



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.

The Constitution that emerged from this process has been widely hailed as being one of the most progressive in the world. Since Namibia's independence on March 21 1990, the supreme law has served the country well. Controversies have arisen, not least over the land issue and the death penalty, and several amendments have been made – but overall, the Constitution has stood the test of time over Namibia's first two decades as a sovereign nation.

*The Constitution in the 21<sup>st</sup> Century: Perspectives on the Context and Future of Namibia's Supreme Law* provides an accessible overview of how the Constitution was formed and analyses how its Bill of Rights has been applied. In addition, the prospects for the Constitution are assessed in a series of interviews with young Namibian leaders. Interspersed throughout are the comments of ten of the lawmakers who served in the Constituent Assembly on the challenges they faced, the most important features of the Constitution, and how the supreme law might fare in the future.

This volume can serve as a civic education handbook on the Constitution and for this purpose discussion pointers and exercises are included throughout.

It is hoped that *The Constitution in the 21<sup>st</sup> Century* can play an important role in making sure that more Namibians can take pride in their supreme law and most importantly express and live out its fundamental values and principles.

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## PERSPECTIVES ON THE CONTEXT AND FUTURE OF NAMIBIA'S SUPREME LAW



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# **THE CONSTITUTION IN THE 21<sup>ST</sup> CENTURY**

**PERSPECTIVES ON THE CONTEXT AND  
FUTURE OF NAMIBIA'S SUPREME LAW**

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We would particularly like to thank the founding mothers and fathers of the Namibian Constitution who made themselves available for the interviews which formed part of the research for this publication. These were: Libertina Amathila, Nahas Angula, Hidipo Hamutenya, Pendukeni Iivula-Ithana, Peter Katjavivi, Michaela Hübschle, Dirk Mudge, Kosie Pretorius, Vekuii Rukoro, and Hartmut Ruppel.

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**Namibia Institute for Democracy**  
**Institute for Public Policy Research**

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# 1. INTRODUCTION

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BY GRAHAM HOPWOOD

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 21 years as an independent country.

In its early days the Constituent Assembly took two crucial decisions. First of all Swapo's Theo-Ben Gurirab made clear the liberation movement would support the incorporation of the 1982 Constitutional Principles (negotiated with the Western Contact Group as a fundamental part of the peace plan for Namibia). Secondly, the then Chairman of the Democratic Turnhalle Alliance, Dirk Mudge, proposed that Swapo's constitutional proposals be used as the basis for debate and discussion. These far-sighted decisions immediately made it clear that the Constitution would place a heavy emphasis on internationally accepted standards for human rights and that there would be a process of give and take with parties prepared to make concessions in the national interest.

All the members of the Constituent Assembly deserve praise for their role during those momentous days, especially the 21 representatives who served on the drafting committee. In particular, Hage Geingob, who chaired proceedings, is remembered by virtually everyone involved as being particularly skilful and effective in helping members overcome suspicion and find agreement.

This volume brings together both retrospective considerations of the Constitution and assessments of what the future may hold for the supreme law and the country. Several of the founding mothers and fathers who were part of the Constituent Assembly were interviewed at length and extracts of those interviews are interspersed with the various sections of the publication. Almost unanimously these serving and retired politicians expressed their pride in the Constitution, their continuing belief in its inherent values, and their hopes that future generations of Namibians will live out its principles.

Masoma Sherazi, who herself worked for United Nations in Namibia in more recent times, contributed the first section of *The Constitution in the 21<sup>st</sup> Century*. This examines the context in which the supreme law came about and summarises and assesses the way in which the Constituent Assembly went about its business.

In the second section – Explaining the Constitution – democracy and governance researcher Frederico Links, with the assistance of Joey Gottlieb, examines the role of Constitution after independence by looking at various cases and examples in which the supreme law has been cited, applied and used as a benchmark.

For the final section of the publication, Naita Hishoono and Justine Hunter, spoke to a range of leading young Namibians about their knowledge and perceptions of the Constitution.

*The Constitution in the 21<sup>st</sup> Century* is not intended to be another academic tome written in legalistic terms. Instead, the publishers hope it will serve as an accessible reader on the supreme law – which will assist the process of ensuring the Constitution is a living document for Namibians. As such, it is hoped the book will give a sense of how the Constitution came about, its journey through the country's 21 years of independence, and its prospects for the future. In part, this volume can serve as a civic education handbook on the Constitution and for this purpose discussion pointers and exercises are included throughout.

