

Election Watch X

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WHAT ARE YOU VOTING FOR?

On November 28 2014 Namibia will go to the polls to elect a new President and a new National Assembly. Several presidential candidates will compete to see who will lead the country as Head of State after March 21 2015. You will be able to vote for your candidate of choice. The candidate with the most votes will become the next President. If no candidate gets over 50 percent of the vote, there will be a second round of voting between the top two candidates to decide the winner.

Also on November 28 there will be an election to see who will serve as Members of Parliament (MPs) in the National Assembly after March 21 next year. Each party that is contesting the election puts forward a list of candidates for the National Assembly. You will be able to vote for the party of your choice. A party's level of support across the country will determine how many of the 96 seats it will obtain.

THE PRESIDENT

The President, who is the Head of State and the commander-in-chief of the army, is elected every five years. The Constitution states that the President is limited to serving two five-year terms. In 1998 another clause was added allowing the first president of Namibia (Sam Nujoma) to serve three terms, although all heads of state following him remain limited to two.

The President is not a member of the National Assembly but does deliver an annual State of the Nation address after which parliamentarians are allowed to ask questions.

From next year Namibia will also have a Vice-President. This is because the Constitution was amended in 2014 to create this post. The President will choose a member of the National Assembly to become Vice-President. After his or her appointment the Vice-President will resign their seat in the National Assembly to be able concentrate on the vice-presidency role.



On November 28 Namibians will decide the composition of the National Assembly. Photo: Bill Lindeke

THE NATIONAL ASSEMBLY

Since independence the National Assembly has consisted of 72 elected members and 6 non-voting members appointed by the President. As a result of the constitutional amendments passed in 2014, after March 21 next year the National Assembly will increase in size – there will be 96 elected members and 8 non-voting members appointed by the President.

National Assembly MPs are elected every five years through elections using a Proportional Representation (PR) system. The President appoints extra members for their special expertise, status, skill or experience. These members of the National Assembly do not have voting rights. (Article 32 5c of the Constitution).

The National Assembly is established in terms of Chapter 7 of the Constitution which gives it the power to make and repeal laws for “the peace, order and good government of the country in the best interest of the people of Namibia” (Article 63).

The National Assembly is expected to approve budgets and taxation regimes, defend the Constitution and laws of Namibia, agree international treaties, receive reports of government agencies and para-

statals, and remain vigilant in ensuring the scourges of apartheid, colonialism and tribalism do not manifest themselves in Namibia.

The National Assembly also allows time for opposition MPs to hold the Prime Minister and Ministers accountable by posing questions relating to matters for which they are responsible. Matters that MPs want discussed by the National Assembly can be introduced in the form of a motion that is debated and eventually voted on.

The quorum in the National Assembly (the minimum number of MPs for parliamentary business to proceed) has been 37 (50 percent plus one) since independence. However, as a result of the 2014 constitutional amendments it will be 49 MPs for a session when the National Assembly is voting. Only 26 MPs are required to be in the chamber if voting is not taking place.

The Speaker, who is chosen by MPs, presides over sittings of the National Assembly and has the authority to make rulings concerning the conduct of proceedings. The Speaker acts as a spokesperson for the National Assembly in its dealings with the State, the President, the National Council and other authorities. The Speaker also has a casting vote in the case of ties. Swapo MP Mosé Tjitendero was the Speaker from 1990 to 2005. He was deputised by Zephania Kameeta (1990-2000) and Willem Konjore (2000-2005). In 2005 Theo-Ben Gurirab became the Speaker with Doreen Sioka as Deputy Speaker. Gurirab remained as Speaker in 2010 with Loide Kassingo being named as his deputy.



Asser Kapere, Chairperson of the National Council, with President Pohamba and Speaker of the National Assembly Theo-Ben Gurirab at a past opening of parliament. Photo: Bill Lindeke

ABOUT ELECTION WATCH

Election Watch is a bulletin containing electoral analysis and voter education, that will appear regularly in the run up to the 2014 National Assembly and Presidential Elections. It is produced as a PDF download and as a printed newspaper insert. Election Watch is a project of the Institute for Public Policy Research (IPPR). It is produced with the support of the European Union and *The Namibian newspaper*. The content of Election Watch is the sole responsibility of the IPPR.

