

# DRAFT CONSTITUTION OF THE REPUBLIC OF NAMIBIA

## PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace; and

Whereas the said rights include the right of the individual to life, liberty and to the pursuit of happiness, regardless of race, colour, ethnic origin, sex or religion, creed or social or economic status; and

Whereas the said rights are most effectively maintained and protected in a democratic society, where the government is responsible to freely elected representatives of the people, operating under a sovereign constitution and a free and independent judiciary; and

Whereas these rights have for so long been denied to the people of Namibia by apartheid, racism and colonialism; and

Whereas we the people of Namibia

have finally emerged victorious in our struggle against apartheid, racism and colonialism;

are determined to adopt a Constitution which expresses for ourselves and our children our resolve to cherish and to protect the gains of our long struggle;

desire to promote amongst all of us the dignity of the individual and the unity and integrity of the Namibian nation among and in association with the nations of the world;

will strive to achieve national reconciliation and to foster peace, unity and a common loyalty to a single state; and

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committed to these principles have resolved to constitute the Republic of Namibia as a sovereign, secular, democratic and unitary State securing to all our citizens justice, liberty, equality and fraternity.

NOW THEREFORE, we the people of Namibia accept and adopt this Constitution as the fundamental law of our Sovereign and Independent Republic.

**CHAPTER 1**

**THE REPUBLIC**

**Article 1. Establishment of the Republic of Namibia and the Identification of its Territory**

- (1) The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all.
- (2) All power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State.
- (3) The main organs of the State shall be the Executive, the Legislature and the Judiciary.
- (4) The national territory of Namibia shall consist of the whole of the territory recognised by the international community through the organs of the United Nations as Namibia, including the harbour and port of Walvis Bay, as well as the islands off the mainland of Namibia, and its southern boundary shall extend to the middle of the Orange River.
- (5) Windhoek shall be the seat of central government.
- (6) This Constitution shall be the supreme law of Namibia.

**Article 2. National Symbols**

- (1) Namibia shall have a National Coat of Arms, a National Flag, a National Anthem and a National Seal to be determined by Act of Parliament, which shall require a two-thirds majority of all the members of the National Assembly for adoption and amendment.
- (2) (a) The National Seal of the Republic of Namibia shall show a Coat of Arms circumscribed with the word 'NAMIBIA' and the motto

of the country which shall be determined by Act of Parliament as aforesaid.

- (b) The National Seal shall be in the custody of the President or such person whom the President may designate for such purpose and shall be used on such official documents as the President may determine.

### **Article 3. Language**

- (1) The official language of Namibia shall be English.
- (2) Nothing contained in this Constitution shall prohibit the use of any other language as a medium of instruction in both private schools as well as schools financed or subsidised by the State, subject to compliance with such requirements as might be imposed by law, to ensure proficiency in the official language, or for pedagogic reasons.
- (3) Nothing contained in sub-paragraph (1) hereof shall preclude legislation by Parliament which permits the use of a language other than English for legislative, administrative and judicial purposes in regions or areas where such other language or languages are spoken by a substantial component of the population in those regions or areas.

## **CHAPTER 2**

### **CITIZENSHIP**

#### **Article 4. Acquisition and Loss of Citizenship**

- (1) The following persons shall be citizens of Namibia by birth:
  - (a) those born in Namibia before the date of independence whose fathers or mothers would have been Namibian citizens at the time of the birth of such persons, if this Constitution had been in force at that time; and

(b) those born in Namibia before the date of independence, who are not Namibian citizens under sub-article (a) hereof, and whose fathers or mothers were ordinarily resident in Namibia at the time of the birth of such persons: provided that their fathers or mothers were not then persons

(aa) enjoying diplomatic immunity in Namibia under any law relating to diplomatic privileges; or,

(bb) who were career representatives of another country; or

(cc) who were members of any police, military or security unit seconded for service within Namibia by the government of another country:

provided further that the provisions of sub-article (cc) hereof shall not apply to persons who were born in Namibia, were ordinarily resident in Namibia at the time of their birth, and had been so resident for a continuous period of not less than five (5) years prior to the date of independence;

(c) those born in Namibia after the date of independence whose fathers or mothers are Namibian citizens at the time of the birth of such persons;

(d) those born in Namibia after the date of independence who do not qualify for citizenship under sub-article (c) hereof, and whose fathers or mothers are ordinarily resident in Namibia at the time of the birth of such persons : provided that their fathers or mothers are not then persons

(aa) enjoying diplomatic immunity in Namibia under any law relating to diplomatic privileges; or

(bb) career representatives of another country; or

(cc) who were members of any police, military or security unit seconded for service within Namibia by the government of another country; or

(dd) who were illegal immigrants:

provided further that sub-paragraphs (aa), (bb), (cc) and (dd) hereof will not apply to children who would otherwise be stateless.

(2) The following persons shall be citizens of Namibia by descent:

(aa) those who are not Namibian citizens under sub-article (1) hereof and whose fathers or mothers at the time of the birth of such persons are citizens of Namibia or whose fathers or mothers would have qualified for Namibian citizenship by birth under sub-article (1) hereof, if this Constitution had been in force at that time; and

(bb) who comply with such requirements as to registration of citizenship as may be required by Act of Parliament: provided that nothing in this Constitution shall preclude Parliament from enacting legislation which requires the birth of such persons born after the date of independence to be registered within a specific time either in Namibia or at an embassy, consulate or office of a trade representative of the government of Namibia.

(3) The following persons shall be citizens of Namibia by marriage:

(a) those who are not Namibian citizens under sub-article (1) or (2) hereof and who

(aa) in good faith marry a Namibian citizen, or who prior to the coming into force of this Act, in good faith married a person who would have qualified for Namibian citizenship if this Act had been in force, and

(bb) subsequent to such marriage have ordinarily resided in Namibia as the spouse of such person for a period of not less than two (2) years, and

(cc) apply to become citizens of Namibia.

(b) For the purposes of this Sub-Article (and without derogating from any effect that it may have for any other purposes) a marriage by customary law shall be deemed to be a marriage: provided that nothing in this Constitution shall preclude Parliament from enacting legislation which defines the requirements which need to be satisfied for a marriage by customary law to be recognised as such for the purposes of this sub-article.

(4) Citizenship by registration may be claimed by persons who are not Namibian citizens under sub-articles (1), (2) or (3) hereof and who were ordinarily resident in Namibia at the date of independence, and had been so resident for a continuous period of not less than five (5) years prior to such date, provided that application for Namibian citizenship under this sub-article is made within a period of twelve (12) months from the date of independence, and prior to making such application, such persons renounce the citizenship of any other country of which they are citizens.

(5) Citizenship by naturalisation may be claimed by persons who are not Namibian citizens under sub-articles (1), (2), (3) or (4) hereof and who

(aa) are ordinarily resident in Namibia at the time when the application for naturalisation is made; and

(bb) have been so resident in Namibia for a continuous period of not less than five (5) years (whether before or after the coming into force of this Constitution); and

(cc) satisfy any other criteria pertaining to health, morality, security or legality of residence as may be prescribed by law.

(6) Nothing contained herein shall preclude Parliament from authorizing by law the conferment of Namibian citizenship upon any fit and proper

person by virtue of any special skill or experience or commitment to or services rendered to the Namibian nation either before or at any time after independence.

- (7) Namibian citizenship shall be lost by persons who renounce their citizenship of Namibia by voluntarily signing a formal declaration to that effect.
- (8) Nothing in this Constitution shall preclude Parliament from enacting legislation providing for the loss of Namibian citizenship by persons who, after the commencement of this Constitution
  - (a) have acquired the citizenship of any other country by any voluntary act; or
  - (b) have served or volunteered to serve in the armed or security forces of another country without the written permission of the Namibian Government; or
  - (c) have taken up permanent residence in another country and absented themselves thereafter from Namibia for a period in excess of two (2) years without the written permission of the Namibian Government:

provided that no person who is a citizen of Namibia by birth may be deprived of Namibian citizenship by such legislation.

- (9) Parliament shall be entitled to make further laws not inconsistent with this Constitution regulating the acquisition or loss of Namibian citizenship.



## CHAPTER 3

### FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

#### Article 5. Protection of Fundamental Rights and Freedoms

The fundamental rights and freedoms enshrined in this chapter shall be respected and upheld by the legislature, executive and judiciary and all organs of the Government and its agencies and where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed.

#### Article 6. Protection of Life

The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

#### Article 7. Protection of Liberty

No persons shall be deprived of personal liberty except according to procedures established by law.

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#### Article 8. Respect for Human Dignity

- (1) The dignity of all persons shall be inviolable.
- (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed;
- (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 9. Forced Labour and Slavery**

- (1) No persons shall be held in slavery or servitude.
- (2) No persons shall be required to perform forced labour.
- (3) For the purposes of this article, the expression "forced labour" does not include:
  - (a) any labour required in consequence of the sentence or order of a Court;
  - (b) labour required of any persons while lawfully detained which, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene;
  - (c) any labour required of members of the defence force, the police force and the prisons service in pursuance of their duties as such or, in the case of persons who have conscientious objections to serving as members of the defence force, any labour which they are required by law to perform in place of such service;
  - (d) any labour required during any period of public emergency or in the event of any other emergency or calamity which threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation;
  - (e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

**Article 10. Equality and Freedom from Discrimination**

- (1) All persons shall be equal before the law.

- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed, or social or economic status.

**Article 11. Arrest and Detention**

- (1) No persons shall be subject to arbitrary arrest or detention.
- (2) No persons who are arrested shall be detained in custody without being informed promptly in a language they understand of the grounds for such arrest.
- (3) All persons who are arrested and detained in custody shall be brought before the nearest magistrate or other officer authorised to exercise judicial power within a period of forty-eight (48) hours of their arrest, or if this is not reasonably possible, as soon as possible thereafter, and no such persons shall be detained in custody beyond such period without the authority of a magistrate.
- (4) Nothing contained in Sub-Article (3) hereof shall apply to:
  - (a) any persons who are arrested or detained under any law providing for preventive detention: provided that no law shall provide for preventive detention unless such detention is reasonably necessary to provide against what is reasonably apprehended to constitute a clear and present danger to the security of the State.
  - (b) illegal immigrants held in custody under any law dealing with illegal immigration: provided that such persons shall not be deported from Namibia unless deportation is authorised by a Tribunal empowered by law to give such authority.
- (5) No law providing for preventive detention shall authorise the detention of any persons for periods in excess of thirty (30) days unless an Advisory Board consisting of not more than five (5) persons (of whom not less than three (3) persons are Judges of the High Court or the Supreme Court or qualified to be so appointed) has authorised extended periods of detention on the grounds that such extended periods (which shall not exceed three (3) months from the date of the authority given by the Board

from time to time) are reasonably necessary to provide protection against what is reasonably apprehended to constitute a clear and present danger to the security of the State: provided that no persons shall be held in preventive detention for a continuous period of more than twelve (12) months unless such extended detention is specifically authorised by resolutions made under article 26 (3).

- (6) Any law providing for preventive detention such as that contemplated by Sub-Articles (4) and (5) hereof shall make adequate provision for the appointment of members of the Advisory Board by the President on the advice of the Judicial Service Commission, for giving to the affected detainee such opportunity for making of representations as might be considered by Parliament to be desirable or expedient and for all matters related or incidental thereto.
- (7) No persons who have been arrested and held in custody or held in preventive detention or as illegal immigrants shall be denied the right to consult confidentially, legal practitioners of their choice and there shall be no interference with this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, or for public safety.

