

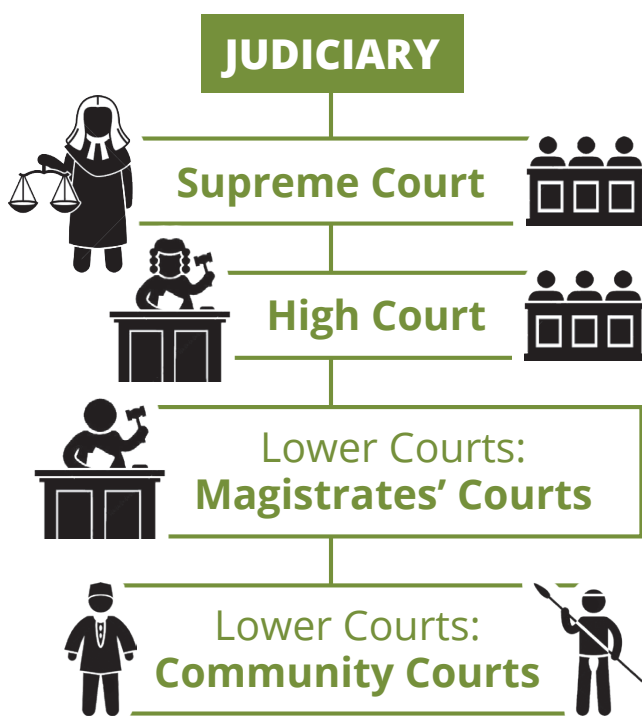


JUDICIAL BRANCH

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



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).



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 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 counts.

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).

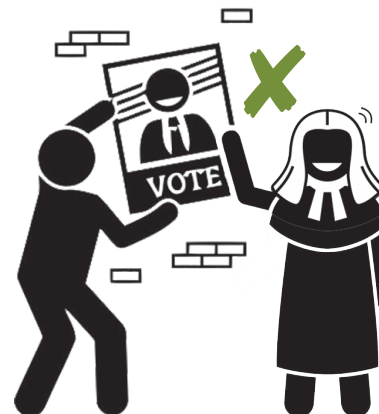
²³ See “The Judicial Service Commission’s Guidelines for Delivery of Reserved Judgments in the High Court of Namibia, adopted by the Judge-President of the High Court in Consultation with the Judicial Service Commission”, and “The Judicial Service Commission’s Guidelines for Delivery of Reserved Judgments 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.