Comments and feedback should be sent to the IPPR, PO Box 6566, Windhoek, Namibia.

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Members of the Constituent Assembly in 1990. Photo: Republikein

A Constitutional Democracy

Your Rights Enshrined

The Constitution includes a chapter on Fundamental Human Rights and Freedoms, which cannot be amended or repealed in a way that would diminish any of the enshrined rights. These rights include freedom of expression, freedom of association, and freedom of religion. Article 6 of Constitution outlaws the death penalty. This chapter also entrenches the right to own property, while giving the government the right to expropriate property “in the public interest” if just compensation is paid.

Namibia's Constitution, adopted on February 9 1990, establishes the country as a “sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all”.

The legal basis of the Namibian State and its institutional structures were decided by the Constituent Assembly elected during the United Nations-supervised November 1989 elections.

The Constitution follows the principle of a separation of powers, whereby government is divided into three branches – the executive (law implementing), the legislature (law making), and the judiciary (law enforcement and interpretation).

Executive powers in Namibia are vested in the President and the Cabinet, who initiate laws and ensure that they are implemented.

Legislative power resides with parliament, that is the National Assembly and the National Council with the National Assembly playing the dominant role.

The powers of the judiciary lie with the courts of Namibia – the Supreme Court, the High Court and the Lower Courts – which are independent.

Namibia's Constitution is a remarkable achievement. It was put together by 72 elected members of the Constituent Assembly in just 80 days in late 1989 and early 1990. Many of these Assembly members had been sworn enemies up until the Namibian transition process got underway in April 1989 under the auspices of the United Nations. It is hard now to imagine how difficult it must have been for those on the different sides of the liberation struggle to sit down with former foes and respectfully debate Namibia's supreme law. It took courage, open-mindedness and magnanimity. The fact that the founding document of the state was drawn up in such an atmosphere was a key enabling factor for the peace and stability that has characterised Namibia's first 24 years as an independent country

The Judiciary



Chief Justice Peter Shivute



Judge President Petrus Damaseb

The judiciary includes the Supreme Court, the High Court and the Lower Courts. All the courts are independent and subject only to the Constitution and the law.

The Constitution explicitly prohibits members of the Cabinet or legislature from interfering with the work of judicial officers. Judges are appointed by the President on the recommendation of the Judicial Service Commission (consisting of the Chief Justice, the Deputy-Chief Justice, the Attorney General and two representatives of the legal profession).

The highest court in the land is the Supreme Court, which is headed by the Chief Justice. The Supreme Court hears appeals from the High Court and gives final judgements on any disputes about interpretation of the Constitution and the Bill of Rights contained within the Constitution.

The High Court, which is headed by the Judge President, hears serious cases and appeal cases from the Lower Courts.

The Lower Courts include magistrate's courts, which deal with less serious cases, and community courts, which deal with matters concerning customary law.

The Cabinet

The Cabinet consists of the President, the Prime Minister and other Ministers appointed by the President. The President can also appoint a Deputy Prime Minister as part of the Cabinet. From 2015 the President will also appoint a Vice-President.

The President is obliged to act in consultation with Cabinet, except where the law says he can act on his own or in consultation with other bodies. The Cabinet supervises the activities of ministries and government departments, including parastatals, and initiates bills for submission to the National Assembly. The Prime Minister, Deputy Prime Minister and Ministers must be appointed from the ranks of the National Assembly although Deputy Ministers can also be drawn from the National Council. The Prime Minister is the leader of government business in parliament, co-ordinates the work of Cabinet and performs functions assigned

by the President. The Office of the Prime Minister is also responsible for the management of the public service.

Hage Geingob was Namibia's first Prime Minister from 1990 to 2002, when he was replaced by Theo-Ben Gurirab. In 2005 incoming President Hifikepunye Pohamba appointed Nahas Angula as Prime Minister. Hage Geingob returned to the office at the end of 2012.