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**Article 12. Fair Trial**

- (1) (a) In the determination of their civil rights and obligations or any criminal charges against them, all persons are entitled to a fair and public hearing by an independent, impartial and competent Court or tribunal established by law, provided that such Court or tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security as would be appropriate in a democratic society.
- (b) A trial referred to in sub-article (a) shall take place within a reasonable time, failing which the accused shall be released.
- (c) Judgments in criminal cases shall be given in public, except where the interests of State security, juvenile persons, or morals, otherwise require.

- (d) All persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them.
  - (e) All persons shall be afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice.
  - (f) No persons shall be compelled to give testimony against themselves or their spouses, who shall include partners in a customary union, and no Court shall admit in evidence against such persons, testimony which has been obtained from such persons in violation of Article 8(2)(b).
- (2) No persons shall be liable to be tried, convicted or punished again for any criminal offence for which they have already been convicted or acquitted according to law: provided that nothing in this sub-article shall be construed as changing the provisions of the common law defences of 'previous acquittal' and 'previous conviction'.
- (3) No persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

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**Article 13. Privacy**

- (1) No persons shall be subject to interference with the privacy of their homes, correspondence or communication save as in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.
- (2) Searches of the person or the homes of individuals shall only be justified:

- (a) where these are authorised by a competent judicial officer;
- (b) in cases where delay in obtaining such judicial authority carries with it the danger of prejudicing the objects of the search or the public interest, and such procedures as are prescribed by Act of Parliament to preclude abuse, are properly satisfied.

**Article 14. Family**

- (1) Men and women of full age, without any limitation, due to race, colour, ethnic origin, nationality, religion, creed, or social or economic standing have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 15. Children's Rights**

- (1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.
- (2) Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development. For the purposes of this sub-article children shall be persons under the age of sixteen (16) years.
- (3) No children under the age of fourteen (14) years shall be employed to work in any factory or mine, save under conditions and circumstances regulated by Act of Parliament; nothing in this sub-article shall be construed as derogating in any way from sub-article (2) hereof.

- (4) Any arrangement or scheme employed on any farm or other undertaking the object or effect of which is to compel the minor children of an employee to work for or in the interest of the employer of such employee, shall for the purposes of Article 9 of this Constitution be deemed to constitute an arrangement or scheme to compel the performance of forced labour.
- (5) No law authorising preventive detention shall permit children under the age of sixteen (16) years to be detained.

**Article 16. Property**

- (1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided however that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire such property by persons who are not Namibian citizens.
- (2) The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.

**Article 17. Political Activity**

- (1) All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form or join political parties and, subject to such qualifications prescribed by law as would be acceptable in a democratic society, to participate in the conduct of public affairs, whether directly or through freely chosen representatives.
- (2) Every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty-one (21) years to be elected to public office.
- (3) The right guaranteed by Sub-Article (2) may only be abrogated, suspended or be impinged upon by Parliament in respect of specified

categories of persons on such grounds of infirmity or on such grounds of public interest or morality as would be acceptable in a democratic society.

**Article 18. Administrative Justice**

Administrative bodies and administrative officials, shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant statutory laws and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent court or tribunal.

**Article 19. Culture**

Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this article do not impinge upon the rights of others or the national interest.

**Article 20. Education**

- (1) All persons shall have the right to education.
- (2) Primary education shall be compulsory and the State shall provide all the reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge to those in need.
- (3) Children shall not be allowed to leave school until they have completed their primary education, or have attained the age of sixteen (16) years, whichever is the sooner, save in so far as they may be authorised by Act of Parliament, on grounds of health or other considerations pertaining to public interest.
- (4) All persons shall have the right, at their own expense, to establish and to maintain private schools, colleges or other institutions of tertiary education, provided that:



- (a) such schools, colleges or institutions are registered with a government department in accordance with the law authorising and regulating such registration;
- (b) the standards maintained by such schools, colleges or institutions are not inferior to the standards maintained in comparable schools, colleges or institutions funded by the State;
- (c) no restrictions of whatever nature are imposed with respect to the admission of pupils based on race, colour or creed;
- (d) no restrictions of whatever nature are imposed with respect to the recruitment of staff based on race or colour.

**Article 21. Fundamental Freedoms**

- (1) All persons shall have the right to:
  - (a) freedom of speech and expression, which shall include the freedom of the press and other media;
  - (b) freedom of thought, conscience and belief;
  - (c) freedom to practise any religion and to manifest such practice;
  - (d) assemble peaceably and without arms;
  - (e) freedom of association including the freedom to form and join associations or unions, including trade unions and political parties;
  - (f) withhold their labour without being exposed to criminal penalties;
  - (g) move freely throughout the territory of the Republic of Namibia;
  - (h) reside and settle in any part of Namibia;

- (i) leave and return to Namibia;
  - (j) practise any profession, or to carry on any occupation, trade or business.
- (2) The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article which are acceptable in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, the security of the State, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.

**Article 22.      Limitation upon Fundamental Rights and Freedoms**

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Part is authorised, any law providing for such limitation shall:

- (a) be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;
- (b) specify the ascertainable extent of such limitation and identify the Article or Articles of the Constitution on which authority to enact such limitation is claimed to rest.

**Article 23.      Apartheid and Affirmative Action**

- (1) The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people to such practices.
- (2) Nothing contained in Article 10 shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons

within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or in the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or to achieve the balanced structuring of the public service, the police force, the defence force, and the prison service.

- (3) In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2), it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

#### Article 24. Derogation

- (1) Nothing contained in or done under the authority of Article 26 shall be held to be inconsistent with or in contravention of this Constitution to the extent that it authorises the taking of measures during any period when Namibia is at war or any period when a declaration of emergency under the Constitution is in force.
- (2) Where any persons are detained by virtue of such authorisation as is referred to in Sub-Article (1) hereof, the following provisions shall apply:
  - (a) they shall, as soon as reasonably practicable and in any case not more than five (5) days after the commencement of their detention, be furnished with a statement in writing in a language that they understand specifying in detail the grounds upon which they are detained, and at their request, this statement shall be read to them;
  - (b) not more than fourteen (14) days after the commencement of their detention, a notification shall be published in the Gazette stating that they have been detained and giving particulars of the provision of law under which their detention is authorised;

- (c) not more than one (1) month after the commencement of their detention and thereafter during their detention at intervals of not more than three (3) months, their cases shall be reviewed by the Advisory Board referred to in Article 26(5)(c) which shall order their release from detention if it is satisfied that it is not reasonably necessary for the purposes of the emergency to continue the detention of such persons.
  - (d) they shall be afforded such opportunity for the making of representations as might be desirable or expedient in the circumstances, having regard to the public interest and the interests of the detained person.
- (3) Nothing contained in this Article shall permit a derogation from or suspension of the fundamental rights or freedoms referred to in Articles 5, 6, 8, 9, 10, 12, 14, 15, 18, 19 and 21 (1)(b), (c) and (e), nor the denial of access by any persons to legal representatives or a court of law.

**Article 25. Enforcement of Fundamental Rights and Freedoms**

- (1) Save in so far as it may be authorised to do so by this Constitution, Parliament, or any other subordinate legislative authority, shall not make any laws, and the executive and the agencies of government shall not take any action which abolishes or abridges the fundamental rights and freedoms, conferred by this Chapter, and any law or action in contravention thereof shall to the extent of the contravention be invalid, provided however that:

- (a) a competent Court instead of declaring such law or action to be invalid shall have the power and the discretion in an appropriate case to allow Parliament, the subordinate legislative authority, or the executive and the agencies of government, as the case may be, to correct any defect in the impugned law or action within a specified period subject to such conditions as might be specified by it. In such event and until such correction or until the expiry of the time limit set out by the Court whichever be the shorter, such impugned law or action shall be deemed to be valid.

- (b) any law which was in force immediately before Independence shall remain in force until amended, repealed or declared unconstitutional. If a competent Court is of the opinion that such law is unconstitutional, it may either set aside the law, or allow Parliament to correct any defect in such law, in which event the provisions of Sub-Article (a) shall be applicable.
- (2) Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened, shall be entitled to approach a Court of competent jurisdiction to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require and the Ombudsman shall have the discretion in response thereto, to provide such legal or other assistance as he or she may consider expedient.
- (3) Subject to the provisions of this Constitution the Court referred to in Sub-Article (2) shall have the power to make all such orders as shall be necessary and appropriate to secure such applicants the enjoyment of the rights and freedoms conferred on them under the provision of this Constitution, should the Court come to the conclusion that such rights or freedoms have unlawfully been denied or violated, or that grounds exist for the protection of such rights or freedoms by interdict.
- (4) The power of the Court shall include also the power to award monetary compensation in respect of any damage suffered by the aggrieved persons in consequence of such unlawful denial or violation of their fundamental rights and freedoms, where it considers such an award to be appropriate in the circumstances of particular cases.

## CHAPTER 4

## PUBLIC EMERGENCY, WAR AND MARTIAL LAW

## Article 26. States of Emergency, War and Martial Law

- (1) In a time of war, national disaster or public emergency threatening the life of the nation or the constitutional order the President may by Proclamation published in the Gazette, declare that a State of Emergency exists in Namibia or any part thereof.
- (2) A declaration under Sub-Article (1) hereof, if not sooner revoked, shall cease to have effect:
  - (a) in the case of a declaration made when the National Assembly is sitting or has been summoned to meet, at the expiration of a period of seven (7) days of publication of the declaration; or
  - (b) in any other case, at the expiration of a period of thirty (30) days beginning with the date of publication of the declaration,unless before the expiration of that period, it is approved by a resolution passed by the National Assembly by a two-thirds majority of all its members.
- (3) Subject to the provisions of Sub-Article (4) hereof, a declaration approved by a resolution of the National Assembly under Sub-Article (2) hereof shall continue to be in force until the expiration of a period of six (6) months beginning with the date of its being so approved or until such earlier date as ~~may be specified in the resolution;~~ provided that the National Assembly may, by resolution by a two-thirds majority of all its members, extend its approval of the declaration for periods of not more than six (6) months at a time.
- (4) The National Assembly may by resolution at any time revoke a declaration approved by it in terms of this Article.

- (5) (a) During the currency of a State of Emergency in terms of this Article the President shall have the power by Proclamation to make such regulations as in his or her opinion are necessary for the protection of the security of the State, public safety and the maintenance of law and order.
- (b) The powers of the President to make such regulations shall include the power to suspend the operation of any rule of the common law or statute or any fundamental right or freedom protected by this Constitution, for such period and subject to such conditions as are reasonably justifiable for the purpose of dealing with the situation which has given rise to the emergency, provided that nothing in this Sub-Article shall enable the President to act contrary to the provisions of Article 24 of this Constitution.
- (c) Where any regulation made under Sub-Article (b) hereof provides for detention without trial, provision shall also be made for the appointment of an Advisory Board to exercise the function set out in Article 24(2)(c) hereof. Such Board shall be constituted in the manner as provided in Article 11(5) and (6) hereof.

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(6) Any regulations made by the President pursuant to the provisions of Sub-Article (5) hereof shall cease to have legal force if they have not been approved by a resolution of the National Assembly within fourteen (14) days from the date when the National Assembly first sits in session after the date of the commencement of any such regulations.