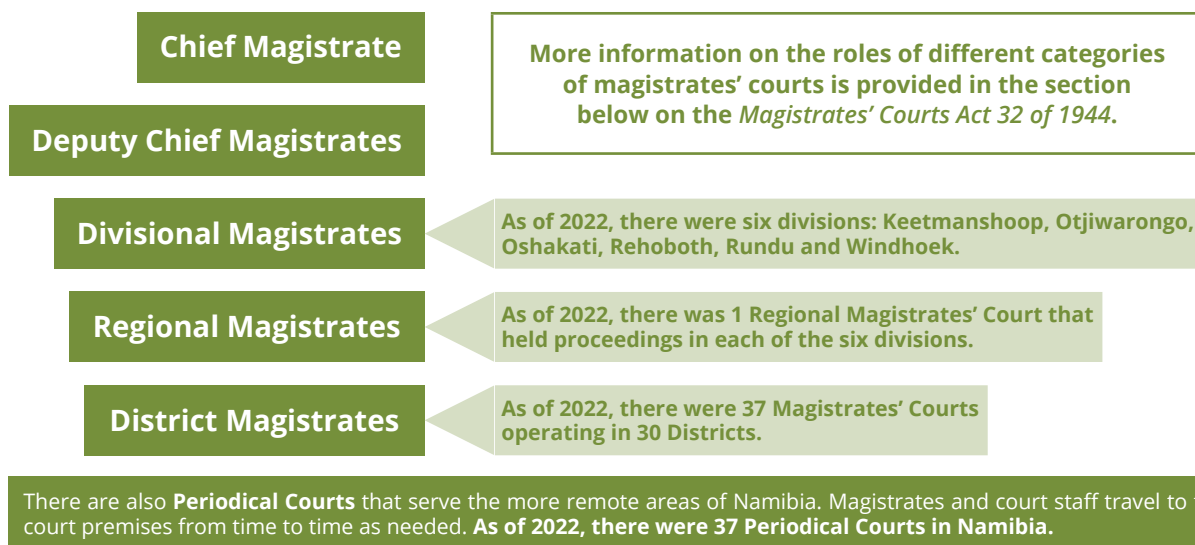
(5) District Magistrates

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.

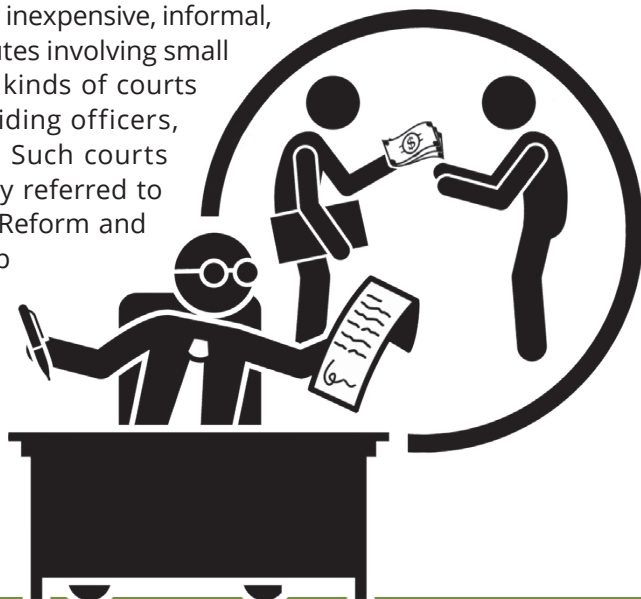
¹¹⁸ EA Peters & JM Ubink, "[Restorative and flexible customary procedures and their gendered impact: a preliminary view on Namibia's formalization of Traditional Courts](#)", *The Journal of Legal Pluralism and Unofficial Law*, 2015; Eline Peters, "Procedures in traditional courts in Namibia", Master's 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)