Indeed, it emerged during the research phase for *The Constitution in the 21<sup>st</sup> Century* that civic education about the supreme law can be greatly enhanced – in schools and tertiary institutions and also in community and civil society groups. We lose touch with our founding law at our own peril.

It is not the purpose of this book to paint the Constitution as a perfect document. It was written under major time constraints and without the option for much consultation with broader Namibian society. It is inevitable that there are areas which may need future amendment or additional clauses. In the first 21 years of Namibian independence there have only been two amendment acts – the first in 1998 allowed Namibia's founding president to run for a third term in office, while the second, passed in 2010, established the Anti-Corruption Commission as a constitutional body and tightened the section on citizenship. It is commendable that the Constitution has not seen repeated tinkering. On the whole, those original members of the Constituent Assembly interviewed for this volume share a belief that the Constitution does not require major revision, although some amendments may be considered from time to time. When they deliberated back in 1989/90, it was decided that Chapter 3 dealing with fundamental rights and freedoms could not be abolished or diminished by future amendments. The consensus still appears to be that this was a prescient and visionary decision, although there are persistent worries from some quarters about the death penalty and land redistribution. These commitments to fundamental rights and freedoms remain at the core of the supreme law and therefore national life. The challenge is to embed them further and create a genuine human rights culture in Namibia. Hopefully, this publication will help citizens understand what was in the minds of the founders of the state when they made these crucial commitments.

There are other areas of the Constitution where reform could be considered at some points in the future. Parliamentary reform is mentioned by several of the interviewees – possibly creating a unicameral parliament – as a means of achieving more effective governance and reducing the influence of the executive over the legislature. Strengthening the Principles of State Policy – set in Chapter 9 – is another suggestion on the table, possibly by considering second generation rights that could be added to Chapter 3. Including access to information in

Chapter 3 has also been mooted. Any such changes should be seen as extending and developing the spirit and letter of the original Constitution – and not undermining or picking apart the work of our founding lawmakers.

The Constitution can only be a living and breathing document if it is understood and internalised by most Namibians. It is clear we still have some way to go before we can say the Constitution’s values and principles have fully taken root in Namibian society.

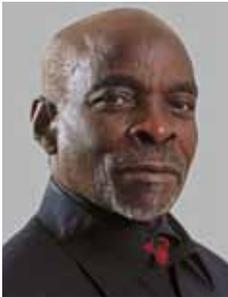
During the research for this book, it emerged that the original minutes of the Constituent Assembly’s drafting committee have never been publicly released. There is no reason for them to be kept secret and their publication could spur further research and analysis, which in turn could enrich civic education efforts.

Our hope is that *The Constitution in the 21<sup>st</sup> Century* can play a role in making sure that more Namibians can take pride in their supreme law and most importantly express and live out its fundamental values and principles.

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## FOUNDING PERSPECTIVE

# NAHAS ANGULA



### SWAPO’S DRAFT WAS THE BASIS

Parties who won the elections appointed members to the drafting committee and Swapo had a draft constitution of its own. I suspect that some other parties had one as well. Luckily enough the Constituent Assembly committee decided to use Swapo’s draft as a basis to draft the national constitution. That gave us a starting point. Then since Swapo was the majority it was also given the privilege to chair the committee in the person of Honourable Hage Geingob. Each political party was also allowed to have a legal advisor, a constitutional expert of their own choice. So that is how the whole process was structured. I think it was a well structured process.

### A GIVE AND TAKE DOCUMENT

If you read the Constitution you’ll see the three legs of the government, the legislative, the executive, the judiciary. The one issue that was brought to the fore was the power of the President. If you read in that section of checks and balances, you’ll see that the President is actually kept in check by the Cabinet. There was a big debate around that issue. So the Constitution was more of a give and take document. It is not necessarily just a Swapo document or a DTA document or another party’s. Each party had to put in something and let go of another thing.

## **THE WELFARE OF THE PEOPLE**

Chapter 11 (Article 95) is about the welfare of the people which was one of Swapo's principles because we thought the Constitution should really address the welfare of the people given the background from where we were coming from where a majority of the population suffered. This particular chapter is just a moral statement, but you can't necessarily enforce it which was a disappointment to some of us.

## **THE CONSTITUTION PROVIDES THE BASICS**

The Constitution can't really solve all the problems but it can provide the basics. For example, if you are unemployed the Constitution can't necessarily provide you with a job – that is still in the domain of politics.

Is the Constitution being learnt at school? Civic education is supposed to be part of life skills subject at school. Whether people really use the topic at school I can't really say. It is quite unfortunate if it is not being done.