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~~(7) The President shall have the power to proclaim or terminate Martial Law. Martial Law may be proclaimed whether or not a state of war with another country exists, but only in a situation in which war prevails.~~

(8) When war prevails the President, acting in consultation with the Cabinet, may by Proclamation make such regulations as he or she considers necessary for the maintenance of public order or the safety of the State, provided that nothing in this Sub-Article shall enable the President to act contrary to the provisions of Article 24 of this Constitution.

## CHAPTER 5

### THE PRESIDENT OF THE REPUBLIC

#### Article 27 Head of State

- (1) The President shall be the Head of State and of the Government and the Commander-in-Chief of the defence forces.
- (2) The executive power of the Republic of Namibia shall vest in the President and his or her Cabinet.
- (3) Except as may be otherwise provided in this Constitution or by law, the President shall in the exercise of his or her other functions be obliged to act in consultation with members of the Cabinet.

#### Article 28 Election of the President

- (1) The President shall be elected in accordance with the provisions of this Constitution and subject thereto.
- 
- (2) Elections for the President
    - (a) shall be by direct, universal and equal suffrage;
    - (b) shall be conducted in accordance with principles and procedures to be determined by Act of Parliament: provided that no person shall be elected as President unless he or she has received more than fifty (50) per cent of the votes cast and the necessary number of ballots shall be conducted until such result is reached.
  - (3) Every citizen over the age of thirty-five (35) years who is eligible to be elected to office as a member of the Parliament shall be eligible for election as President.



- (4) The procedures to be followed for the nomination of candidates for election as President, and for all matters necessary and incidental to ensure the free, fair and effective election of a President, shall be determined by Act of Parliament: provided that any registered political party shall be entitled to nominate a candidate, and any person supported by a minimum number of registered voters to be determined by Act of Parliament shall also be entitled to be nominated as a candidate.

#### **Article 29 Term of Office**

- (1) The President's term of office shall be five (5) years unless he or she dies or resigns before the expiry of the said term or is removed from office. A person shall hold office as President for not more than two full terms.
- (2) A President shall be removed from office if a two-thirds majority of all the members of the National Assembly confirmed by a two-thirds majority of all the members of the National Council, adopts a resolution impeaching the President on the grounds that he or she has been guilty of a violation of the Constitution or guilty of a serious violation of the laws of the land or otherwise guilty of such gross misconduct or ineptitude as to render him or her unfit to hold with dignity and honour the office of the President.
- (3) In the event of a dissolution of the National Assembly in the circumstances provided for under Articles 32 (3)(a) and 57 of this Constitution, the President's term of office shall also expire.
- (4) If a President dies, resigns or is removed from office in terms of this Constitution, the vacant office of President shall be filled for the unexpired period thereof as follows:
  - (a) If the vacancy occurs not more than one year before the date on which Presidential elections are required to be held, the Presidency shall be determined in accordance with the provisions of Article 34 hereof;
  - (b) If the vacancy occurs more than one year before the date on which Presidential elections are required to be held, an election for the President shall be held in accordance with the provisions of Article 28 hereof within a period of not more than ninety (90)

days from the date on which the vacancy occurred, and pending such election the vacant office shall be filled in accordance with the provisions of Article 34 hereof.

- (5) If a President dissolves the National Assembly under Articles 32 (3)(a) and 57(1) of this Constitution, a new election for the Presidency shall be held in accordance with the provisions of Article 28 hereof within ninety (90) days, and pending such election the President shall remain in office, and the provisions of Article 58 shall be applicable.
- (6) If a person becomes President under sub-article (4) hereof, the period of time during which he or she holds office consequent upon such election or succession shall not be regarded as a term for the purposes of sub-article (1) hereof.

#### Article 30 Oath of Office

Before formally assuming office, a President elect shall take the following oath or affirmation which shall be administered by the Chief Justice or a Judge designated by the Chief Justice for this purpose:

"I, \_\_\_\_\_ do hereby swear/solemnly affirm, \_\_\_\_\_  
That I will strive to the best of my ability to uphold, protect and to defend as the supreme law the Constitution of the Republic of Namibia, and faithfully to obey and to execute and administer the laws of the Republic of Namibia;  
That I will protect the independence, sovereignty, territorial integrity and the material and spiritual resources of the Republic of Namibia;  
and that I will endeavour to the best of my ability to ensure justice for all \_\_\_\_\_  
the inhabitants of the Republic of Namibia;  
(In the case of an oath)  
So help me God."

#### Article 31 Immunity from Criminal and Civil Proceedings

- (1) No person holding the office of President or performing the functions of President may be sued in any civil proceedings save where such

proceedings concern an act done in his or her official capacity as President.

- (2) No person holding the office of President shall be charged with any criminal offence or be amenable to the criminal jurisdiction of any Court in respect of any act allegedly performed, or any omission to perform any act, during his or her tenure of office as President.
- (3) After a President has vacated office as President:
  - (a) No Court may entertain any action against him or her in any civil proceedings in respect of any act done in his or her official capacity as President;
  - (b) A civil or criminal Court shall only have jurisdiction to entertain proceedings against him or her, in respect of acts of commission or omission alleged to have been perpetrated in his or her personal capacity whilst holding office as President, if Parliament by resolution has removed the President on the grounds specified in this Constitution and if a resolution is adopted by Parliament resolving that any such proceedings are justified in the public interest notwithstanding any damage such proceedings might cause to the dignity of the office of President.

### **Article 32 The Functions, Powers and Duties of the President**

- (1) As the head of the State, the President shall uphold, protect and defend the Constitution as the supreme law, and shall perform with dignity and leadership all acts necessary, expedient, reasonable and incidental to the discharge of the executive functions of government, subject to the overriding terms of this Constitution and the laws of Namibia which he or she is constitutionally obliged to protect, to administer and to execute.
- (2) In accordance with the responsibility of the executive branch of government to the legislative branch, the President and his or her Cabinet shall each year during the consideration of the official budget attend Parliament. During such session the President shall address Parliament on the state of the nation and on the future policies of government, shall

report on the policies of the previous year and shall be available to respond to questions.

(3) Without derogating from the generality of the functions and powers contemplated by Sub-Article (1) the President shall preside over meetings of the Cabinet and shall have the power subject to this Constitution to:

(a) dissolve the National Assembly by Proclamation in the circumstances provided for in Article 57(1), or if the government is unable to govern effectively;

(b) determine the times for the holding of sessions of the National Assembly, and to prorogue such sessions;

(c) accredit, receive and recognise ambassadors, and to appoint ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

(d) pardon or relieve offenders, either unconditionally or subject to such conditions as he or she may deem fit;

(e) negotiate, and sign international agreements, and to delegate such power;

(f) declare martial law or if it is necessary for the defence of the nation, to declare war;

(g) establish and dissolve such government departments and ministries as the President may at any time consider to be necessary or expedient for the good government of Namibia;

(h) confer such honours as the President considers appropriate on citizens, residents and friends of Namibia in consultation with interested and relevant persons and institutions;

(i) appoint the following persons:

(aa) the Prime Minister;

- (bb) Ministers and Deputy-Ministers;
- (cc) the Chief of the defence force;
- (dd) the Inspector-General of Police;
- (ee) any other person or persons who are required by any other provision of this Constitution or any other law to be appointed by the President.

(4) The President shall also have the power subject to this Constitution

(a) to appoint on the recommendation of the Judicial Service Commission

(aa) the Chief Justice, the Judge President of the High Court, and other Judges of the Supreme Court and the High Court;

(bb) the Ombudsman.

(b) to appoint on the recommendation of the Public Service Commission

(aa) the Auditor-General;

(bb) the Governor and Deputy Governor of the Central Bank.

(5) Subject to the provisions of this Constitution dealing with the signing of any laws passed by Parliament and the promulgation and publication of such laws in the Gazette, the President shall have power to:

(a) sign and promulgate any Proclamation which by law he or she is entitled to proclaim as President;

(b) initiate, in so far as he or she considers it necessary and expedient, laws for submission and consideration by the National Assembly;

- (c) appoint as members of the National Assembly but without any vote therein, not more than six (6) persons by virtue of their special expertise, status, skill or experience.
- (6) Subject to the provisions of this Constitution or any other law any person appointed by the President pursuant to the powers vested in him or her by this Constitution or any other law may be removed by the President by the same process through which such person was appointed.
- (7) Subject to the provisions of this Constitution and of any other law of application in this matter, the President may, in consultation with the Cabinet and the Public Service Commission:
  - (a) constitute any office in the service of the Republic of Namibia not otherwise provided for by any other law;
  - (b) appoint any person to such office;
  - (c) determine the tenure of any person so appointed as well as the terms and conditions of his or her service.
- (8) Subject to the provisions of this Constitution and save where this Constitution otherwise provides, any action taken by the President pursuant to any power vested in the President by the terms of this Article, shall be capable of being reviewed, reversed and corrected on such terms as are deemed expedient and proper should there be a resolution proposed by at least one-third of the members of the National Assembly and passed by a two-thirds majority of the members of the National Assembly disapproving any such action and resolving to review, reverse or correct it.
- (9) All appointments made and actions taken under sub-articles (3)(a) to (i), (4), (5), (6), (7) and (8) hereof shall be announced by the President by proclamation in the Gazette.
- (10) Notwithstanding the review, reversal or correction of any action in terms of Sub-Article (8) hereof, all actions performed pursuant to any such action (during the period preceding such review, reversal or correction) shall be

deemed to be valid and effective in law, until and unless Parliament otherwise enacts.

### Article 33 Remuneration of the President

Provision shall be made by Act of Parliament for the payment out of the State Revenue Fund of remuneration and allowances for the President, as well as for the payment of pensions to former Presidents, and in the case of their death, their surviving spouses.

### Article 34 Succession of the President

(1) If the office of the President becomes vacant or if the President is otherwise unable to fulfil the duties of the office, the following persons shall in the order provided for in this Article act as President for the unexpired portion of the President's term of office or until the President is able to resume office, whichever be the earlier:

- (a) the Prime Minister;
- (b) the Deputy Prime Minister;

~~(c) a person appointed by the Cabinet.~~

(2) Where it is regarded as necessary or expedient that some other person deputise for the President because of a temporary absence from the country or because of pressure of work, the President shall be entitled to nominate any person enumerated in the preceding Sub-Article to deputise for him or her in respect of such specific occasions or such specific ~~matters and for such specific periods as in his or her discretion may be~~ considered wise and expedient, subject always to consultation with members of the Cabinet.

**CHAPTER 6****THE CABINET****Article 35 Composition of the Cabinet**

- (1) The Cabinet shall consist of the President, a Prime Minister and such other Ministers as the President may appoint from the members of the National Assembly including members nominated under Article 46 (1)(b) of this Constitution, for the purposes of administering and executing the functions of the Government, provided that the President may also include in the Cabinet any Deputy-Minister appointed under Article 37 hereof, the Attorney-General and the Director of Planning.
- (2) The President may also appoint a Deputy Prime Minister to perform such functions as might be assigned to him or her by the President or the Prime Minister.
- (3) The President or in his or her absence the Prime Minister or other Minister designated for this purpose by the President, shall preside at meetings of the Cabinet.

**Article 36 Functions of the Prime Minister**

The functions of the Prime Minister shall be to co-ordinate the work of the Cabinet and to advise and assist the President in the execution of the functions of government.

**Article 37 Deputy-Ministers**

The President may appoint from the Members of the National Assembly such Deputy-Ministers as he or she may consider expedient, to exercise or perform on behalf of Ministers, any of the powers, functions and duties which may have been assigned to such Ministers.