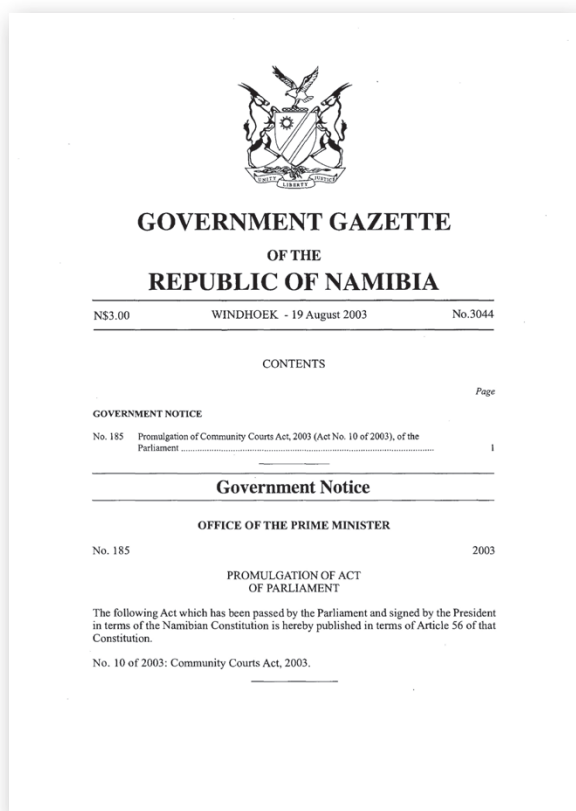
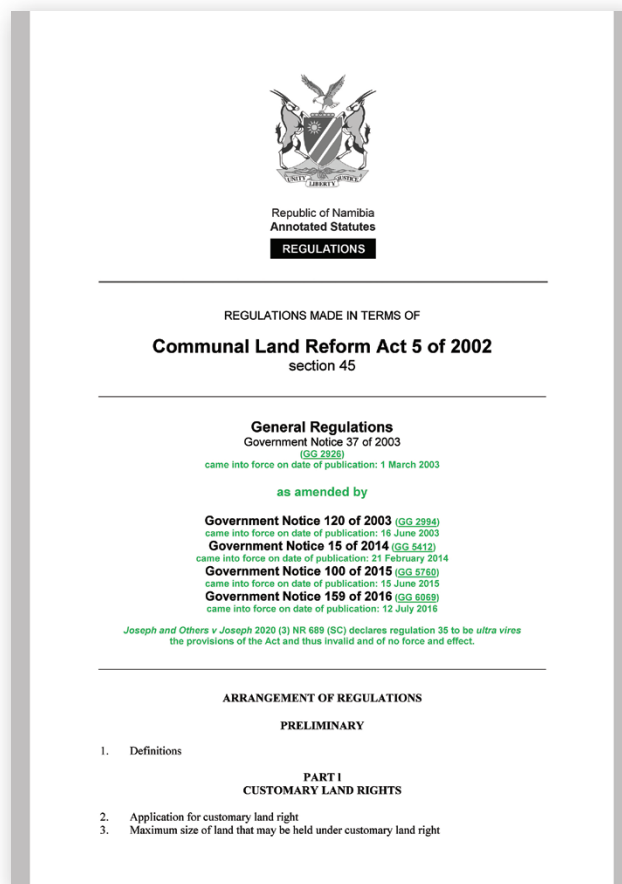
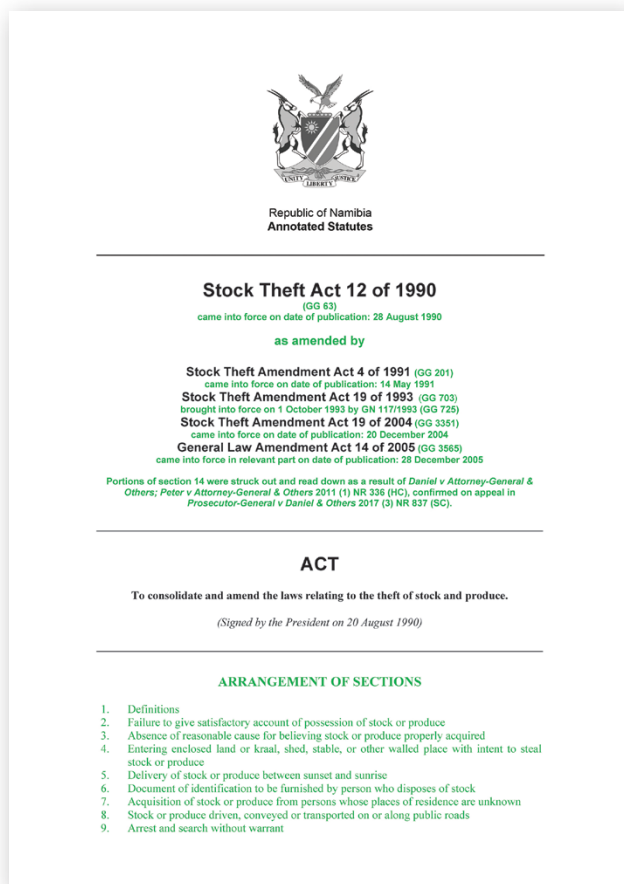
- signature: 14 August 2001 (source: SADC)
- approval by National Assembly: 27 April 2004 (source: Hansard)
- ratification: 23 June 2005 (source: SADC)
- entry into force internationally: 6 July 2005 (source: SADC)

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.

