

Election WatchX

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WHAT IS THE NATIONAL COUNCIL?

This Election Watch bulletin focuses on the National Council (NC). The NC is composed of Regional Councillors who will be elected during the November 27 regional elections. After the results have been announced, each of Namibia's 14 Regional Councils will select three of their councillors to serve in the National Council.

The Namibian government is divided into three separate branches - the executive, legislature and judiciary. This division follows the principle of the separation of powers, which essentially means that powers of the government such as making laws and enforcing regulations are divided among different institutions. This is done to ensure that government institutions cannot abuse their powers by, for example, enacting repressive laws.

The Namibian parliament is the legislative branch of the government and is made up of the National Assembly (NA) and the National Council (NC). The parliament's key role in government is to review debate and approve or reject proposed bills. Once a bill is approved by parliament it becomes law and only then it is applicable to Namibia's society.

The first NC was inaugurated in February 1993, after the first regional elections took place in November 1992 in an independent Namibia. The NC was established in terms of Article 68 of the Constitution of Namibia. Furthermore, articles under Chapter 8 of the Constitution also set out the NC's powers and functions, the number of Councillors and how they are elected. Initially, the NC consisted of 26 members, two from each of the country's 13 regions. Following the creation of a new region in 2013 and constitutional changes in 2014, the new NC will consist of 42 members - three from each of the 14 regions. Members of the NC are selected by their fellow Regional Council members. NC members serve for five years from the date of their election until the next regional elections. Regional Councillors are elected directly through their local constituencies which make up each region. It can therefore be argued that the NC is the most representative body in government in terms of reflecting the regional diversity of the country.¹

The workings of the NC are overseen by the Presiding Officer officially known as the Chairperson of the NC. The Chairperson is elected from among the NC members. The



National Council Chambers, Windhoek

Chairperson's duties include the chairing of all NC sessions, overseeing the NC's finances and administration as well as serving as a link to government entities. NC members also elect a Vice-Chairperson from their rank to chair sessions in the absence of the Chairperson. The first Chairperson of the NC was Kandy Nehova (Swapo). Asser Kapere is currently the Council Chairperson.²

The term of the 4th National Council, which was sworn in in November 2010, will come to an end in November of this year when the next regional elections will take place.

- 1 Hopwood, Graham. Guide to Namibian Politics, Namibia Institute for Democracy. 2008 Edition
- 2 Guide to Parliament, Namibia Institute for Democracy & Parliament of Namibia. 2005



Formal procession of National Council Members, lead by the Chairperson Hon. Asser Kapere

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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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ROLE OF THE NATIONAL COUNCIL IN THE LAW-MAKING PROCESS

In the law-making process the NA dominates due to its assigned role detailed in the Constitution as the first receiver of draft legislation. The NC's primary role is to comprehensively review every bill that is passed by the NA. Therefore the NC is also often referred to as 'The House of Review'. Hence, in theory, the Council is acting as a check and balancing body on the powers of the executive and the NA.

The bills that are reviewed by the Council go through the same steps as they do in the NA: first reading, second reading, whole committee stage and a final third Reading. During the first reading a bill is introduced – no debate takes place yet. At the second reading the bill is presented and discussed in more detail. Now MPs also reject or approve the bill. During this stage the NC can also refer the bill to a specific committee for further discussions and consultations. The NC committee tasked to do so can also arrange for public hearings on the bill. The next step called 'whole committee stage' does not involve a sub-committee as such. Rather during this phase Council members go through each of the individual clauses of the bill before them to debate and approve them. Now members can also suggest amendments to the bill. The third and final reading is mostly a formality. If there is no further debate the bill is considered passed. If there are objections the bill is put to a vote and if a simple majority approves (51%) it is passed as well.

In summary, when reviewing a bill the NC can take one of three actions: it can approve the bill in its current form, it can send it back to the NA with suggested amendments or it can reject the principle of the bill meaning that it disagrees with the bill as a whole. The Council generally has about three months to review a bill. However, bills with regards to the budget or tax need to be reviewed within 30 days.

The NA is not required to accept the Council's recommendations or objections. However, these must be discussed and the bill put up for a vote again. If the bill is approved by a two-thirds majority in the NA it is passed and becomes law regardless of any NC objections.¹

The Constitution also gives the NC the power to propose legislation on issues of regional concern and send such bills for consideration to the NA. However, in its 22 years of existence the NC has never exercised this power.² Considering the many challenges facing the regions in Namibia the lack of proposed bills coming from the NC is somewhat surprising.