**Article 38 Oath of Ministers and Deputy-Ministers**

Before assuming office, a Minister or Deputy-Minister shall make and subscribe to an oath or solemn affirmation before the President or a person designated by



the President for that purpose, in the terms set out in Schedule 1 to the Constitution.

#### **Article 39 Vote of No Confidence**

The President shall be obliged to terminate the appointment of any member of the Cabinet, if a majority of all the members of the National Assembly resolve that they have no confidence in that member.

#### **Article 40 Duties and Functions of the Cabinet**

The members of the Cabinet shall have the following functions:

- (a) To assist in directing, co-ordinating and supervising the activities of Ministries and government departments including public corporations and to review and advise the President and the National Assembly on the desirability and wisdom of any prevailing subsidiary legislation, regulations or orders pertaining to such public corporations, regard being had to the public interest.
- (b) To initiate Bills for submission to the National Assembly.
- (c) To formulate, explain and assess for the National Assembly the budget of the State and its economic development plans, and to report to the National Assembly thereon.
- (d) To carry out such other functions as are assigned to them by law or are incidental to such assignment.
- ~~(e) To attend meetings of the National Assembly and to be available for the purposes of any queries and debates pertaining to the legitimacy, wisdom, effectiveness and direction of governmental policies.~~
- (f) To take steps as are authorised by law to establish such economic organisations, institutions and enterprises on behalf of the State as are directed or authorised by law.

- (g) To formulate, explain and analyse for members of the National Assembly the goals of Namibian foreign policy and its relations with other States, and to report to the National Assembly thereon.
- (h) To formulate, explain and analyse for the Members of the National Assembly the directions and content of foreign trade policy and to report to the National Assembly thereon.
- (i) To assist the President in determining what international agreements are to be concluded, acceded to or succeeded to and to report to the National Assembly thereon.
- (j) To advise the President on the state of national defence and the maintenance of law and order and to inform the National Assembly thereon.
- (k) To issue notices, instructions and directions to facilitate the implementation and administration of laws administered by the Executive, subject to the terms of this Constitution or any other law.
- (l) To remain vigilant for the purposes of ensuring that the scourge of apartheid, tribalism and colonialism does not manifest itself in any form in a free and independent Namibia and to protect and assist disadvantaged citizens within Namibia who have historically been the victims of these pathologies.

#### **Article 41 Ministerial Accountability**

All Ministers shall be accountable individually for the administration of their own Ministries and collectively for the administration of the work of the Cabinet, both to the President and the Parliament.

#### **Article 42 Outside Employment**

- (1) During their tenure of office as members of the Cabinet Ministers may not take up any other paid employment, engage in activities inconsistent with their position as Ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interests as Ministers and their private interests.

- (2) No members of the Cabinet shall use their position as such or use information entrusted to them confidentially as such members of the Cabinet, directly or indirectly to enrich themselves.

**Article 43 Appointment of the Secretary to the Cabinet**

- (1) There shall be a Secretary to the Cabinet who shall be appointed by the President and who shall perform such functions as might be determined by law and such functions as are from time to time assigned to the Secretary by the President or the Prime Minister. Upon appointment by the President, the Secretary shall be deemed to have been appointed to such office by the Public Service Commission.
- (2) The Secretary of the Cabinet shall also serve as a depository of the records, minutes and related documents of the Cabinet.

**CHAPTER 7**

**PARLIAMENT**

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**Article 44 Legislative Power**

The Legislative power of Namibia shall be vested in the National Assembly with the power to pass laws with the assent of the President as provided in this Constitution subject, where applicable, to the powers and functions of the National Council as set out in this Constitution.

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**Article 45 Representative Nature of the National Assembly**

The members of the National Assembly shall be representative of all the people and shall in the performance of their duties be guided by the objectives of the Constitution, the public interest and by their conscience.

**Article 46 Composition of the National Assembly**

- (1) The composition of the National Assembly shall be as follows:

- (a) Seventy-two (72) members to be elected by the registered voters by general, direct, and secret ballot. Subject to Article 47 of this Constitution every Namibian Citizen who has the qualifications described in Article 17 shall be entitled to vote in the elections for members of the National Assembly, and shall be eligible for candidature as a member of the National Assembly.
  - (b) not more than six (6) persons appointed by the President by virtue of their special expertise, status, skill or experience: provided that such members shall have no vote in the National Assembly, and shall not be taken into account for the purpose of determining any specific majorities that are required under this Constitution or any other law
- (2) Subject to the principles referred to in Article 48 of this Constitution, the elected members of the National Assembly referred to in Sub-Article (1)(a) hereof, shall be elected in accordance with procedures to be determined by Act of Parliament.

**Article 47 Disqualification**

(1) No persons may become members of the National Assembly if they

- (a) have at any time after Independence been convicted of any offence in Namibia, or outside Namibia if such conduct would have constituted an offence within Namibia, and for which they have been sentenced to death or imprisonment of more than twelve (12) months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten years before the date of their election; or
- (b) have at any time prior to Independence been convicted of an offence, if such conduct would have constituted an offence in Namibia after Independence, and for which they have been sentenced to death or to imprisonment of more than twelve (12) months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten (10) years before the date of their election, provided that,

nobody sentenced to death or imprisonment for acts committed in connection with the struggle for the Independence of Namibia shall be disqualified under this Sub-Article from being elected as a member of the National Assembly; or

- (c) are unrehabilitated insolvents; or
- (d) are of unsound mind and have been so declared by a competent court; or
- (e) are remunerated members of the civil service of Namibia.
- (f) are members of the National Council, regional councils or local authorities.

(2) For the purposes of sub-article (1) hereof

- (a) no person shall be considered as having been convicted by any court until any appeal which might have been noted against the conviction or sentence has been determined, or the time for noting an appeal against such conviction has expired.
- (b) the Civil Service shall be deemed to include para-statal, regional councils and local authorities.

#### **Article 48 Vacation of Seats**

(1) Members of the National Assembly shall vacate their seats if they:

- (a) ~~cease to have the qualifications which rendered them eligible to be members of the National Assembly, or if the Political Party which nominated them to sit in the National Assembly informs the Speaker that such members are no longer members of such Political Party;~~
- (b) resign their seats in writing addressed to the Speaker;

- (c) are removed by the National Assembly pursuant to the rules and standing orders of the National Assembly permitting or requiring such removal for good and sufficient reasons;
  - (d) are absent during sittings of the National Assembly for ten consecutive sitting days, without having obtained the special leave of the National Assembly on grounds specified in the rules and standing orders of the National Assembly;
- (2) If the seat of a member of the National Assembly is vacated in terms of sub-article (1) hereof, the Political Party which nominated such member to sit in the Assembly shall be entitled to fill the vacancy by nominating any person on the Party's election list compiled for the previous general election, or if there be no such person, by nominating any member of the Party.

#### **Article 49 Elections**

The election of members in terms of Article 46(1)(a) shall be in accordance with the principles of proportional representation and on party lists as set out in Schedule 2.

#### **Article 50 Duration of the National Assembly**

Every National Assembly shall continue for a maximum period of five (5) years, but it may before the expiry of its term be dissolved by the President by Proclamation as provided in Articles 32 (3)(a) and 57 of this Constitution.

#### **Article 51 Speaker of the National Assembly**

- (1) At the first sitting of a newly elected National Assembly, the Assembly shall elect a member as Speaker and another member as Deputy Speaker. The Deputy Speaker acts as Speaker whenever the Speaker is not available.
- (2) The Speaker or Deputy Speaker shall cease to hold office if he or she ceases to be a member of the National Assembly. The Speaker or Deputy-Speaker may be removed from office by a majority resolution of

the National Assembly, and may resign from office or from the National Assembly in writing addressed to the Secretary of the National Assembly.

- (3) When the office of Speaker or Deputy Speaker becomes vacant the National Assembly shall elect a member to fill the vacancy.
- (4) When the Speaker as well as the Deputy Speaker are not available for duty, the National Assembly shall, under chairmanship of the Secretary, elect a member to act as Speaker.

#### **Article 52 Secretary and other Officers of the National Assembly**

- (1) Subject to the provisions of the laws pertaining to the government service and the directions of the National Assembly, the Speaker shall appoint a person, (or designate a person in the government service made available for that purpose), as the Secretary of the National Assembly, who shall perform the functions and duties assigned to such Secretary by this Constitution or by the Speaker of the National Assembly.
  - (2) Subject to the laws governing the control of public moneys, the Secretary shall perform his or her functions and duties under the control of the Speaker.
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- (3) The Secretary shall be assisted by officers of the assembly who shall be persons in the government service made available for that purpose.

#### **Article 53 Quorum**

The presence of at least thirty-seven (37) members of the National Assembly entitled to vote, other than the Speaker or the presiding member, shall be necessary to constitute a meeting of the National Assembly for the exercise of its powers.

#### **Article 54 Voting in the National Assembly**

Subject to any contrary provisions in this Constitution or any other law, all matters in the National Assembly shall be determined by a majority of votes cast by members present other than the Speaker or the presiding member, who

shall, however, have and exercise a casting vote in the case of an equality of votes.

#### **Article 55 Oath or Solemn Affirmation**

Every member of the National Assembly shall make and subscribe before the Chief Justice, or a Judge designated by him or her for that purpose an oath or solemn affirmation in the terms set out in Schedule 3 to this Constitution.

#### **Article 56 Assent to Bills**

- (1) Every bill passed by Parliament in terms of this Constitution in order to acquire the status of an Act of Parliament shall require the assent of the President to be signified by the signing of the bill and the publication of the Act in the Gazette.
- (2) Where a bill is passed by a majority of two-thirds or more of all the members of the National Assembly who are entitled to vote and has been confirmed by the National Council the President shall be obliged to give his or her assent thereto.
- (3) Where any bill is passed by a majority of the members of the National Assembly but such majority consists of less than two-thirds of all the members of the National Assembly who are entitled to vote, and has been confirmed by the National Council, but the President declines to assent to such bill, the President shall communicate such dissent to the Speaker.
- (4) If the President has declined to assent to a bill under Sub-Article (3) hereof, the National Assembly may reconsider the bill, and if it so decides, pass the bill in the form in which it was referred back to it, or in an amended form, or it may decline to pass the bill. Should the bill then be passed by a majority of the National Assembly it will not require further confirmation by the National Council, but if the majority consists of less than two-thirds of all the members of the National Assembly, the President shall retain his or her power to withhold assent to the bill. If the President elects not to assent to the bill, it will then lapse.



**Article 57 Dissolution of the National Assembly**

- (1) The National Assembly may be dissolved by the President under Article 32(3)(a) of this Constitution, and shall be dissolved if the President is advised to do so by the Prime Minister acting with the concurrence of the majority of the Cabinet.
- (2) Should the National Assembly be dissolved a national election for a new National Assembly and a new President shall take place within a period of not more than ninety (90) days from the date of dissolution.

**Article 58 Conduct of Business after the Dissolution of the National Assembly**

Notwithstanding the provisions of Article 57

- (a) every person who at the date of its dissolution was a member of the National Assembly, shall remain a member of the National Assembly and remain competent to perform the functions of a member until the day immediately preceding the first polling day for the election held in pursuance of such dissolution;
- (b) the President shall have power to summon Parliament for the conduct of business during the period following such dissolution up to and including the day immediately preceding the first polling day for the election held in pursuance of such dissolution in the same manner and in all respects as if the dissolution had not occurred.

