namibian Constitution](#), Article 79(1).

⁴ [Namibian Constitution](#), Article 79(2) and (4).

⁵ [Namibian Constitution](#), Article 79(3).

⁶ [Namibian Constitution](#), Articles 79 and 81.



High Court

The next highest court in Namibia is called the High Court. The head of the High Court is called the Judge-President. The Judge-President is also the Deputy-Chief Justice of the Supreme Court. The President, on the recommendation of the Judicial Service Commission, may appoint one or more Deputy Judges-President and any number of additional Judges.⁷

The High Court can consider both criminal and civil cases, including cases on the interpretation and implementation of the Constitution. It can also consider appeals from decisions made by Lower Courts.⁸

Judicial Service Commission

Recommendations on the appointment or removal of Judges are made by the Judicial Service Commission. The Constitution states that this Commission must be made of

- the Chief Justice
- the Deputy-Chief Justice
- the Attorney-General
- two members of the legal profession nominated by professional organisations representing the interests of the legal profession in Namibia.



Any temporary vacancy on the Judicial Service Commission can be filled by someone chosen by the Chief Justice, or by the Deputy-Chief Justice in the absence of the Chief Justice.

At least three of the members must be present for a meeting of the Judicial Service Commission to take place.⁹

Appointment of judges to Supreme Court and High Court

The President appoints judges on the recommendation of the Judicial Service Commission.¹⁰

The President can also appoint acting judges to the Supreme Court, at the request of the Chief Justice –

- to fill casual vacancies
- to take part in cases involving constitutional issues or the fundamental rights and freedoms protected by the Constitution if the Chief Justice believes that acting judges are needed in these cases because of their special knowledge or expertise.¹¹

The President can appoint acting judges to the High Court, at the request of the Judge-President –

- to fill casual vacancies in the court
- to enable the court to deal with its work more speedily.¹²



⁷ [Namibian Constitution](#), Article 80(1).

⁸ [Namibian Constitution](#), Article 80(2).

⁹ [Namibian Constitution](#), Article 85.

¹⁰ [Namibian Constitution](#), Article 82(1).

¹¹ [Namibian Constitution](#), Article 82(2).

¹² [Namibian Constitution](#), Article 82(3).

As in the case of permanent appointments of judges, acting judges must be appointed on the recommendation of the Judicial Service Commission.¹³

The checks and balances on Presidential powers to appoint acting judges help to make sure that this power is never used to try to influence the outcome of a particular court case.

Judges generally hold office until they reach age 65, but the President can extend the retirement age of any judge to age 70. There is no age limit for acting judges, who are appointed for fixed terms. The Constitution also requires that any judges who are not Namibian citizens can be appointed only for a fixed term of office.¹⁴

Removal of judges from Supreme Court and High Court

To protect the independence of the Judicial Branch, the Constitution says that judges may be removed by the President before their term of office expires only on the recommendation of the Judicial Service Commission, and only for two grounds: (1) mental incapacity or (2) serious misconduct. The Constitution sets out the procedure that must be followed to remove a judge on either of these grounds.

The Judicial Service Commission must set up a Tribunal to investigate the situation. This Tribunal must be made up of a Chairperson and at least two other members who are currently judges or have been judges in the past. The Judicial Service Commission can recommend that the President should suspend a judge who is under investigation until the enquiry by the Tribunal has been completed.

The Tribunal must report its findings to the Judicial Service Commission, which will then decide whether to advise the President to remove the judge in question on one of the two permissible grounds. If the Judicial Service Commission recommends removal of a judge, the President is required to remove the judge from office.

If the judge being investigated is a member of the Judicial Service Commission, that judge must not take part in the deliberations of the Judicial Service Commission – and the President must appoint another judge to stand in for the judge who is under investigation.¹⁵



Oath by Judges Namibian Constitution, Article 82(1)

"I,, do hereby swear/solemnly affirm that as a Judge of the Republic of Namibia I will defend and uphold the Constitution of the Republic of Namibia as the Supreme Law and will fearlessly administer justice to all persons without favour or prejudice and in accordance with the laws of the Republic of Namibia."

Lower Courts

The Constitution does not give much detail about Lower Courts, which are set up by laws passed by Parliament. Lower Courts are presided over by magistrates or other judicial officers appointed under procedures set out in laws passed by Parliament. But, to preserve the independence of magistrates, Parliament is required to set up a Magistrates Commission to take responsibility for the transfer, discipline, removal, remuneration and other conditions of service of magistrates. The Constitution also

¹³ *S v Zemburuka (2)* 2003 NR 200 (HC).

¹⁴ *Namibian Constitution*, Article 82(4).

¹⁵ *Namibian Constitution*, Article 84.

gives Parliament power to set up other commissions to regulate matters relating to other kinds of Lower Courts.¹⁶

As of 2022, there are two kinds of Lower Courts. Some Lower Courts are **Magistrates' Courts**. Most court cases in Namibia start out in a Magistrate's Court. Decisions of a Magistrate's Court can be appealed to the High Court. Other Lower Courts are **Community Courts**, which have authority to hear and decide cases arising under the customary law of the community where they operate. There is a right of appeal from Community Courts to Magistrates' Courts, and from there to the High Court. These Lower Courts operate in terms of statutes enacted by Parliament.



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 is 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.¹⁷ The Attorney-General also has the power to refer issues directly to the Supreme Court for decision.¹⁸

Prosecutor-General

The Constitution also provides for a Prosecutor-General appointed by the President on the recommendation of the Judicial Service Commission. The Prosecutor-General must have legal qualifications that would entitle him or her to practise in all the courts of Namibia, as well as having the experience, conscientiousness and integrity to be a fit and proper person for the post. The Prosecutor-General brings criminal cases on behalf of the Government and represents the Government in appeals from criminal cases in the High Court or the Supreme Court. These powers can be delegated to other officials who act under the control and direction of the Prosecutor-General. The Prosecutor-General must also carry out any other functions and duties assigned to the Prosecutor-General by a law passed by Parliament.

The Prosecutor-General may be removed by the President before the end of his or her period of appointment only on the recommendation of the Judicial Service Commission, and (like judges) only for two grounds: (1) mental incapacity or (2) serious misconduct. The Constitution sets out the procedure that must be followed to remove the Prosecutor-General on either of these grounds, which is the same as the procedure for removing judges.¹⁹

Relationship between Attorney-General and Prosecutor-General

In 1995, at the request of the Attorney-General, the Supreme Court considered the constitutional relationship between the Attorney-General and the Prosecutor-General. The Court had to decide on the meaning of the constitutional provision saying that the Attorney-General exercises "the final responsibility for the office of the Prosecutor-General". This is an important question,

¹⁶ *Namibian Constitution*, Article 83.

¹⁷ *Namibian Constitution*, Articles 32(3)(i)(ee), 86 and 87.

¹⁸ *Namibian Constitution*, Articles 79(2) and 87(c).

¹⁹ *Namibian Constitution*, Articles 88-88A.

since the Attorney-General is a political appointee, while the Prosecutor-General is appointed by an independent body in the same manner as a judge.

The Court emphasised that prosecutorial discretion and decision-making are central to the criminal justice system. The prosecutorial process must be fair and also seen by the public to be fair, in order to inspire public confidence in the system and to be consistent with human rights norms. The discretion that rests with a Prosecutor-General should never be used as a tool for political ends.

So the Supreme Court decided that proper interpretation of the constitutional framework is that the Prosecutor-General must function independently, subject only to the duty to keep the Attorney-General informed. The reference to the Attorney-General's "final responsibility for the office of the Prosecutor-General" means financial responsibility as well as a duty to report to the President, the Executive and the Legislature about the actions of the office.

More specifically, the Supreme Court stated that the Attorney-General *cannot* instruct the Prosecutor-General to prosecute a particular case, to decline to prosecute or to withdraw a case. In the same vein, the Attorney-General *cannot* instruct the Prosecutor-General to take or not to take specific steps in connection with the preparation, institution or conduct of any particular prosecution. But the Attorney-General *can* require the Prosecutor-General to keep the Attorney-General informed about prosecutions that are of public interest or that involve important aspects of legal or prosecutorial authority.²⁰

Independence in the prosecution of criminal cases is important to make sure that there is no favouritism in who is held to account under the laws of Namibia. Independence in prosecution combined with independence on the part of the courts that hear criminal cases helps to ensure that everyone in Namibia will get a fair trial and that the laws are applied fairly to everyone.



²⁰ *Ex Parte Attorney-General In Re: The Constitutional Relationship Between the Attorney-General and the Prosecutor-General*, Supreme Court of Namibia, 1998.



Statutes relating to Courts

The laws about the appointment of judges and magistrates are summarised first, followed by summaries of the laws that govern the operation of the Supreme Court, the High Court, Magistrates' Courts and community courts.

Judiciary Act 11 of 2015

What does the law do?

This law provides for administrative and financial independence of the Office of the Judiciary, which covers the Supreme Court, the High Court and the Magistrates' Courts.¹



NAMIBIAN CONSTITUTION

Article 8(2)(a):

"In any judicial proceedings ... respect for human dignity shall be guaranteed."

What is the purpose of the law?

The law strengthens the separation of powers between the Executive and Judicial Branches by separating the Office of the Judiciary from the Ministry of Justice.

When did the law come into force?

1 December 2015.



What is the "Office of the Judiciary"?

The "Office of the Judiciary" is the administrative arm of the Judiciary. It handles all administrative and financial matters of the Judiciary. The Office includes judicial officers and staff members.²

Mission of the Office of the Judiciary: "To uphold the Constitution by promoting the rule of law through administering justice in a fair, timely, accountable and accessible manner"³

Constitutional background

The Ministry of Justice was previously responsible for providing financial and administrative support to the Judiciary. But since the Ministry of Justice is part of the Executive Branch of Government, this approach was not consistent with the principle of separation of powers.

"Judicial officers"

For the purposes of this law, the term "judicial officers" includes:

- Supreme Court Judges
- High Court Judges
- Magistrates.

Note that this term does *not* cover the same officials as the term "judicial offices" in the *Judicial Service Commission Act*.

¹ *Judiciary Act 11 of 2015*, section 1 (definition of "Judiciary").

² *Judiciary Act 11 of 2015*, sections 1 (definition of "judicial officer") and 3.

³ Office of the Judiciary website (home page): www.judiciary.na.



In 2014, the Namibian Constitution was amended to mandate a different arrangement. The amended provisions stated that the financial and other administrative matters of the High Court and Supreme Court must be carried out in a way that guarantees the independence of the Judiciary, and that the budget should be administered by a separate accounting officer acting under the direction and control of the Chief Justice. The amended constitutional provisions also made it clear that the Chief Justice has the duty to supervise the Judiciary and monitor the norms and standards related to the judicial functions of all courts.⁴

The **Judiciary Act** carried out the new Constitutional mandate by establishing the Office of the Judiciary with its own Executive Director, its own budget, and power to determine its own policies and priorities.

Administration

The administrative staff of the Office of the Judiciary are members of the public service. The Prime Minister appoints the Executive Director and other staff members of the Office of the Judiciary, acting on the recommendation of the Chief Justice. The terms and conditions of their appointment are agreed between the Prime Minister and the Chief Justice. The Executive Director has the power to issue administrative directives on the general control, training, duties and responsibilities of the staff members, and on any other matters related to the effective functioning of the Office.⁵

Committees

The Chief Justice has the power to establish committees to investigate and make recommendations on issues relating to the Office, such as budgeting, organisation of the courts, conditions of service of judicial officers, ways to improve judicial output and relationships with other organs of State. These committees can be made up of judicial officers only, staff members only, or a mixture of judicial officers and staff members.⁶

Budget

The Office has its own budget for payments of salaries and allowances to judicial officers and staff members as well as other costs relating to the operation of the Office. The Ministry of Justice bears the costs of capital projects for the Office, but is required to consult the Chief Justice about the construction or renovation of courthouses and other buildings used by the Office.⁷ Budgetary independence is a key aspect of independent function, because controlling the expenditure of the Judiciary could be a mechanism for controlling aspects of its work.

Annual report

Every year, the Executive Director must submit an annual report to both the Chief Justice and the Minister of Justice. This report must include information on the financial affairs of the Office.

Representation by Minister of Justice

The Minister represents the Office of the Judiciary in Cabinet and in the National Assembly.⁸ This enables the Judiciary to keep a proper distance from decision-making processes in the Executive and Legislative Branches so that its independence is not compromised.

⁴ [Namibian Constitution](#), Article 78(5)-(7) (inserted by the [Namibian Constitution Third Amendment Act 8 of 2014](#)).

⁵ [Judiciary Act 11 of 2015](#), sections 2, 4 and 7.

⁶ [Judiciary Act 11 of 2015](#), section 15.

⁷ [Judiciary Act 11 of 2015](#), sections 8-9.

⁸ [Judiciary Act 11 of 2015](#), section 13.

“It must be remembered that the concept of independence of the judiciary stands on two inseparable pillars, namely **individual independence** and **institutional independence**.

Individual independence means the complete liberty of individual judges and magistrates to hear and decide the cases that come before them... .

Institutional independence of the judiciary, on the other hand, reflects a deeper commitment to the separation of powers between and among the legislative, executive and judicial organs of State. The doctrine of separation of powers is also a part of Namibia’s constitutional make-up” and the “institutional independence of the judiciary is not subject to any limitation”.

Alexander v Minister of Justice, High Court, 2009 paragraph 47

Judicial Service Commission Act 18 of 1995

What does the law do?

This law governs the operation of the Judicial Service Commission established by the Namibian Constitution. The Judicial Service Commission makes recommendations to the President on the appointment and removal of Supreme Court Judges and High Court Judges, as well as other “judicial offices”.

What is the purpose of the law?

The law adds more detail to the Constitutional framework for the Judicial Service Commission to ensure that it operates independently.

When did the law come into force?

20 November 1995.

Composition of Judicial Service Commission

As explained in the summary of constitutional provisions on the Judicial Branch, the Namibian Constitution determines the composition of the Judicial Service Commission. It must have the following five members:

- the Chief Justice
- the Deputy-Chief Justice
- the Attorney-General
- two members of the legal profession appointed by the President from persons nominated by professional organisations representing the interests of the legal profession in Namibia.

Any temporary vacancy on the Commission can be filled by someone chosen by the Chief Justice, or by the Deputy-Chief Justice in the absence of the Chief Justice.⁹

“Judicial officers”

The term “judicial offices” in the context of the functions of the Judicial Service Commission includes the Chief Justice, the Judge-President of the High Court, any other judge of the Supreme Court or the High Court, the Ombudsman and the Prosecutor-General. This does not mean that the Ombudsman and the Prosecutor-General have any judicial powers. But the Judicial Service Commission plays a role in the appointment of these officials because, as with judges, their independence and impartiality are important.

Note that this term does *not* cover the same officials as the term “judicial offices” in the *Judiciary Act*.