EFFECTIVE REVIEW OR RUBBER STAMP?

As provided for in the Constitution the NC should constitute an important forum for the critical review of bills passed by the NA. In the past the Council has come under criticism for perceived lacklustre performance alleging little or no active engagement with bills before the Council members.

In effect the NC is often seen as a rubber-stamp arm of the legislature – meaning it simply approves bills passed by

the NA without proper review.³ However, there have been instances where the NC has been influential in terms of referring key pieces of legislation back to the NA and/or provided meaningful input.

The influence of the NC was probably at its greatest during 'the founding year', as argued by Joshua B. Forrest. In 1993, there were about seven thematic issues that repeatedly found their way into national councillors' consideration of bills where their influence was impactful. These issues were: 1) pensioners' problems; 2) the role of traditional authorities; 3) drought and agricultural development; 4) line ministry-regional council relations and economic development; 5) Ministry of Regional, Local Government and Housing relations with regional councils; 6) ministerial decentralisation and the regional councils; and 7) media attention.⁴

According to the information provided by the NC, amendments suggested by the Council that substantially affected and changed the respective bills included:

- Married Persons Equality Bill 1995
- Communal Land Reform Bill 1999
- Constitutional Amendment Bill 2003
- National Health Bill 2014
- Childcare Bill 2014
- University of Science and Technology Bill 2015

The National Council has further proposed amendments to the following Bills:

- State-owned Enterprises Bill 2005
- Veterans Bill 2007
- National Youth Council Bill 2008
- Sectional Titles Bill 2008
- Banking Institutions Amendment Bill 2010
- Unit Trust Control Amendment Bill 2011
- Employment Service Bill 2011
- Statistics Bill 2010
- Magistrates Amendment Bill 2013
- Agricultural (Commercial) Land Reform Amendment Bill 2013
- University of Science and Technology Bill 2015⁵

The NC has on occasion rejected bills and referred them back to the NA. One notable case was the objection to a number of changes to the set-up of the Council proposed under the Constitutional Amendment Bill of 2003. Council members objected to the planned limit of their term from six to five years as well as disallowing members to be re-elected.⁶ MPs from both Houses were unable to solve the issue and the bill was consequently dropped.⁷

Overall, it could be said that the NC has only somewhat served its primary intended purpose of critically reviewing bills by the NA. Due to the dominance of the ruling party Swapo over the NA, the NC and the executive, the Council has arguably not fulfilled its role as a review body as intended by the Constituent Assembly.⁸



Hon. Asser Kapere, Chairperson of the 4th NC.