**Article 59 Rules of Procedure, Standing Committees and Standing Orders**

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- (1) The National Assembly may make such rules of procedure for the conduct of its business and proceedings and may also make such rules for the establishing, functioning and procedures of standing committees, and formulate such standing orders, as may appear to it to be expedient or necessary.
- (2) The National Assembly and the National Council shall in their rules of procedure make provision for such disclosure as may be considered to be appropriate in regard to the financial or business affairs of their members.

- (3) For the purposes of carrying out its powers and functions any Committee of the National Assembly appointed in terms of Sub-Article (1) hereof shall have the power to sub-poena persons to appear before it to give evidence on oath and to produce any documents required by it.

#### Article 60 The Duties, Privileges and Immunities of Members of the National Assembly

- (1) The duties of the members of the National Assembly shall include the following:

(a)

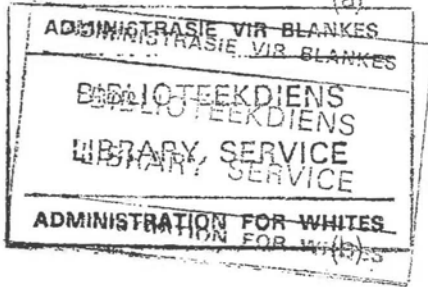
all members of the National Assembly shall maintain the dignity and image of the Assembly both during the sittings in the Assembly as well as in their acts and activities outside the Assembly;

all members of the National Assembly shall 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.

- (2) A private members' bill may be introduced in the National Assembly if supported by one-third of the members of the National Assembly.
- (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 61 Public Access to Sittings of the National Assembly

- (1) Save as provided in Sub-Article (2) hereunder all meetings of the National Assembly shall be held in public and members of the public shall have access to such meetings.
- (2) Access by members of the public in terms of Sub-Article (1) above may be denied if the National Assembly adopts a motion supported by two-thirds of all the members of the National Assembly entitled to vote, excluding such access to members of the public for specified periods or in respect of specified matters. Such a motion shall only be considered if it is



supported by at least one-tenth of the members of the National Assembly entitled to vote and the debate on such motion shall not be open to the public.

- (3) The National Assembly shall sit:
  - (a) at its usual place of sitting determined by the National Assembly unless the Speaker directs otherwise on the grounds of public interest, security or convenience; and
  - (b) for at least two (2) terms of each year, on such days and during such times of the day or night as the Assembly by its rules and standing orders may provide; and
  - (c) for such special terms as might be directed by the President, from time to time.

#### **Article 62 Functions and Powers of the National Assembly**

- (1) The National Assembly as the principal legislative authority in and over Namibia shall have the power subject to this Constitution to make and repeal laws for the peace, order and the good government of the country in the best interest of the people of Namibia.
- (2) The National Assembly shall further have the power and function subject to this Constitution:
  - (a) To approve budgets for the effective government and administration of the country;
  - (b) To provide for revenue and taxation;
  - (c) To take such steps as it considers expedient to uphold and defend this Constitution and the laws of Namibia and to advance the objectives of Namibian Independence;
  - (d) To consider, and decide whether or not to succeed to such international agreements as may have been entered into prior to independence by administrations within Namibia in which the

majority of the Namibian people had historically not enjoyed democratic representation and participation;

- (e) To ratify or accede to international agreements which have been negotiated and signed in terms of Article 32(3)(e) hereof;
- (f) To receive reports on the activities of the executive including para-statal public enterprises, and from time to time to require any senior official thereof to appear before the National Assembly or any of the committees of the National Assembly to account for and explain his or her acts and programmes;
- (g) To initiate, approve or decide to hold a referendum on matters of National concern;
- (h) To debate and to advise the President in regard to any matters which by this Constitution the President is authorised to deal with;
- (i) To remain vigilant and vigorous in ensuring that the scourge of apartheid and colonialism does not manifest itself in Namibia again in different guises and to assist and to protect such citizens of Namibia who are still suffering and will continue to suffer from the ravages of this pathology from the past; and
- (j) Generally to exercise any other functions and powers assigned to it by this Constitution or any other law and any other functions incidental thereto.

**Article 63 Withholding of Presidential Assent**

- (1) Subject to the provisions of this Constitution, the President shall be entitled to withhold his assent to a bill approved by the National Assembly if in his opinion such bill would upon adoption conflict with the provisions of this Constitution.
- (2) Should the President withhold assent on the grounds of such opinion he or she shall so inform the Speaker who shall inform the National Assembly thereof, and the Attorney-General, who may then take appropriate steps to have the matter decided by a Court of competent jurisdiction.
- (3) Should such Court thereafter conclude that such bill is not in conflict with the said fundamental rights or freedoms, the President shall assent to the said bill if it was passed by the National Assembly by a two-thirds majority of all its members entitled to vote. If the bill was not passed with such majority, the President may withhold his or her assent to the bill, in which event the provisions of Articles 56 (3) and (4) shall apply.
- (4) Should such Court conclude that the disputed bill would be in conflict with the provisions of this Constitution or the said fundamental rights and freedoms the said bill shall be deemed to have lapsed and the President shall not be entitled to assent thereto.

**Article 64 Signature and Enrolment of Acts**

- (1) When any bill has become an Act of Parliament as a result of its having been passed by Parliament, signed by the President and published in the Gazette, the Secretary of Parliament shall promptly cause two fair copies of such Act in the English language to be enrolled in the office of the Registrar of the Supreme Court of Namibia and such copies shall be conclusive evidence of the provisions of every such Act;
- (2) The public shall have the right of access to such copies subject to such regulations as may be prescribed by Parliament to protect the durability of the said copies and the convenience of the Registrar's staff.

**Article 65 Customary and Common Law**

- (1) Both the customary law and the common law of the Namibia in force at 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, it shall be competent by Act of Parliament for any part of such common law or customary law to be repealed or modified, or for the application thereof to be confined to particular parts of Namibia or for particular periods.

**Article 66 Requisite Extent of Majorities**

Save as provided in this Constitution a simple majority of votes cast in the National Assembly shall be sufficient for the passage of any bill or resolution of the National Assembly.

**CHAPTER 8**

**THE NATIONAL COUNCIL**

**Article 67 Establishment of the National Council**

There shall be a National Council which shall be established in terms of this Constitution.

**Article 68 Composition of the National Council**

- (1) The National Council shall consist of two members from each region referred to in Article 101 hereof, to be elected from amongst their members by the Regional Councils for such region.
- (2) The elections for members of the National Council shall be conducted according to procedures to be prescribed by Act of Parliament.

**Article 69 Term of Office of Members of the National Council**

- (1) **Members of the National Council shall hold their seats for six (6) years from the date of their election.**
  
- (2) When a seat of a member of the National Council becomes vacant through death, resignation or disqualification, an election for a successor to occupy the vacant seat until the expiry of the predecessor's term of office shall be held, except in the instance where such vacancy arises six (6) months before the expiry of the life of the National Council, in which instance such vacancy need not be filled. Such election shall be held in accordance with the procedures prescribed by the Act of Parliament referred to in Article 68 (2) of this Constitution.

**Article 70 Oath or Solemn Affirmation**

Every member of the National Council shall make and subscribe before the Chief Justice, or a Judge designated by him for that purpose, an oath or affirmation in the terms set out in Schedule 3 to this Constitution.

### **Article 71 Qualifications of Members of the National Council**

No person shall be qualified to be a member of the National Council if he or she is an elected member of a local authority, and unless he or she is qualified under Article 47 (1)(a) to (e) to be a member of the National Assembly.

### **Article 72 Chairperson and Vice-Chairperson of the National Council**

The National Council shall, before proceeding to the dispatch of any other business, elect from its members a Chairperson and Vice-Chairperson. The Chairperson, or in his or her absence the Vice-Chairperson, shall preside over sessions of the National Council. Should neither the Chairperson nor the Vice-Chairperson be present at any session, the National Council shall elect from amongst its members, a person to act as Chairperson in their absence during that session.

### **Article 73 Powers and Functions of the National Council**

- (1) The National Council shall have the power to -
  - (a) consider in terms of Article 74 all bills passed by the National Assembly; and
  - (b) investigate and report to the National Assembly on any sub-ordinate legislation, reports and documents which under law must be tabled in the National Assembly and which are referred to it by the National Assembly for advice;
  - (c) perform any other functions allocated to it by an Act of Parliament.
- (2) The National Council shall have the power to institute committees and to adopt its own rules and procedures for the exercise of its powers and the performance of its functions. A committee of the National Council shall be entitled to conduct all such hearings and collect such evidence as it considers necessary for the exercise of the Council's powers of review and investigations, and for such purposes, shall have the powers referred to in Article 59 (3).



**Article 74 Review of Legislation**

- (1) All Bills passed by the National Assembly shall be referred by the Speaker to the National Council.
- (2) The National Council shall consider bills referred to it under Sub-Article (1) hereof, and shall submit reports thereon with its recommendations to the Speaker
- (3) If in its report to the Speaker the National Council confirms a bill, the Speaker shall refer it to the President to enable the President to deal with it under Article 56.
- (4)
  - (a) If the National Council in its report to the Speaker recommends that the bill be passed subject to amendments proposed by it, such bill shall be referred by the Speaker back to the National Assembly.
  - (b) If a bill is referred back to the National Assembly under Sub-Article 4(a) hereof, the National Assembly may reconsider the bill and may make any amendments thereto, whether proposed by the National Council or not. If the bill is then passed by the National Assembly, whether in the form in which it was originally passed, or in an amended form, the bill shall not again be referred to the National Council, but shall be referred by the Speaker to the President to enable it to be dealt with under Article 56.
  - (c) If a majority of two-thirds of all the members of the National Council are opposed to the principle of a bill, this shall be mentioned in its report to the Speaker, and in that event the National Assembly will be required to reconsider the principle of the bill. If upon such reconsideration the National Assembly reaffirms the principle of the bill by a majority of two-thirds of all its members entitled to vote, the bill shall be dealt with under Article 56. If such two-thirds majority is not obtained in the National Assembly, the bill shall lapse.

- (5) The National Council shall report to the Speaker on all bills dealing with the levying of taxes or appropriations of public monies within thirty (30) days of the date on which such bills were referred to it by the Speaker, and on all other bills, within three (3) months of the date of referral by the Speaker, failing which the National Council will be deemed to have confirmed such bills and the Speaker shall then refer them promptly to the President to enable the President to deal with the bills under Article 56.
- (6) If the President withholds his or her assent to any bill under Article 56 and the bill is then dealt with in terms of that Article, and passed again by the National Assembly in the form in which it was originally passed, or in an amended form, such bill shall not again be referred to the National Council, but shall be referred by the Speaker directly to the President to enable the bill to be dealt with in terms of Article 56.

#### **Article 75 Quorum**

The presence of the majority of the members of the National Council shall be necessary to constitute a meeting of the National Council for the exercise of its powers and the performance of its functions.

#### **Article 76 Voting in the National Council**

Save as is otherwise provided in this Constitution, all questions in the National Council shall be determined by a majority of the votes cast by members present other than the Chairperson, or in his or her absence the Vice-Chairperson or the member presiding at that session, who shall, however, have and exercise a casting vote in the case of an equality of votes.