Judicial Service Commission Act 18 of 1995, section 1 (definition of “judicial officers”)



⁹ *Namibian Constitution*, Article 85(1) and (4).

Representatives of the legal profession on the Commission

The two members of the legal profession on the Judicial Service Commission must be legal practitioners, meaning that they must have satisfied the requirements in the *Legal Practitioners Act 15 of 1995* to practise law in Namibia. The President must invite all of the organisations representing the interests of the legal profession in Namibia to nominate legal practitioners for these posts. (One organisation representing the legal profession is the Law Society of Namibia, which is the body set up by the *Legal Practitioners Act 15 of 1995* to regulate the legal profession. Other privately-established bodies are set up from time to time to represent particular interest groups of legal practitioners.) The President will then choose two persons and announce their appointment in the *Government Gazette*.¹⁰

Terms of office

The two members of the Judicial Service Commission who represent the legal profession hold office for three-year terms. There is no fixed term of office for the three persons who are automatically members of the Commission by virtue of the office they hold (the Chief Justice, the Deputy-Chief Justice and the Attorney-General).¹¹

What is the role of the Judicial Service Commission?

Appointment and removal of Judges, the Ombudsman and the Prosecutor-General

The Namibian Constitution requires that certain appointments and removals must be made on the recommendation of the Judicial Service Commission.

The Judicial Service Commission makes recommendations to the President on the appointment of the **Chief Justice of the Supreme Court**, the **Judge-President of the High Court** and **all other Supreme Court and High Court Judges**.

The Judicial Service Commission makes recommendations to the President on the appointment of the **Ombudsman**, who is an independent Government official with the power to investigate complaints about violations of fundamental rights and freedoms by anyone, abuse of power or unfair treatment by Government officials, the failure to achieve a balanced structuring of the public service or the uniformed services, or environmental issues.

The Judicial Service Commission makes recommendations to the President on the appointment of the **Prosecutor-General**, who is responsible for prosecuting people accused of crimes on behalf of the Government.

As a form of protection for these officials, they can be removed only on the grounds of mental incapacity or serious misconduct, and only after an investigation by a Tribunal set up by the Judicial Service Commission and made up of a Chairperson and two current or former judges. The President must act on the recommendation of the Commission, whether its recommendation is to remove or not to remove a person from any one of these offices.

In practice, the Judicial Service Commission invites nominations for appointments to any of these judicial offices from the Law Society of Namibia (the body set up by the *Legal Practitioners Act 15 of 1995* to regulate the legal profession), from any other professional organisation representing the interests of the legal profession, from the Magistrates Commission and from any other organisations identified by the Commission as having an interest in its work. In addition to these nominations, the Chief Justice

¹⁰ *Judicial Service Commission Act 18 of 1995*, section 2.

¹¹ *Judicial Service Commission Act 18 of 1995*, section 3.

may identify other possible candidates for appointment to the Supreme Court for the Commission's consideration, while the Judge-President may identify other possible candidates for appointment to the High Court. The Commission may conduct personal interviews with any of the nominees. The Commission will then make its recommendations to the President, along with the reasons behind the recommendation.¹²

Appointment of Advisory Board in a State of Emergency

The Judicial Service Commission also makes recommendations to the President on the appointment of members of the **Advisory Board** which must be set up to review detentions if there is a State of Emergency that allows for detention without trial.¹³

Role in appointment or removal of other key officials

Specific laws enacted by Parliament may give the Judicial Service Commission a role in the appointment or removal of various other officials, particularly where it is important for such officials to act with complete independence from any political influence. Currently the *Anti-Corruption Commission Act 8 of 2003* and the *Whistleblower Protection Act 10 of 2017* (which has been passed by Parliament but was not yet in force as of 2022) both give a role to the Judicial Service Commission in respect of the removal of top officials appointed under those laws (but not in their appointment). Other laws passed in future might also give the Judicial Service Commission a role to play in respect of the appointment or removal of other officials.

- **Anti-Corruption Commission Act:** The Namibian Constitution requires that the **Director-General and Deputy Director-General** of the Anti-Corruption Commission must be appointed by the National Assembly from persons nominated by the President.¹⁴ These officials are normally appointed for five-year terms but can be removed from office before their term expires because of misconduct, mental or physical infirmity, failure to carry out their duties efficiently or failure to comply with a condition of their appointment. If the issue of possible removal arises, the President must notify the Chief Justice. The Chief Justice, after consultation with the Judicial Service Commission, must set up a board to enquire into the matter and make recommendations to the President. This board must be made up of a chairperson who is a former Supreme Court or High Court Judge or someone who is qualified to be appointed as a judge, along with two other persons of good character and integrity. The President must consider the board's report and recommendation. If the President concludes that the official should be removed from office, the President must motivate the decision to the National Assembly and ask it to adopt a resolution recommending removal. If the National Assembly passes such a resolution, then the President must remove the official in question.¹⁵
- **Whistleblower Protection Act:** This law protects persons who report information on improper conduct to fight against corruption. The **Commissioner of Whistleblower Protection** is appointed by the President from nominations made by the Magistrates Commission and approved by the National Assembly. The same process applies if the President decides to appoint one or more **Deputy-Commissioners**. These officials are normally appointed for five-year terms but can be removed from office before their term expires because of misconduct, mental or physical infirmity, failure to carry out their duties efficiently or failure to comply with a condition of their appointment. If the issue of possible removal arises, the procedure is the same as in the case of the top officials of the Anti-Corruption Commission.¹⁶

¹² [Namibian Constitution](#), Articles 32(4)(a), 79(1), 80(1), 82(1), 84; [Judicial Service Commission Act 18 of 1995](#), sections 1 (definition of "judicial offices") and 4; [Judicial Service Commission Regulations](#), regulations 2-5.

¹³ [Namibian Constitution](#), Article 26(5)(c).

¹⁴ [Namibian Constitution](#), Article 94A(5).

¹⁵ [Anti-Corruption Act 8 of 2003](#), sections 4-9.

¹⁶ [Whistleblower Protection Act 10 of 2017](#), sections 8-11.

Recommendations on remuneration of judicial officers

Another role of the Judicial Service Commission is to make recommendations to the President on the salary and benefits of judges under the *Judges' Remuneration Act 18 of 1990*.¹⁷ The Commission can also make recommendations to the President on the salary and benefits of other “judicial officers”.¹⁸



Investigating complaints

The Judicial Service Commission can investigate complaints from the public about the conduct of persons in judicial offices or complaints about the administration of justice by the Supreme Court or the High Court. It can hold disciplinary enquiries into the conduct of persons in judicial offices if appropriate.¹⁹

How to make a complaint about a judicial officer (a Judge, the Ombudsman or the Prosecutor-General)

A complaint about a “judicial officer” must be made in the form of a sworn statement submitted to the Chief Justice. The statement must explain the nature of the complaint and its factual background. It must be based on mental incapacity or serious misconduct, since these are the only grounds for removal of judicial officers. The Chief Justice must immediately bring the complaint to the attention of the other members of the Judicial Service Commission.

The Commission can dismiss a complaint without making any investigation if the complaint was made anonymously, or if it obviously does not make out a case for mental incapacity or serious misconduct. If the Commission dismisses the complaint, the person who submitted it will be informed of this decision in writing.

If the Commission decides that the complaint should be investigated, it will invite the judicial officer in question to respond in writing. The Commission may ask the judicial officer or the person who made the complaint to provide more information. The Commission will then consider the matter in a private session and come to a decision.

After considering the complaint, the Commission could recommend instituting a formal procedure for possible removal of the judicial officer. If the Commission does not find the complaint serious enough to warrant possible removal, it may take certain other measures:

- requesting the judicial officer to apologise to the complainant
- requiring counselling of the judicial officer by an appropriate superior
- requesting the judicial officer to remedy the problem identified in the complaint
- issuing a reprimand.

The complainant must be notified in writing of the outcome of the complaint. All of the proceedings relating to complaints and possible removals take place in private.²⁰

¹⁷ *Judges' Remuneration Act 18 of 1990*, sections 3(1) and 5(1); *Judicial Service Commission Act 18 of 1995*, section 4(1)(b).

¹⁸ *Judicial Service Commission Act 18 of 1995*, section 4(1)(b).

¹⁹ *Judicial Service Commission Act 18 of 1995*, section 4(1)(c).

²⁰ *Judicial Service Commission Regulations*, regulations 6-ff.

Independence

The Judicial Service Commission is not subject to the direction or control of any person or authority. It makes rules and regulations for its own procedures and functions, although the Namibian Constitution requires that at least three members of the Commission must be present for a valid meeting to take place.²¹

Recommendations for improving the administration of justice in Namibia

The Judicial Service Commission can make recommendations to the Minister of Justice on how to improve the administration of justice in Namibia.²² For example, the Commission has issued guidelines on the maximum time period between the date when a court hears a case and the date when it delivers its decision, as a mechanism to reduce delays.²³

Qualifications for judicial offices

The qualifications for Supreme Court and High Court Judges are set out in the laws that give more detail about those courts, discussed below in the sections on the *Supreme Court Act* and the *High Court Act*.

Balanced structuring of judicial offices

In recommending persons for judicial offices, the Judicial Services Commission must consider affirmative action for previously-disadvantaged persons (including women) and the need to have a balanced group of persons that reflects the composition of Namibia. Where the Commission has made a recommendation to the President aimed at these goals, the President may reject the recommendation. In that case, the President must refer the matter back to the Commission with written reasons for rejecting its recommendation and a request for a fresh recommendation.²⁴

Codes of Conduct for judges

Rules and Guidelines for Ethical Judicial Conduct in Namibia have been adopted by Supreme Court and High Court Judges. They are made by the judges themselves to help the courts maintain their independence.

The basic values covered by these rules are:

- **Independence:** carrying out judicial duties free of any influence, inducement, pressure, threats or interference from anyone, and mindful of the separation between the Executive, the Legislature and the Judiciary
- **Impartiality:** carrying out judicial duties without fear, favour, bias or prejudice, acting only in accordance with the Namibian Constitution and the laws of Namibia
- **Integrity:** acting with honour and honesty
- **Propriety:** acting properly, decently and respectably
- **Equality:** treating all persons involved in legal proceedings equally and with dignity and consideration, and with no discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status
- **Competence and diligence:** avoiding unreasonable delays, and taking reasonable steps to maintain and enhance the knowledge, professional skills and personal qualities necessary to carry out judicial duties responsibly.

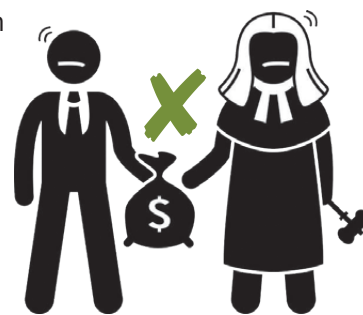
²¹ *Namibian Constitution*, Article 85(3) and (5); *Judicial Service Commission Act 18 of 1995*, section 4(2)-(3).

²² *Judicial Service Commission Act 18 of 1995*, section 4(1)(d).

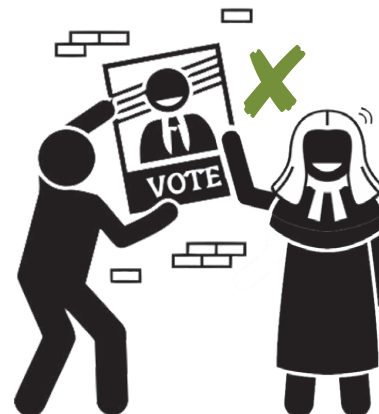
²³ See “The Judicial Service Commission’s Guidelines for Delivery of Reserved Judgments in the High Court of Namibia, adopted by the Judge-President of the High Court in Consultation with the Judicial Service Commission”, and “The Judicial Service Commission’s Guidelines for Delivery of Reserved Judgments in the Supreme Court of Namibia, adopted by the Chief Justice of the Supreme Court in Consultation with the Judicial Service Commission”, both available [here](#).

²⁴ *Namibian Constitution*, Article 23(2)-(3); *Judicial Service Commission Act 18 of 1995*, section 5.

Judges may not accept any gifts, loans or other favours in connection with their official roles, and they may not use their positions to advance their private interests or the interests of any other person. They should refuse to be involved in any court case where there is a conflict of interest, such as where the judge, a member of the judge's family, or a close friend or associate has an economic or other interest that could be substantially affected by the outcome of the case. They should also refuse to be involved in any court case that directly involves a family member, a personal friend or a personal enemy.



Judges may not be actively involved in any party-political activity, or in any organisations or activities that could detract from the dignity or independence of their offices.²⁵



"A judge shall strive to be aware of, and to understand, diversity in society..."

Ethical Judicial Conduct in Namibia, Guideline 5(c)(i)

Criticism

Three of the five members of the Judicial Service Commission are members of the body because they hold positions as a result of Presidential appointments (the Chief Justice, the Judge-President and the Attorney-General). The other two members must come from persons nominated by the legal profession, but they are also finally chosen and appointed by the President. It has been suggested that **the Judicial Service Commission should be more representative of broader society**, with a composition that gives the public confidence that its members are not obligated to the President or the Executive Branch.²⁶ The International Commission of Jurists (a group of 60 distinguished judges and lawyers from all regions of the world) has recommended that Judicial Service Commissions should be broadly representative of the major stakeholders in the administration of justice, with representatives from the Judiciary, the Executive, the Legislature, the legal profession, law teachers and civil society.²⁷

The absence of any system requiring **declarations of financial interests by the judiciary** has been criticised, with a suggestion that there should be an assets and interests register for Supreme Court and High Court Judges to help guard against potential conflicts of interest in court cases.²⁸ As a point of comparison, judges in South Africa must disclose particulars of their financial and other interests, along with those of their immediate family members, to a senior official in the Office of the Chief Justice. Some of this information is kept confidential, while some is accessible to the public; the Minister of Justice makes regulations on what type of information is public and what remains private.²⁹ As another example, judges in the United States are required to file financial information upon appointment, annually during their tenure, and upon leaving office. These financial disclosures are available for public inspection.³⁰

²⁵ [Rules and Guidelines for Ethical Judicial Conduct in Namibia: Superior Courts](#), undated.

²⁶ Makanatsa Makonese, ["Appointment processes for Judicial Services Commissions \(JSCs\) and their Role in Promoting Independence of the Judiciary in Southern Africa: A Focus on Law Society/Bar Association Representatives on the JSCs"](#), research supported by the American Bar Association Justice Defenders Program, 2017, pages 13-14.

²⁷ ["The Crisis in Judicial Leadership in the Kingdom of Lesotho"](#) International Commission of Jurists, 2013, page 58.

²⁸ ["Namibia needs to close anti-corruption gaps"](#), Institute for Public Policy and Research, 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.

²⁹ [South African Judicial Service Commission Act 9 of 1994](#), section 13.

³⁰ US [Ethics in Government Act of 1978](#), which applies to all federal judges including Justices of the US Supreme Court.