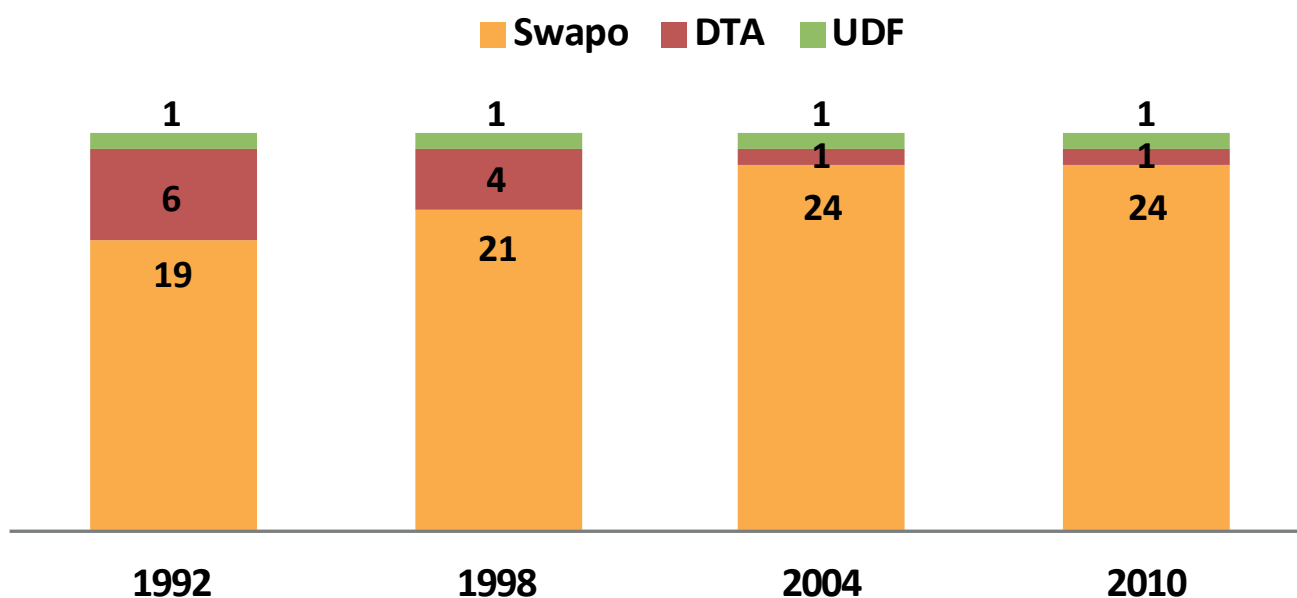
DISCLOSURE OF INTERESTS BY NC MEMBERS⁹

To guard against practices and interests that could improperly influence individual MP's conduct and voting all parliamentarians are required to make public their interests which include assets as well as business interests. It can be argued that internationally this has become a norm in well-run democracies and forms part of the good governance culture. With regards to Namibia, an MP's individual privileges, powers, immunities as well as correct conduct with regards to private interests are set out in the Powers, Privileges and Immunities of Parliament Act of 1996. This law also requires that MPs disclose their personal interests including all assets and income on a regular basis. These declarations are listed in the register of member's interests and made available to the public.

There are a number of concerns regarding the comprehensiveness of the Act as well as its implementation. However, it is of note that the NC has consistently collected and published a members' interests register since 2006. Unlike the NA, the Council also adopted their code of conduct in October 2005 which further reinforces the requirement for MPs to behave in an ethical manner. Notably the Council has also taken action in the past against Council members that failed to declare their interests on time.¹⁰ The NC met the August 31st deadline for declaring their interests for 2015.¹¹

Figure 1: Number of seats in the NC per Party as allocated after each Regional Election⁹

National Council: Number of seats per Party as allocated after each Regional Election



1 Hopwood, Graham. Guide to Namibian Politics, Namibia Institute for Democracy. 2008 Edition

2 Information provided by the NC to the author

3 Blaauw, Lesley. 'Accountability and Democracy' In Sims, Bryan, M. & Koep, Monica (Eds.), Unfinished Business: Democracy in Namibia, Idasa. 2012

4 Forrest, Joshua, B. Namibia's Post-apartheid Regional Institutions: The Founding Year. 1998

5 Information provided by the NC to the author

6 Op. cit.

7 Hopwood, Graham. Guide to Namibian Politics, Namibia Institute for Democracy. 2008 Edition

8 Blaauw, Lesley. 'Accountability and Democracy' In Sims, Bryan, M. & Koep, Monica (Eds.), Unfinished Business: Democracy in Namibia, Idasa. 2012

9 Graph information sourced from [https://en.wikipedia.org/wiki/National_Council_\(Namibia\)](https://en.wikipedia.org/wiki/National_Council_(Namibia)) and <http://www.parliament.na/>

10 Tjirera, Ellison. Asset Disclosure in Namibia: The need for Reform and Enforcement. IPPR. August 2012

11 <https://www.newera.com.na/2015/10/06/mps-active-fishing-farming-shebeens/>

CITIZENS' PERCEPTIONS OF THE NATIONAL COUNCIL

Data gathered by Afrobarometer¹ in opinion surveys suggest that the NC and its work are not seen as highly relevant by many Namibian citizens.

Country specific Afrobarometer questions that relate to the NC in Namibia have dealt with issues such as the extent to which citizens contact representatives from the NC about important problems they face and the extent to which elected officials in the NC listen to what people have to say (see figure 3).

Moreover, representatives of the NC were gauged on how they performed in their jobs. As figure 2 below shows, citizens

reported very low contact with representatives from the NC. This trend is quite worrisome and somewhat at variance with how the NC is composed. Directly elected representative from all the political regions of the country would suggest a close contact between elected officials and voters as opposed to the NA where members are elected according to a party list system and represent one constituency, i.e. Namibia.

