

Know Your Constitution!



The Republic of Namibia Mar. 1990



Legal Assistance Centre

DEDICATION

This booklet is dedicated to all those who made the Namibian Constitution possible, through their commitment and sacrifice, in order to create a free, democratic and independent Namibia.

ACKNOWLEDGEMENTS

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The booklet is very short and simple so that it will be suitable for the general public and easy to translate into various Namibian languages.

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A SUMMARY OF THE NAMIBIAN CONSTITUTION

*This booklet is a summary of some of the
most important parts of the Namibian Constitution.
It does not cover all of the contents of the Constitution.*

The Constitution is the Supreme Law of Namibia. This means that all the other laws in Namibia must follow the Constitution. No one is allowed to violate the rights that the Constitution protects.

The Constitution begins with an introduction that explains why it is so important. The Namibian Constitution protects the gains achieved in the victorious struggle against apartheid, racism and colonialism. It protects the dignity and the fundamental rights of all persons – including the rights to life, liberty and the pursuit of happiness. All Namibians now have equal rights, without discrimination. The Constitution's protection of everyone's rights is necessary for freedom, justice and peace in Namibia.

The Constitution says that the people of Namibia are committed to national reconciliation, peace, unity and a common loyalty to the Namibian nation. It promotes the principles of justice, liberty, equality and a sense of community.





DEMOCRACY AND THE RULE OF LAW

The Republic of Namibia is an independent, democratic, united nation that is based on democracy, the rule of law and justice for all.

The **rule of law** means that everyone must obey the law, even people in positions of power. It also means that the law must apply equally to all people, and that everyone has the right to seek help from the courts if the law is not followed.

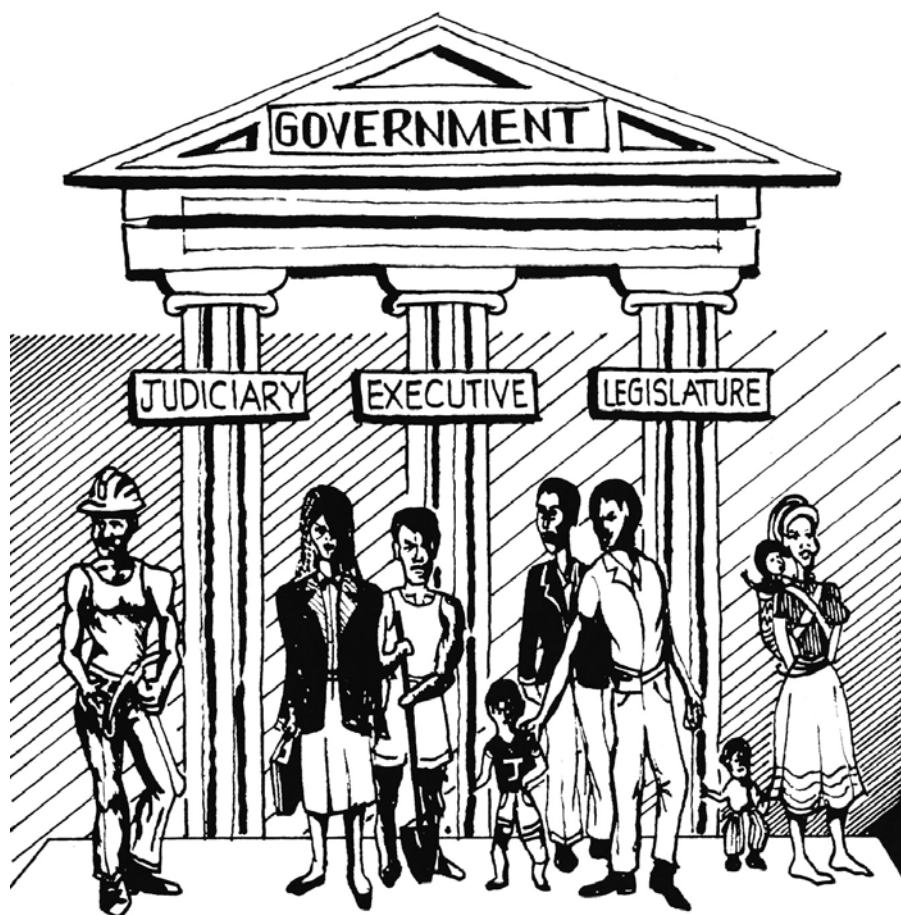
All power belongs to the people of Namibia. The people exercise this power by democratically electing representatives to government.

