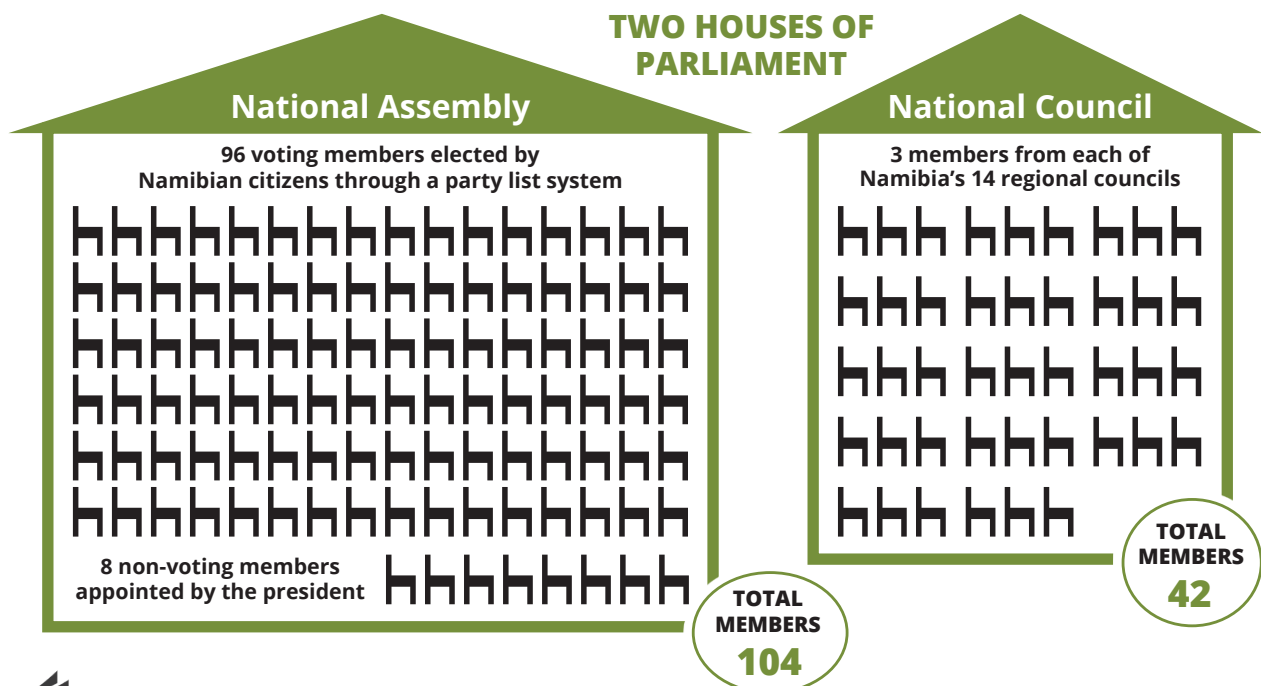




LEGISLATIVE BRANCH

Constitutional Framework

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



Oath by Members of the National Assembly and the National Council

Namibian Constitution, Articles 55 and 71

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

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

¹ *Namibian Constitution*, Articles 60(1) and 74(4).



National Assembly

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

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

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

Term of office

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

Qualifications

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

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

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

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

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

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

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

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

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

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

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



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

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

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



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

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

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

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

Vacancies

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

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

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

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

Functions

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

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

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

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

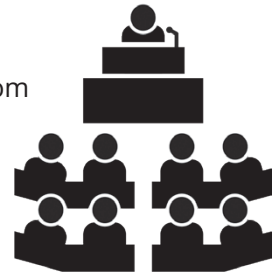
¹¹ [Namibian Constitution](#), Article 48(2).