## CHAPTER 9

### THE ADMINISTRATION OF JUSTICE

#### Article 77 The Judiciary

- (1) The judicial power shall be vested in the Courts of Namibia, which shall be independent and subject only to the Constitution and the law.
- (2) 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 might require to protect their independence, dignity and effectiveness subject to the terms of this Constitution or any other law.
- (3) The Court structures shall consist of:
  - (a) A Supreme Court of Namibia, which shall be established by Act of Parliament.
  - (b) A High Court which shall be established by Act of Parliament.
  - (c) Magistrates and Lower Courts.
- (4) The Supreme Court and the High Court shall have the inherent jurisdiction which vested in the Supreme of South West Africa immediately prior to the date of independence including the power to regulate their own procedure and to make Court rules for that purpose.

#### Article 78 The Supreme Court

- (1) The Supreme Court shall consist of a Chief Justice and such additional Judges as may be prescribed by Act of Parliament.
- (2) The Supreme Court shall be presided over by a Chief Justice and shall hear and adjudicate upon appeals emanating from the High Court, including appeals which involve the interpretation, implementation and

upholding of the Constitution and the fundamental rights and freedoms guaranteed thereunder. The Supreme Court shall also deal with matters referred to it for decision by the Attorney-General under this Constitution, and with such other matters as may be authorised by Act of Parliament.

#### **Article 79 The High Court**

- (1) The High Court shall consist of a Judge-President and such additional judges as may be prescribed by Act of Parliament.
- (2) The High Court shall have original jurisdiction to hear and adjudicate upon all civil disputes and criminal prosecutions, including cases which involve the interpretation, implementation and upholding of the Constitution and the fundamental rights and freedoms guaranteed thereunder. The High Court shall also have jurisdiction to hear and adjudicate upon appeals from lower courts.

#### **Article 80 Binding nature of Decisions of the Supreme Court**

A decision of the Supreme Court shall be binding on all other courts of Namibia and all persons in Namibia unless it is reversed by the Supreme Court itself, or is contradicted by an Act of Parliament lawfully enacted.

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#### **Article 81 Appointment of Judges**

- (1) All appointments of judges to the Supreme Court and the High Court shall be made by the President on the recommendation of the Judicial Service Commission.
- (2) At the request of the Chief Justice the President may appoint acting judges of the Supreme Court to fill casual vacancies in the court from time to time, or as ad hoc appointments to sit in cases involving constitutional issues or the guarantee of fundamental rights and freedoms if in the opinion of the Chief Justice it is desirable that such persons should be appointed to hear such cases by reason of their special knowledge of or expertise in such matters.

- (3) At the request of the Judge President, the President may appoint acting judges of the High Court from time to time to fill casual vacancies in the Court, or to enable the Court to deal expeditiously with its work.
- (4) All judges appointed under this Constitution shall hold office until the age of sixty-five (65) but the President shall be entitled to extend the retiring age of any judge to seventy (70). It shall also be possible by Act of Parliament to make provision for retirement at older ages than that specified in this Article.

#### **Article 82 Lower Courts**

- (1) Lower Courts shall be constituted by Act of Parliament and shall have the jurisdiction, and adopt the procedures prescribed by such Act and regulations made thereunder.
- (2) Lower Courts shall be presided over by Magistrates or other judicial officers appointed in accordance with procedures prescribed by Act of Parliament.

#### **Article 83 Removal of Judges from Office**

- (1) A Judge may be removed from office before the expiry of his or her tenure only by the President acting on the recommendation of the Judicial Service Commission.
- (2) Judges may only be removed from office on the grounds of mental incapacity, or for gross misconduct, and in accordance with the provisions of Sub-Article (3) hereof.
- (3) The Judicial Service Commission shall investigate whether or not a Judge should be removed from office on such grounds, and if it decides that the Judge should be removed, it shall inform the President of its recommendation.
- (4) If the deliberations of the Judicial Service Commission pursuant to this Article involves the conduct of a member of the Judicial Service Commission, such judge shall not participate in the deliberations, and the President shall appoint another judge to fill such vacancy.

- (5) While investigations are being carried out into the necessity of causing the removal of a Judge in terms of this Article, the President may, on the advice of the Judicial Service Commission, and pending the outcome of such investigations and recommendations suspend the Judge from office.

#### **Article 84 The Judicial Service Commission**

- (1) **There shall be a** Judicial Service Commission which shall consist of the Chief Justice, a Judge appointed by the President, the Attorney-General and two members of the legal profession nominated in accordance with the provisions of an Act of Parliament by the professional organisation or organisations representing the interests of the legal profession in Namibia.
- (2) The Judicial Service Commission shall perform such functions as are prescribed for it by this Constitution or any other law.
- (3) The Judicial Service Commission shall be entitled to make such rules and regulations, for the purposes of regulating its procedures and functions as are not inconsistent with this Constitution or any other law.
- (4) Any casual vacancy in the Judicial Service Commission may be filled by the Chief Justice or in his absence by the Judge appointed by the President.

#### **Article 85 The Attorney-General**

There shall be an Attorney-General appointed by the President in accordance with the provisions of Article 32(4)(a). No person shall be eligible for appointment as an Attorney-General unless the President, acting in consultation with the Cabinet is satisfied that such person

- (a) possesses legal qualifications which would entitle him or her to practise in all the Courts of the country;
- (b) is, by virtue of his or her experience, conscientiousness and integrity a fit and proper person to be entrusted with the responsibilities of the office of Attorney-General.

## **Article 86 Powers and Functions of the Attorney-General**

The powers and functions of the Attorney General shall be:

- (a) To exercise the final responsibility for the institution or discontinuance of any criminal proceedings before a Court having jurisdiction in respect of criminal offences, excluding disciplinary courts of the police force, the defence force, and the prison service;
- (b) To be responsible for the prosecution and defence of appeals in criminal proceedings in the High Court and the Supreme Court;
- (c) To delegate any of his or her responsibilities under sub-articles (a) and (b) hereof to the Prosecutor-General and to give instructions to and receive reports from the Prosecutor-General in relation to such matters;
- (d) To be the principal legal adviser to the President and Government of Namibia;
- (e) To take all action necessary for the protection and upholding of the Constitution;
- (f) To perform all such functions and duties as may lawfully be assigned to the Attorney-General by the President or by Act of Parliament.

## **Article 87 Prosecutor-General**

- (1) There shall be a Prosecutor-General appointed by the President on recommendation of the Judicial Service Commission.
- (2) The powers and functions of the Prosecutor-General shall be:
  - (a) to prosecute, subject to the provisions of this Constitution, in the name of the Republic of Namibia in criminal proceedings;
  - (b) to perform all functions relating to the exercise of such powers;
  - (c) to delegate to other officials, subject to his control and directions, authority to conduct criminal proceedings in any Court;

- (d) to perform all such other functions as ascribed to him or her in terms of any other law.

## CHAPTER 10

### THE OMBUDSMAN

#### Article 88 Establishment and Independence

- (1) Subject to the terms of this Constitution, there shall be an Ombudsman.
- (2) The Ombudsman shall be independent and subject only to the Constitution and the law.
- (3) No member of the Cabinet or the Legislature or any other person shall interfere with the Ombudsman in the exercise of his or her functions and all other organs of the State shall accord such assistance as might be needed for the protection of the independence, dignity and effectiveness of the Ombudsman.

#### Article 89 Appointment and Term of Office of the Ombudsman

- (1) The Ombudsman shall be appointed by the President on the recommendation of the Judicial Service Commission.

#### Article 90 Functions of the Ombudsman

The functions of the Ombudsman are to be defined and prescribed by an Act of Parliament and shall include the following:

- (a) The duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of government (whether national or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society.



- (b) The duty to investigate complaints concerning the functioning of the Public Service Commission, administrative organs of the State, the police service, the prison service and the defence force in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access by all to the recruitment of such services or fair administration in relation to such services.
- (c) The duty to investigate complaints concerning the failure to protect the natural environment, resources, beauty and ecology of Namibia.
- (d) The duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place.
- (e) The duty and power to take appropriate action to call for the remedying, correction, and reversal of instances specified in the preceding Sub-Articles through such means as are fair, proper and effective, including:
  - (aa) negotiation and compromise between the parties concerned;
  - (bb) causing the complaint and his or her finding thereon to be reported to the superior of an offending person;
  - (cc) referring the matter to the Attorney-General;
  - (dd) bringing proceedings in a Court of competent jurisdiction for an interdict or some other suitable remedy to secure the termination of the offending action or conduct or the abandonment or alteration of the offending procedures; or
  - (ee) bringing proceedings to interdict its enforcement by challenging the validity of such legislation or regulation if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise ultra vires;

- (ff) reviewing such laws, as were in operation before Independence in order to ascertain whether they violate the letter or the spirit of this Constitution and to make consequential recommendations to the President, the Cabinet or the Attorney-General for appropriate action following thereupon.
- (f) to investigate vigorously all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps including reports to the Prosecutor-General and the Auditor-General pursuant thereto.
- (g) to report annually to the National Assembly on the exercise of his or her powers and functions.

#### **Article 91 Powers of Investigation of the Ombudsman**

Subject to this Constitution the powers of the Ombudsman shall include:

- (a) The power of subpoena requiring the attendance of any person before the Ombudsman and the production of any document or records relevant to any investigation by the Ombudsman.
- (b) The power to cause any person contemptuous of any such subpoena to be prosecuted before a Court of competent jurisdiction.
- (c) The power to question or interrogate any person.
- (d) The power to require any person to co-operate with the Ombudsman and to disclose truthfully and frankly any information within his or her knowledge relevant to the investigation of the Ombudsman.

#### **Article 92 The Meaning of "Official"**

For the purposes of this chapter the word "official" shall, unless the context otherwise indicates, include any elected or appointed official or employee of any organ of the central or local government, any official of an enterprise owned or managed or controlled by the State (or in which the State or the Government has substantial interest) or any officer of the police force, the defence force and

the prison service, but shall not include a Judge of the Supreme Court or the High Court.

**Article 93 Removal from Office**

- (1) The Ombudsman may be removed from office before the expiry of his or her term office by the President acting on the recommendation of the Judicial Service Commission.
- (2) The Ombudsman may only be removed from office on the grounds of physical incapacity or for gross misconduct, and in accordance with the provisions of Sub-Article (2) hereof.
- (3) The Judicial Service Commission shall investigate whether or not the Ombudsman shall be removed from office on such grounds, and if it decides that the Ombudsman shall be removed, it shall inform the President of its recommendation.
- (4) While investigations are being carried out by the Judicial Service Commission under sub-article (3) hereof into the necessity of the removal of the Ombudsman in terms of this Article, the President on the recommendation of the Judicial Commission may, pending the outcome of such investigations and recommendations of the Judicial Service Commission, suspend the Ombudsman from office.

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**CHAPTER 11**

**PRINCIPLES OF STATE POLICY**

**Article 94 Promotion of the Welfare of the People**

- (1) The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following:
  - (a) the enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of

Namibian society. In particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women. Further, Government shall seek, through appropriate legislation, to provide maternity and related benefits for women;

- (b) the enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength;
- (c) the active encouragement of the formation of independent trade unions to protect workers' rights and interests, and to promote sound labour relations and fair employment practices;
- (d) To become a member of the International Labour Organisation (ILO) and, where possible, to adhere to and act in accordance with the International Conventions and Recommendations of the ILO.
- (e) to ensure that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law;
- (f) to ensure that the senior citizens are entitled to and do receive a regular pension adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities;
- (g) the enactment of legislation to ensure that the unemployed, the incapacitated, the indigent and the disadvantaged are accorded such social benefits and amenities as are determined by Parliament to be just and affordable given the resources of the State;
- (h) that the legal system seeks to promote justice on the basis of equal opportunity by providing free legal aid in defined cases with due regard to the resources of the State;

### **Article 97 Principles of Economic Order**

- (1) The economic order of Namibia shall be based on the principles of a mixed economy with the objective of securing economic growth, prosperity and a life of human dignity for all Namibians.
- (2) The Namibian economy shall be based, inter alia, on the following forms of ownership:
  - (a) public;
  - (b) private;
  - (c) joint public-private;
  - (d) co-operative;
  - (e) co-ownership;
  - (f) small-scale family.