THREE BRANCHES OF GOVERNMENT

There are three branches of government:

- the **executive**, which implements laws (President, Vice President and Cabinet)
- the **legislature**, which makes laws (Parliament)
- the **judiciary**, which enforces laws (the courts).

Government power is divided amongst the three different branches so that they can check and balance each other. This helps make sure that no one person or institution becomes too powerful. It also helps prevent the abuse of government power.



**GOVERNMENT
FOR THE PEOPLE
BY THE PEOPLE**



LANGUAGE

The official language of Namibia is English. However, schools are allowed to use other languages also, where this helps with effective teaching. Parliament can also pass laws allowing government officials and courts in different parts of Namibia to use the languages spoken by most people in those areas.

CITIZENSHIP

The following people are citizens of Namibia:

- a person born in Namibia to a father or mother who is a Namibian citizen OR to a non-Namibian parent who ordinarily lives in Namibia
- a person born outside Namibia to a father or mother who is a Namibian citizen, IF the law on registering this kind of citizenship is followed
- a person married in good faith to a Namibian citizen (in a civil or customary law marriage) AND who has lived in Namibia for at least 10 years since the marriage
- a person who has lived in Namibia for at least 10 years AND who satisfies the requirements set by law for this kind of citizenship.

FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

Fundamental human rights and freedoms are the rights that are the most important in a democratic society. The fundamental rights and freedoms protected by the Constitution must be respected by all government bodies and officials, and by all people in Namibia. The courts have a duty to help enforce these rights.

THE RIGHT TO LIFE (Article 6)

All people have the right to life. The death sentence cannot be used in Namibia anymore, no matter what crime has been committed.

THE RIGHT TO LIBERTY (Article 7)

Liberty is the right to be free. No one can take another person's liberty away, unless this is done according to the law. This means that the law must be followed whenever a person is arrested. This protection helps to make sure that arrests are not misused for personal or political reasons.

RESPECT FOR HUMAN DIGNITY (Article 8)

The dignity of every human being must be respected. This means that all government bodies and courts must treat the people who appear before them with respect.

No one can be tortured or punished in any cruel or degrading way, not even a person who has been convicted of a crime.

FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS



SLAVERY AND FORCED LABOUR (Article 9)

Slavery and forced labour are not allowed in Namibia. But this rule does not apply to labour ordered by a court (such as labour as punishment for a crime) or reasonable labour required as part of public duties.

EQUALITY AND FREEDOM FROM DISCRIMINATION (Article 10)

All people are equal before the law.

No person can be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

ARREST AND DETENTION (Article 11)

No one can be arrested or detained unless there is a fair reason, and correct legal procedures must be followed for an arrest or detention.

Anyone who is arrested must be told of the reason for the arrest, in a language that he or she can understand.

Anyone who is arrested must be brought before a magistrate or judge within 48 hours of the arrest, or as soon as reasonably possible. This will give the person a chance to ask for bail, or to tell the magistrate or judge about any mistreatment.

FAIR TRIAL (Article 12)

Anyone charged with a crime has a right to a fair trial by an independent and impartial court. An **independent** court cannot be told what to decide by anyone, not even by a government official or the President. An **impartial** court will not consider a person's race, sex, ethnic origin or political beliefs. It will look only at the facts of the case and the law.

All trials must take place within a reasonable time. If a delay is unreasonable, a person charged with a crime who is not already free on bail must be released.

The courts must treat all persons charged with crimes as being innocent until it is proved in court that they are guilty, after they have had a proper chance to present their side of the story. Persons charged with crimes have the right to get help from a lawyer of their choice to defend themselves against the charges. No one can be forced to give evidence against themselves or against their husbands or wives (in a civil or customary law marriage).