¹ Afrobarometer is an African-led, non-partisan research project that has measured countries' social, political, and economic atmosphere since 1999. <http://www.afrobarometer.org>

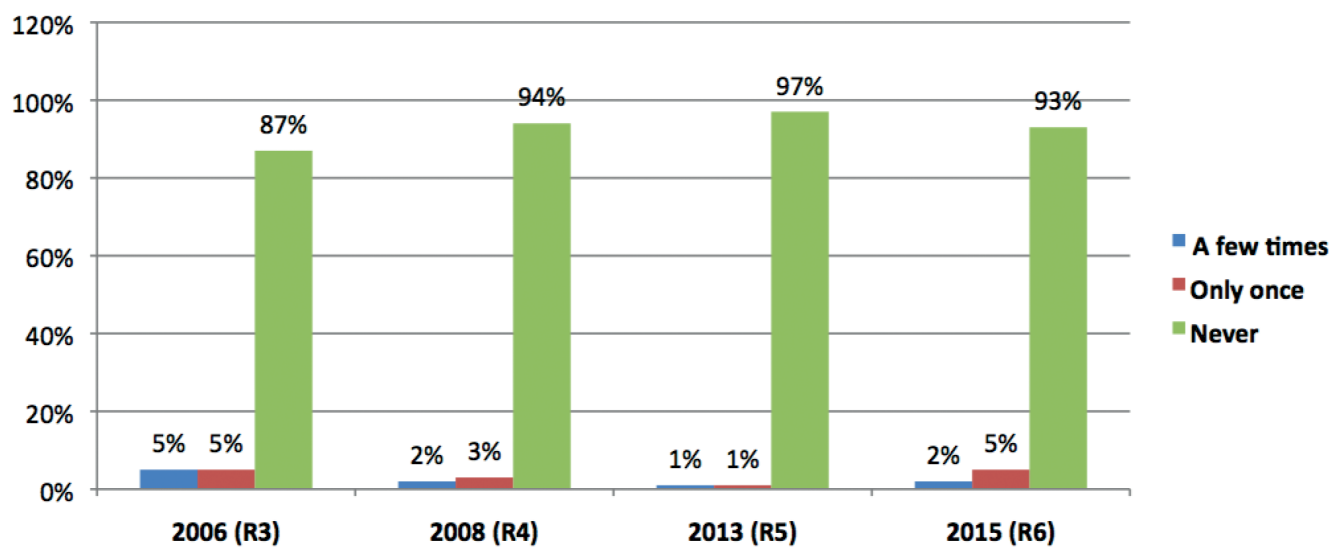
THIRD CONSTITUTIONAL AMENDMENT

The third Constitutional amendment law, which was passed in the middle of 2014, also affected the NC. While most of the changes enacted covered procedural issues there were two important amendments. Firstly, the size of the NC has increased - thus three instead of two council members are now drawn from each region. In addition with the Kavango region being split in two (Kavango East and Kavango West), the 5th NC will be made up of 42 members from 14 regions.

Secondly, the NC can no longer suggest amendments to bills that levy taxes and the appropriation of funds. For these bills the NC can only propose corrections.¹

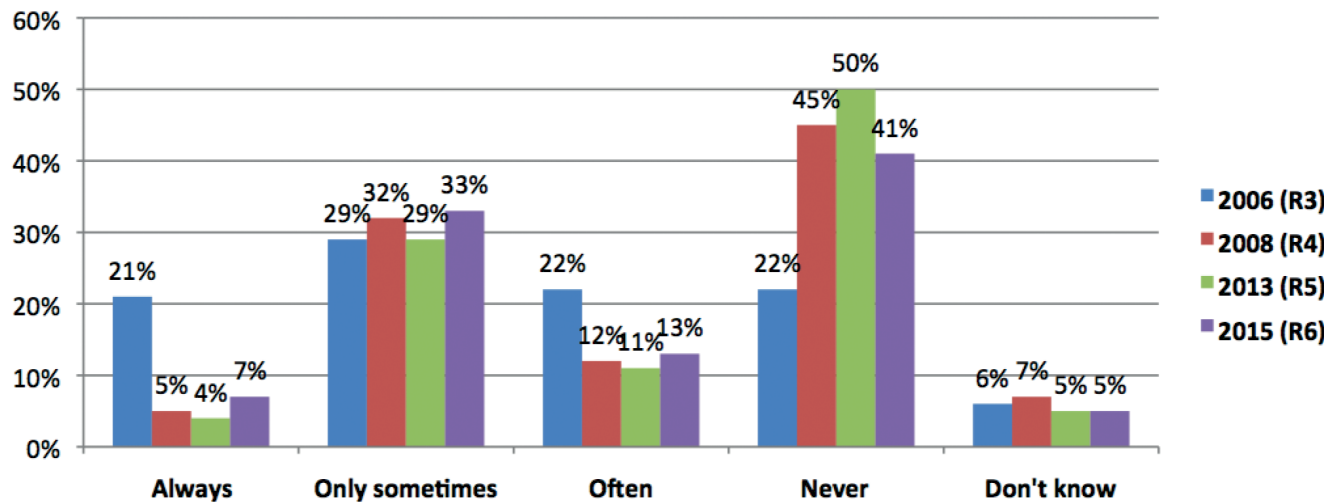
¹ Namibian Constitution Third Amendment Bill, <http://www.lac.org.na/Pdf/B9-2014-Nam%20Constitution%203%20Amend.pdf>