FACTSHEETS ON THE NAMIBIAN GOVERNMENT

This set of 8 factsheets is available online at the Legal Assistance Centre website: www.lac.org.na

Know Your Government
Factsheet Series
No. 1 of 8

Overview of the Namibian Constitution

What is a constitution?
Most democracies have a constitution, which is a foundational law that establishes government structures, explains how power will be organised. A constitution explains how the other laws of the country will be made. Constitutions also usually guarantee that all the citizens of the nation will have certain important rights.

The Supreme Law
Article 1 of the Namibian Constitution says that it is the "Supreme Law of Namibia". This means that all other laws in Namibia are valid only if they are consistent with the provisions described in the Constitution, and only if they are consistent with the rights provided for in the Constitution. For example, the Constitution says that there shall be no death penalty for any crime. If Parliament tried to pass a law imposing the death penalty for murder, it would not be valid.

HOW WAS NAMIBIA'S CONSTITUTION WRITTEN?
Namibia's independence was the result of a long struggle for freedom by the Namibian people. Namibia's first free and fair elections were held in November 1989, under international supervision. Voters cast their ballots for political parties who then sent representatives to a body called the Constitutional Assembly which had the task of writing the Namibian Constitution. The 72 seats in the Constitutional Assembly were divided amongst seven political parties. It was drafted by a committee which included members of every political party, and accepted unanimously by every member of the Constitutional Assembly. It came into force on the day that Namibia became an independent nation - 21 March 1990.

The rule of law
The Namibia Constitution establishes the rule of law. This means that all people and institutions are governed by laws that must be applied and enforced fairly. The rule of law means that it does not matter who you are or who you know. There must be no favouritism. Everyone - including the President and Members of Parliament, the police and the army, judges and traditional authorities, rich people and poor people - must follow the laws of the country.

A 'sovereign, secular, democratic and unitary' republic
Article 1 of the Namibian Constitution says that the Republic of Namibia is a "sovereign, secular, democratic and unitary" state. A sovereign is a representative democracy, where decisions are made by representatives elected by the people. Secular means that Namibia is not an independent nation which is not under the control of any other religion. Secular means that the country is not run according to the rules of any official religion. Representative means that power rests with the people of Namibia, who elect key government decision-makers. Unitary means that Namibia is one single nation where the Constitution applies equally to everyone.

Enforcement
The fundamental rights and freedoms are enforced by the courts. People who think that someone has violated their rights can go to a court for help, and the court can order that they will be given their rights. If there is a law that is in conflict with the Constitution, the court can rule that the law is no longer in force. The court can also award money to people who have suffered damage because their rights have been violated. People can also make complaints about the violation of their fundamental rights and freedoms to an independent government official called the Ombudsman, who can look into the problem and take action to correct it.

Know Your Government
Factsheet Series
No. 2 of 8

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

NATIONAL GOVERNMENT

EXECUTIVE
President
Vice-President
Prime Minister
Deputy Prime Minister
Cabinet
Ministers and Ministers of State
Ministry Members and Ministers of State
Ministry Members and Ministers of State

LEGISLATURE
National Assembly
National Council
Total 60 members

JUDICIARY
Supreme Court
High Court
Magistrates' Courts
Community Courts

THE SEPARATION OF POWERS
The separation of powers amongst the three branches prevents abuse 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 ensure that no one person or institution becomes too powerful. The separation of powers helps protect the rights of the people of Namibia.

Know Your Government
Factsheet Series
No. 3 of 8

Executive Branch: PRESIDENT, VICE PRESIDENT, PRIME MINISTER, DEPUTY PRIME MINISTER, CABINET, MINISTRIES AND PUBLIC SERVICE

President
The President is the Head of State, which means that he or she is in charge of the executive branch. The President is also the Commander-in-Chief of the Namibian Defence Force.

Prime Minister
The Prime Minister is the head of the executive branch. The President appoints and dismisses the Prime Minister. The Prime Minister is chosen from among the members of the National Assembly. The Prime Minister must be a member of the National Assembly. The Prime Minister must be a member of the National Assembly. The Prime Minister must be a member of the National Assembly.