Although most ministers head ministries, President Nujoma twice appointed Ministers without Portfolio. In both cases the Minister without Portfolio was also the Swapo Secretary General. President Pohamba continued this tradition in 2005 when he also appointed Swapo Secretary General Ngarikutuke Tjiriange as Minister without Portfolio. Apart from ministers, other senior government figures can serve as part of the Cabinet on the invitation of the President (such posts include the Director General of the National Planning Commission (NPC) and the Attorney General).

CHECKS AND BALANCES

Checks and balances are counterbalancing influences. Often they ensure that power is not abused by political institutions. They also help to ensure power is not concentrated in the hands of particular individuals or groups.

The system of checks and balances is an important part of the Constitution. With checks and balances, each of the three branches of government – the executive, the legislature and the judiciary – can limit the powers of the others. This way, no one branch becomes too powerful. Each branch “checks” the power of the other branches to make sure that the power is balanced between them.

In addition to the executive, legislature, and judiciary, there are several other key institutions and posts that play a role in Namibia’s constitutional checks and balances.

The Ombudsman

The Office of the Ombudsman is a watchdog body that guards over human rights, promotes fair and effective administration in the public service, and protects the environment. It has the power to investigate complaints and refer matters to the courts or other authorities.



Adv. Mr. John Walters

The Ombudsman is a lawyer or judge appointed by the President on the recommendation of the Judicial Service Commission. There have been three occupants of the post since independence – Jariretundu Kozonguizi (1990-95), Bience Gawanas (1996-2003), and John Walters (since 2004).

The Auditor General

The Auditor General audits government spending and presents annual reports on various ministries and institutions to the National Assembly. The Auditor General is appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly. Fanuel Tjingaete was the Auditor General from 1993 to 2003 when Junias Kandjeke took over.



Mr. Junias Etuna Kandjeke

The Attorney General

The Attorney General is the principal legal advisor to the president and the government, protects the Constitution, and has final responsibility over the Prosecutor General (who is in charge of conducting criminal cases on behalf of the State). As the Attorney General is invited to attend Cabinet, the person filling the post has been drawn from the National Assembly since independence. The Attorney General is appointed by the President. Hartmut Ruppel served as Attorney General from 1990 to 1995. He was succeeded by Vekuii Rukoro who moved into the private sector in 2000. Ngarikutuke Tjiriange served as both Justice Minister and Attorney General from March 2000 to January 2001 when Pendukeni Iivula-lthana took over the reins. From March 2005 Iivula-lthana was given the dual roles of Attorney General and Justice Minister. In March 2010 President appointed Albert Kawana as Acting Attorney General. Kawana also serves as Minister for Presidential Affairs.

The Director-General of the Anti-Corruption Commission

In February 2006 the Anti-Corruption Commission (ACC) was launched on the basis of the Anti-Corruption Act of 2003.

The first Director of the ACC was Paulus Noa. In 2010, an amendment was passed to the Constitution making the ACC a constitutional body. At the same time the responsibility for tackling corruption was removed from the Ombudsman’s constitutional mandate. In 2014, the title of the Director of the ACC was changed to Director-General as part of the constitutional changes passed by parliament.



Mr. Paulus Noa

Share of seats in National Assembly since 1990:

Party/Year	1990	1995	2000	2005	2010
Swapo	41	53	55	55	54
DTA	21	15	7	4	2
UDF	4	2	2	3	2
ACN/MAG	3	1	1	1	-
FCN	1	-	-	-	-
NNF	1	-	-	-	-
NPF/DCN	1	1	-	-	-
CoD	-	-	7	5	1
Nudo	-	-	-	3	2
RP	-	-	-	1	1
RDP	-	-	-	-	8
APP	-	-	-	-	1
Swanu	-	-	-	-	1

Where Does The Real Power Lie?

The Constitution’s separation of powers is supposed to provide checks and balances so that one part of the State cannot ride roughshod over the others.

In Namibia, there is an argument that executive power dominates the legislature because of Swapo’s dominance in parliament, the high proportion of ruling party MPs who serve in the executive, and an electoral system in which most MPs are primarily accountable to their parties rather than the electorate.