Another issue relates to **codes of judicial conduct**. It is noteworthy that there are clear and detailed *Rules and Guidelines on Ethical Conduct for Judges* which are publically available on the website of the Office of the Judiciary. It also seems appropriate for judges to develop these rules collectively and independently, without involving other branches of Government. However, these documents might be more easily and reliably accessible if the law required that they must be published in the *Government Gazette*, as in South Africa.³¹

Another point of debate concerns **public participation in the procedures for making recommendations for appointments**. As of late 2022, shortlists of candidates for specific posts are sometimes announced, and some interviews of short-listed candidates take place in public while most do not. Decisions on these matters are at the discretion of the Judicial Services Commission since the law is silent on these points. Some in Namibia have called for more transparent procedures, asserting that interviews of short-listed candidates should always take place in public.³² Others have asserted that a public interview process might compromise the dignity of the positions in question and that the Judicial Services Commission should carry out its recommendation processes in private.³³ In 2020, the Judicial Services Commission announced that it had established a committee to consider whether interviews with candidates should be open to the public, and to consider guidelines on this issue. The Commission has indicated that future interviews of judges will take place in public, once the regulations are amended for this purpose.³⁴



As a point of comparison, in South Africa interviews for all judicial positions take place in public.³⁵ In Kenya, interviews of judicial candidates are open to the public, and also streamed live on national television and radio.³⁶ In Zimbabwe, the Constitution requires that judicial positions must be publically advertised, that members of the public can nominate candidates and that candidates should be publicly interviewed.³⁷ In contrast, the Court of Appeal of Botswana has pointed to concerns that public interviews might compromise the privacy and dignity of the candidates, given that rigorous interviews may need to cover sensitive and difficult issues – which could discourage good candidates from making themselves available for possible appointment.³⁸

The Southern African Chief Justices' Forum has adopted a set of principles and guidelines on judicial appointments known as the "Lilongwe Principles" (after the city in Malawi where they were approved). The Lilongwe Principles say that the judicial appointment process should encourage input from stakeholders, including the legal profession, academics, other judges and civil society. It recommends that shortlisted names should always be made available to the general public. It does not call for public interviews, but it does recommend that records of the interview process shall be kept and made available.³⁹

³¹ South African *Judicial Service Commission Act 9 of 1994*, section 12.

³² See, for example, Sonja Smith & Eliaser Ndeyanae, "[Judiciary to decide on PG interviews](#)", *The Namibian*, 26 October 2020.

³³ See "[Choosing a PG is not a beauty pageant](#)", *Windhoek Observer*, 23 October 2020.

³⁴ Media Statement, Office of the Judiciary, "[Selection Process of the Prosecutor-General](#)", 10 November 2020; communication to LAC from Judicial Services Commission, 15 November 2022.

³⁵ Judicial Service Commission (JSC), "[Overview](#)", National Government of South Africa, as updated on 2 October 2022.

³⁶ Oagile Bethuel Key Dingake, "[Appointment of Judges and the Threat to Judicial Independence: Case Studies from Botswana, Swaziland, South Africa, and Kenya](#)", *Southern Illinois University Law Journal*, Volume 44, 2020, page 428; "[Judiciary Reschedules Interviews To Hire Judges](#)", *Kenya News Agency*, 20 September 2022.

³⁷ *Zimbabwe Constitution*, section 180; "[A Reflection on Zimbabwe's JSC Interviews for the Supreme Court](#)", 14 November 2016.

³⁸ *Law Society of Botswana v President of Botswana*, Botswana Court of Appeal, 2017 (Judges Letsededi and Brand), paragraph 96. In this case, the Law Society of Botswana went to court to challenge the appointment process for High Court judges in Botswana. One issue was whether the process used by Botswana's Judicial Service Commission was consistent with the principles of transparency and openness. The Law Society wanted the court to require that interviews of candidates for appointment as judges must generally be open to the public. Botswana's Court of Appeal refused to do so, with all of the judges agreeing that the Judicial Service Commission should be free to regulate its own procedures as it sees fit.

³⁹ [Lilongwe Principles and Guidelines on the Selection and Appointment of Judicial Officers](#), adopted at the Southern African Chief Justices' Forum Conference and Annual General Meeting, Lilongwe, 30 October 2018, Guidelines 3.5-3.6.

Judges' Remuneration Act 18 of 1990

Salaries and benefits for judges are set out in this law, with the details being amended every few years. The amounts are set by the President, acting on the recommendation of the Judicial Service Commission. As of 2022, the most recent amendments to the salaries and benefits of judges had been announced in the *Government Gazette* in 2018 (salary) and 2015 (benefits).⁴⁰

Annual salary and benefits for judges, 2022

| | Basic Salary | Non-taxable Allowance | Water & Electricity | Housing Allowance | Telephone Allowance | Entertainment Allowance | Total Remuneration |
|--|---------------------|------------------------------|-------------------------------------|--------------------------|----------------------------|--------------------------------|---------------------------|
| Supreme Court | | | | | | | |
| Chief Justice | N\$1 706 144 | N\$17 500 | Total usage at Government's expense | N\$285 730 | N\$250 | N\$5 000 | N\$2 014 624 |
| Deputy-Chief Justice (who is also the Judge-President of the High Court) | N\$1 645 406 | N\$15 000 | Total usage at Government's expense | N\$233 480 | N\$250 | N\$4 000 | N\$1 898 136 |
| Supreme Court Judge | N\$1 540 896 | N\$10 000 | N\$55 560 | N\$222 376 | N\$250 | – | N\$1 829 082 |
| High Court | | | | | | | |
| Deputy Judge-President of the High Court | N\$1 354 556 | N\$10 000 | N\$55 560 | N\$222 376 | N\$250 | – | N\$ 1 642 742 |
| High Court Judge | N\$1 248 636 | N\$10 000 | N\$48 240 | N\$159 222 | N\$250 | – | N\$ 1 466 348 |

Judges are entitled to suitable accommodation in an official residence at Government expense as an alternative to the housing allowance. In addition, State vehicles are made available to judges for their official and private use. Judges who use their own vehicles for official duties are compensated per kilometre at the same rate as public servants at management level. All judges are also entitled to the services of an official driver, and to security at State expense if they wish.⁴¹ Judges receive pensions as part of the Members of Parliament and other Office-bearers Pension Fund.⁴² The remuneration of Supreme Court Judges cannot be reduced during their terms of office.⁴³ This safeguard makes sure that the Executive Branch of Government cannot use financial threats to attempt to influence judges.

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⁴⁰ Salary: *Judges' Remuneration Act 18 of 1990*, Second Schedule, as amended in 2018; Benefits: *Regulations relating to Conditions of Service of Judges*, dated 23 September 2015 and read with Proclamation 4 of 2017 (*Government Gazette* 6259) regarding equivalent housing allowances.

⁴¹ *Regulations relating to Conditions of Service of Judges*, regulations 4-6, 8(1) and 10.

⁴² *Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999; Judges' Pensions Act 13 of 2011*.

⁴³ *Supreme Court Act 15 of 1990*, section 10(2).

Magistrates Act 3 of 2003

What does the law do?

This law provides for the establishment of a Magistrates Commission and a Magistracy that is not part of the public service.

What is the purpose of the law?

The law strengthens the independence of the Judicial Branch by separating it from the Executive Branch.

When did the law come into force?

Part of the law was brought into force on 20 June 2003 and the remainder on 30 June 2003.

Constitutional background

The original version of the provision on lower courts in the Namibian Constitution said only that they would be established by a law passed by Parliament which would set out their functions and procedures. It also said that lower courts would be presided over by magistrates or other judicial officers appointed in accordance with procedures set out in a law passed by Parliament.⁴⁴

Initially, magistrates were treated as members of the public service. But this arrangement was challenged by a magistrate who was unhappy about being transferred from one location to another as a public servant. He suspected that the order to transfer him might have been retribution because he raised the alarm about fraudulent actions by a prosecutor that led to a police investigation and criminal charges. This motivation for the transfer was not proved, but it shows the importance of complete independence for the courts.

In 2003, the Supreme Court ruled in this case that treating magistrates as public servants was inconsistent with the constitutional rule that all courts in Namibia must be independent.⁴⁵ Members of the public service are required to execute Government policy and directives, and work under the control of the Executive Branch of Government. Magistrates must not be treated as Government employees because this threatens their independence and prevents the public from seeing them as being independent from the Executive Branch.

The Supreme Court gave Parliament a deadline to correct this constitutional problem.⁴⁶ As a result, Parliament passed the *Magistrates Act 3 of 2003* to provide for the independent administration of magistrates outside the public service.

In 2014, the Namibian Constitution was amended to entrench this position. It now provides that there must be a Magistrates Commission, governed by a law passed by Parliament, which is responsible for administrative matters relating to magistrates.

What are the qualifications for members of the Magistrates Commission?

To be eligible to be a member of the Magistrates Commission, a person must be a Namibian citizen or permanent resident. They must also have at least 10 years of work experience, including some experience at a management level.

⁴⁴ *Namibian Constitution*, Article 83, before it was amended by the *Namibian Constitution Third Amendment Act 8 of 2014*.

⁴⁵ *Namibian Constitution*, Article 78(2).

⁴⁶ *Mostert v Minister of Justice*, Supreme Court of Namibia, 2003.



Persons are *not* eligible to be members of the Magistrates Commission if –

- they have been declared to be mentally ill in terms of a law on mental health
- they are unrehabilitated insolvents
- they have been convicted of a crime and sentenced to some term of imprisonment without the option of a fine
- they have been removed from any office of trust because of misconduct
- they represent the State or other clients in the Magistrates' Courts.⁴⁷

Who are the members of the Magistrates Commission?

The Magistrates Commission has a larger and more diverse composition than the Judicial Service Commission. It has the following seven members:

- a High Court Judge chosen by the Judge-President
- the Chief Magistrate
- one Divisional Magistrate or Regional Court Magistrate chosen by the Minister of Justice from a list of three magistrates nominated by the professional association that represents magistrates
- one staff member of the Ministry of Justice chosen by the Minister of Justice
- one person chosen by the Public Service Commission
- one person chosen by the Attorney-General
- one teacher of law chosen by the Minister of Justice from a list of two teachers nominated by the Vice-Chancellor of the University of Namibia.⁴⁸

An “**unrehabilitated insolvent**” is someone who has, in layperson's terms, declared bankruptcy because their debts are greater than their assets. In this situation, the person's assets can be taken over for fair distribution between all creditors, under the supervision of the Master of the High Court. When the creditors have all been satisfied, then the insolvent person can apply to be considered “rehabilitated” – which allows them to once again take control of their assets and engage in financial transactions. Rehabilitation also happens automatically after a significant amount of time has passed (currently 10 years). Bankruptcy is a common disqualification for public office, perhaps because it signals recklessness in decision-making or because financial difficulties could make an office-holder vulnerable to corruption. However, some argue that insolvency should not be a disqualification for public office unless it is accompanied by dishonesty, incompetency or irresponsibility.

Convictions for serious crimes often disqualify persons from holding public offices. The sentences imposed are used as an indication of the seriousness of the crime, instead of providing a list of specific crimes that might become outdated over time. Some suggest that convictions for crimes involving elements of bribery, fraud or corruption should disqualify persons from holding public offices regardless of the sentence imposed.



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. It advises the President and the Government on the appointment of suitable persons to the public service.

⁴⁷ *Magistrates Act 3 of 2003*, section 5A.

⁴⁸ *Magistrates Act 3 of 2003*, section 5.

The High Court Judge is the Chairperson of the Magistrates Commission. The Commission must elect one of its members to serve as Deputy Chairperson. The Chairperson must publish the names of the members of the Commission in the *Government Gazette*.

The Chief Magistrate has no fixed term of office because he or she is a member by virtue of holding this position. Other members are appointed for three-year terms and can be re-appointed – but they may not serve more than two terms in a row. The Minister of Justice can withdraw a member from Commission if there is a valid reason to do so, and if the Commission has recommended this step.⁴⁹

Administration and procedure

A majority of the members of the Magistrates Commission must be present for a meeting to take place. Decisions are made by a majority vote of the members who are present. The person serving as chairperson has an extra vote in the case of a tie.

The Commission can set committees made up of members and other persons with special expertise to assist and advise it on any of its functions.

The Minister of Justice and the Minister of Finance decide together on the remuneration and allowances to be paid to members of the Commission and its committees. Members who are judges, magistrates or members of the public service are eligible only for allowances for travelling and subsistence, since they already receive a salary from the State.

The Ministry of Justice assigns staff members of the Ministry to the office of the Chief Magistrate to carry out work related to the Magistrates Commission. The Chief Magistrate supervises and controls these staff members and designates one of them as secretary of the Commission.⁵⁰

What is the role of the Magistrates Commission?

The Magistrates Commission has the following purposes:

- to make sure that all administrative actions concerning magistrates – including appointment, promotion, transfer, dismissal and disciplinary steps – are applied fairly, without favour or prejudice
- to make sure laws and administrative directives are applied to magistrates uniformly and correctly
- to make sure that magistrates are not influenced or victimized
- to promote the continuing education of magistrates
- to make sure that properly-qualified and competent persons are appointed as magistrates
- to advise the Minister of Justice on any issue relating to the independence of the Magistracy and the efficiency of the administration of justice in the lower courts.

More specifically, the Commission is responsible for the following functions:

- preparing estimates of the expenditure for the Commission and the Magistracy, for inclusion in the budget of the Ministry of Justice
- issuing a Code of Conduct for magistrates
- investigating complaints from the public on improper conduct of magistrates or other problems in the lower courts
- investigating complaints from magistrates
- conducting disciplinary investigations into any alleged misconduct of magistrates
- making recommendations to the Minister of Justice on the minimum qualifications for magistrates, the suitability of candidates for appointment as magistrates and the dismissal of magistrates
- making recommendations to the Minister of Justice on the conditions of service of magistrates, including salary, benefits and retirement.

⁴⁹ *Magistrates Act 3 of 2003*, sections 5-6.

⁵⁰ *Magistrates Act 3 of 2003*, sections 5-10.

The Commission has the power to promote magistrates to higher grades, according to their performance, and to transfer magistrates. It may recognise one professional association of magistrates.⁵¹

Protecting the independence of the Magistracy

The power of the Magistrates Commission to investigate complaints about magistrates and complaints about the operation of Magistrates' Courts must not be used to interfere with the independence of the courts or the judicial role of magistrates.⁵²

Appointment of magistrates

Decisions on posts to be filled

The Minister of Justice makes decisions about how many magistrates are needed, in consultation with the Magistrates Commission and with the agreement of the Minister of Finance. The Minister of Justice decides on **permanent posts** for magistrates – including the number, grading, regrading, designation, re-designation or conversion of these posts – and **temporary posts** for magistrates when there is a need to increase the number of magistrates temporarily. Magistrates as a group are referred to as the “Magistracy”.⁵³

Qualifications of magistrates

All magistrates appointed after the law came into force must have a qualification in law that has been recognised by the Minister of Justice for this purpose. This requirement does not apply to magistrates who were appointed before the law was enacted.