Ministries
The President appoints and dismisses the Ministers. The Ministers are chosen from among the members of the National Assembly. The Ministers are chosen from among the members of the National Assembly. The Ministers are chosen from among the members of the National Assembly.

THE PRESIDENT
The President is the Head of State, which means that he or she is in charge of the executive branch. The President is also the Commander-in-Chief of the Namibian Defence Force.

THE PRIME MINISTER
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THE MINISTRIES
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Know Your Government
Factsheet Series
No. 4 of 8

Legislative Branch: PARLIAMENT

TWO HOUSES OF PARLIAMENT

National Assembly
The National Assembly is the lower house of Parliament. It has 60 members. 20 members are elected by the people. 40 members are elected by the regional councils. The National Assembly has the power to pass laws. It also has the power to elect and dismiss the President. The National Assembly has the power to elect and dismiss the Prime Minister. The National Assembly has the power to elect and dismiss the Ministers. The National Assembly has the power to elect and dismiss the Judges. The National Assembly has the power to elect and dismiss the Members of Parliament. The National Assembly has the power to elect and dismiss the Members of Parliament.

National Council
The National Council is the upper house of Parliament. It has 20 members. 10 members are elected by the people. 10 members are elected by the regional councils. The National Council has the power to pass laws. It also has the power to elect and dismiss the President. The National Council has the power to elect and dismiss the Prime Minister. The National Council has the power to elect and dismiss the Ministers. The National Council has the power to elect and dismiss the Judges. The National Council has the power to elect and dismiss the Members of Parliament. The National Council has the power to elect and dismiss the Members of Parliament.

THE NATIONAL ASSEMBLY
The National Assembly is the lower house of Parliament. It has 60 members. 20 members are elected by the people. 40 members are elected by the regional councils. The National Assembly has the power to pass laws. It also has the power to elect and dismiss the President. The National Assembly has the power to elect and dismiss the Prime Minister. The National Assembly has the power to elect and dismiss the Ministers. The National Assembly has the power to elect and dismiss the Judges. The National Assembly has the power to elect and dismiss the Members of Parliament. The National Assembly has the power to elect and dismiss the Members of Parliament.

THE NATIONAL COUNCIL
The National Council is the upper house of Parliament. It has 20 members. 10 members are elected by the people. 10 members are elected by the regional councils. The National Council has the power to pass laws. It also has the power to elect and dismiss the President. The National Council has the power to elect and dismiss the Prime Minister. The National Council has the power to elect and dismiss the Ministers. The National Council has the power to elect and dismiss the Judges. The National Council has the power to elect and dismiss the Members of Parliament. The National Council has the power to elect and dismiss the Members of Parliament.

Know Your Government
Factsheet Series
No. 5 of 8

Judicial Branch: THE COURTS

Supreme Court
The Supreme Court is the highest court in Namibia. It has 5 members. 1 member is elected by the people. 4 members are elected by the regional councils. The Supreme Court has the power to pass laws. It also has the power to elect and dismiss the President. The Supreme Court has the power to elect and dismiss the Prime Minister. The Supreme Court has the power to elect and dismiss the Ministers. The Supreme Court has the power to elect and dismiss the Judges. The Supreme Court has the power to elect and dismiss the Members of Parliament. The Supreme Court has the power to elect and dismiss the Members of Parliament.

High Court
The High Court is the second highest court in Namibia. It has 10 members. 5 members are elected by the people. 5 members are elected by the regional councils. The High Court has the power to pass laws. It also has the power to elect and dismiss the President. The High Court has the power to elect and dismiss the Prime Minister. The High Court has the power to elect and dismiss the Ministers. The High Court has the power to elect and dismiss the Judges. The High Court has the power to elect and dismiss the Members of Parliament. The High Court has the power to elect and dismiss the Members of Parliament.