When the Constituent Assembly met to decide on the structure of the State in 1989-90, some opposition figures wanted a National Council that could act as a check on the National Assembly. However, they did not want an executive presidency or at least not one with the powers proposed by Swapo. In the end a trade-off took place with Swapo agree-

ing to the creation of the National Council in exchange for an executive presidency. Although the National Council has sent a handful of bills back to the National Assembly over the years, it has not played a strong checking and balancing role because of its limited powers and its domination by Swapo MPs. In this scenario the real power lies with the executive, particularly the presidency, with the legislature and to a lesser extent the judiciary failing to counterbalance this concentration of authority.

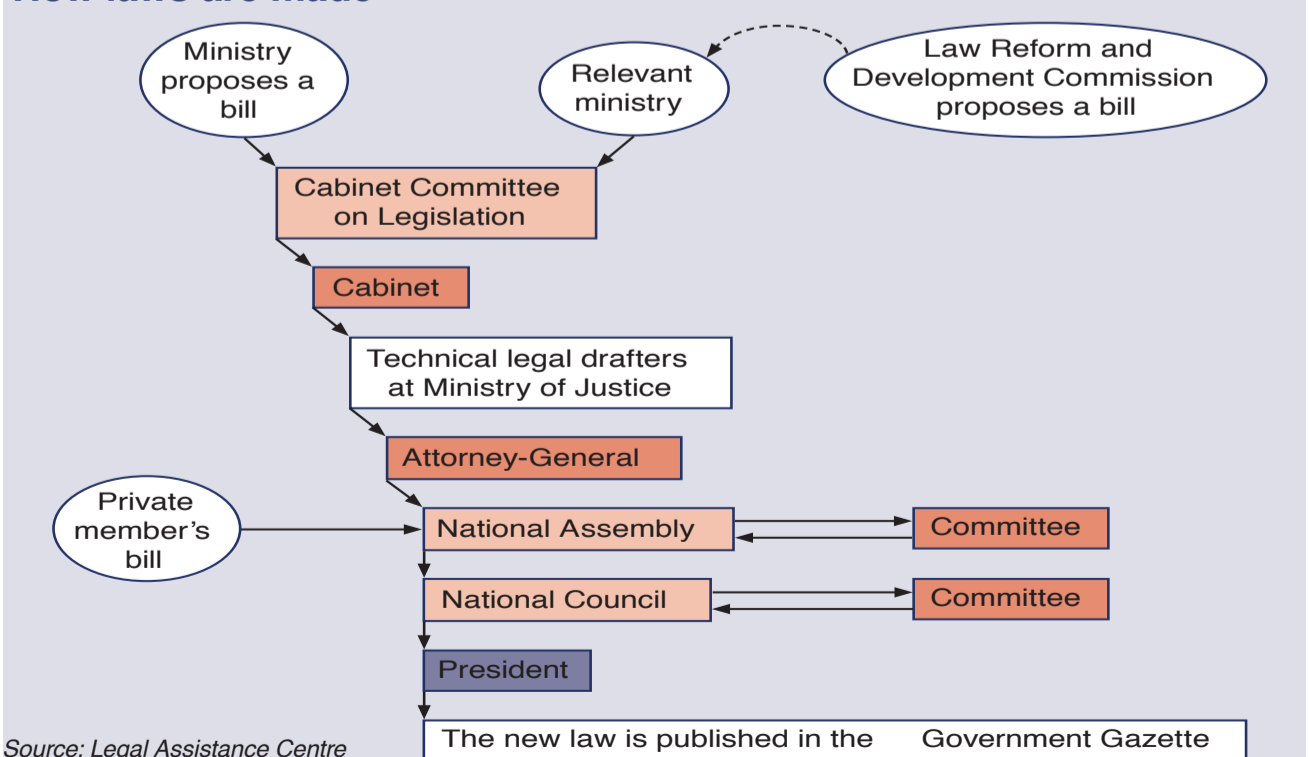
An alternative argument would be that the strength of the executive was necessary to give the new nation clear leadership after independence, and that the legislature can only have more counter-balancing influence if the opposition improves its share of the vote and therefore representation in parliament. In the meantime, the remaining part of the three branches of government – the judiciary – along with the media and some parts of civil society have played balancing and checking roles in the absence of an effective performance from parliament