In addition, no one can be appointed as a magistrate unless they have been certified by the Magistrates Commission to be suitable to serve as a magistrate.

Magistrates can be appointed on a permanent basis only if they are Namibian citizens. If they are not Namibian citizens, they can be appointed only on contracts for a fixed time period.⁵⁴

Decisions on appointments of individual magistrates

All permanent magistrates are appointed by the Minister of Justice, on the recommendation of the Magistrates Commission.⁵⁵ Temporary magistrates are appointed by the Magistrates Commission, to work generally as magistrates for a fixed time period or to preside in court over particular matters.⁵⁶

Oath by Magistrates

Magistrates Act 3 of 2003, section 11(5) and Schedule 1

“I,, do hereby swear/solemnly affirm that in my capacity as a magistrate I will be faithful to the Republic of Namibia, will uphold and protect the Namibian Constitution as the supreme law and the fundamental human rights and freedoms entrenched in it, and will administer justice to all persons alike in accordance with the Constitution and the law without fear, favour or prejudice.

⁵¹ *Magistrates Act 3 of 2003*, sections 3-4.

⁵² *Magistrates Act 3 of 2003*, section 4(4).

⁵³ *Magistrates Act 3 of 2003*, section 12.

⁵⁴ *Magistrates Act 3 of 2003*, sections 13(1)-(2) and 14.

⁵⁵ *Magistrates Act 3 of 2003*, section 13(1).

⁵⁶ *Magistrates Act 3 of 2003*, section 11(7).

Categories of magistrates

There are different categories of magistrates:

(1) Chief Magistrate

The Chief Magistrate is appointed by the Minister of Justice, on the recommendation of the Commission, for a five-year term of office and is eligible for reappointment. This official is the administrative head of the Magistracy. The Chief Magistrate also has the power to preside over cases in any lower court.

(2) Deputy Chief Magistrates

Deputy Chief Magistrates assist the Chief Magistrate and may be assigned by the Commission to act as Chief Magistrate generally or in a particular case when the Chief Magistrate is absent.

(3) Divisional Magistrates

Divisional Magistrates are accountable for the administration of justice in the regional and district courts in their division. They can hear cases in District Magistrate's Courts and may be assigned to perform relief duties in any Regional Magistrates' Court. They have the same powers as other magistrates who hear cases in these courts, except where the Commission or the Chief Magistrate has set limits in this regard.

(4) Regional Court Magistrates

Regional Court Magistrates hear cases in regional courts. They may also hear cases in District Magistrate's Courts, where they have the same powers and functions as District Magistrates.

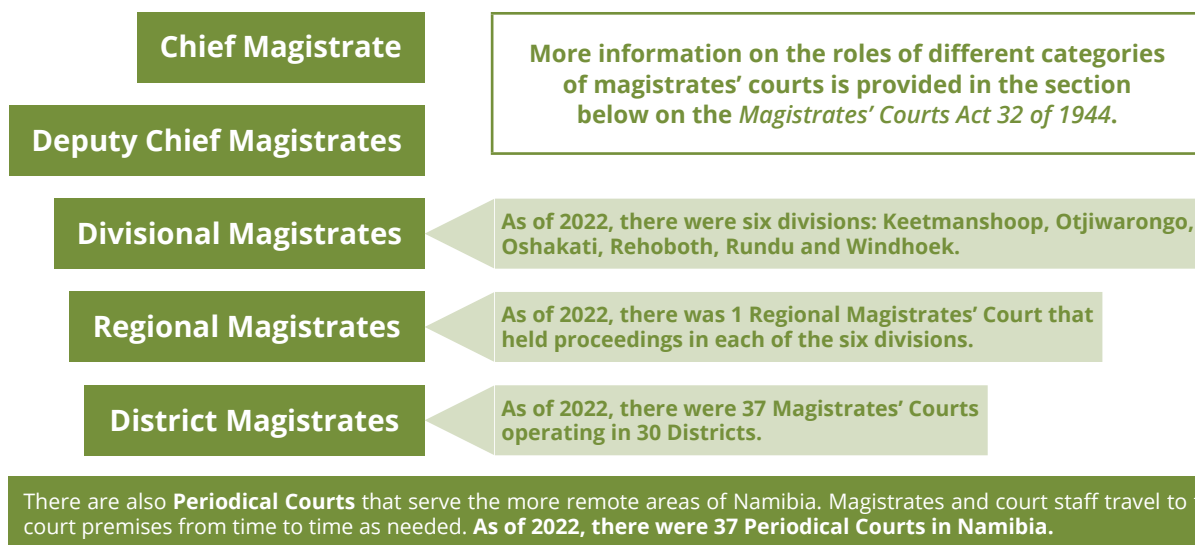
(5) District Magistrates

District Magistrates hear cases in District Magistrate's Courts. They are also accountable for the efficient management of their offices and for the proper administration of justice in their districts.

(6) Additional Magistrates

Additional Magistrates may hear cases in District Magistrate's Courts or other lower courts, as assigned by the District Magistrate. They have the same powers as other magistrates who hear cases in these courts, except where a law expressly prohibits them from carrying out certain functions or where the Commission or the relevant District Magistrate has set limits on certain functions.⁵⁷

All magistrates are allowed to belong to a professional association that represents their interests. As of 2022, this professional association was the "Judges' and Magistrates' Association of Namibia".⁵⁸



⁵⁷ *Magistrates Act 3 of 2003*, sections 11(1) and 16(1)-(8).

⁵⁸ *Magistrates Act 3 of 2003*, section 16(9); *Regulations regarding Magistrates, 2003*, regulation 33.

Annual salary and benefits for magistrates, 2022

The salary and benefits for magistrates are set by the Minister of Justice on the recommendation of the Magistrates Commission. As of 2022, the most recent amendments to the salaries and benefits of magistrates had been announced in the *Government Gazette* in 2017, for the financial year beginning on 1 April 2017.⁵⁹

| Position | Annual salary | Bonuses | Housing allowance | Total |
|---------------------------|--|-----------|-------------------|-------------------|
| Chief Magistrate | N\$551 567 | N\$45 964 | N\$92 880 | N\$690 411 |
| Deputy Chief Magistrate | N\$504 380 | N\$42 032 | N\$83 160 | N\$629 572 |
| Divisional Magistrate | N\$504 380 | N\$42 032 | N\$83 160 | N\$629 572 |
| Regional Court Magistrate | N\$504 380 | N\$42 032 | N\$83 160 | N\$629 572 |
| Principal Magistrate | N\$490 882 | N\$40 907 | N\$62 640 | N\$594 429 |
| Senior Magistrate | N\$284 445 | N\$23 704 | N\$52 320 | N\$360 469 |
| Magistrate | N\$213 561 | N\$17 797 | N\$52 320 | N\$283 678 |
| Salary Scale | Senior Magistrate: N\$310 045 to N\$330 332 | | | |
| | Magistrate: N\$232 781 to N\$259 285 | | | |

Other court personnel

Clerical tasks at Magistrates' Courts are carried out by **clerks of court**, who are members of the public service. The Commission or the Chief Magistrate may temporarily appoint the clerk of a Magistrate's Court to act as an assistant magistrate for certain limited purposes. The Minister also appoints **messengers of court** to serve documents related to court cases.⁶⁰

Balanced structuring of the Magistracy

In recommending persons for appointment as magistrates, the Magistrates Commission must consider affirmative action for racially disadvantaged persons, women and persons with disabilities, and the need to have a balanced group of persons that reflects the composition of Namibia.⁶¹

Private work

Magistrates are not allowed to do any other paid work outside the duties of their office without permission from the Magistrates Commission.⁶² This helps to prevent possible conflicts of interest.

Limitations on political activities by magistrates

A magistrate may be a member of a political party, but may not be a political party office-bearer or publicly write or speak in favour of or against any political party. Magistrates are also not allowed to be candidates for election to the National Assembly, a regional council or a local authority. If they accept a nomination, they are automatically considered to have resigned from the date of their acceptance.⁶³ These rules are intended to ensure that all magistrates act impartially and independently when making their decisions.

⁵⁹ [Regulations regarding Magistrates, 2003](#), regulation 5; the remuneration of magistrates is increased from time to time by Government Notices published in the *Government Gazette*. As of last 2022, the most recent increase was announced in Government Notice 202 of 2017 ([Government Gazette 6377](#)).

⁶⁰ [Magistrates Act 3 of 2003](#), section 11(7A); [Magistrates' Courts Act 32 of 1944](#), sections 13-14; [Judiciary Act 11 of 2015](#), sections 6 and 18(b).

⁶¹ [Magistrates Act 3 of 2003](#), section 15 read together with the [Affirmative Action \(Employment\) Act 29 of 1998](#), sections 17-18.

⁶² [Magistrates Act 3 of 2003](#), section 22.

⁶³ [Magistrates Act 3 of 2003](#), section 23.

Term of office

Magistrates normally hold office until they reach the retirement age of 65. They may be asked by the Minister of Justice to stay in office past this age, on the recommendation of the Commission, but they may not hold office beyond the age of 70.⁶⁴

Misconduct by magistrates

The Minister of Justice can dismiss magistrates *only* on grounds of misconduct or incapacity to perform their duties efficiently, and *only* on the recommendation of the Magistrates Commission.⁶⁵

What amounts to misconduct?

The following acts are misconduct:

- violating the *Magistrates Act* or the *Code of Conduct for Magistrates*
- committing a serious crime
- being negligent (careless) or lazy in carrying out duties
- engaging in excessive alcohol or drug use that interferes with the ability to carry out duties
- accepting or demanding any kind of bribe in connection with official duties
- engaging in any form of private business that is directly or indirectly related to their work without the permission of the Magistrates Commission, or failing to declare that a member of his or her household is engaged in this kind of private business
- improperly using or taking State property
- being absent from work without a good reason
- knowingly making a false or incorrect statement to gain some privilege or advantage
- knowingly making a false or incorrect statement that interferes with the administration of justice
- acting in a way that reflects badly on the Magistracy
- refusing to obey a lawful order.



CODE OF CONDUCT FOR MAGISTRATES: SUMMARY

*The Code of Conduct for Magistrates was issued by the Magistrates Commission after consultation with the Judges' and Magistrates' Association of Namibia. This is a simple-language summary of the Code, with the rules grouped under added headings to make them more accessible. Magistrates commit misconduct if they violate the Code of Conduct.*⁶⁶

Honest, dignified and lawful behaviour

- Magistrates are required to maintain a high standard of conduct in both their professional and personal capacities, in and out of court.
- Magistrates must act with integrity and display the highest degree of honesty.
- Magistrates must act at all times, in their official or private capacities, in a way that manner promotes the dignity and esteem of the office of magistrate and the administration of justice
- Magistrates must act in a way that gives the public confidence in the integrity of the judiciary.
- Magistrates must obey all the laws of Namibia.
- Magistrates must not discuss or comment on their profession or their work in a way that is damaging to the image of the Magistracy or the administration of justice.

⁶⁴ *Magistrates Act 3 of 2003*, section 20.

⁶⁵ *Magistrates Act 3 of 2003*, section 21.

⁶⁶ The full Code of Conduct for Magistrates can be found in Government Notice 190 of 2010 (*Government Gazette* 4551).

Fairness

- Magistrates must administer justice to all without fear, prejudice or favour.
- Magistrates must carry out their official duties impartially and competently, with dignity, courtesy and self-control.
- Magistrates must avoid situations that might reasonably give rise to suspicions of favouritism, in their personal relations with members of the legal profession who practice regularly in their court.

Preventing conflicts of interest

- Magistrates must refrain from expressly supporting any political party or grouping.
- Magistrates may not be members of any legislative or executive authority without the permission of the Magistrates Commission, because this might compromise the independence of the judiciary.
- Magistrates may not accept any gift without prior written consent from the Magistrates Commission.
- Magistrates must not accept any kind of favour or benefit that might unduly influence their official duties, or even create the impression that this is the case.
- Magistrates must not use their office to further the interests of any individual or body, and must not even act in a way that creates the appearance of being obligated to favour any individual or body.
- Magistrates must not be involved in any matters that directly or indirectly involve themselves, their family members, their close relative or their friends. If in doubt a magistrate may approach the Magistrates Commission for guidance on this point.

Confidentiality

- Magistrates must not share any confidential information that they learn in their official capacities, except as necessary to carry out their duties.

Maintaining order in court

- Magistrates must maintain order and decorum in their court. They must be patient, dignified and courteous to everyone, and they must require dignified conduct from all the other people present in the court.
- Magistrates must not permit court proceedings to be televised or broadcast or photographed without the permission of the Magistrates Commission,
- Magistrates must report unprofessional conduct by legal practitioners or public prosecutors to the Magistrates Commission, and to the Law Society of Namibia (in the case of legal practitioners) or the Prosecutor-General (in the case of prosecutors).
- Magistrates may not act in any way that undermines the discipline or the efficiency of the administration of justice.

Professionalism

- Magistrates must execute their diligently and thoroughly. Judicial duties must take precedence over all other activities.
- Magistrates must strive to keep abreast of legal development and to improve their skills, knowledge and expertise.
- Magistrates must wear the appropriate official dress during court sessions (a magistrate's gown with a white shirt or blouse and black trousers or skirt).

A magistrate is automatically understood to be guilty of misconduct if he or she is absent from work without leave and without a valid reason for five or more working days in a row. In this case, the Magistrates Commission must be informed and must order a preliminary investigation to decide whether the magistrate must be dismissed.

If a magistrate is showing poor work performance, the first step will be to provide support. This could include guidance, instructions, mentoring or training. The magistrate will be given a written warning which will give a timeline for improvement. If the magistrate is unable to meet the expected standard of performance despite these steps, then this will be considered misconduct due to poor work performance.⁶⁷

Procedure for investigating alleged misconduct

The law sets out a very elaborate process for investigating allegations of misconduct on the part of a magistrate. An investigation can result from a complaint from a member of the public, or when information about possible misconduct has come to the attention of the Magistrates Commission in any other way.⁶⁸

If the Magistrates Commission believes that a magistrate has committed misconduct, it can appoint a magistrate of equal or more senior rank, or some other person, to carry out a preliminary investigation to see if there is a basis for a formal charge of misconduct. Alternatively, if the Commission is satisfied that there is enough evidence to support a formal charge of misconduct, it can charge the magistrate with misconduct without a preliminary investigation.

COMPLAINT PROCEDURE

Any person can make a complaint about a magistrate to the Magistrates Commission. The complaint must be in the form of a sworn statement. This statement should give information about the reasons for the complaint, the date and time of the incident, the names of the persons involved and any witnesses and any other relevant information. The Magistrates Commission must consider the complaint and decide if an investigation is warranted. If an investigation does take place, the Commission must inform the complainant in writing of the steps it took to remedy the problem.