No one can be tried more than once for the same crime. No one can be convicted of a crime for doing something which only became a crime later on.

PRIVACY (Article 13)

All people have a right to privacy in their own homes. The government cannot open their letters or listen to their telephone conversations. However, there can be exceptions to this rule for reasons of national security or safety, or for the protection of the community.

If police or other authorities want to search a person or a home, they must get a warrant from a court, or follow the legal procedures for situations where it is important to act without delay.

FAMILY (Article 14)

All adult men and women have the right to marry and to have a family, no matter what their race, colour, ethnic origin, nationality, religion, creed or social or economic status. Men and women must have equal rights during marriage, and also when the marriage ends through divorce or death.

People cannot be forced to marry against their will. This applies to both men and women.

The family is the basic group unit of the community, and must be protected by society and government.

CHILDREN'S RIGHTS (Article 15)

All children have the right to a name and a nationality, from birth. They also have the right to know and be cared for by their parents, although laws enacted to protect the best interests of the child can override this right if necessary.



Children must be protected against economic exploitation. Children under age 16 cannot do work that is dangerous to their health or development, or work that interferes with their education. Children under age 14 cannot work in a factory or mine, unless this work follows the conditions in a law passed by Parliament to protect them.

No farmer or other employer can force children to do work simply because their parents are employees.

There may be no preventative detention of children under age 16. (Preventative detention means confining people without charging them with a crime.)

PROPERTY (Article 16)

All people have the right to own land and other kinds of property in any part of Namibia.

Government and other bodies can take away private property to serve the public interest, as long as they pay the owner just compensation under a law passed by Parliament for this purpose.

POLITICAL ACTIVITY (Article 17)

All Namibian citizens have the right to take part in peaceful political activity. They have the right to join existing political parties or to form new political parties.

All citizens have the right to participate in public affairs, either by holding a public office themselves or by electing representatives to government.

Every citizen who is at least 18 years old can vote. Every citizen who is at least 21 years old can be elected to a public office.



ADMINISTRATIVE JUSTICE (Article 18)

Every government official or decision-making body must act fairly and reasonably, and must follow the law. People who believe that they have been treated unfairly by a government decision-maker can go to the courts for help.

CULTURE (Article 19)

All people have the right to their own culture, language, traditions and religion, but no one can use this right in a way that interferes with the rights of any other person or with the national interest of Namibia.

EDUCATION (Article 20)

All people in Namibia have the right to an education. Primary education must be free for all in government schools, and all children must go to school until they have finished their primary education, or until they have reached age 16.

WOMEN & MEN



ARE EQUAL

FUNDAMENTAL FREEDOMS (Article 21)

All people have these rights:

- **Freedom of speech and expression**

This is the right of all people to speak freely, even if they criticise government or express unpopular views. It includes freedom of the press (newspapers, radio and television) and other media (which would include online platforms). Freedom of speech ensures that important issues can be freely discussed and debated by all Namibians.

- **Freedom of thought, conscience and belief**

This means that all people are free to think and believe whatever they wish, as long as this does not interfere with the rights of anyone else. This freedom includes academic freedom in universities and colleges.

- **Freedom to practise any religion**

The government cannot forbid any religion. All people are free to worship as they like.

- **Freedom to assemble peaceably**

People are free to gather together for meetings, as long as they are peaceful and carry no weapons.

- **Freedom of association**

This is the freedom to join together with other people for any lawful purpose. It protects the right to form groups such as trade unions and political parties.

- **The right to strike**

Workers have a right to go on strike. Laws may set reasonable rules for strikes, as long as they do not make all strikes illegal.

- **The right to move freely in Namibia**

No one can be restricted to a particular part of Namibia. Everyone in Namibia is free to travel to any part of Namibia.

- **The right to live in any part of Namibia**

No part of Namibia can be reserved for people of a single ethnic group.