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

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

Speaker and Deputy-Speaker of National Assembly

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



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

Secretary and staff of National Assembly

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



Parliamentary Service Commission

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

Namibian Constitution, Article 52(4)

Procedure

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

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

Sessions and sittings

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

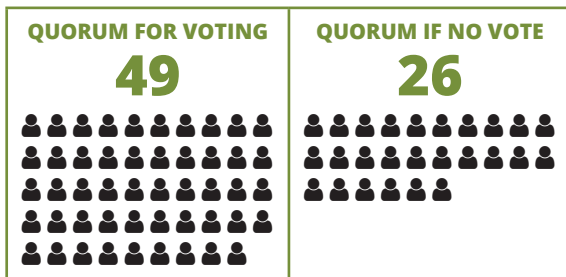
Namibian Constitution, Article 62

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

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

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

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



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

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

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

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

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

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

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

Namibian Constitution, Article 67 compared to Article 77

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

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

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

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

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

Committees

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

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



National Assembly Standing Committees, 2022

STANDING COMMITTEES (Portfolio Committees)

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

ADMINISTRATIVE COMMITTEES (“In-house” Committees)

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

Disclosure of financial interests

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



Disclosure of personal financial interests by Members of the National Assembly

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

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

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

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

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

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

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

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

Dissolution

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

Code of Conduct for Members of the National Assembly, 2022

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

PREAMBLE

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

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

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

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

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

²⁸ *Namibian Constitution*, Article 57.

PERSONAL CONDUCT (Rule 3.1)

"A Member must:

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

Complaints procedure

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



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

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

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

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

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

National Council

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

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

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

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

Term of office

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

Qualifications

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

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

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

Vacancies

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

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

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

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

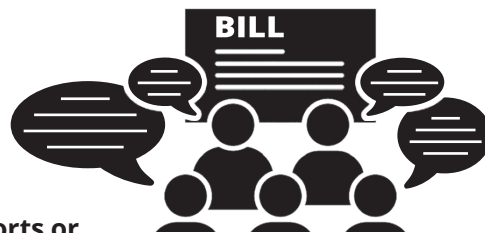
³³ [Namibian Constitution](#), Articles 47(1)(f), 69(1) and 72.

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

Functions

The National Council has the following powers and duties:

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



Chairperson and Vice-Chairperson

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

Secretary and staff of National Council

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

Procedure

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

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

Parliamentary Service Commission

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

Namibian Constitution, Article 52(4)

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

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

³⁶ *Namibian Constitution*, Article 73.

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

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

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

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

Namibian Constitution, Article 77.

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

Committees

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

National Council Standing Committees, 2022

STANDING COMMITTEES (Portfolio Committees)

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

ADMINISTRATIVE COMMITTEES (“In-house” Committees)

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

³⁸ *Namibian Constitution*, Article 76.

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

⁴⁰ *Namibian Constitution*, Article 77.

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

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

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

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

Disclosure of financial interests

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

Dissolution

There is no provision for dissolution of the National Council.

Code of Conduct for Members of the National Council, 2022

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

“A Member must:

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

Complaints procedure

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



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

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

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

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

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

The Law-Making Process

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

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

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



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



Cabinet & Cabinet Committee on Legislation (CCL)

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

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

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

In 2022, the following Government officials were also members:

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

CCL and Cabinet meetings are confidential.

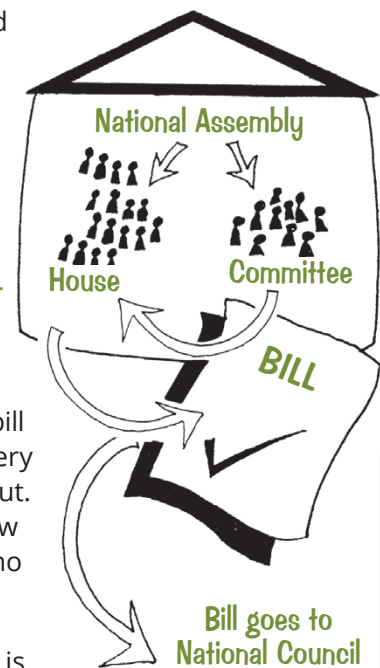
A bill may go back and forth between the relevant Minister, the CCL and Cabinet until all of these decision-makers are satisfied that the bill is ready to go forward.

