



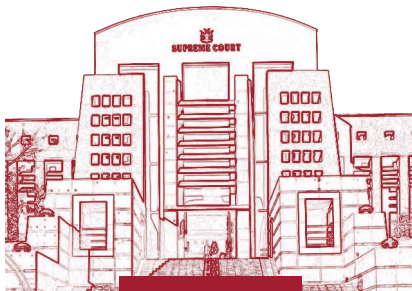
MyDemocracyTree
Namibia

Judicial Branch: THE COURTS

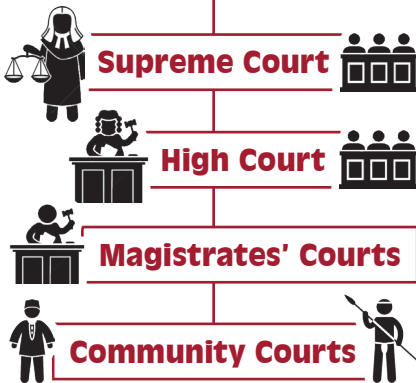
This judicial branch includes all of the courts of law in Namibia, namely the Supreme Court, the High Court and the Lower Courts. These courts can decide criminal cases (when someone has been arrested for committing a crime) and civil cases (disputes between two individuals, such as a divorce or an argument about who should pay for a car accident). They also interpret the law by saying how to apply the law to everyday life. The courts also interpret and apply the Constitution.

All the courts are independent. This means that they follow only the Constitution and the law. No one can tell the courts how to decide a case, not even someone from one of the other branches of the government.

"The Courts shall be independent and subject only to this Constitution and the law."



JUDICIARY



Supreme Court

The highest court in Namibia is the Supreme Court, which is located in Windhoek. The head of this court is called the Chief Justice. At least three judges must work together to decide any case in the Supreme Court. A decision of the Supreme Court must be obeyed by all the other courts and by all people in Namibia. The Supreme Court can hear cases which are appeals from the High Court. An appeal is when one party to a court case is unhappy with the outcome and asks another higher court to say if the decision was really correct. It also has the special duty of making final decisions on any questions about the Constitution. For example, the Supreme Court can make the final decision if there is a question about how the Constitution should be applied in everyday life. It can also make the final decision if there is some disagreement about what the words in the Constitution mean.

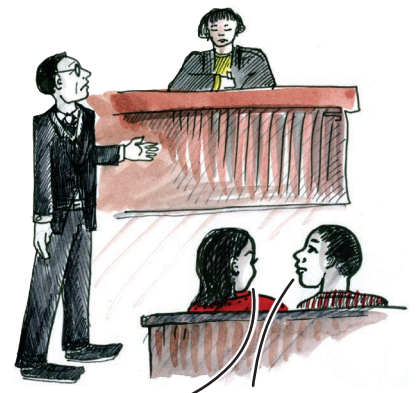
High Court

The next highest court in Namibia is called the High Court. The head of the High Court is called the Judge-President. The Judge-President is also the Deputy Chief Justice of the Supreme Court. The High Court hears serious cases and makes decisions on appeals from the Lower Courts. The High Court has two divisions, one in Windhoek and one in Oshakati.

Lower Courts

Some Lower Courts are **magistrates' courts**. Cases that are somewhat less serious than those which start in the High Court are decided in the magistrates' courts. Most court cases in Namibia start out in a magistrate's court. Decisions of a magistrate's court can be appealed to the High Court. Magistrates' courts are located throughout Namibia.

Other Lower Courts are **community courts**, which have authority to hear and decide cases arising under the customary law of the community in the area where they operate. A traditional authority must apply to the Minister of Justice to establish a community court for the area which falls under that traditional authority. All community court proceedings must follow the principles of fairness and natural justice. There must be written records of all community court proceedings. There is a right of appeal from community courts to magistrates' courts, and from there to the High Court. This means that traditional courts are now integrated into the overall judicial system of Namibia. ►



How can that man be convicted for assaulting his wife? He is a government minister!

It doesn't matter who he is. In a democracy, the courts enforce the law equally for everyone.