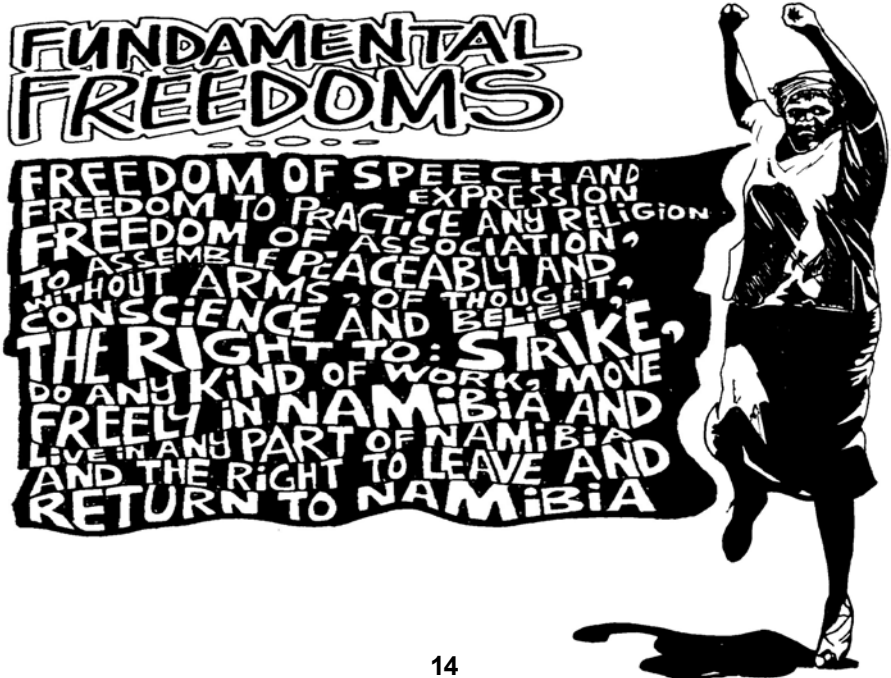
- **The right to leave and return to Namibia**

All Namibian citizens have the right to get a Namibian passport and travel to other countries.

- **The right to do any kind of work**

All jobs must be open to any person who has the necessary knowledge and skills, without unfair discrimination.

Parliament can make laws about how these rights are exercised, but it cannot take any of them away.



APARTHEID AND AFFIRMATIVE ACTION (Article 23)

The practices of racial discrimination and apartheid which caused the majority of Namibians to suffer for so long are now illegal. Parliament may pass laws making these practices crimes and providing for severe punishment.

Parliament may pass laws that give special help to people who have been disadvantaged by past discrimination. Government policies and programmes can try to make up for past discrimination. Government can also take steps to make sure that government jobs, including positions in the armed forces, are balanced. (This means ensuring that they are not dominated by whites or any other ethnic group, or by men or women.)

The Constitution points out that women suffered special discrimination in the past. It says that Parliament may need to take special steps to help women play an equal role in all areas of life in Namibia.

ENFORCING FUNDAMENTAL RIGHTS AND FREEDOMS (Article 25)

No one has the authority to take away another person's fundamental rights and freedoms – not a traditional leader or any government official, not even Parliament or the President.

People who think that someone has interfered with their rights can go to a **court** for help. The court can make an order that will protect them. The court can decide that a law is no longer in force because it conflicts with the Constitution, or order Parliament to fix the problem in the law within a certain time period. The court can also award money to people who have suffered damages because their rights have been violated. (Note that only the High Court and the Supreme Court deal with questions about the Constitution.)

People can also get help to protect their fundamental rights and freedoms from a government official called the **Ombudsman**. The Ombudsman is a lawyer or a judge appointed by the President to guard against abuses of power by government, and to help protect the fundamental rights and freedoms of everyone in Namibia.



STATES OF EMERGENCY

If there is a situation that is threatening the life of the nation, or the existence of the Constitution or the government, the President can declare a **state of emergency**.

This decision must be confirmed by the National Assembly.

During a state of emergency, people over age 16 can be detained without trial – but the Constitution provides special protections for people who are detained during states of emergency. The President is allowed to take away some of the fundamental rights and freedoms during a state of emergency, but there are some rights that can **never** be taken away – such as the right to life and human dignity, the right to equality, the right to fair trial, freedom of speech and thought, freedom of association and the right of access to lawyers and courts.