### **Article 98 Foreign Investment**

Foreign investments shall be encouraged within Namibia subject to the provisions of an Investment Code to be adopted by Parliament.

### **Article 99 Sovereign Ownership of Natural Resources**

Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and Exclusive Economic Zone of Namibia shall belong to the State where it is not otherwise lawfully owned.

### **Article 100 Application of the Principles contained in this Chapter**

The principles of State Policy herein contained shall not of and by themselves be legally enforceable by any Court, but shall nevertheless guide the Government in making and applying laws to give effect to the fundamental

objectives of the said principles. The Courts are entitled to have regard to the said principles in interpreting any laws that may have been based on the same.

## CHAPTER 12 REGIONAL AND LOCAL GOVERNMENT

### **Article 101 Structures of Regional and Local Government**

- (1) For purposes of Regional and Local Government, Namibia shall be divided into regional and local units of State government, which shall consist of such regions and local Authorities, as may be determined and defined by Act of Parliament.
- (2) The delineation of the boundaries of the regions, and local authorities referred to in Sub-Article (1) hereof shall be geographical only, without any reference to the race, sex, colour or ethnic origin of the inhabitants of such areas.
- (3) Every organ of Regional and Local Government shall have a council as the principal governing body freely elected in accordance with this Constitution, and the Act of Parliament referred to in sub-article (1) hereof, with an executive and administration which shall carry out all lawful resolutions and policies of such council, subject to this Constitution and any other relevant laws.
- (4) For the purposes of this Chapter of the Constitution a local authority shall include all municipalities, communes, village councils and other organs of local government defined and constituted by Act of Parliament.
- (5) There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament.

### **Article 102 Establishment of Regional Councils**

- (1) The boundaries of Regional Councils shall be determined by a Delimitation Commission in accordance with the principles set out in Article 99 (2) hereof.

- (2) The boundaries of regions may be changed from time to time and new regions may be created from time to time, but only in accordance with the recommendations of the Delimitation Commission.
- (3) A Regional Council shall be established for every region the boundaries of which have been determined in accordance with sub-articles (1) and (2) hereof.

#### **Article 103 The Delimitation Commission**

- (1) The Delimitation Commission shall consist of a Chairperson who shall be a judge of the Supreme Court or the High Court, and two other persons to be appointed by the President with the approval of Parliament.
- (2) The Delimitation Commission shall discharge its duties in accordance with the provisions of an Act of Parliament and this Constitution, and shall report thereon to the president.

#### **Article 104 Composition of Regional Councils**

Every Regional Council shall consist of such a number of persons as determined by the Delimitation Commission for any particular region for which a Regional Council has been established, and who are qualified to be elected to the National Council.

#### **Article 105 Elections to Regional Councils**

- (1) Each region shall be divided into constituencies the boundaries of which shall be fixed by the Delimitation Commission in accordance with the provisions of or Act of Parliament and this Constitution: provided that there shall be not less than six (6) and not more than twelve (12) constituencies in each Region.
- (2) Each constituency shall elect one member to the Regional Council for the region in which it is situated.
- (3) The elections shall be by secret ballot to be conducted in accordance with the provisions of an Act of Parliament, and the candidate receiving the

most votes in any constituency shall be the elected member of the Regional Council for that constituency.

- (4) All elections for Regional Councils for the various regions of Namibia shall be held on the same day.
- (5) The date for Regional Council elections shall be determined by the President by Proclamation in the Gazette.

#### **Article 106 Remuneration of Members of Regional Councils**

The remuneration and allowances to be paid to members of Regional Councils shall be determined by Act of Parliament.

#### **Article 107 Powers of Regional Councils**

Regional Councils shall have the following powers:

- (a) to elect members to the National Council;
- (b) to exercise within the region for which they have been constituted such executive powers and to perform such duties as allocated to them in legislation and in connection therewith as may be delegated to them by the President;
- (c) to raise revenue, or share in the revenue raised by the government within its region, as may be determined by Act of Parliament;
- (d) to perform any other powers and functions and make such by-laws or regulations as may be determined by Act of Parliament.

#### **Article 108 Management Committees**

- (1) Each Regional Council shall elect from amongst its members a Management Committee which shall be vested with executive powers in accordance with the provisions of an Act of Parliament.
- (2) The Management Committee shall have a Chairperson to be elected by the members of the Regional Council at the time that they elect the



Management Committee, and such Chairperson shall preside at meetings of Regional Councils.

- (3) The Chairperson and members of the Management Committee shall hold office for one (1) year but shall be eligible for re-election thereafter.

#### **Article 109 Functions of Regional Councils**

The holding and conducting of meetings of Regional Councils, the filling of casual vacancies on Regional Councils, and the employment of officials by the Regional Councils, as well as all other matters dealing with or incidental to the administration and functioning of Regional Councils, shall be determined by Act of Parliament.

#### **Article 110 Authorities**

- (1) Local authorities shall be established in accordance with the provisions of Article 99 of this Constitution.
- (2) The boundaries of Local Authorities, the election of Councils to administer the affairs of Local Authorities, the method of electing persons to Local Authority Councils, the methods of raising revenue for Local Authorities, the remuneration of Local Authority Councillors and all other matters dealing with or incidental to the administration and functioning of Local Authorities, shall be determined by Act of Parliament.
- (3) Persons shall be qualified to elect representatives to Local Authority Councils if such persons have been resident not less than one year immediately prior to any election in the region concerned and if such persons furthermore qualify to elect representatives under this Constitution.
- (4) Different provisions may be made by the Act of Parliament referred to in sub-article (2) in regard to different types of Local Authorities.
- (5) All by-laws or regulations made by local authorities pursuant to powers vested in them by Act of Parliament shall be tabled in the National Assembly and shall cease to be of force if a resolution to that effect is passed by the National Assembly.

## CHAPTER 13

### PUBLIC SERVICE COMMISSION

#### Article 111 The Public Service Commission

- (1) There shall be established a Public Service Commission which is independent, impartial and accountable at all times to the President and the Cabinet.
- (2) The Public Service Commission shall consist of a chairperson and not less than three nor more than six other persons nominated by the President and appointed by the National Assembly by resolution.
- (3) Every member of the Public Service Commission shall be entitled to serve on such Commission for a period of five (5) years unless lawfully removed before the expiry of that period for good and sufficient reasons in terms of this Constitution and procedures to be prescribed by law. Every such member of the Public Service Commission shall be eligible for reappointment upon the expiry of his or her ordinary period of tenure.

#### Article 112 Functions of the Public Service Commission

The functions of the the Public Service Commission to be defined by Act of Parliament shall include the following:

- (a) The power to appoint suitable persons to specified categories of employment in the Public Service, with special regard to the balanced structuring thereof;
- (b) The power and the duty to exercise adequate disciplinary control over such persons and to assure the fair administration of personnel policy;
- (c) The power to retire any such persons;
- (d) The power to advise the President about the identity and availability of suitable persons who may be appointed by the President to such positions as the President is entitled by this Constitution or any other law to appoint; and

#### **Article 116 Establishment of the Defence Force**

- (1) There shall be established by Act of Parliament a Namibian defence force with prescribed powers, duties and procedures, to defend the territory and national interests of Namibia.
- (2) The President shall be the Commander-in-Chief of the defence forces and shall have all the powers and exercise all the functions necessary for that purpose.

#### **Article 117 Commanding-General of the Defence Force**

- (1) There shall be a Chief of the defence force who shall be appointed by the President in terms of Article 32(2)(i)(cc) hereof.
- (2) The Chief of the defence force shall make provision for a balanced structuring of the defence force and shall have the power to make suitable appointments to the defence force, to cause charges of indiscipline among members of the defence force to be investigated and prosecuted and to ensure the efficient administration of the defence force.

#### **Article 118 Removal of the Commanding-General**

The President may remove the Chief of the defence force from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which might prescribe procedures considered to be expedient for this purpose.

#### **Article 119 Establishment of the Prison Service**

There shall be established by Act of Parliament a Namibian prison service with prescribed powers, duties and procedures.

#### **Article 120 Commissioner of Prisons**

- (1) There shall be a Commissioner of Prisons who shall be appointed by the President.

- (2) The Commissioner of Prisons shall make provision for a balanced structuring of the prison service and shall have the power to make suitable appointments to the defence force, to cause charges of indiscipline among members of the defence force to be investigated and prosecuted and to ensure the efficient administration of the prison service.

#### **Article 121 Removal of the Commissioner of Prisons**

The President may remove the Commissioner of Prisons from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which might prescribe procedures considered to be expedient for this purpose.

### **CHAPTER 15**

#### **FINANCE**

#### **Article 122 Assets of Existing Governmental Bodies**

- (1) The movable and immovable assets which immediately before the commencement of this Constitution were owned by bodies specified in Schedule 4 to this Constitution shall at the commencement of this Constitution vest in the Government of Namibia:
- (2) The ownership of communal land shall not be affected by Sub-Article (1) and control over such land, which vested in executive committees of representatives authorities shall vest in the Government of Namibia.

#### **Article 123 The State Revenue Fund**

- (1) The State Revenue Fund of the mandated territory of South West Africa instituted in terms of Section 3 of the Treasury and Audit Proclamation 85 of 1979 and Section 31(1) of Proclamation R101 of 1985 shall continue as the State Revenue Fund of the Republic of Namibia.
- (2) All income accruing to the Central Government shall be deposited in the State Revenue Fund and the disposal thereof shall vest in the Government of Namibia.

- (3) Nothing contained in Sub-Article (2) hereinabove shall preclude the enactment of any law or the application of any law which provides that:
- (a) The Government shall pay any particular monies accruing to it into a fund designated for a special purpose; or
  - (b) Any body or institution to which any monies accruing to the State have been paid, may retain such monies or portions thereof for the purpose of defraying the expenses of such body or institution.
  - (c) Where necessary, subsidies are allotted to regional and local authorities.
- (4) No money shall be withdrawn from the State Revenue Fund except in accordance with law.
- (5) No body or person other than the Government shall have the power to withdraw monies from the State Revenue Fund.

#### **Article 124 Appropriations**

- (1) The relevant Minister in charge of the Department of Finance in the Cabinet shall at least once every year and thereafter at such interim stages as might be necessary, present for the consideration of the National Assembly estimates of revenue, expenditure and income for the prospective financial year.
- (2) The National Assembly shall consider such estimates and pass pursuant thereto such Appropriation Acts as are in its opinion necessary to meet the financial requirements of the State from time to time.

#### **Article 125 The Auditor-General**

- (1) There shall be an Auditor-General appointed by the President on the recommendation of the Public Service Commission and with the approval by the National Assembly. The Auditor-General shall hold office for five (5) years unless removed earlier under sub-article (4) hereof or unless he or

she resigns. The Auditor-General shall be eligible for reappointment upon the expiry of the prescribed term of office of five (5) years.