Regulations regarding Magistrates, 2003,
regulations 21-22.

If a magistrate is charged with misconduct, the magistrate must be informed of the specifics of the alleged misconduct and given a chance to admit or deny the charge.

- **If the magistrate admits the misconduct,** he or she may make submissions to the Magistrates Commission about the nature of the punishment.
- **If the magistrate denies the misconduct,** the Commission will appoint a magistrate or some other suitable person to preside at the investigation, and another magistrate or suitable person to present the evidence about the allegations. The investigation will take place in private. The magistrate who is charged with misconduct will have a chance to present a defence to the charge, personally or through a lawyer. The presiding officer will decide if the magistrate is guilty of misconduct. If the magistrate is found guilty, he or she can offer explanations that may affect the decision on punishment. The presiding officer will then make a recommendation to the Commission about the appropriate punishment. A magistrate who wants to challenge the findings of the investigation can make further written submissions to the Commission, and the presiding officer will provide a response to the Commission on these additional submissions.

In any case, the Magistrates Commission will consider all of the material that has been provided and make a final decision on the charge of misconduct and the appropriate punishment. It might give the magistrate a caution or a reprimand. A caution can be combined with a fine of up to N\$1 000 or a transfer. Another option is to direct the magistrate to undergo corrective counselling. If the Magistrates Commission finds that the magistrate is no longer fit to hold office, it can offer the magistrate an opportunity to resign. If no resignation is forthcoming, the Commission can recommend to the Minister of Justice that the magistrate must be dismissed, and the Minister is required to follow this recommendation.

⁶⁷ *Magistrates Act 3 of 2003*, section 24.

⁶⁸ *Bampton v Magistrates' Commission*, High Court, 2020.

A magistrate has the right to appeal to the High Court against the decision of the Magistrates Commission.

There are similar procedures for magistrates who have become unable to carry out their duties efficiently because of incapacity or continued ill-health.⁶⁹

Magistrates and Judges: Institutional Differences

The Namibian Supreme Court has said that all courts in Namibia are guaranteed institutional independence, but it has also noted that the institutional arrangements for lower courts (which includes magistrates' courts) do not necessarily have to have the same rigorous protection given to the higher courts.

The decisions of magistrates' courts can be appealed or reviewed by the higher courts. This safeguards the lower courts against interference with their independence and provides supervision of their operation. Higher courts also have powers that the lower courts lack – such as reviewing decisions of the Executive Branch, interpreting legislation and applying the Namibian Constitution. These kinds of decisions are most likely to produce tensions between the different branches of Government, and so the higher courts require the highest level of protection for their institutional independence.

The Constitution also sets out rules for the appointment of judges in the higher courts that are different from the rules for the appointment of magistrates in the lower courts. Judges must be appointed on the advice of the Judicial Service Commission, and the grounds for their removal are set out in the Constitution. In the case of magistrates, the Constitution says only that the rules for their appointment and conditions of service must be set out in a law passed by Parliament, and that there must be a Magistrates Commission that sets their conditions of employment and grounds for discipline and removal.

Magistrates are entitled to the protections necessary to preserve judicial independence, but this does not have to be in the same form as for the higher courts.⁷⁰

| Judicial Service Commission (5 members) recommends Supreme Court and High Court Judges for appointment by the President | Magistrates Commission (7 members) recommends Magistrates for appointment by the Minister of Justice |
|--|--|
| Chief Justice | High Court Judge <i>chosen by the Judge-President</i> |
| Deputy-Chief Justice | Chief Magistrate |
| Attorney-General | one magistrate <i>chosen by the Minister of Justice from a list of three magistrates nominated by the professional association of magistrates</i> |
| two members of the legal profession, <i>chosen by the President from persons nominated by professional organisations representing the legal profession</i> | one staff member of Ministry of Justice, <i>chosen by the Minister of Justice</i> |
| no civil society representation less diversity than Magistrates Commission | one person <i>chosen by the Public Service Commission</i> |
| | one person <i>chosen by the Attorney-General</i> |
| | one teacher of law <i>chosen by the Minister of Justice from a list of two teachers nominated by the Vice- Chancellor of the University of Namibia</i> |
| | no civil society representation no representation of practising legal profession |

⁶⁹ *Magistrates Act 3 of 2003*, sections 21, 25-26; *Regulations regarding Magistrates, 2003*, regulations 15-18H; *Minister of Justice v Magistrates' Commission*, Supreme Court, 2012.

⁷⁰ *Mostert v Minister of Justice*, Supreme Court, 2003; *Mostert v The Magistrates' Commission*, High Court, 2005.

Criticism

Concerns have been raised about the fact that magistrates are appointed by the Minister of Justice, who is not obligated to implement all of the recommendations from the Magistrates Commission – even though the Supreme Court has found that this system is not an unconstitutional violation of the independence of the judiciary. Alternatives would be to oblige the Minister to make appointments recommended by the Commission or to make the Commission the appointing authority.

It has been suggested that the composition of the Magistrates Commission should be re-examined, to reduce the influence of the Minister of Justice, to give more representation to magistrates and to provide for representation from legal practitioners who appear in the lower courts on a daily basis.

It has also been pointed out that the Magistracy would have a greater degree of independence if it had its own budget instead of a budget controlled by the Minister of Justice. The current approach arguably interferes with the ability of the Magistrates Commission to address the needs of the Magistracy. It has also been suggested that the salary and benefits of magistrates should be totally within the control of the Magistrates Commission, instead of being finally decided by the Minister of Justice and the Minister of Finance.⁷¹

Key legal personnel

The President appoints a lawyer to be the **Attorney-General**, who advises the President and the Government on legal questions. The Attorney-General must take any actions that are necessary to protect and uphold the Constitution. The President, acting on the recommendation of the Judicial Services Commission, also appoints a lawyer to be the **Prosecutor-General**. The Prosecutor-General is in charge of conducting all criminal cases for the Government. The Minister of Justice appoints a **Government Attorney** who acts as the Government's lawyer in any court cases involving the Government.

Supreme Court Act 15 of 1990

What does the law do?

This law adds more detail to the provisions in the Namibian Constitution about the operation of the Supreme Court.

What is the purpose of the law?

Each kind of court in Namibia has a law that explains what cases it can decide and what rules apply to proceedings in that court. This law is the one that covers the Supreme Court. The rules about procedure are intended to make sure that trials and other procedures are fair to everyone involved.

When did the law come into force?

8 October 1990.



⁷¹ Kaijata NG Kanguuehi, “[The Magistrates Act of Namibia and the independence of magistrates](#)” in Nico Horn and Anton Bösl, eds, *The independence of the judiciary in Namibia*, Macmillan Education Namibia, 2008; see also the arguments and decision in [Mostert v The Magistrates’ Commission](#), High Court, 2005.

What cases are handled by the Supreme Court?

The main role of the Supreme Court is to consider appeals from decisions of the High Court in civil or criminal cases.

Criminal appeals from cases decided by the High Court require permission to appeal (called “leave to appeal”) from the judge who presided at the trial – but if this permission is denied, it is possible to petition the Supreme Court to allow the appeal to go ahead.⁷²

In the case of civil appeals, there is generally a right to appeal to the Supreme Court if the case started out in the High Court. But a High Court decision on appeal from the decision of a lower court, can be appealed to the Supreme Court only with permission from the High Court Judge who decided the case or from the Supreme Court itself. The Supreme Court can refuse to consider a civil appeal that is frivolous (not serious), vexatious (creating a nuisance) or otherwise has no chance whatsoever of success.⁷³

Criminal cases and civil cases

A **criminal** case is a case between the State and someone who has broken a law. A lawyer who represents the State in a criminal trial is called a prosecutor. The prosecutor tries to prove that the accused person is really guilty of committing a crime. If the person who is brought before the court is found guilty of committing a crime, then the court will decide on some form of punishment. The **parties** to a criminal case are the State on one side (through a State prosecutor) and the person accused of the crime on the other side.

A **civil** case is a case between two persons who are in dispute. A civil case often involves a claim for money, but it could also be a request for a court order saying that a person must do something or stop doing something. For instance, a civil case could involve a dispute about a contract between two people, land ownership, damages for an assault or responsibility for the costs of a car accident – to name just a few examples. The **parties** to a civil case are the persons or groups who are in dispute – in other words, the persons who are bringing the lawsuit and the persons who are being sued.

The Supreme Court also has the authority to “review” certain matters. It can review the proceedings of the High Court or any lower court, or any administrative tribunal or authority, whenever it comes to the notice of the Supreme Court that an irregularity may have occurred.⁷⁴

There are only a few circumstances where a case can start out in the Supreme Court. One is when the Attorney-General refers a matter to the Supreme Court as part of his or her constitutional duty “to take all action necessary for the protection and upholding of the Constitution”. Another is when the Supreme Court hears a challenge to the outcome of a Presidential election on an urgent and final basis in terms of the *Electoral Act*, to provide finality as soon as possible.⁷⁵

What is the difference between appeal and review?

An **appeal** considers the merits of a decision by another body. An appeal court may replace an incorrect order, ruling or judgment with its own decision, or return the case to the lower court for a new decision.

A **review** involves more limited intervention by a higher court. The reviewing court checks to see that the correct law and procedure were followed and that the decision was reasonable. In a review, a higher court will not overturn a decision just because it disagrees with the outcome if the process was correct and reasonable.

⁷² *Supreme Court Act 15 of 1990*, section 2; *Criminal Procedure Act 51 of 1977*, sections 311, 316-316A.

⁷³ *High Court Act 16 of 1990*, section 18; *Supreme Court Act 15 of 1990*, section 14.

⁷⁴ *Supreme Court Act 15 of 1990*, section 16.

⁷⁵ *Electoral Act 5 of 2014*, section 172.

The Supreme Court as the final authority

The Supreme Court is the final authority in the Namibian judicial system. It is not possible to appeal a Supreme Court decision to any other authority, or to ask any other authority to review the proceedings of the Supreme Court. No other court in Namibia can make a decision that contradicts a decision of the Supreme Court. Both the High Court and the Supreme Court can make decisions on constitutional issues, but the Supreme Court is the final authority on the interpretation and application of the Constitution.⁷⁶

Can the Supreme Court change its mind?

Yes. The Supreme Court can re-open a case or reverse a past stance on an issue in a later case, but this is very unusual. This involves a balance between the value of having finality in court decisions, and the value of having the power to correct an injustice that has come to light – particularly in a criminal case where a person's liberty is at stake.⁷⁷

Qualifications of Supreme Court Judges

To be eligible for appointment as a Supreme Court Judge, a person must –

- have previous experience as a judge in Namibia or in another country with a similar legal system, or
- have practised as an advocate for at least 10 years, or
- have worked full-time as a legal practitioner in public service for at least 10 years.⁷⁸

Prohibition on private work by Supreme Court Judges

A Supreme Court Judge may not hold any other positions that involve payment, or do any other kind of paid work, unless this has been authorised by the Judicial Service Commission.⁷⁹ This rule helps prevent conflicts of interest and ensures that judicial work is given priority.

Insulation of Supreme Court Judges from certain court processes

Subpoenas and other court documents arising from civil cases cannot be served on Supreme Court Judges without the consent of the Chief Justice. If the summons or subpoena is allowed to be served, the timing of the court appearance must be set in consultation with the Chief Justice. (If the document is aimed at the Chief Justice, then the consent must come from the next most senior judge.)⁸⁰ This protects Supreme Court proceedings from unnecessary disruption.

Procedure in the Supreme Court

The statute adds more detail to the rule in the Constitution that **at least three judges** must consider any Supreme Court case. It empowers the Chief Justice to direct that a larger number of judges must consider a specific case, as long as the number is uneven. For example, the Supreme Court might arrange for a group of five judges to consider a matter of particular constitutional and public importance. The law requires an uneven number of judges because decisions are made by a majority of the judges in the case (more than half), so it is necessary to have an uneven number to avoid a situation where the

⁷⁶ *Supreme Court Act 15 of 1990*, section 17; *Namibian Constitution*, Article 81.

⁷⁷ *Namibian Constitution*, Article 81; *S v Likanyji*, Supreme Court, 2017.

⁷⁸ *Supreme Court Act 15 of 1990*, section 9.

⁷⁹ *Supreme Court Act 15 of 1990*, section 11.

⁸⁰ *Supreme Court Act 15 of 1990*, section 12.

court is evenly split. Even with this safeguard, there could be a case where there is no majority view. If this happens, the case would have to start over with different judges or a larger number of judges.

The statute also provides directions on how to handle a situation where one judge dies, retires or becomes incapacitated in the middle of a case. If two judges are left, they can decide the case as long as they are in agreement with each other. If the two remaining judges disagree, or if there is only one judge left, the matter must start over.

No Supreme Court Judge can hear an appeal in a case if he or she was involved in deciding the same case in the High Court. This would be an obvious conflict of interest.

Cases in the Supreme Court must normally be **open to the public**, but exceptions can be made for reasons of morals, public order or national security.

In civil cases, the Supreme Court has the authority to ask a “referee” to compile a “**special dossier**” to assist it. A “dossier” is a collection of documents and information on a specific topic. The Court can use this power if the case involves statistical data, scientific or technical information or sociological, psychological, economic or financial facts that would not be easy for the Court to assemble or assess. The referee does not take sides in the case, but only assists the Court by consulting experts, carrying out enquiries as necessary and assembling relevant information. The parties to the case will have a chance to consider and comment on the information in the special dossier.

The Chief Justice, with the approval of the President, makes **other rules** to regulate the proceedings of the Supreme Court.⁸¹

Officers of Supreme Court

The Minister of Justice appoints officers to assist the Supreme Court, including a registrar to handle administrative matters and a sheriff to serve summons, subpoenas and other court documents. These officers are members of the public service. It is permissible for officers such as the registrar and the sheriff to assist the Supreme Court and the High Court at the same time.⁸²

High Court Act 16 of 1990

What does the law do?

This law adds more detail to the provisions in the Namibian Constitution about the operation of the High Court.

What is the purpose of the law?

Each kind of court in Namibia has a law that explains what cases it can decide and what rules apply to proceedings in that court. This law is the one that covers the High Court. The rules about procedure are intended to make sure that trials and other procedures are fair to everyone involved.

When did the law come into force?

8 October 1990.

⁸¹ [Supreme Court Act 15 of 1990](#), sections 6, 13, 23 and 37(1).

⁸² [Supreme Court Act 15 of 1990](#), section 26.

Divisions of the High Court

The High Court can have as many different divisions as are needed to serve the country well. New divisions are established by the President, and the Judge-President of the High Court assigns judges to each division.⁸³

As of 2022, the High Court has two geographical divisions: the Main Division in Windhoek and the Northern Local Division in Oshakati.



What cases are handled by the High Court?

The High Court handles both trials and appeals.

Some civil and criminal cases start out in the High Court. For example, cases that fall outside the authority of the Magistrates' Courts – which have upper limits for the amounts in dispute or the criminal sentences that can be imposed – would start in the High Court.