Parliamentary Committees

Standing Committees are groups of MPs from all parties who scrutinise bills and other documents in detail. The committees are drawn from MPs who are not ministers or deputy ministers and are appointed by the Speaker of the National Assembly. They usually handle specific issues such as human resources or economics. They can ask for input from experts and hold public hearings. The committee can suggest changes to a bill as part of its findings. Sometimes a Select Committee is set up to deal with a particular matter before the National Assembly. Standing Committees are permanent committees, while Select Committees have a limited timeframe. The committee system in the National Assembly has developed since independence from just two functioning committees before 1995 to nine in 2014.

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How laws are made



Source: Legal Assistance Centre

People Power



Photo: Caroline de Meersseman

Public participation in the democratic process should not begin and end with voting. There are a variety of options for civil society groups and individuals to bring their views before parliamentarians.

In order to understand how parliament works and to see how key issues are being addressed, members of the public can attend sittings of the National Assembly and the National Council. In addition civil society groups and individuals can also make representations at public hearings organised by the standing committees of parliament.

Such hearings, which can be held at parliament or sometimes at various locations around the country, give the public a chance to comment on draft legislation and other issues of national importance that might have been referred to a committee.

Lobbying

MPs in both the National Assembly and the National Council should be responsive to public concerns and requests about legislation and other national issues.

Members of the public can write to an MP raising concerns and requesting to meet him or her. In the National Council a member of the public or civil society group can contact the National Councillor who represents their region. National Assembly MPs do not serve geographical constituencies. However, some parties, Swapo in particular, have assigned their MPs to look after the interests of certain regions.

National Assembly and National Council MPs have offices in parliament where they can meet members of the public, while National Council MPs also have offices in their regions. Members of the public can also lobby members of Standing Committees that cover their particular concern.

Civil society does not simply have to make demands of parliamentarians. Individuals and groups can also make information on national issues available to MPs, provide their own briefings, and suggest questions and motions that should be raised.

Civil society groups can also organise peaceful demonstrations outside parliament or marches to parliament to amplify their points and gain media coverage.

Petitioning

Civil society groups can submit petitions to parliament, requesting MPs to act on a certain situation or concern or pass a specific piece of legislation. The National Assembly has specific rules on the handling of petitions, which, if followed, mean it should be dealt with more speedily. A petition should be addressed to the National Assembly and be delivered to the Secretary of the National Assembly, who can pass it on to the Standing Committee on Constitutional and Legal Affairs for consideration. The Committee will consider the petition and submit a report and recommendations on it to the Standing Committee on Standing Rules and Orders, which will decide whether to table the petition in the National Assembly or refer it back to the Standing Committee

on Constitutional and Legal Affairs for additional information.

The petition should include the names, addresses and signatures of all the petitioners and a clear and concise request setting out exactly what the petitioners want the National Assembly to address. In addition, the petition should make clear that the petitioners have already requested the relevant ministry or government agency to look into the matter.

Petitions can be written in any language used in Namibia, but should have an English translation attached. Sometimes petitioners organise a public handover of their petition to a top parliamentary official so that their concerns are raised in the media.

The Law-making Process

Over the first 24 years of independence the government has initiated nearly all legislation. Bills can in theory be suggested by anyone, including MPs, the Law Reform Development Commission, Non-Governmental Organisations (NGOs) and individuals outside Parliament. However, in practice proposals for legislation mostly emanate from the executive branch of government – through the President, Cabinet or Ministries. The idea for a law is first presented to the Attorney General who checks that it is in keeping with the Constitution. A draft bill is then submitted to the Cabinet Committee on Legislation (CCL), which will decide if the bill is ready to go to the whole Cabinet for approval. If Cabinet approves the principle of the bill, the Ministry of Justice's legal drafters finalise the language of the bill, before it is sent back to the sponsoring ministry, the CCL and the Attorney General for final approval. The time lag between a ministry proposing a law and a bill coming before the National Assembly can sometimes be several years. The delays have often been blamed on a shortage of legal drafters in the Ministry of Justice.