- (2) The Auditor-General shall audit the State Revenue Fund and shall report annually to the National Assembly thereon.
- (3) The Auditor-General shall not be a member of the Public Service.
- (4) The Auditor-General shall not be removed from office unless a two-thirds majority of the National Assembly votes for such removal on the grounds of mental incapacity or misconduct or impropriety.

## CHAPTER 16

### COMING INTO FORCE OF THE CONSTITUTION

#### Article 126 Coming Into Force

This Constitution as adapted by the Constituent Assembly shall come into force on the date of Independence.

## CHAPTER 17

### AMENDMENT OF THE CONSTITUTION

#### Article 127 Amendment

- (1) Any bill seeking to amend any provisions of this Constitution shall indicate the proposed amendments with reference to the specific Articles thus sought to be amended and shall require the affirmative vote of two-thirds of all the members of the National Assembly and the National Council and no purported passage of such amendments to the Constitution shall be valid unless at least two-thirds of all the members of the National Assembly and the National Council vote in support thereof: provided that if an affirmative vote of a two-thirds majority of all the members of the National Council cannot be obtained, the President may by Proclamation make the proposed constitutional amendment the subject of a national referendum, the procedures accordig to which it shall be held to be laid down by Act of Parliament, and if the proposed amendment is approved by a two-thirds majority of the votes thus cast in the national referendum, the amendment shall enter into force.
- (2) No amendment of this Article in so far as it diminishes or detracts from the majorities of votes to be cast in the National Assembly and the National

Council or by means of a national referendum in the circumstance aforesaid, shall be valid under this Constitution.

## **CHAPTER 18**

### **THE LAW IN FORCE AND TRANSITIONAL PROVISIONS**

#### **Article 128 The First National Assembly**

Notwithstanding the provisions of Article 45 (concerning the size and election of the National Assembly), the Constituent Assembly (elected during November 1989) for the purpose, inter alia, of approving a Constitution of Namibia shall be deemed to have been elected under Articles 45 and 46 of this Constitution, and shall constitute the first National Assembly, and its terms of office and that of the President shall be deemed to have begun from the date of the Independence of Namibia.

#### **Article 129 Election of the First President of Namibia**

- (1) Notwithstanding the provisions of Article 28 of this Constitution the first President of the Republic of Namibia shall be elected by a majority of the members of the first National Assembly.
- (2) Upon election by the National Assembly the first President of the Republic of Namibia shall be deemed to have been elected under Article 29 of this Constitution and upon assuming office as President shall have all the powers, functions, duties and immunities of a President elected under such Article.

#### **Article 130 Implementation of this Constitution**

This Constitution shall be implemented in accordance with the provisions of Schedule 7.

#### **Article 131 Courts and Pending Actions**

- (1) The judges of the Supreme Court of South West Africa holding office at the date on which this Constitution is adopted by the Constituent Assembly shall



be deemed to have been appointed as judges of the High Court of Namibia under Article 81 of this Constitution on the date of Independence, and upon taking the oath of affirmation of office as set out in Schedule 5 to this Constitution, shall become the first judges of the High Court of Namibia.

- (2) (a) The laws in force immediately prior to the date of Independence governing the jurisdiction of courts within Namibia, the manner in which procedure in such courts shall be conducted and the power and authority of the Judges, Magistrates and other judicial officers, shall remain in force until repealed or amended by Act of Parliament, and all proceedings pending in such Courts at the date of Independence shall be continued as if such Courts had been duly constituted as Courts of the Republic of Namibia when the proceedings were instituted.
- (b) Any appeal noted to the Appellate Division of the Supreme Court of South Africa against any judgment or order of the Supreme Court of South West Africa shall be deemed to have been noted to the Supreme Court of Namibia and shall be prosecuted before such Court as if that judgment or order appealed against had been made by the High Court of Namibia and the appeal had been noted to the Supreme Court of Namibia.
- (c) All criminal prosecutions initiated in Courts within Namibia prior to the date of Independence shall be continued as if such prosecutions had been initiated after the date of Independence in Courts of the Republic of Namibia.
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- (d) All crimes committed in Namibia prior to the date of Independence which would be crimes according to the law of the Republic of Namibia if it had then existed, shall be deemed to constitute crimes according to the law of the Republic of Namibia, and to be punishable as such in and by the courts of the Republic of Namibia.

#### **Article 132 The Law In Force at the Date of Independence**

- (1) Subject to the provisions of this Constitution, all laws which were in force immediately before Independence shall remain in force until repealed or

amended by Act of Parliament or until they are declared unconstitutional by a competent Court.

- (2) Any powers vested by such laws in the Government, Minister or other official of the Republic of South Africa shall be deemed to vest in the Government of Namibia or in a corresponding Minister or official of the Government of the Republic of Namibia.
- (3) Anything done under such laws by the Government, Minister or other official of the Republic of South Africa shall be deemed to have been done by the Government of the Republic of Namibia or by a corresponding Minister or official of the Government of Namibia, unless such action is subsequently repudiated by an Act of Parliament passed in accordance with the provisions of this Constitution.
- (4) Any reference in such laws to the President, Government, Minister or other official or institution in the Republic of South Africa shall be deemed to be a reference to the President of Namibia or to a corresponding Minister, official or institution in the Republic of Namibia.
- (5) For the purposes of this Article the Government of the Republic of South Africa shall be deemed to include the Administration of the Administrator-General appointed by the government of South Africa to administer Namibia, and any reference in legislation enacted by such Administration to the Administrator-General, shall be deemed to be a reference to the President of Namibia, and any reference to a Minister or official of such Administration shall be deemed to be a reference to a corresponding Minister or official of the Government of Namibia.

#### **Article 133 Existing Appointments**

- (1) Subject to the provisions of this Constitution any person holding office under any law in force at the date of Independence shall continue to hold such office unless and until he or she resigns or is retired, transferred or removed from office in accordance with law.
- (2) Any reference in legislation in force immediately prior to the date of independence to the Attorney-General shall be deemed to be a reference to

the Prosecutor-General who shall exercise his or her functions in accordance with this Constitution.

**Article 134 Existing International Agreements**

All existing international agreements binding upon Namibia shall remain in force, unless and until the National Assembly acting under Article 62 (2)(d) of this Constitution otherwise decides.

**Article 135 International Law**

Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution, shall form part of the law of Namibia.

**Article 136 Savings**

- (1) Nothing contained in this Constitution shall be construed as imposing upon the Government of Namibia
  - (a) any obligations to any other state which would not otherwise have existed under international law;
  - (b) any obligations to any person arising out of the acts or contracts of prior Administrations which would not otherwise have been recognised by international law as binding upon the Republic of Namibia.
- (2) Nothing contained in this Constitution shall be construed as recognising in any way the validity of the previous administration of Namibia by the government of the Republic of South Africa or by the Administrator-General appointed by the government of the Republic of South Africa to administer Namibia.

**Article 137 Definitions**

- (1) Unless the context otherwise indicates, any word or expression in this Constitution shall bear the meaning given to such word or expression in any law which deals with the interpretation of Statutes and which was in operation

## SCHEDULE 1

### TO THE CONSTITUTION OF THE REPUBLIC OF NAMIBIA

#### OATH OF MINISTERS AND DEPUTY-MINISTERS

'I, \_\_\_\_\_ do hereby swear/solemnly affirm to be faithful to the Republic of Namibia, to hold my office as Minister/Deputy-Minister with honour and dignity, to uphold, protect and defend the Constitution and faithfully to obey, execute and administer the laws of the Republic of Namibia; to serve the people of Namibia to the best of my ability; not to divulge directly or indirectly any matters brought before the Cabinet and entrusted to me under secrecy, and to perform the duties of my office and the functions entrusted to me by the President conscientiously and to the best of my ability.

(in the case of an oath)

So help me God.'

## SCHEDULE 2

### TO THE CONSTITUTION OF THE REPUBLIC OF NAMIBIA

### ELECTION OF MEMBERS OF THE NATIONAL ASSEMBLY

- (1) For the purpose of filling the seventy-two (72) seats in the National Assembly pursuant to the provisions of Article 46 (1)(a) the total number of votes cast in general election for these seats shall be divided by seventy-two (72) and the result shall constitute the quota of voters per seat.
- (2) The total number of votes cast in favour of a registered political party which offers itself for this purpose shall be divided by the quota of voters per seat and the result shall constitute the number of seats to which that political party shall be entitled to in the National Assembly.
- (3) Subject to the requirements pertaining to the qualification of members of the National Assembly, a political party which qualifies for seats in terms of paragraph (2) shall be free to choose in its own discretion which persons to nominate as members of the National Assembly to fill the said seats.
- (4) Where the formula set out in paragraph (2) yields a surplus fraction not absorbed by the number of seats allocated to the political party concerned, such surplus shall compete with other similar surpluses accruing to any other political party or parties participating in the elections, and any undistributed seat or seats ~~(in terms of the formula set out in paragraph (2))~~ shall be awarded to the party or parties concerned in sequence to the highest surplus.

**SCHEDULE 3**

**TO THE CONSTITUTION OF THE REPUBLIC OF NAMIBIA**

**OATH OF MEMBERS OF THE NATIONAL ASSEMBLY  
AND THE NATIONAL COUNCIL**

I, \_\_\_\_\_ do hereby swear/solemnly affirm to 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.

(In the case of an oath)

So help me God.

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## **SCHEDULE 4**

### **TO THE CONSTITUTION OF THE REPUBLIC OF NAMIBIA**

#### **ASSETS OF EXISTING GOVERNMENTAL BODIES**

- (a) Assets of the Transitional Government established by Proclamation R101 of 17 June 1985;
  - (b) The Namibian assets of the South African Development Trust established by Act 18 of 1936 as amended by Act 110 of 1976 (RSA);
  - (c) Assets of the representative authorities established by Administrator-General's Proclamation 8 of 1980;
  - (d) Assets of the Government of Rehoboth, established by Act 56 of 1976 (RSA).
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## SCHEDULE 7

### TO THE CONSTITUTION OF THE REPUBLIC OF NAMIBIA

#### IMPLEMENTATION OF THIS CONSTITUTION

1. The National Assembly shall meet for the first time on the day of Independence.
2. The Chairperson of the Constituent Assembly or in his absence a member of the Constituent Assembly appointed for that purpose by a resolution of the Constituent Assembly, shall conduct the proceedings within the National Assembly until the Speaker has been elected as hereinafter provided.
3. When the first meeting of the National Assembly has convened the Chairperson of the Constituent Assembly shall conduct the proceedings for the election of the first President of Namibia:
4. Before assuming office as the first President of Namibia the person elected as ~~President under Article 126 of this Constitution~~ shall take the oath or affirmation prescribed by Article 30 of this Constitution which shall be administered by the Secretary-General of the United Nations or his duly authorised representative.
5. Upon assuming office the President shall administer the oath or affirmation prescribed in Article ~~of this Constitution~~ to the first judges of the High ~~Court of Namibia~~, and the President shall administer the oath or affirmation prescribed in Article 38 of this Constitution to the first Ministers and Deputy-Ministers.
6. The Judge-President, or in his absence, the senior Judge present shall then administer the oath or affirmation prescribed by Article 55 of this Constitution to the members of the first National Assembly.

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Having taken the oath or affirmation of office the members of the first National Assembly shall then elect the Speaker who, upon election shall become the first Speaker of the National Assembly.