Figure 2: Contact with a National Council Representative



Respondents were asked: How often have you contacted a National Council representative about some important problem or to give them your views?

Figure 3: Listening to what citizens have to say



Respondents were asked: How much do you think the following try their best to listen to what the people like you have to say: representatives of the National Council?



Hon. Margaret Mensah-Williams, Vice-Chairperson of the 4th NC.

THE CREATION OF THE NC

The creation of the NC was not a given when the Constituent Assembly (CA) met in 1989-90 to debate and decide on the structures of the Namibian state. As one of the key deliberations of the Constituent Assembly in 1989, the provision for a bicameral parliament was strongly opposed by Swapo because nomination of its members by regional councils would arguably promote ethnicity.¹ In the spirit of compromise, Swapo accepted the concept of a bicameral parliament. A former official opposition president on the other hand argues that Swapo reluctantly con-

ceded to the bicameral legislature.²

Another alternative explanation argues that some opposition politicians wanted the establishment of a NC to act as a check on the NA. In addition the opposition also were against the creation of an executive presidency which was favoured by Swapo. An executive presidency provides considerable ruling powers to the president and cabinet in the government system. Apparently, the parties eventually decided on a trade-off - Swapo agreed to a bicameral parliament and hence the creation of the NC, while the opposi-

tion approved an executive presidency for the Namibian government structure.³

¹ Mudge, Dirk, 'The art of compromise: Constitution-making in Namibia', In Bösl, A., Horn, N., du Pisani, A. (Eds.), Constitutional democracy in Namibia - A critical analysis after two decades. 2010

² Sharazi, M. 2011

³ Hopwood, Graham. Guide to Namibian Politics, Namibia Institute for Democracy. 2008 Edition

Code of Conduct for Political Parties

We Pledge Our Commitment to Free and Fair Elections

1. Intimidation in any form is impermissible.
2. No weapon of any kind, including any traditional weapon, may be brought to any political rally, meeting, march or other demonstration.
3. Parties shall avoid holding rallies, meetings, marches or demonstrations physically close to one another during the same time of day.
4. Parties shall refrain from utilising public address systems, either fixed or mobile, between 21:00 and 7:00 hours and which could constitute a public nuisance.
5. Speakers at political rallies may not use language which incites violence in any form against any other person or group of persons. Parties will not issue pamphlets, newsletters or posters which contain materials which incite people to violence.
6. Party members and supporters will not disrupt other parties' rallies, meetings, marches or demonstrations.
7. Party members and supporters will not seek to obstruct other persons from attending the political rallies of other parties.
8. Party members and supporters will not disfigure or destroy political or campaign materials of other parties.
9. Party leaders will use their good offices to ensure reasonable freedom of access by all political parties to potential voters, including those at farms and on state-owned properties, outside working hours.
10. Parties will establish lines of communication to one another at headquarters, regional and local levels, and will appoint liaison personnel who will be constantly on call to deal with any problems that may arise.
11. The Director of Elections will meet party representatives on a weekly basis to discuss all matters of concern related to the election campaign and the election itself. Emergency meetings will be convened as and when necessary.
12. Designated members will attend their parties' rallies to ensure compliance with this code.
13. All allegations of intimidation and other unlawful conduct in the election campaign will be brought to the attention of the Police and of the Directorate of Elections at the places where they are alleged to have occurred.
14. Party leaders will issue directives to their members and supporters to observe this Code of Conduct, and take all other necessary steps to ensure compliance.
15. The Directorate of Elections and party leaders undertake to publicise this Code of Conduct throughout Namibia by all means at their disposal.
16. Parties will in their advertising and propaganda efforts take care not to disfigure the environment.

Source: Electoral Commission of Namibia

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), Graham Hopwood, Ndiitah Nghipondoka-Robiat, Daniel Motinga, Justin Ellis and Michael Humavindu.

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