



MyDemocracyTree  
Namibia



# The Three Branches of Government

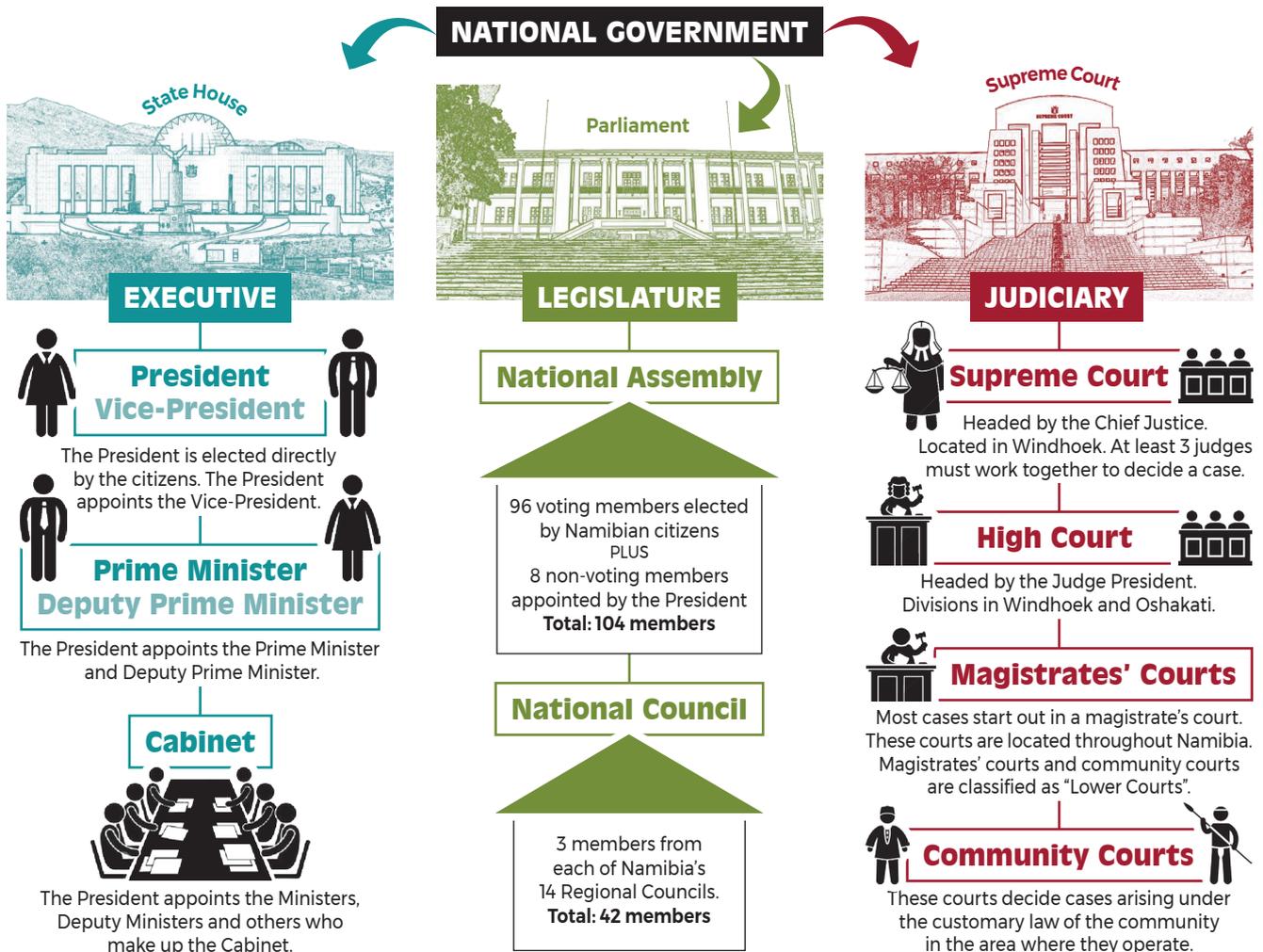
The Namibian Constitution creates three different branches of government:

- 1) the executive branch (the President and Cabinet)
- 2) the legislative branch (Parliament)
- 3) the judicial branch (the courts).



This kind of **separation of powers** is an important part of most democracies.

## SEPARATION OF POWERS INTO THREE BRANCHES OF GOVERNMENT



The separation of government powers amongst three branches prevents abuses of power. Each branch has some independent powers, 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 controlling. The separation of powers helps protect the rights of the people of Namibia.