Magistrates' Courts
The Magistrates' Courts are the lowest courts in Namibia. They have 100 members. 50 members are elected by the people. 50 members are elected by the regional councils. The Magistrates' Courts have the power to pass laws. It also has the power to elect and dismiss the President. The Magistrates' Courts have the power to elect and dismiss the Prime Minister. The Magistrates' Courts have the power to elect and dismiss the Ministers. The Magistrates' Courts have the power to elect and dismiss the Judges. The Magistrates' Courts have the power to elect and dismiss the Members of Parliament. The Magistrates' Courts have the power to elect and dismiss the Members of Parliament.

Community Courts
The Community Courts are the lowest courts in Namibia. They have 100 members. 50 members are elected by the people. 50 members are elected by the regional councils. The Community Courts have the power to pass laws. It also has the power to elect and dismiss the President. The Community Courts have the power to elect and dismiss the Prime Minister. The Community Courts have the power to elect and dismiss the Ministers. The Community Courts have the power to elect and dismiss the Judges. The Community Courts have the power to elect and dismiss the Members of Parliament. The Community Courts have the power to elect and dismiss the Members of Parliament.

Know Your Government
Factsheet Series
No. 6 of 8

Regional and Local Government

Regional Government
The Regional Government is the second level of government. It has 14 members. 7 members are elected by the people. 7 members are elected by the regional councils. The Regional Government has the power to pass laws. It also has the power to elect and dismiss the President. The Regional Government has the power to elect and dismiss the Prime Minister. The Regional Government has the power to elect and dismiss the Ministers. The Regional Government has the power to elect and dismiss the Judges. The Regional Government has the power to elect and dismiss the Members of Parliament. The Regional Government has the power to elect and dismiss the Members of Parliament.

Local Government
The Local Government is the third level of government. It has 14 members. 7 members are elected by the people. 7 members are elected by the regional councils. The Local Government has the power to pass laws. It also has the power to elect and dismiss the President. The Local Government has the power to elect and dismiss the Prime Minister. The Local Government has the power to elect and dismiss the Ministers. The Local Government has the power to elect and dismiss the Judges. The Local Government has the power to elect and dismiss the Members of Parliament. The Local Government has the power to elect and dismiss the Members of Parliament.

THE REGIONAL GOVERNMENT
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THE LOCAL GOVERNMENT
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Government Elections: National, Regional, Local

Elections
Elections are the process by which members of a community or country choose representatives to hold positions in various levels of government.

National Elections
National elections are held every five years. They are held to elect the President and the Members of Parliament. The President is elected by the people. The Members of Parliament are elected by the people and the regional councils. The President is elected by the people. The Members of Parliament are elected by the people and the regional councils.

Regional Elections
Regional elections are held every five years. They are held to elect the Members of the Regional Council. The Members of the Regional Council are elected by the people. The Members of the Regional Council are elected by the people.

Local Elections
Local elections are held every five years. They are held to elect the Members of the Local Council. The Members of the Local Council are elected by the people. The Members of the Local Council are elected by the people.

THE ELECTION PROCESS
The election process is the process by which members of a community or country choose representatives to hold positions in various levels of government. The election process is the process by which members of a community or country choose representatives to hold positions in various levels of government.

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Government Watchdogs

Ombudsman
The Ombudsman is an independent body that investigates complaints about government officials. The Ombudsman has the power to investigate and recommend the removal of government officials. The Ombudsman has the power to investigate and recommend the removal of government officials.

Anti-Corruption Commission
The Anti-Corruption Commission is an independent body that investigates complaints about government officials. The Anti-Corruption Commission has the power to investigate and recommend the removal of government officials. The Anti-Corruption Commission has the power to investigate and recommend the removal of government officials.

THE OMBUDSMAN
The Ombudsman is an independent body that investigates complaints about government officials. The Ombudsman has the power to investigate and recommend the removal of government officials. The Ombudsman has the power to investigate and recommend the removal of government officials.

THE ANTI-CORRUPTION COMMISSION
The Anti-Corruption Commission is an independent body that investigates complaints about government officials. The Anti-Corruption Commission has the power to investigate and recommend the removal of government officials. The Anti-Corruption Commission has the power to investigate and recommend the removal of government officials.