Judges

All judges of the Supreme Court and High Court are appointed by the President on the recommendation of the Judicial Services Commission – a group of legal experts which suggests people who have the right skills to be judges. All judges must take an oath to defend and uphold the Constitution and to fearlessly give justice to all people without prejudice.

Judges normally serve until they retire at age 65. The President has the power to extend the retirement age of any particular judge to age 70. Judges can be removed from the courts earlier only if they are guilty of serious misconduct or are unable to think clearly because of age or illness. Judges cannot be forced to leave their positions just because someone in one of the other branches of the government does not like their decisions. This means that judges do not have to be afraid to make the right decisions, even if they know that these decisions may upset Parliament or the President. This is another part of the balance of power between the different branches of the government.

Sometimes judges are appointed for temporary periods. For example, Acting Judges are appointed only for specific periods. Judges who are not Namibian citizens can be appointed only for specific periods. But, like permanent judges, temporary judges have a duty to make decisions without reference to the views of anyone else.

Because no one can tell a judge how to interpret or apply the law, our judicial system is independent. And since everyone in the government must obey the law as it is interpreted and applied by the courts, our nation is governed by the “rule of law”. These principles help to make our nation a strong democracy.

Magistrates

Magistrates are appointed by the Minister of Justice on the recommendation of the Magistrates Commission. The Magistrates Commission must ensure that magistrates are properly qualified and competent persons. All magistrates take an oath to uphold and protect the Namibian Constitution as the Supreme Law to administer justice to all persons alike without fear, favour or prejudice.

The Magistrates Commission sets the pay, qualifications and other conditions of service of magistrates. It is responsible for ensuring that appointment, promotion, transfer and dismissal of magistrates take place without favour or prejudice. It must also ensure that magistrates are not improperly influenced or victimised.

A magistrate may be a member of a political party, but may not be a political party office-bearer or publicly write or speak in favour of or against any political party. A magistrate may not run for office as a member of the National Assembly, a regional council or a local authority. This system is intended to ensure that all magistrates act impartially and independently when making their decisions.

Justices of Community Courts

The Minister of Justice appoints justices to be the decision-makers in community courts on the recommendation of the traditional authority for the area. A justice of a community court must be a person of integrity who is familiar with the customary law of the area where the court will operate. The justice may not be a Member of Parliament, a regional councillor, a local authority councillor or a leader of a political party. The Minister may remove a justice who no longer meets these qualifications, after consultation with the relevant traditional authority. Justices take an oath to administer justice to all persons alike, without fear, favour or prejudice, in accordance with the laws and customs of Namibia.

Other officials

Several government officials in the executive branch are important to the operation of the courts. The President appoints a lawyer to be the **Attorney-General**, who advises the President and the government on legal questions. The Attorney-General must take any actions that are necessary to protect and uphold the Constitution. The President, acting on the recommendation of the Judicial Services Commission, also appoints a lawyer to be the **Prosecutor-General**. The Prosecutor-General is in charge of conducting all criminal cases for the government. The Minister of Justice appoints a **Government Attorney** who acts as the government’s lawyer in any court cases involving the government. ■



The Judicial Service Commission consists of the Chief Justice, the Deputy Chief Justice, the Attorney-General and two lawyers nominated by the professional organisations representing the legal profession in Namibia. The President appoints judges on the recommendation of the Judicial Service Commission. In recommending judges, the Commission must consider affirmative action for previously-disadvantaged persons and the need to have a balanced group of judges that reflects the composition of Namibia. The President can remove a judge before the expiry of his or her tenure *only* on grounds of mental incapacity or serious misconduct, and *only* on the recommendation of the Judicial Service Commission.



The Magistrates Commission consists of a High Court judge; the Chief Magistrate; a magistrate nominated by a professional association of magistrates; a staff member of the Ministry of Justice; a person chosen by the Public Service Commission; a person chosen by the Attorney-General; and a teacher of law nominated by the Vice-Chancellor of the University of Namibia. In recommending magistrates, the Commission must consider affirmative action for previously-disadvantaged persons and the need to have a balanced group of magistrates that reflects the composition of Namibia. The Minister of Justice can dismiss magistrates *only* on grounds of misconduct or incapacity to perform their duties efficiently, and *only* on the recommendation of the Magistrates Commission.