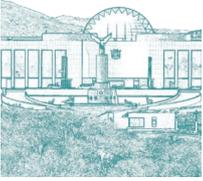


In a democracy, power belongs to the people. Article 1 of the Namibian Constitution says:

**"All power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State."**

# CHECKS AND BALANCES

## How each branch of government monitors and limits the others

<p><b>EXECUTIVE BRANCH</b></p>  <p>The President and Cabinet <i>implement</i> laws.</p>	<p><b>Checks on Judicial Branch</b></p> <ul style="list-style-type: none"> <li>● The President <b>appoints judges</b> on the recommendation of the Judicial Service Commission.</li> <li>● The President may <b>remove a judge from office</b> on the recommendation of the Judicial Service Commission, but <i>only</i> for mental incapacity or gross misconduct.</li> <li>● The President has the power to <b>pardon</b> convicted offenders.</li> </ul>	<p><b>Checks on Legislative Branch</b></p> <ul style="list-style-type: none"> <li>● The President and Ministers <b>propose bills</b> for consideration by Parliament.</li> <li>● The President can <b>refuse to sign a bill passed by Parliament</b> (but cannot withhold consent to a bill passed by a 2/3 majority in the National Assembly).</li> <li>● The President <b>nominates eight non-voting members</b> to the National Assembly.</li> <li>● The President can <b>dissolve the National Assembly</b> 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).</li> </ul>
<p><b>LEGISLATIVE BRANCH</b></p>  <p>Parliament <i>makes</i> laws.</p>	<p><b>Checks on Executive Branch</b></p> <ul style="list-style-type: none"> <li>● Parliament <b>approves the budget</b> for government.</li> <li>● The National Assembly can force the President to <b>remove a member of Cabinet</b> by a majority vote of no confidence.</li> <li>● Parliament can <b>impeach the President</b> by a 2/3 vote in the case of serious misconduct.</li> <li>● If the National Assembly <b>passes a bill by a 2/3 majority</b>, the <b>President cannot withhold consent</b> to that bill.</li> <li>● The National Assembly can <b>disapprove an action of the President</b> and review, reverse or correct it by a 2/3 vote.</li> </ul>	<p><b>Checks on Judicial Branch</b></p> <ul style="list-style-type: none"> <li>● Parliament <b>enacts statutes which govern the operation of the courts</b>.</li> <li>● Parliament can <b>amend statutes</b> if it disagrees with an interpretation of the statute by the court.</li> <li>● Parliament can <b>amend the Constitution</b> 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).</li> </ul>
<p><b>JUDICIAL BRANCH</b></p>  <p>The Courts <i>interpret and apply</i> laws.</p>	<p><b>Checks on Legislative Branch</b></p> <ul style="list-style-type: none"> <li>● Courts <b>interpret laws passed by Parliament</b> and apply laws to specific cases.</li> <li>● Courts can <b>invalidate a law passed by Parliament on the grounds that the law is unconstitutional</b>.</li> </ul>	<p><b>Checks on Executive Branch</b></p> <ul style="list-style-type: none"> <li>● Courts <b>interpret laws passed by Parliament</b>, and so guide government agencies on how to implement those laws.</li> <li>● Courts can <b>declare actions of the executive unconstitutional</b>.</li> <li>● The <b>Attorney-General can refer a matter to the Supreme Court for decision</b>, to guide the executive branch.</li> </ul>

Another form of check and balance in a democracy is an active **civil society**. Civil society includes all groups which work independently from government to influence what happens in Namibia. It includes the press, faith-based organisations, human rights groups, trade unions, charities and other non-governmental organisations. Constitutional rights like freedom of speech and freedom of association protect the right of people in Namibia to come together to consider, criticise, monitor and influence government actions.

Article 95 of the Namibian Constitution says that the State will adopt policies aimed at “encouragement of the mass of the population through education and other activities and through their organisations to influence Government policy by debating its decisions”.



### 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.

Government in Namibia also operates at three different *levels*, with each level having its own powers and duties:

- 1) **national** (President, Parliament, Cabinet and ministries)
- 2) **regional** (Regional Councils and Governors)
- 3) **local** (Local Authority Councils and Mayors).

**Traditional authorities** also have certain powers and duties in respect of their communities.

Power is often divided between different levels of government in a democracy.