



**LEGAL ASSISTANCE CENTRE**  
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**INFORMATION ABOUT NAMIBIA'S LAW**

**RULE OF LAW SERIES**

**Rule of Law Article #4**  
**PRESIDENTIAL IMMUNITY:**  
**IS THE PRESIDENT OF NAMIBIA ABOVE THE LAW?**

Could a Namibian President stand in the middle of the street and shoot someone without consequence?

The simple answer appears to be yes... at least according to Namibia's current constitutional provisions on Presidential immunity.

There are two situations to consider: the liability of a president who is still in office (a "sitting President") and the liability of a former President, after the end of the term of office, for actions during the presidency. There are also two kinds of acts to consider: official acts which are part of the exercise of the duties of a President, and personal acts which are outside the boundaries of a President's official duties.

Finally, there are two kinds of liability: civil liability, which means being held accountable for the harms caused by a wrongful act (usually by paying damages for the loss or injury suffered), and criminal liability, which means being put on trial by the State for a crime, and subjected on conviction to appropriate penalties (such as payment of a fine or imprisonment).

In Namibia, a sitting President can be sued in *civil* proceedings for acts which are part of his or her official duties – and this happens from time to time in practice. For example, the President has been named in civil lawsuits in respect of the appointment of certain persons to official positions and the setting of election dates by proclamation. However, in such cases it is actually the State that is being sued (represented by the President as the Head of State) and not the President as an individual.

A sitting president may *not* be held civilly liable for any action which falls outside his or her official duties, and enjoys absolute immunity from criminal prosecution whilst in office.

After leaving office, a former President is immune from civil lawsuits for official actions, and almost entirely immune from civil and criminal liability for anything done in his or her personal capacity while in office.

The only instance where proceedings may be brought against a former President for actions in a personal capacity is where Parliament has voted by a two-thirds majority to remove the President from office for serious misconduct (often referred to as "impeachment") *and* passed a resolution determining that a court case against the President would be in the public interest. This is a high bar, meaning that a Namibian President can essentially act with total impunity.

Furthermore, even though there is this theoretical avenue to holding a President accountable, at least in extreme circumstances, there is a big loophole: a President who wanted to escape any and all legal liability could simply resign to avoid impeachment.

As the law currently stands, Namibian Presidents *who have left office without being impeached* enjoy lifelong immunity for *anything* they did whilst in office and can *never* be held accountable. This would apply, for example, to a President who assaults his or her spouse or engages in corrupt activities for personal profit.

Such far-reaching Presidential immunity clearly flies in the face of the rule of law, which is the principle that everyone must obey the law – even people in positions of power. The degree of Presidential immunity provided by the Namibian Constitution places the President above the law, and is out of step with the spirit of the Constitution as a whole.

Immunity for sitting Presidents is often justified as being necessary to allow them to exercise official discretion without distraction, particularly in light of their enormous responsibilities. Some also assert that immunity is necessary to protect the dignity of the Office of the President.

However, even if one were to accept some of these arguments, it would be difficult to justify such extensive immunity for Presidents *after they are no longer in office* – especially if they have committed very serious crimes which were not part of their official duties.

Namibia's broad Presidential immunity is out of line with the immunities which apply to other state and judicial officials. These other immunities are narrowly drawn and specifically aimed at protecting public officials who exercise statutory and constitutional duties in good faith – immunity for other officials does not extend to bad faith or fraudulent actions. Shouldn't the President be held to the same standard?

The immunity that Namibian Presidents enjoy is also excessive compared to that of Presidents in most other African nations. In fact, if one discounts the immunity accorded to the King of Eswatini (Swaziland), who is not entirely analogous to a President, Namibia has the most far-reaching Presidential immunity out of 18 other African countries examined by the Legal Assistance Centre – including many countries with less well-entrenched democratic traditions.

Of all the other countries surveyed, Namibia stands alone as the sole nation with no practical way of holding a sitting or former President accountable for wrongful conduct. In contrast, at least 14 African countries provide *no immunity whatsoever* to former Presidents for *unofficial* actions.

Indeed, several African leaders – including the former Presidents of Equatorial Guinea, Ethiopia, Mali and Zambia – have been criminally prosecuted by the courts of their own countries *after* the expiry of their terms of office for acts committed during their tenure, demonstrating both in theory and in practice that all persons are equal before the law.

Interestingly, South Africa's Constitution is completely silent on Presidential immunity and thus provides no protection from legal liability for sitting or former Presidents. In fact, Former President Jacob Zuma spent much of his term of office embroiled in court proceedings relating to corruption charges and misuse of state funds.

South Africa's decision not to provide immunity has been praised as a positive example of how States can demonstrate that they are serious about accountability. So, it is all the more perplexing why Namibia chose to provide such extensive immunity provisions in the Namibian Constitution, especially given its legal and historical connections with South Africa.

Although constitutional amendments should be infrequent, the Legal Assistance Centre recommends that the Namibian Constitution be amended to extend the rule of law to the President the next time constitutional amendments are on the table.

We propose that *sitting* Presidents should be immune from both criminal proceedings and civil lawsuits for official acts carried out in good faith – while allowing them to continue to be civilly sued in their official capacity as Head of State, as happens now.

However, we propose that *former* Presidents should have no immunity whatsoever from criminal prosecution for any crime committed whilst in office, and no civil immunity for unofficial acts or for official acts carried out in bad faith.

This approach would allow a sitting President to give full attention to the duties of the office, without distraction or disruption, as well as showing due deference to dignity of the office. But it would also remove a situation where, short of impeachment, “the President can do no wrong”.

The next time Namibia considers constitutional amendments, it will have an opportunity to show its citizens and the world that it is serious about accountability, by removing the current Presidential impunity and strengthening its commitment to the rule of law.

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