THE EXECUTIVE BRANCH

The President

All Namibian citizens of voting age elect the President directly. This means that the voters choose the person whom they want to be the President, instead of voting for a political party. A person must receive more than half of all the votes cast in a Presidential election to become President.

Any Namibian citizen over age 35 can seek election as President. The President holds office for 5 years, and one person can be elected as President only twice.

The President must take an oath to uphold and defend the Constitution as the Supreme Law of the Republic of Namibia.

The President chooses a Vice-President, Prime Minister, Ministers and many other important government officials. The President may appoint a Deputy-Prime Minister, but this is optional. The President also sets up different ministries and departments in the government to take care of the business of government.

Any action taken by the President can be reviewed and changed by the National Assembly, if two-thirds of the members of the National Assembly think that this is necessary. The National Assembly can also remove a President from office by a vote of two-thirds of its members if the President disobeys the Constitution or any other law, or if the President is guilty of some other serious misconduct. This is part of the balance of power between the executive branch and the legislative branch.

The Cabinet

The Cabinet is a group of government officials that includes the President, the Vice-President, the Prime Minister, the Deputy Prime Minister and the Ministers of each government department.

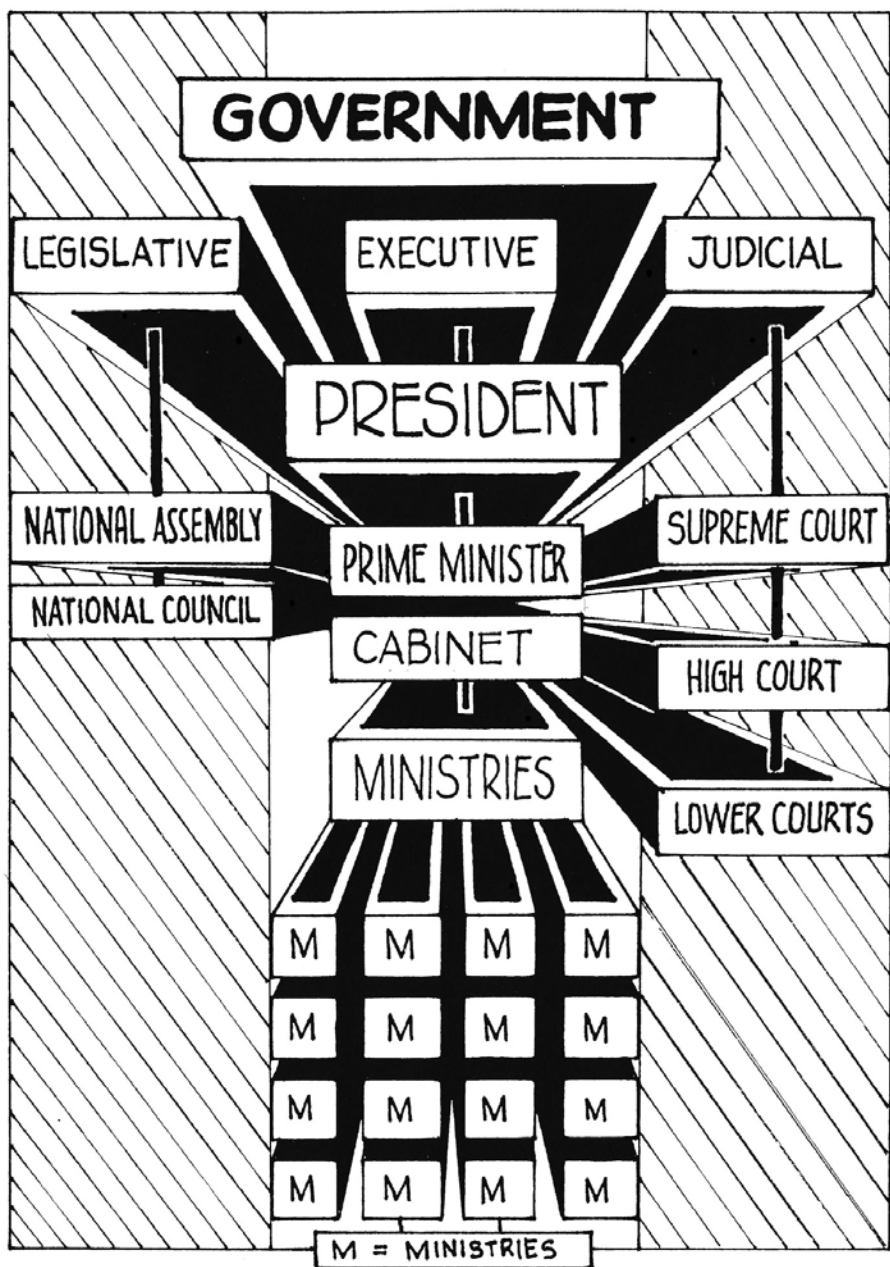
The duties of the Cabinet are to supervise the work of all government ministries and departments, and to help make decisions on government policies.