Sometimes, prior to Cabinet approval, draft laws are made available to the public or distributed to certain stakeholders for comment. The public can also ask for a copy of a draft law from the relevant ministry.

• **The First Reading** – The title of the bill is read in the National Assembly. At this point the draft law becomes a public document. There is no debate at this stage.

• **The Second Reading** – The minister or MP introduces and outlines the intention of the bill and debate starts. MPs can raise issues relating to the general purpose and principle of the bill. MPs approve or reject the bill in principle. If rejected by more than half the MPs then the bill is withdrawn and may be re-introduced after a period of 30 days, either in the same form or with changes. During the second reading the National Assembly can agree to refer a bill to a Standing Committee for further discussion or consultation. The Committee is obliged to report back to the National Assembly within 90 days.

• **Whole House Committee** – MPs examine the bill clause by clause and debate its details. MPs can suggest

amendments at this stage. Any interested person or group could lobby an MP to propose a change to the bill at this point. All proposed amendments are voted on and each section of the bill has to be approved separately.

• **Third Reading** – There is no further debate and the bill is considered passed. If MPs do not agree on the passing of the bill then it is put to a vote. Most bills require a simple majority (50 percent plus one) to gain approval, although amendments to the Constitution require a two-thirds majority. The bill then proceeds to the National Council for review.

• **Review** – The National Council can either approve a bill or send it back to the National Assembly with suggested amendments. The National Council can also reject the principle of the bill. The National Assembly is not obliged to accept the National Council's recommendations or objections, but must consider them and vote again on the bill. If the National Council rejects the principle of a bill then the National Assembly must then re-affirm the bill by a two-thirds majority for it to become law. In the National Council the bill passes through the same steps: First Reading, Second Reading, Committee Stage, and Third Reading. The National Council normally has three months to review a bill, although draft laws dealing with the budget or tax issues must be passed within 30 days of the Speaker referring the bill to the National Council. In practice the

National Council has rarely referred bills back to the National Assembly. Among a handful of bills that have been sent back are the Immunities and Privileges Bill and the Communal Land Reform Bill.

• **Final steps** – Once a bill has passed through the National Assembly and the National Council, then the law goes to the President for his signature. If a bill has been approved by a two-thirds majority in the National Assembly and has the backing of the National Council, then the President is obliged to assent to the law. If the President refuses to sign the bill, the Speaker informs the National Assembly and the Attorney General who may decide to refer the issue to an appropriate court if it is a question of ensuring the bill is in keeping with the Constitution. The bill can still become law if the National Assembly reconsiders the draft law and approves it by a two-thirds majority (and it already had National Council approval).

Finally, the Act is then published in the Government Gazette. Often the law will come into force on the day the law is published in the Government Gazette.

Alternatively, the Government Gazette sometimes states the law will come into effect at a future date or on a day still to be announced by the relevant minister.

What is Civil Society?

The term civil society is used to describe a wide range of organisations, networks, associations, groups and movements that are independent from government and that sometimes come together to advance their common interests through collective action. Traditionally, civil society includes all organisations that occupy the 'social space' between the family and the state, excluding political parties and firms.

Civil Society Organisations include Non-Governmental Organisations, Community-based Organisations, clubs, faith-based organisations, media, women's and youth groups, housing associations, farmers' leagues, savings and credit associations, water point committees, conservancies, sectoral and cross-sectoral networks, trade unions and chambers of commerce, among others. Civil society can be made up of any kind of organisation that is set up and operates separately from government and government agencies. Civil society organisations are diverse and they do not all speak with one voice. However, when a number of civil society organisations raise an issue collectively it can have more impact.

WHAT IS THE IPPR?

The Institute for Public Policy Research was established in 2001 as a not-for-profit organisation with a mission to deliver, independent, analytical, critical yet constructive research on social, political and economic issues which affect development Namibia. The IPPR was established in the belief that development is best promoted through free and critical debate informed by quality research. The IPPR is independent of government, political parties, business, trade unions and other interest groups and is governed by a board of directors consisting of Monica Koep (chairperson), Bill Lindeke, Graham Hopwood, Ndiitah Nghipondoka-Robiati, Daniel Motinga and Justin Ellis.

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