The High Court also hears appeals from lower courts in civil and criminal cases. In criminal cases, both the prosecutor and the accused person have a right to appeal the decision of the Lower Court on guilt or sentencing. A prosecutor who wants to appeal must get permission for the appeal from a single judge of the High Court, but the convicted person has a right to appeal without any permission. In civil cases, any party to the case can appeal a decision of a lower court. No permission is required.⁸⁴

The High Court can also review the proceedings of lower courts. For example, they can review a case if there was possible bias or corruption on the part of the presiding judicial officer, or some other kind of irregularity in the proceedings.⁸⁵

The High Court also has some special functions. It serves as an Admiralty Court in terms of various admiralty laws, a Labour Court in terms of the *Labour Act 11 of 2007* and an Electoral Court in terms of the *Electoral Act 5 of 2014*. A recent development is preparation for a Commercial Court as another specialised division of the High Court. This Court will

Criminal cases and civil cases

A **criminal** case is a case between the State and someone who has broken a law. A lawyer who represents the State in a criminal trial is called a prosecutor. The prosecutor tries to prove that the accused person is really guilty of committing a crime. If the person who is brought before the court is found guilty of committing a crime, then the court will decide on some form of punishment.

A **civil** case is a case between two persons who are in dispute. A civil case often involves a claim for money, but it could also be a request for a court order saying that a person must do something or stop doing something. For instance, a civil case could involve a dispute about a contract between two people, land ownership, damages for an assault or responsibility for the costs of a car accident – to name just a few examples.

What is the difference between appeal and review?

An **appeal** considers the merits of a decision by another body. An appeal court may replace an incorrect order, ruling or judgment with its own decision, or return the case to the lower court for a new decision.

A **review** involves more limited intervention by a higher court. The reviewing court checks to see that the correct law and procedure were followed and that the decision was reasonable. In a review, a higher court will not overturn a decision just because it disagrees with the outcome if the process was correct and reasonable.

⁸³ *High Court Act 16 of 1990*, sections 2A and 4A.

⁸⁴ *High Court Act 16 of 1990*, sections 2 and 16; *Criminal Procedure Act 51 of 1977*, sections 309-310; *Magistrates' Courts Act 32 of 1944*, section 83.

⁸⁵ *High Court Act 16 of 1990*, sections 16 and 20.

fast-track the resolution of commercial disputes, which may help to attract investment and contribute to economic growth.

Qualifications of High Court Judges

To be eligible for appointment as a High Court Judge, a person must –

- have previous experience as a judge in Namibia or in another country with a similar legal system, or
- have practised as a legal practitioner for at least 5 years, or
- have worked full-time as a legal practitioner in public service for at least 5 years, or
- be a magistrate with an approved law degree who has at least 5 years experience.⁸⁶

Prohibition on private work by High Court Judges

The rules on private work are the same as for Supreme Court Judges. A High Court Judge may not hold any other positions that involve payment, or do any other kind of paid work, unless this has been authorised by the Judicial Service Commission.⁸⁷ This rule helps prevent conflicts of interest and ensures that judicial work is given priority.

Insulation of High Court Judges from certain court processes

Subpoenas and other court documents arising from civil cases cannot be served on High Court Judges without the consent of the High Court. If the summons or subpoena is allowed to be served, the timing of the court appearance must be set in consultation with the Judge-President (or, in his or her absence, the next most senior judge).⁸⁸ This protects High Court proceedings from unnecessary disruption.

Procedure in the High Court

A **civil case that starts out in the High Court** can be heard by a single High Court Judge, unless the Judge-President directs that the case should be heard by a “full bench” which means more than two Judges. **Criminal trials** are normally decided by a single High Court judge. **Appeals from decisions of lower courts** may be heard by one or more High Court Judges, as the Judge-President directs. Where there is more than one judge, the case will be decided by a majority of the judges (more than half). If there is no agreement by a majority of the judges, the case will have to start over again with a different group of judges. The law also provides directions on how to handle a situation where one judge dies, retires or becomes incapacitated in the middle of a case.

Cases in the High Court must normally be **open to the public**, but exceptions can be made for reasons of morals, public order or national security.

In civil cases, the High Court has the authority to ask a “referee” to compile a “**special dossier**” of technical or complex information, in the same manner as this would take place in the Supreme Court.

The Judge-President, with the approval of the President, makes **other rules** to regulate the proceedings of the High Court.⁸⁹

Officers of High Court

As in the case of the Supreme Court, the Minister of Justice appoints officers to assist the High Court with administrative matters.⁹⁰

⁸⁶ *High Court Act 16 of 1990*, section 3.

⁸⁷ *High Court Act 16 of 1990*, section 9.

⁸⁸ *High Court Act 16 of 1990*, section 21.

⁸⁹ *High Court Act 16 of 1990*, sections 10, 13-14, 17 and 39; *Criminal Procedure Act 51 of 1977*, sections 145 and 148.

⁹⁰ *High Court Act 16 of 1990*, section 30.

Magistrates' Courts Act 32 of 1944

What does the law do?

This law explains what kinds of civil and criminal cases can be decided in Magistrates' Courts and gives details about the procedure in Magistrates' Courts.

What is the purpose of the law?

Each kind of court in Namibia has a law that explains what cases it can decide and what rules apply to proceedings in that court. This law is the one that covers Magistrates' Courts. The rules about procedure are intended to make sure that trials and other procedures are fair to everyone involved.



When did the law come into force?

1 December 1970. It is a South African law that Namibia inherited at independence. Even though this law has been amended many times over the years, both before and after Namibian independence, some parts of it are outdated and even still refer to the "territory" of "South West Africa".

Establishing Magistrates' Courts

The Minister of Justice organises the distribution of Magistrates' Courts throughout Namibia. The Minister can establish –

- specific Magistrates' Courts and Regional Magistrates' Courts
- districts that include all of the Magistrate's Courts in a specific geographical area
- district or regional divisions (which may include multiple districts).

The Minister also defines the geographical area covered by each district.⁹¹

What cases are handled by Magistrates' Courts?

Magistrates' Courts can hear some kinds of civil cases and some kinds of criminal cases.

Criminal cases and civil cases

A **criminal** case is a case between the State and someone who has broken a law. A lawyer who represents the State in a criminal trial is called a prosecutor. The prosecutor tries to prove that the accused person is really guilty of committing a crime. If the person who is brought before the court is found guilty of committing a crime, then the court will decide on some form of punishment.

A **civil** case is a case between two persons who are in dispute. A civil case often involves a claim for money, but it could also be a request for a court order saying that a person must do something or stop doing something. For instance, a civil case could involve a dispute about a contract between two people, land ownership, damages for an assault or responsibility for the costs of a car accident – to name just a few examples.

⁹¹ [Magistrates' Courts Act 32 of 1944](#), section 2.

Criminal cases

With a few exceptions, a Regional Magistrate's Court or a Magistrate's Court can only decide a criminal case where the crime took place in or very near the geographical area covered by the court.

A Regional Magistrate's Court can hold trials for any crime other than treason. Any other Magistrate's Court can hold trials for any crime other than treason, murder and rape.

There are limits on the punishment that can be imposed by different types of lower courts. Unless another law on a specific crime says something different, a Regional Magistrate's Court is not allowed to impose a prison sentence longer than 20 years or a fine that is more than N\$100 000. Any other Magistrate's Court is not allowed to impose a prison sentence longer than 5 years or a fine that is more than N\$20 000.

If a magistrate convicts an accused person and believes at that stage that the appropriate sentence might be higher than what Magistrates' Courts are allowed to impose, the case can be transferred to a Regional Magistrate's Court for sentencing.⁹²

Civil cases

A Magistrate's Court can only decide civil cases that involve a person who lives or works in the geographical area covered by the court or where the case concerns something that happened in that area.

In general, a Magistrate's Court can decide civil cases where the amount in dispute or the value of the property in dispute is not more than N\$25 000. When it comes to mortgages, or goods or services that have been purchased on credit, the maximum amount is N\$100 000. If any person who is being sued in a Magistrates' Court for an amount higher than N\$5000 requests it, the case can be moved to the High Court.

There have been proposals to raise these amounts so that more people can utilise Magistrates' Courts to settle their disputes.

Magistrates' Courts are not allowed to make decisions on a few specific types of civil cases, including divorces and cases on the validity or interpretation of a will or an individual's mental capacity.⁹³

Regional Magistrates' Courts do not currently decide *any* civil cases.⁹⁴ But, as of 2022, the possibility of giving Regional Magistrates' Courts the power to grant divorces was under discussion.

Other matters

Some other laws give Magistrates' Courts authority over additional matters. For example, magistrates can grant protection orders under the *Combating of Domestic Violence Act 4 of 2003*. They act as Maintenance Courts to rule on maintenance orders under the *Maintenance Act 9 of 2003*. They sit as Children's Courts with powers over a number of matters relating to children under the *Child Care and Protection Act 3 of 2015*. They deal with applications for liquor licenses under the *Liquor Act 6 of 1998* and they administer deceased estates with a total value of N\$100 000 or less in terms of the *Administration of Estates Act 66 of 1965*.⁹⁵ Magistrates can also conduct marriages in terms of the *Marriage Act 25 of 1961*. These are just some examples of their additional functions and duties. Many recent laws assign powers to magistrates because the Magistrates' Courts are more accessible to most people in Namibia than the High Court. Traffic Courts are also a specialised branch of the lower courts.

⁹² *Magistrates' Courts Act 32 of 1944*, section 89, 90 and 92; *Criminal Procedure Act 51 of 1977*, section 116.

⁹³ *Magistrates' Courts Act 32 of 1944*, sections 28-29, 46 and 50.

⁹⁴ *Magistrates Act 3 of 2003*, section 16(3); Office of the Judiciary, *Annual Report 2019/20*, page 62.

⁹⁵ The maximum amount for deceased estates can be changed. It is currently set in Government Notice 43 of 2006 (*Government Gazette 3591*) read together with Government Notice 108 of 2002 (*Government Gazette 2760*).

Procedure in Magistrates' Courts

Some of the rules about the procedures in Magistrates' Courts are contained in the law. Other rules for cases in Magistrates' Courts are made by a Rules Board composed of the Chief Magistrate, a staff member of the Ministry of Justice with knowledge of the law nominated by the Minister and a legal practitioner nominated by the Law Society of Namibia. Any rules made by the Rules Board must be confirmed by Cabinet and published in the *Government Gazette* before they come into force.

A magistrate may call on one to two persons who have special skills and experience to assist in a particular court case, if this is requested by any of the parties to the case. These persons are called **assessors**. In a civil case, assessors play only an advisory role. In a criminal case, assessors can help the magistrate decide what facts are true, but questions of law must be decided by the magistrate alone.

Magistrates' Courts must keep **records** of their cases. This allows for a higher court to review the work of the Magistrates' Courts, or to make decisions on appeals. Court records are also generally available to be examined by members of the public, on request.

Court proceedings must be **generally open to the public**, unless there is a specific law that provides for exceptions to this rule (such as rape cases, domestic violence cases and criminal cases involving young offenders). The court can also exclude the public generally, or some specific category such as children, from the courtroom in any court case, where this is in the interests of good order or public morals. Also, the court has the power to remove individuals or to clear the court completely in a civil case, if spectators are disturbing the peace or order of the court.⁹⁶

Crimes related to Magistrates' Courts

Anyone who disobeys an order from a Magistrate's Court, with a few exceptions, can be charged with the crime of contempt of court and punished with a fine of up to N\$1 000 or imprisonment for up to three months with or without the option of a fine. It is also contempt of court to insult a judicial officer, a clerk of court, a court messenger or any other court officer during court proceedings, or to disrupt the court proceedings. The judicial officer can find the person in question guilty then and there, and the punishment is a fine of up to N\$1000 imprisonment for up to 3 months with or without the option of a fine.⁹⁷

Appeals

Parties to a court case who are unhappy with the outcome of a court case in a Magistrate's Court can appeal the decision to the High Court.⁹⁸

Automatic reviews

Certain categories of criminal cases are automatically reviewed by a High Court Judge as an extra safeguard if the accused person is not assisted by a lawyer – and where there is no appeal from the outcome in the Magistrate's Court. These automatic reviews depend on the magistrate's level of experience and on the severity of the sentence.⁹⁹

Experience of less than seven years

Imprisonment for more than 3 months
Fine greater than N\$500 where the accused
is imprisoned for not paying the fine

Experience of seven years or longer

Imprisonment for more than 6 months
Fine greater than N\$1000 where the accused
is imprisoned for not paying the fine

⁹⁶ *Magistrates' Courts Act 32 of 1944*, sections 4(1), 5, 7, 25, 34 and 93ter.

⁹⁷ *Magistrates' Courts Act 32 of 1944*, sections 106 and 108.

⁹⁸ *Magistrates' Courts Act 32 of 1944*, sections 83-88.

⁹⁹ *Criminal Procedure Act 51 of 1977*, section 302.



Community Courts Act 10 of 2003

What does the law do?

This law establishes “community courts”, which are a category of lower courts. They have authority to hear and decide cases arising under the customary law of the community in the area where they operate.

What is the purpose of the law?

The law integrates traditional courts that apply customary law into the overall judicial system of Namibia.

When did the law come into force?

17 November 2003. However, community courts only began to operate in terms of the Act from around 2009-2010 when the first community courts were recognised.



NAMIBIAN CONSTITUTION

Article 66: Customary and Common Law

- (1) Both the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law.
- (2) Subject to the terms of this Constitution, any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods.

How are community courts set up?

Traditional courts were already operating in many communities before this law came into force. Traditional authorities in these areas may apply to the Minister of Justice for the **recognition** of existing traditional courts as community courts.

Where there is no traditional court already in place, a traditional authority can apply to the Minister of Justice for the **establishment** of a community court for a particular “traditional community”.

In either case, if the application is approved, the Minister will publish a notice in the *Government Gazette* identifying the community court and the traditional community it serves, as well as the exact geographical area covered by the court. The notice will also say whether the community court is authorised to hear appeals.¹⁰⁰

A “**traditional community**” is a grouping of persons with a common ancestry, language, cultural heritage, customs and traditions that recognises a common traditional authority and inhabits a common communal area. It also includes the members of the community who live outside the common communal area.

Community Courts Act 10 of 2003, section 1 (definition of “traditional community”).

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](#).

¹⁰⁰ *Community Courts Act 10 of 2003*, sections 2-4.