THE LEGISLATIVE BRANCH

The National Assembly

The National Assembly has the power to make laws for Namibia. The members of the National Assembly 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.

There are 96 members of the National Assembly who are elected by the people every 5 years. Citizens vote for the political party of their choice. Then the political parties choose the individuals who will go to the National Assembly on their behalf.



The President has the power to appoint an additional 8 people with special experience, skills or positions to the National Assembly. These appointed members do not have the right to vote in the National Assembly.

Like the President, all the members of the National Assembly must take an oath to uphold and defend the Constitution.

The members of the National Assembly are the servants of the people of Namibia. They are required to behave with dignity, and they must not do anything to enrich themselves improperly or to separate themselves from the people.

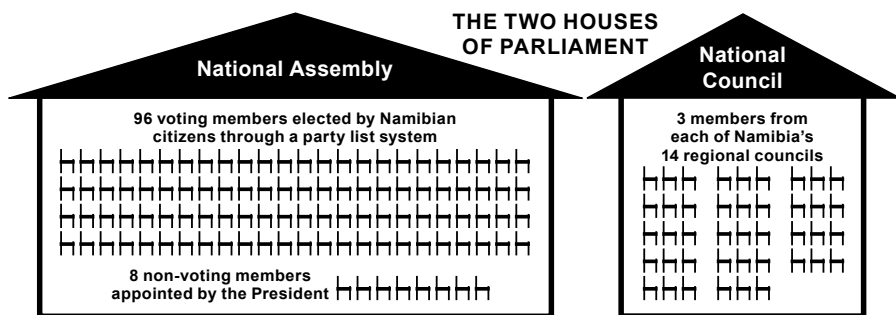
The meetings of the National Assembly must ordinarily be open to the public.

The National Council

The National Council helps the National Assembly with its task of making laws.

The National Council has 3 members from each region in Namibia. The residents of each region elect people from their region to the Regional Council. Then each Regional Council selects 3 of its members to serve on the National Council for 5 years.

The main task of the National Council is to give advice to the National Assembly about the laws that the National Assembly is considering. The National Council does not have the power to make laws on its own. It can only make suggestions to the National Assembly.



THE JUDICIAL BRANCH

The judicial branch includes all the courts in Namibia.

All the 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 the other branches of government.

The highest court in Namibia is the **Supreme Court**. The head of this court is called the Chief Justice. At least three judges must work together to decide any case in the Supreme Court. A decision of the Supreme Court must be obeyed by all the other courts and by all people in Namibia. The Supreme Court has the special duty of making final decisions on any questions about the Constitution. This is part of the balance of power between the judicial branch and the other branches of government.

The next highest court in Namibia is called the **High Court**. The head of the High Court is called the Judge-President.

There are also **Lower Courts**, which include magistrates' courts. Parliament can make laws setting up other lower courts, such as community courts. Lower courts deal with less serious cases. They

do not have the power to make decisions on questions about the Constitution.

All the judges for the Supreme Court and the High Court are appointed by the President. All judges must take an oath to defend and uphold the Constitution as the Supreme Law of Namibia and to fearlessly administer justice to all people without favour or prejudice.