## **I WOULDN'T CHANGE MUCH**

I wouldn't change too much except for the welfare of the people, I want it to be strengthened so that we won't have this controversy of the basic income grant, so that if we have people in great need they can be taken care of. Of course, the government has lots of nets for the elderly or disabled but I still would like the government to put up some unemployment benefits like having food coupons so that they could get some basic food

## **WE ARE IN A GLOBAL VILLAGE**

Is the supreme law Namibian or based on foreign concepts? The world is a global village and the concepts of justice or equality and all those things aren't necessarily our ideas but they are good for all of us. So we have to learn from each other. You know how our traditional rules go, if it wasn't for the influence of foreign concepts things like women's rights would not exist.

*Nahas Angula is the Prime Minister of Namibia.*

*He previously served as a minister for Education*

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## FOUNDING PERSPECTIVE

# LIBERTINA AMATHILA



### THERE WAS EXCITEMENT

In 1989 when we came home and we began to write the Constitution, what really kept us together was our strength. We were all united. Most of us knew each other, some of us went to school together and we were all happy to see each other. There was excitement, everyone was ready and happy to pitch in.

### RECONCILIATION WAS KEY

What we really wanted to get in the Constitution was number one: the policy of reconciliation. During the struggle we as Swapo lived in other African countries ... we also experienced and learned how the other African countries were administered. Most of them went into civil war [after independence] and we were determined that when Namibia becomes independent, we will do anything to avoid war and to protect our people and infrastructure. We did not want the situation whereby there would have been the pointing of fingers at each other, we would have finished ourselves.

### NEVER UNDERMINED

Our Constitution was never undermined. You don't amend the Constitution every year, but after 20 years with experience, particularly in the area of regional governance, and so on, we are busy with some small amendments.

### WE MUST LEARN THE CONSTITUTION

I think our education system must make sure the Constitution is part of the curriculum in the schools so that we bring up our children according to our Constitution, according to what we want them to be in the future. You still find that when you speak Afrikaans to children they would address me as *ji* because they still think I am a servant of theirs or something, and if they address a white woman they will address them as *juffrou* or aunty but for blacks they will say *ji*. So that is why we must bring our Constitution in our schools, the kids will learn and debate. I think that will we strengthen our Constitution if we make it part of our curriculum.

### WRITTEN OUT OF EXPERIENCE

I would not exchange anything in our Constitution with another country's [supreme law]. I remember when we were writing our Swapo party constitution, Dr Nicky Iyambo and myself were in charge of the healthcare chapter and already that time we thought of primary healthcare as an important aspect, because I represented Namibia at the World Health Organization and that is when the primary healthcare started [in Swapo' exile settlements] in 1978 already. So we were conscious of these types of issues and that is what we brought here.

## **EVERYBODY SHOULD KNOW THE CONSTITUTION**

For the Constitution to be a living document we have to make a point of educating our people, not only schools but generally including the youth, the women, the senior citizens ... it is a document which everybody should know about.

*Libertina Amathila is a former deputy prime minister. She also held the ministerial portfolios for Health and Local, Regional Government and Housing*

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## **FOUNDING PERSPECTIVE**

### **HIDIPO HAMUTENYA**



#### **MODERN AND PROGRESSIVE**

The people who were involved [in writing the Constitution] were single minded. They were focused on achieving the goal of drafting a modern and progressive constitution and I think they realized that. There was fear on the other side of the Assembly. I think the other [opposition] parties did not trust that Swapo would play a fair game with them and they were quite surprise that they did.

#### **THE LAND ISSUE REMAINS**

The land issue is still with us. It has not been resolved. The idea of just and fair compensation was warmly agreed on [in the Constitution] but I think that deep in the hearts and minds of the people this was not really permanently agreed on. It is unfair to talk about just and fair because the way the land was required from the people was not just and fair at all.

#### **DEMOCRACY IS NOT HONOURED**

The political practices have not entirely confirmed the Constitution. Democracy must be strictly honoured. Instead of fostering or preparing the process of democratic governance a tendency has set in whereby autocracy and cronyism were used to steer the politics in one direction. Although democracy is provided for in the Constitution, it is not honoured. The Constitution did not have in mind a situation whereby multi-party democracy was reduced to the governance of one dominant party.