Community Courts, 2022

As of 2022, the following 44 community courts had been established:

| | | |
|--------------|---------------------|-------------------------------------|
| Aman | /Khomanin Hagos | Otjikaoko |
| ≠Aodaman | King Morwe III Kung | Otjimana |
| Bakgalagadi | Linyanti | (Eiseb Block Traditional Community) |
| Bondelswartz | Mafwe | Oukwanyama |
| Dâure-Daman | Maharero | Ovambanderu |
| Fransfontein | Masubia | Shambyu |
| /Gaio-Daman | Mayeyi | Tsoaxudaman |
| Gciriku | Mbukushu | Ukwangali |
| /Gobanin | Mbunza | Uukolonkadhi |
| Hai-//oms | !Oe≠Gân | Uukwaluudhi |
| /Haramûb | Okalongo | Uukwambi |
| Kai-/Khauben | Ombadja | Vita-Thom Royal House |
| Kakuru-Kouye | Ombalantu | !Xoo |
| Kambazembi | Ondonga | Zeraeua. ¹⁰¹ |
| !Khobesen | Ongandjera | |

Justices and assessors

The judicial officers of community courts are called “Justices”. One or more Justices will preside over community court cases. They may be assisted by one or more “assessors” who provide advice on specific cases. The Justice must consider the input of an assessor, but is not bound to follow it.

The Minister of Justice appoints Justices from a list of persons submitted by the traditional authority for the area. The Minister of Justice also selects five to ten persons from a list submitted by the traditional authority. The community court may then appoint assessors from the persons approved by the Minister for a particular case.

A Justice of a community court must be a person of integrity who is familiar with the customary law of the area where the court will operate. The Justice may not be a Member of Parliament, a regional councillor, a local authority councillor or a leader of a political party. The Minister may remove a Justice who no longer meets these qualifications, after consultation with the relevant traditional authority. The Minister may also remove an assessor on the same grounds.

The appointment or removal of Justices and assessors must be announced in the Government Gazette.¹⁰²

Oath by Justices

Justices must sign this oath in front of a magistrate.¹⁰³

“I, (full name), do hereby swear/solemnly and sincerely affirm and declare that I will in my capacity as a judicial officer of a community court administer justice to all persons alike, without fear, favour or prejudice, and as the circumstances in any particular case may require, in accordance with the laws and customs of the Republic of Namibia.”

¹⁰¹ See the list under the entry for this law in *Namlex: Index to the Laws of Namibia*, Legal Assistance Centre (updated regularly).

¹⁰² *Community Courts Act 10 of 2003*, sections 7-8.

¹⁰³ *Community Courts Act 10 of 2003*, section 11.

Allowances for Community Court Justices and Assessors, 2022

The payments to justices, assessors and other community court officials are set by the Minister of Justice with the agreement of the Minister of Finance. If any community court official is already receiving payment as a traditional leader or a secretary under the Traditional Authorities Act, then they are not eligible for the community court allowances. The most recent rates were set in 2022.¹⁰⁴

**Allowances payable
to justices for every
attendance at court**

**Per hour
N\$30**

**Per day
N\$240**

**Allowances payable
to assessors for every
attendance at court**

**Per hour
N\$20**

**Per day
N\$160**

Other officials

A community court is required to appoint a clerk of the court and a messenger of the court to assist with community court cases. Notices, summons to come to court and other documents can be delivered by the messenger of the court. The Namibian Police can also assist with this task.¹⁰⁵

Finances

The Minister of Justice, with the agreement of the Minister of Finance, can provide financial assistance for the administrative costs of community courts. The community court must open an account where it deposits government funding along with any fines and fees that the court receives. This account can be used to pay the costs of running the court. The secretary of the community court is required to keep financial records of income and expenditure, and the Auditor-General must audit these accounts annually.¹⁰⁶

What cases are decided by community courts?

A community court can only decide cases that arise under customary law. These could include claims for compensation, restitution or “any other claim” recognised by customary law. In addition, the community court can only hear cases where the dispute arose in the area covered by the community court, or where the persons involved are closely connected with the customary law.¹⁰⁷

The concept of separate criminal cases and civil cases does not work well for customary law, and is not mentioned in this statute. Under customary law, compensation is intended in part to acknowledge economic losses resulting from a wrong (which is “civil” in nature), but it also has an element of punishment (which is more “criminal” in nature).¹⁰⁸ The compensation is not always paid by the wrongdoer to the victim, but is often an exchange between their families. In some cases it may take the form of a fine paid to the traditional authority instead of to the person who suffered the harm.

¹⁰⁴ [Community Courts Act 10 of 2003](#), section 10; [Regulations of Community Courts](#), Tables A-D.

¹⁰⁵ [Community Courts Act 10 of 2003](#), sections 9 and 17.

¹⁰⁶ [Community Courts Act 10 of 2003](#), sections 5-6.

¹⁰⁷ [Community Courts Act 10 of 2003](#), section 12.

¹⁰⁸ Manfred O Hinz, “Traditional governance and African customary law: Comparative observations from a Namibian perspective” in Nico Horn & Anton Bösl, eds, [Human Rights and the Rule of Law in Namibia](#), Konrad Adenauer Foundation, 2008; *S v Mutero*, High Court, 2021.

The idea that these claims for compensation under customary law are not “criminal” in nature is reinforced by the fact that there are many examples of situations where a person has been tried for a crime in the Magistrate’s Court or in the High Court after paying compensation under customary law. The general courts sometimes take note of the payment of compensation under customary law in the course of sentencing, seeing it as a way of expressing remorse to the victim and the victim’s family.

Procedure in community courts

Community courts apply the customary law of their community. If there is a case involving parties who are connected to different systems of customary law, the community court will apply the customary law that seems to it to be most appropriate in the circumstances. If there is any doubt about the relevant rules of customary law, the community court can consider various opinions on this point as well as textbooks or any other sources.

The proceedings in a community court can be in English or any other language, but it must arrange a translator if any of the parties to the case is not able to understand the language fully.

The parties to a case in a community court can represent themselves, or they can be represented by anyone else they choose – including a lawyer.

All community court proceedings must follow the principles of fairness and natural justice, and the orders they make must be fair and reasonable.

A community court can order a party to provide compensation, damages or restitution, or to do some specific action according to customary law.

If necessary, a community court can get assistance from the local Magistrate’s Court to enforce its orders.

The clerk of the court must make sure that there are written records of all community court proceedings. This is important in case any of the parties wants to appeal. Copies of the court records are supposed to be provided to the local Magistrate’s Court and to the Ministry of Justice, and any member of the public can view them for free and get a copy on payment of a fee.¹⁰⁹

Appeals

There is a right of appeal from a community court to a Magistrate’s Court, and from there to the High Court if necessary. This means that traditional courts are fully integrated into the overall judicial system of Namibia.

If the community court has been approved as a court that can consider appeals, then the first step is to appeal the decision to the same community court – with the possibility of appealing to the Magistrate’s Court coming after that.

A Magistrate’s Court that is considering an appeal from the decision of a community court must appoint two assessors from the list of assessors approved by the Minister of Justice for that community court. It is not permitted for the same person to be an assessor in a case in the community court and also on appeal in the Magistrate’s Court.

If there is an appeal, the record of the case must be translated into English by the community court if the court used another language.¹¹⁰

¹⁰⁹ [Community Courts Act 10 of 2003](#), sections 13-16, 18-19 and 22-23.

¹¹⁰ [Community Courts Act 10 of 2003](#), sections 26-28; [Regulations of Community Courts](#), regulations 10-11.

Conflicts of interest

No Justice or assessor may be involved in any proceedings before a community court if he or she has a personal or financial interest in the matter, directly or indirectly. The same rule applies to an assessor who is assisting a Magistrate's Court with an appeal from a community court decision.¹¹¹

Crimes

It is a crime to interfere with the proceedings of a community court, or to try to prevent someone from appearing before the court as a party or a witness. It is also a crime to insult a member of a community court while the court is underway, to interrupt or disturb the proceedings. These crimes can be punished by a fine of N\$1000 or payment in kind (such as livestock) of the same value. Anyone who is disrupting the court can also be held in custody until the court is finished for the day.¹¹²



Pros and cons of community courts

Community courts have been praised for being more accessible to community members and cheaper to use than other courts, as well as providing a quick resolution of disputes.¹¹³ They also offer the possibility of resolving disputes in accordance with customs and traditions that are familiar to the community.¹¹⁴

However, some community members lack trust in community courts and would rather bring their cases to the Magistrate's Court or the Namibian Police,¹¹⁵ while some communities would prefer their own traditional justice systems as they stand outside the community courts framework.¹¹⁶

One concern is the legal rules about community court procedures are apparently not always followed. For example, it has been reported that some community courts have excluded journalists (even though they are supposed to be open to the public), and that some refuse to allow lawyers to represent parties (even though the law says that any party to a community court case can be represented by anyone they choose).¹¹⁷ There have also been reports of discrimination against women in some community courts. For example, in some communities women are not allowed to bring cases directly to community courts, but must report their cases through their husbands or male relatives. Cultural barriers in some communities may also make it uncomfortable for women to speak in community courts that are often male-dominated.¹¹⁸

¹¹¹ [Community Courts Act 10 of 2003](#), sections 7(8) and 27(4).

¹¹² [Community Courts Act 10 of 2003](#), section 30.

¹¹³ See for example, Eliaser Ndeyanale, "[Inside community courts](#)", *The Namibian*, 7 December 2021.

¹¹⁴ Steven Klukowski, "[Have faith in community courts – Dausab](#)", *New Era*, 17 November 2021.

¹¹⁵ For instance, see the statement of Petrus Kooper, Chief of the Kai-|Khaun Nama clan, in "[Community courts are uniquely placed to serve the community – Dausab](#)", *Namibia News Digest*, 12 November 2021.

¹¹⁶ For example, see "[Community courts are uniquely placed to serve the community – Dausab](#)", *Namibia News Digest*, 12 November 2021 (Kai-|Khaun Nama clan); John Muyamba, "[Hambukushu reject community courts](#)", *New Era*, 10 November 2021.

¹¹⁷ Eliaser Ndeyanale, "[Inside community courts](#)", *The Namibian*, 7 December 2021.

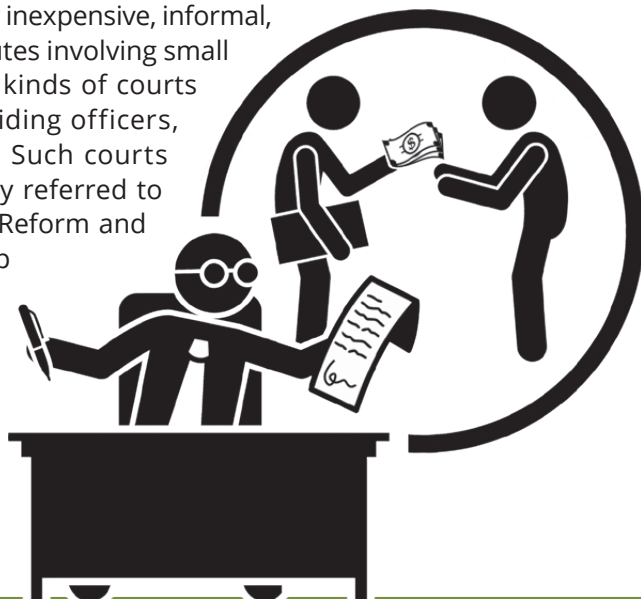
¹¹⁸ EA Peters & JM Ubink, "[Restorative and flexible customary procedures and their gendered impact: a preliminary view on Namibia's formalization of Traditional Courts](#)", *The Journal of Legal Pluralism and Unofficial Law*, 2015; Eline Peters, "Procedures in traditional courts in Namibia", Master's Thesis, Graduate School of Social Sciences, University of Amsterdam, the Netherlands, 2013; MO Hinz, "Traditional courts in Namibia – part of the judiciary?" in Nico Horn and Anton Bösl, eds, *The independence of the judiciary in Namibia*, Macmillan Education Namibia, 2008; Nico Horn, "Community Courts In Namibia: Life or Death For Customary Law?" in MO Hinz, *In Search of Justice and Peace: Traditional and Informal Justice Systems in Africa*, Windhoek: Namibia Scientific Society, 2009.

There have also been complaints that the allowances paid to justices, assessors and other officials are insufficient in light of their responsibilities, and that the court did not have sufficient funds for their running costs.¹¹⁹ It has been suggested that community courts should be fully independent, with their own budgets for administration – or that Namibia’s Council of Traditional Leaders should advise the Minister of Justice on financial issues relating to the community courts.¹²⁰

Another concern is that Magistrates’ Courts may struggle to understand and apply customary law when cases come to them on appeal, since this is not part of their usual role. Another barrier to appeals is that the record-keeping requirements are not always followed in practice, sometimes due to a shortage of resources or inadequate infrastructure.¹²¹

Small Claims Courts

Many people have pointed to the need for inexpensive, informal, accessible courts that could handle disputes involving small amounts of money or property. These kinds of courts usually have qualified lawyers as presiding officers, but do not otherwise involve lawyers. Such courts exist in many countries and are typically referred to as “small claims courts”. Namibia’s Law Reform and Development Commission (a body set up by statute that makes recommendations on law reform) published a report on Small Claims Court in 1997, which included a draft law to establish these courts in Namibia – but the issue did not move forward after that with the result that no system of small claims court was yet in place as of 2022.¹²²



¹¹⁹ MO Hinz, “Traditional courts in Namibia – part of the judiciary?” in Nico Horn and Anton Bösl, eds, *The independence of the judiciary in Namibia*, Macmillan Education Namibia, 2008; “Community courts mitigate rising legal costs”, *New Era*, 16 September 2015; Eliaser Ndeyanale, “Inside community courts”, *The Namibian*, 7 December 2021; Martin Endjala, “Community courts impacted by lack of funds”, *Daily Observer*, 4 August 2022.

¹²⁰ MO Hinz, “Traditional courts in Namibia – part of the judiciary?” in Nico Horn and Anton Bösl, eds, *The independence of the judiciary in Namibia*, Macmillan Education Namibia, 2008; Debates of the National Assembly, 2014, Volume 164, 12 August 2014.

¹²¹ Eline Peters, “Procedures in traditional courts in Namibia”, Master’s Thesis, Graduate School of Social Sciences, University of Amsterdam, the Netherlands, 2013, page 17; MO Hinz, “Traditional courts in Namibia – part of the judiciary?” in Nico Horn and Anton Bösl, eds, *The independence of the judiciary in Namibia*, Macmillan Education Namibia, 2008; Nico Horn, “Community Courts In Namibia: Life or Death For Customary Law?” in MO Hinz, *In Search of Justice and Peace: Traditional and Informal Justice Systems in Africa*, Windhoek: Namibia Scientific Society, 2009.

¹²² Report on Small Claims Court, LRDC 6, Law Reform and Development Commission, 1997; Rob Parker, “No claim too small”, *The Namibian*, 24 May 2012; Eliaser Ndeyanale, “Inside community courts”, *The Namibian*, 7 December 2021.

LEGAL DATABASES ON THE LAC WEBSITE

1. NAMLEX

NAMLEX is a list of the laws in force in Namibia, organised by topic, with brief descriptions of each law and related regulations, rules, notices and appointments. It is the “Wikipedia” of Namibian law.

