

# Overview of the Namibian Constitution

## What is a constitution?

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

## The Supreme Law

Article 1 of the Namibian Constitution says that it is the “**Supreme Law of Namibia**”. This means that other laws in Namibia are valid only if they were enacted according to the procedures described in the Constitution, and only if they are consistent with the rights protected by the Constitution. **For example, the Constitution says that there shall be no death penalty for any crime, so if Parliament tried to pass a law imposing the death penalty for murder, it would not be valid.**

## HOW WAS NAMIBIA'S CONSTITUTION WRITTEN?

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



## The rule of law

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

## A “sovereign, secular, democratic and unitary” republic

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

## Enforcement

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

# Amending the Constitution

Because a constitution is the most important law of a nation, there are usually special rules about how it can be changed. It is usually more difficult to amend a constitution than to amend any other law. The reason for this is that most democracies want their governments to be stable, with the basic structure of government remaining the same over the years. The Constitution can be changed only with the agreement of –

- **two-thirds of the members of the National Assembly and two-thirds of the members of the National Council**

OR

- **two-thirds of the members of the National Assembly and two-thirds of the people who vote in a national referendum.**
- A referendum is a way of consulting the people of Namibia to find out how they feel about an issue. It is like an election, except that the voters choose an opinion rather than a political party. For example, voters might be asked a question such as “Should the size of Parliament be decreased?”. Then each voter would make a mark next to “yes” or “no”. ■

## OVERVIEW OF THE NAMIBIAN CONSTITUTION

*The Namibian Constitution originally had 21 chapters. Amendments since independence have given it a total of 23 chapters.*

- **Chapter 1** establishes the **Republic of Namibia** and makes **English the official language** of Namibia, meaning that this is the language of the government and laws. It also provides for the three branches of government: (1) the executive (the President and Cabinet); (2) the legislature (Parliament); and (3) the judiciary (the courts).
- **Chapter 2** contains rules on who is a **Namibian citizen** by birth, descent, marriage, or naturalisation.
- **Chapter 3** guarantees the **Fundamental Human Rights and Freedoms** of people living in Namibia, and explains the circumstances in which some of these can be limited. This chapter is sometimes called the “Bill of Rights”.

The **fundamental rights** include

- ▶ the right to life and liberty
- ▶ the right to respect for human dignity
- ▶ protection against slavery and forced labour
- ▶ the right to equality
- ▶ protection against arbitrary arrest and detention
- ▶ the right to a fair trial
- ▶ the right to privacy
- ▶ the right to marry and have a family
- ▶ children’s rights
- ▶ the right to property
- ▶ the right to participate in peaceful political activity
- ▶ the right to administrative justice
- ▶ the right to culture
- ▶ the right to education.

The **fundamental freedoms** include

- ▶ freedom of speech and expression
- ▶ freedom of thought, conscience and belief
- ▶ freedom to practise any religion
- ▶ freedom to assemble peaceably
- ▶ freedom of association
- ▶ the right of workers to strike
- ▶ the right to move freely throughout Namibia
- ▶ the right to reside and settle in any part of Namibia
- ▶ the right to leave and return to Namibia
- ▶ the right to practise any profession, or carry on any occupation, trade or business.

The fundamental rights and freedoms are “**entrenched**”. This means that they can never be amended in ways that make them weaker, but only in ways that make them stronger and better.

Chapter 3 also provides for **affirmative action** to help those who have suffered race or sex discrimination

- **Chapter 4** provides for **temporary states of emergency or martial law during times of serious crisis**, such as during a national disaster or a situation threatening the life of the nation or the constitutional order.
- **Chapter 5** explains how the **President** is elected, and sets out the President’s functions, powers and duties.
- **Chapter 6** explains the composition of **Cabinet** and Cabinet’s duties and functions
- **Chapter 7** explains the election of the **National Assembly** and its role in making laws.
- **Chapter 8** explains the election of the **National Council** and its role in making laws.
- **Chapter 9** establishes the **courts** and explains how judges are appointed. It also spells out the powers and functions of the Attorney-General and the Prosecutor-General.
- **Chapter 10** deals with the appointment, functions and powers of the **Ombudsman**, who investigates complaints about violations of the fundamental rights and freedoms.
- **Chapter 10A** (added in 2010) establishes the **Anti-Corruption Commission** as an independent and impartial body which helps prevent and combat corruption.
- **Chapter 10B** (added in 2014) establishes the **Electoral Commission of Namibia** as an independent, transparent and impartial body which supervises and manages elections.
- **Chapter 11** contains **principles of state policy** intended to guide government action. Unlike other parts of the Constitution, these principles are not directly enforceable by the courts.
- **Chapter 12** establishes **regional and local government structures**. It also creates a Boundaries Delimitation and Demarcation Commission to advise on the borders of regions and local authorities, and the division of regions into constituencies for the purposes of regional elections.
- **Chapter 13** establishes the **Public Service Commission** which advises on matters related to employment in the public service.
- **Chapter 14** establishes the **Security Commission** which advises the President on security-related matters.
- **Chapter 15** establishes the **Namibian Police**, the **Namibian Defence Force**, the **Intelligence Service** and the **Correctional Service** which is in charge of correctional facilities (prisons). It also covers the appointment of the top officials for each of these bodies.
- **Chapter 16** is about **Finance**. It covers matters related to government income and expenditure. It also provides for the **Auditor-General**, whose main task is to audit government finances and give a report on this to the National Assembly every year.
- **Chapter 17** deals with the establishment and functions of the **Central Bank** which controls money and financial institutions in Namibia, and the **National Planning Commission**, which sets the priorities and direction of national development.
- **Chapter 18** brought the Constitution **into force** on Independence Day.
- **Chapter 19** explains the procedure for **amending the Constitution**.
- **Chapter 20** covers the **transition to independence**. To ensure stability, all the laws in force at independence remain in force until repealed or amended by Parliament or declared unconstitutional by a court.
- **Chapter 21** provides that the **general rules of public international law** and any **international agreements** binding on Namibia are part of the law of Namibia.

The Namibian Constitution is one of the few in the world with gender-neutral language. It uses “he or she” throughout to remind everyone that men and women are equal under the Constitution.

The Namibian Constitution includes provisions on the protection of the environment. It promotes the preservation of ecosystems and biological diversity. It says that natural resources must be used sustainably to ensure that they are available to future generations. It also guards against the dumping of toxic waste in Namibia.