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## **INFORMATION ABOUT NAMIBIA'S LAW ON ...**

### **Appointment of the President and other Executives**

Not too long ago, Namibia experienced its first abrupt loss of a sitting president, H.E. Dr. Hage Geingob. The Namibian nation wept but this loss was felt across borders. As well-wishes from all over the world poured in, our leaders had to act quickly to make critical decisions that would best serve Namibia and its people. One could argue that the most important and urgent choice to make at the time was to appoint an acting president and vice president.

The president is the Head of State and the Government as well as the Commander-in-Chief of the Defence Force. Article 27A of the Namibian Constitution states that “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...” The Constitution also sets out the basic powers and duties of the president and the vice-president.

This article highlights the requirements set to become president in Namibia and outlines the executive branch's constitutional structure.

The president must be a Namibian citizen by birth or descent, at least 35 years old and at least have the same qualifications required for eligibility for election to the National Assembly. A president serves for a term of five years and no individual may serve more than two terms. However, it is interesting to note, that the Namibian Constitution was amended in 1998 to make an exception for Namibia's first President, Dr Sam Nujoma. He was 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.

When he passed on, H.E. Dr. Geingob was in his second term of office and was to step down by the end of his final constitutionally mandated term in November 2024. This brought in the ‘argument’ as to whether H.E. President Nangolo Mbumba is President or Acting President.

Article 34(1) states that ‘If the office of President becomes vacant or if the President is otherwise unable to fulfil the duties of the office, the following persons shall in the order

provided for in this Sub-Article *act as President* for the unexpired portion of the President's term.' The comprehensive question whether 'Act as president' and 'Acting President' mean the same word or are two different titles or positions which can be given to the successor of this great position lies in the statute interpretation.

'Act as President' refers to situations where an individual, typically a vice-president, is designated to perform the duties of the president in the president's temporary absence or incapacity. This designation does not bestow the full status of the president upon the individual. Rather, it allows them to carry out specific presidential functions under limited circumstances. The Constitution envisages this role as a temporary measure, ensuring that the executive branch remains functional during short periods when the president cannot perform duties.

On the other hand, 'Acting President' is a term used when an individual assumes the office of the president in an interim capacity, following a vacancy in the presidency until a new president is elected or appointed according to constitutional procedures. This situation arises under more serious circumstances, such as the death or resignation of the president. An 'Acting President' assumes the full powers and responsibilities of the presidency, albeit for a limited time. This provision is crucial for maintaining the continuity of governance and leadership, preventing a power vacuum that could destabilise the country.

Based on the above explanation, one can say that President Mbumba is the 4<sup>th</sup> president of the Republic of Namibia, on the theory that "Act as President" is different from being 'Acting President'.

Legal scholars and political analysts have different opinions of the term 'Act as President' and "Acting President". John Nakuta, a social academic who works for the law faculty at the University of Namibia, is of the view that "acting" may not fully capture the essence of Mbumba's role, and that 'caretaker' could be one of the terms used instead. As stated in the article "The word 'act' as used in this context could, in my view, easily be replaced with words such as 'serve', 'perform, without changing the substantive meaning of this provision, therefore, Dr Nangolo Mbumba is the substantive president of the Republic of Namibia and not an acting president."

In understanding and appreciating these constitutional provisions, the Namibian Constitution, with its clear provisions for leadership continuity, stands as a model of thoughtful governance, ensuring that the nation remains steadfast in its journey towards prosperity and stability.

*This article was made possible by support from the Hanns Seidel Foundation (HSF).  
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