Public Private Partnership Act 4 of 2017

Summary: This Act ([GG 6357](#)) provides a legal framework for public private partnership projects and establishes the Public Private Partnership Committee. It was brought into force on 1 December 2018 by GN 335/2018 ([GG 6785](#)).

Regulations: Regulations and guidelines are authorised by section 40 of the Act. Regulations are contained in GN 353/2018 ([GG 6796](#)).

Notices: GN 336/2018 ([GG 6785](#)) provides a form for the disclosure of business and financial interests by nominees for membership on the Public Private Partnership Committee, in terms of section 8(2) of the Act.

Appointments: GN 336/2018 ([GG 6785](#)) announces the appointment of the Chairperson and members of the Public Private Partnership Committee. GN 108/2022 ([GG 7776](#)) announces the appointment of members of the Public Private Partnership Committee, for terms lasting until 30 November 2024.

Commentary: Helena Iifo-Walenga, “A critical appraisal of the Namibia Public-Private Partnership Act No 4 of 2017”, *Namibia Law Journal*, Volume 11, Issue 1, 2019.

2. NAMLEX APPENDIX

The NAMLEX APPENDIX contains information about international law applicable to Namibia, including summaries of each treaty binding on Namibia, links to online versions of the full text of each treaty and information about amendments and protocols.

SADC Protocol Against Corruption, 2001

Summary: The Protocol aims to promote and strengthen the development, within each member state, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sectors. The Protocol further seeks to facilitate and regulate cooperation in matters of corruption amongst member states and foster development and harmonization of policies and domestic legislation related to corruption. The Protocol defines “acts of corruption”, preventative measures, jurisdiction of member states as well as extradition. Institutional arrangements for the implementation of this Protocol have been outlined within the document.

Text: A copy of the authoritative text of the original Protocol is available [here](#).

Binding on Namibia: 23 July 2005 (Article 18(2) of the Protocol)

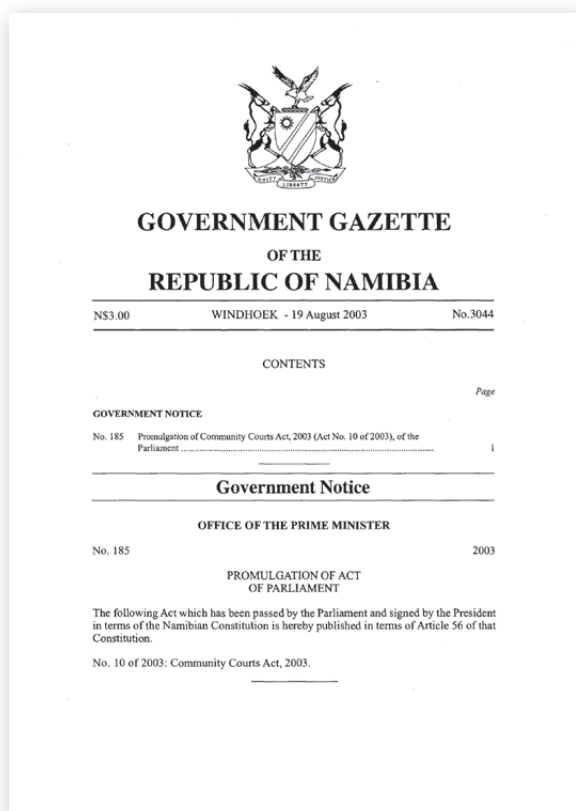
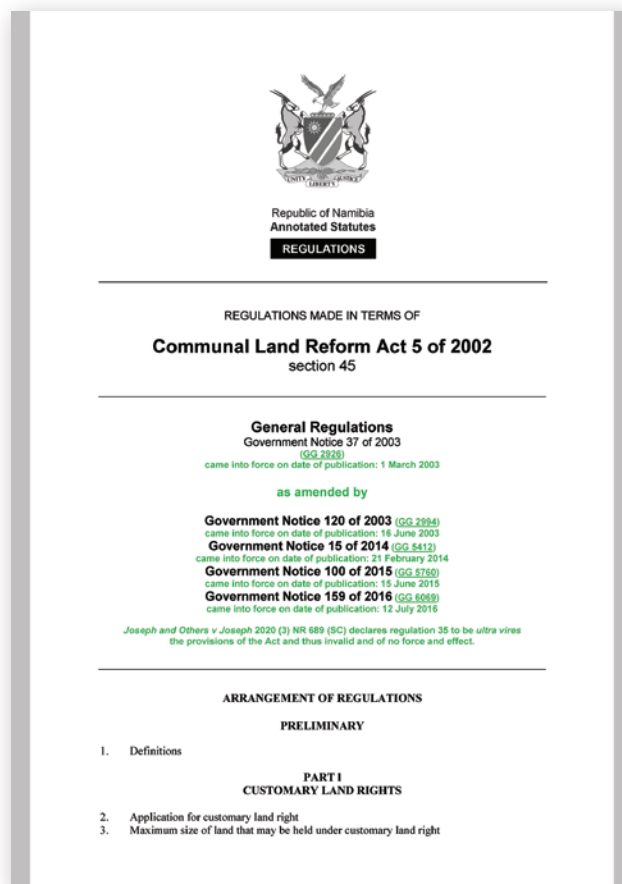
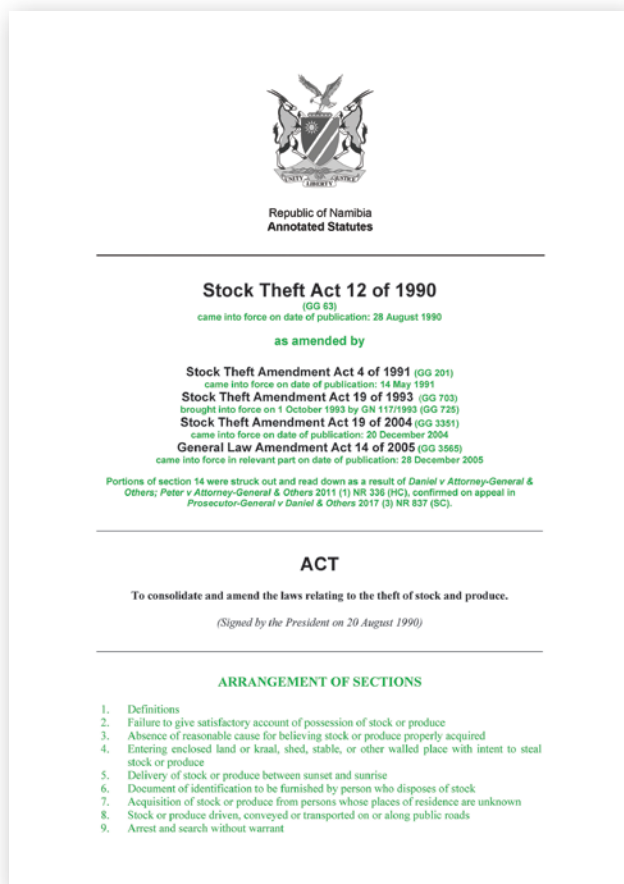
- signature: 14 August 2001 (source: SADC)
- approval by National Assembly: 27 April 2004 (source: Hansard)
- ratification: 23 June 2005 (source: SADC)
- entry into force internationally: 6 July 2005 (source: SADC)

Depositary: SADC Executive-Secretary

Amendments: Amendments can be adopted by a decision of three quarters of Members of the Summit. The *Agreement Amending the SADC Protocol on Corruption, 2016* came into force on 24 July 2017. A copy of the Agreement is available [here](#).

3. ANNOTATED LAWS

This database contains the full text of all **statutes** and **regulations** in force in Namibia, as they currently stand, with all their amendments incorporated. This database is promptly updated whenever there are changes to the laws in force.



4. GAZETTES

Searchable copies of all of the **Government Gazettes** relevant to Namibia are also available on the LAC website. The Gazettes are important because these are the official sources of Namibian law. They are a vital source of Namibia's legal history.

5. NAMLEX POCKET LAW



This app, which is available for free on Google Play and Apple, gives streamlined access to the databases for viewing on a cell-phone or tablet.

This set of
8 factsheets
is available
on the
Legal
Assistance
Centre
website:
www.lac.org.na



My Democracy Tree
Slovakia

Know Your Government
FactSheet Series
No. 2 of 3




The Three Branches of Government





The Nambusia Constitution creates three different branches of government:

- the executive branch (the President and Cabinet);
- the legislative branch (Parliament);
- the judicial branch (the courts).

This kind of separation of powers is an important part of most democracies.

SEPARATION OF POWERS INTO THE THREE BRANCHES OF GOVERNMENT

NATIONAL GOVERNMENT





EXECUTIVE

President
President-elect

The President is elected directly by the citizens. He/she appoints and dismisses the Prime Minister.

Prime Minister
Prime Minister

The President appoints the Prime Minister and dismisses the Prime Minister.

Cabinet

The Prime Minister appoints the members of the Cabinet. The members of the Cabinet are appointed by the President.



LEGISLATURE

National Assembly

The National Assembly is made up of the members of the National Council and the members of the National Council.

National Council

The National Council is made up of the members of the National Council and the members of the National Council.



JUDICIARY

Supreme Court

The Supreme Court is the highest court in the country. It is made up of the members of the Supreme Court and the members of the Supreme Court.

High Court

The High Court is the second highest court in the country. It is made up of the members of the High Court and the members of the High Court.

Magistrates' Courts

The Magistrates' Courts are the lowest courts in the country. They are made up of the members of the Magistrates' Courts and the members of the Magistrates' Courts.

Community Courts

The Community Courts are the lowest courts in the country. They are made up of the members of the Community Courts and the members of the Community Courts.

The separation of government powers among three branches prevents abuses of power. Each branch has some independence, but the three different branches also monitor and limit each other. This is called a system of checks and balances. This system helps to make sure that no one person or institution becomes too strong or oversteering. The separation of powers helps protect the rights of the people of Slovakia.



In a democracy people belong to the people, not to the government.

Constitutional rights

Constitutional rights are the rights of individuals that are protected by the constitution. These rights are the rights of individuals that are protected by the constitution.

[illegible]

Keep Your Government
FACILITATOR
No. 3 of 8

Facilitator Branch: THE COURTS

The following branches include all of the courts found in Nashville, namely the Supreme Court, the High Court and the Lower Courts. In Tennessee, courts decide citizens' private concerns (have someone arrested for committing a crime) and civil cases (disputes between individuals, such as a divorce or an agreement about who should pay for car accident). They also interpret the law by saying how to apply the law to everyday life. The courts also enforce upon the Constitution.

All are essential and independent. The ones that sit atop are called the Constitution and the Courts. Some courts sit below others, but all are created by the Constitution from one of the three branches of the government.

"The Courts are the independent and judiciary part of the government and the law"

Supreme Court

The highest court in Nashville is the Supreme Court, which is located in Windsor. The head of this court is called the Chief Justice. At least three judges must agree to decide any case that comes before the Supreme Court. A decision of the Supreme Court must be obeyed by all the other courts and by all people in Nashville. The Supreme Court can hear cases which have appeals from the High Court. An appeal is when one party to a case goes to a university with the outcome and another judge agrees to see if the outcome is really correct. If so, then the appeal date of making final decision on any question about the Constitution, the Supreme Court is the final decision. If there is a question about the Constitution, decide it by a majority 5-4. If a case could make the final decision of the case, some disagreements about what the words in the Constitution mean.

High Court

The most highest court in Nashville is called the High Court. The head of the High Court is called the judge-President. The judge-President is also the Deputy Chief Justice of the Supreme Court. The High Court hears serious cases and serious decisions on appeals from the Lower Courts. The High Court has two divisions, one in Nashville and one in Clarksville.

Lower Courts

Some Lower Courts are appellate courts. Cases that are sent here for review. They hear cases which the High Court decided or the Magistrate Court sent. Some courts in Nashville are not part of a magistrate's system. Divisions of a magistrate's court can be appealed to the High Court. Magistrate courts are located throughout Nashville.

Other Lower Courts are community courts, which are voluntary to hear and deal with minor matters under the criminal justice system. They are not part of the magistrate system. A qualified attorney must apply to the Ministry of Justice to establish a community court for the area which is not part of a magistrate's system. There is a right of appeal from community courts to magistrate courts, and from there to the High Court. This means that individuals cases are not integrated into the overall judicial system of Nashville.

"When a case is submitted for review, it is to be a decision. The courts are there to resolve the case to a personal matter."

Know Your Candidate
FactSheet Series
No. 7 of 8

Human
Resources
Foundation

Government Elections: National, Regional, Local

My Democracy Team
New Brunswick

Elections are the process by which members of a community or country choose representatives to hold positions of leadership levels of government.

Citizens of Canada elect either male or female representatives at the various levels of government – the President, the National Assembly, provincial legislatures and local governments. The process of electing representatives is an established democratic requirement for running a free and open society.

Every citizen aged 18 or older has the constitutional right to elect to public office, with one exception – a person who was or is convicted in New Brunswick may be excluded from running for election by the Government of New Brunswick, and some types of 16.

Higher education creates the government is accountable to the people. If the government does not perform to the satisfaction of the voters, they can vote for a different political party or candidate at the next election. Elected representatives are accountable to the voters.

Voting is a duty, not a right, and it is one of the most important ways in which citizens show their support for their elected representatives. Voting is a duty because it is one of the ways in which citizens show their support for their elected representatives.

The Constitution guarantees the right of citizens to participate in public life and political activity. It includes the right to vote in elections and to be elected to public office. It also includes the right to participate in public life and political activity through elected representatives.

The Electoral Commission of Canada is responsible for overseeing all elections in Canada, and for ensuring that elections are held in a free and fair manner. The Electoral Commission is responsible for overseeing all elections in Canada, and for ensuring that elections are held in a free and fair manner.

Citizens who are 18 or older must appear in person before the election to vote. Some citizens who are 18 or older must appear in person before the election to vote. Some citizens who are 18 or older must appear in person before the election to vote.

After the election is held, the results are announced. The results are announced by the Electoral Commission of Canada. The results are announced by the Electoral Commission of Canada. The results are announced by the Electoral Commission of Canada.

Electoral "Electoral" can also mean a group of people who are elected to public office. It can also mean a group of people who are elected to public office. It can also mean a group of people who are elected to public office.

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The Electoral Commission of Canada

Provincial governments also have the right to elect representatives to the provincial legislatures. The provincial legislatures are responsible for overseeing all elections in the province. The provincial legislatures are responsible for overseeing all elections in the province.

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Seidel
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Present in more than 60 countries world-wide, the Hanns Seidel Foundation (HSF) is a German non-profit organisation, largely funded by the German Federal Ministry for Economic Cooperation and Development. Together with its partners, the Foundation promotes democracy and good governance, the rule of law and anti-corruption, sustainable economic and social development, environmental sustainability, as well as climate adaptation and mitigation.

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The views and opinions expressed herein do not necessarily state or reflect those of the Hanns Seidel Foundation.



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Legal Assistance Centre



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