HOW LAWS ARE MADE

Although the National Assembly has the main responsibility for making laws, all three branches of government have a part in this task.

A proposal for a law is called a “bill”. A bill can be suggested by the President, by a member of the Cabinet or by a member of the National Council or the National Assembly.

Any bill proposing a law is presented to the National Assembly for a vote. The National Assembly can discuss the bill and make changes to it if it wishes. The bill might also be sent to a committee for special study. The bill must be approved by more than one-half of the members of the National Assembly to go forward.

The National Assembly then sends the bill to the National Council for advice. The National Council can take up to three months to study the bill. It can then make recommendations to the National Assembly. The National Assembly is not required to follow all the recommendations of the National Council, but it must vote on the bill again after it has heard the opinion of the National Council.

If the National Council has strong objections to a bill, then it must be approved by at least two-thirds of the members of the National Assembly in order to go forward.



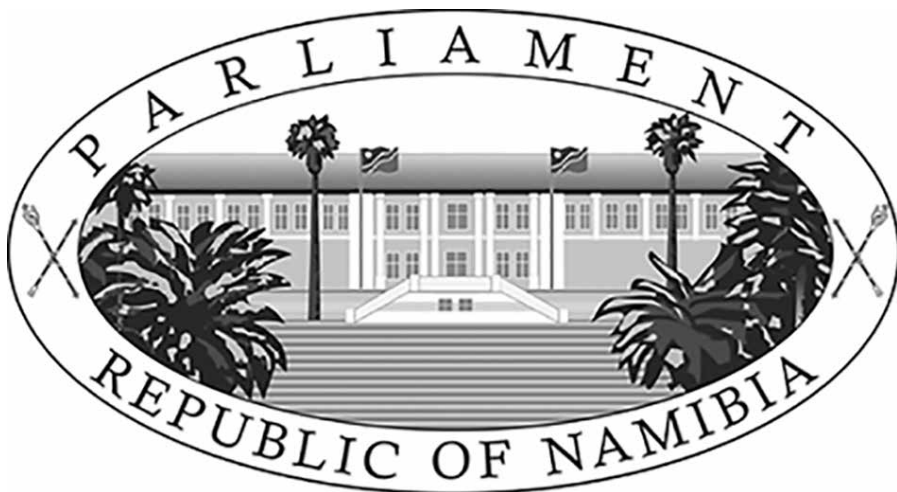
**KNOW YOUR
CONSTITUTION**

All bills must be signed by the President before they can become laws. If the President disagrees with a bill and refuses to sign it, then the National Assembly must vote on the bill again. If a bill is approved by at least two-thirds of the members of the National Assembly, then the President cannot prevent it from becoming a law.

If the President refuses to sign a bill because he or she thinks the bill may violate the Constitution, then the courts may be asked to decide this question. If the courts decide that the bill is in conflict with the Constitution, then the bill cannot become law.

In this way, the executive branch and the judicial branch provide a check on the law-making powers of the legislative branch.

All of the laws that were in force at the time of independence stay in force until they are taken away or changed by Parliament, or until the courts decide that they are in conflict with the Constitution. This includes customary laws, which are the laws that are administered by traditional authorities.



REGIONAL AND LOCAL GOVERNMENT

Namibia is divided into **regions** on the basis of where people live. Regions may **not** be based on the race, colour or ethnic origin of the people. The people of every region elect a Regional Council to deal with matters affecting their region.

There are also smaller units of **local government**. Each unit of local government has a council that is elected by the people in the community to take care of community matters.

There is also a **Council of Traditional Leaders** which advises the President on the control and use of communal land.

AMENDMENT OF THE CONSTITUTION

The Constitution can be changed only if the change is approved by either:

- 1) two-thirds of the members of the National Assembly and two-thirds of the members of the National Council
OR
- 2) two-thirds of the members of the National Assembly and two-thirds of the people of Namibia who give their opinions on the proposed amendment in a special vote called a referendum.

But no one is allowed to make a change to the Constitution that takes away any of the fundamental rights or freedoms. These rights are protected by the Constitution for all Namibians, forever.



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