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

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

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

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



PROCEDURE IN THE NATIONAL ASSEMBLY

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

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

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

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

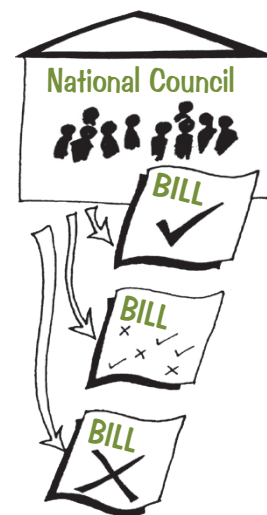
Third reading – deciding on the bill: At the final stage, the title of the bill is read out for the third time and it is passed (or rejected). No more amendments to the bill can be made at this stage. Bills are usually passed by consensus, without taking a vote.⁵²

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

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

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

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

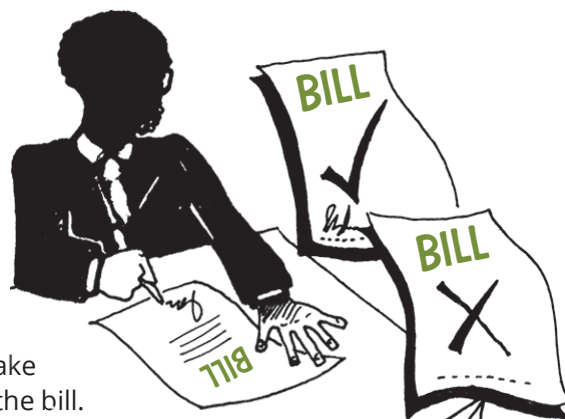


If the National Council objects to the principle of the bill, its report to the Speaker of the National Assembly will indicate whether the objection was supported by a majority of two-thirds of all the members of the National Council. The report of the National Council may include proposals for amendments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

Namibian Constitution, Article 75(5).

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

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



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

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

⁵⁵ *Namibian Constitution*, Article 56.



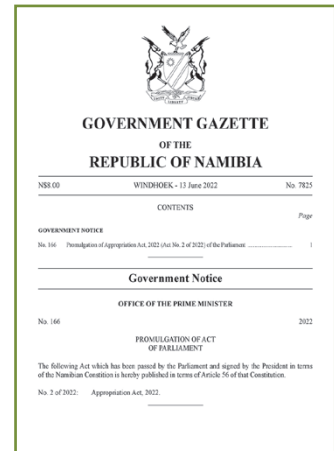
- (1) If the courts decide that the bill is in conflict with the Constitution, then the bill cannot become a law.
- (2) If the courts decide that the bill is not in conflict with the Constitution, then the bill can go forward in the same way as other bills.⁵⁶

Publication of laws

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

Authentic copies of laws

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



The role of the Judicial Branch in respect of legislation

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



Supreme Court



High Court



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

Constitutional amendments

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

⁵⁶ *Namibian Constitution*, Article 64.

⁵⁷ *Namibian Constitution*, Article 65.

⁵⁸ *Namibian Constitution*, Article 65.

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



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

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

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

Petitions to Parliament

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



How to find out what a law says

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

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

⁶⁰ *Namibian Constitution*, Articles 131 and 132.



Statutes relating to Parliament

Powers, Privileges and Immunities of Parliament Act 17 of 1996

What does the law do?

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



What is the purpose of the law?

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



NAMIBIAN CONSTITUTION

Article 60(3)

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

Article 74(5)

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

When did the law come into force?

13 August 1996.

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

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

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

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



Protection for freedom of speech in Parliament

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

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

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

The rationale for immunity for Parliamentary speech

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

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

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

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

Insulation from certain court processes

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

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

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

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

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

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

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

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

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

Conflicts of interest

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

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

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

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

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

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

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

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

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

Standing Rules and Orders

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

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

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

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

Committee of Privileges

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

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

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



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

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

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



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

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

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

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

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

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

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

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

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

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

Crimes

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

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

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

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



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

Criticism

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

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

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

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

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

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

Annual salary and benefits of Parliamentarians, 2022

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

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

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

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

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

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

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

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



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

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

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