## **NEW CHALLENGE TO RECONCILIATION**

Reconciliation has come a long way. Reconciliation was emphasized because of the background from where we are coming. The nation was tired of terror activities. And people behaved accordingly. We went through the problem of apartheid and we went through the process of fighting with guns and as we were writing the Constitution we knew that this country of ours had weapons which were hidden all over the place. And we were aware of the danger of people resuming fighting. So we tend to overemphasize reconciliation. But there are other issues which have come to the fore. Right now we are talking about things like corruption, nepotism and class conflict. What you are seeing now is blatant class conflict. When you read that an elite has taken hundreds of millions of your money that was invested into the GIPF [civil servants' pension fund] then we no longer have reconciliation.

## **POVERTY COULD UNDERMINE THE CONSTITUTION**

One challenge to the Constitution is the need to develop the economy, to provide jobs and to improve the incomes of the broad majority of this society. And, if they are not addressed, you will have a continuous trend of young generations being unemployed and you don't know when they are going to get tired of sitting on street corners. And they might start to significantly undermine the Constitution. So we may celebrate and rejoice that we do not have violence yet but how long are you going to ensure that that's the case? That's a constitutional issue. The well-being of the people, taking care of the development of the people has implications for peace and stability in the country.

## **THE PRINCIPLES OF DEMOCRATIC GOVERNMENT**

The only way to ensure that Namibia entrenches what is provided for in the Constitution is to condition the minds of the Namibian people to uphold those principles in practice. Because if they don't uphold then we will be drifting far way from those democratic principles and we will find ourselves in the quagmire financially and democratically. So we have to question right away whether democratic principles and values are being taught in our education system. So we have to do what we can to ensure that civic education in our schools stresses the values and principles of democratic government.

*Hidipo Hamutenya is the leader of the official opposition and was previously a minister of Foreign Affairs, Trade and Industry, and Information.*

## TIMELINE OF EVENTS LEADING TO THE ADOPTION OF THE CONSTITUTION IN 1990

DATE	EVENT
1884	South West Africa becomes a German colony
1915	South Africa takes over the territory
1918	South West Africa is placed under the administration of South Africa by the League of Nations
1947	South Africa refuses to surrender control over South West Africa to the UN Trusteeship System
1960	South West Africa People's Organisation (Swapo), which becomes the main liberation movement, founded
1966	Swapo's armed struggle commences
1966	The UN passes a resolution declaring South Africa's administration unlawful
1968	South West Africa renamed 'Namibia' by UN
1971	International Court of Justice declares South African occupation illegal
1976	The UN recognises Swapo as 'sole and authentic' representative of the Namibian people.
1977	South Africa holds the Turnhalle Conference and appoints the first Administrator-General to govern Namibia
1978	The UN passes Security Resolution 435
1985	South Africa establishes the Transitional Government of National Unity
1987	Battle of Cuito Cuenavale in southern Angola
1988	The New York Tripartite Accords are signed bringing an end to civil war in Angola
1989	The United Nations Transition Assistance Group (Untag) is deployed in Namibia
7-11 November 1989	Namibia holds its first democratic elections
21 November 1989	The Constituent Assembly is convened to begin work on drafting Namibia's first Constitution
9 February 1990	The Constitution is adopted
21 March 1990	Namibia becomes independent

## 2. EXPLAINING THE CONSTITUTION

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BY MASOMA SHERAZI

**A** constitution is the basic or supreme law of a nation according to which all other laws have to be made. This means that other laws are only valid if they are consistent with the rights contained within the Constitution. A constitution also determines the fundamental political principles and structures of a government. It enumerates and limits its powers and functions. Most constitutions guarantee certain rights and freedoms to the citizens of a nation.

The Namibian Constitution can be said to be the product of a struggle for democracy and human rights. Its creation by Namibia's future leaders was a statement of a commitment to the rule of law and protection of fundamental freedoms, which under decades of apartheid policies had been denied to the Namibian people. This commitment is reflected in the preamble of the Constitution which states that Namibia is a "sovereign, secular, democratic and unitary state securing to all our citizens justice, liberty, equality and fraternity." The uniquely international character of what has been hailed as sub-Saharan Africa's most democratic constitution gave the country a promising start as a democracy.

This section will provide an overview of the historical background and influences that led to the formation of the Constituent Assembly that was responsible for drafting Namibia's first Constitution. It will examine the work of this body for its relevance to the final shape and form of the Constitution. The section will further describe the principle features of the Constitution and briefly analyse its importance in promoting human rights.

### THE ORIGINS OF THE NAMIBIAN CONSTITUTION

South West Africa, as Namibia was formally known, became a German colony in 1884. At the end of the First World War in 1918, the territory was placed under the administration of South Africa by the League of Nations. When the League was dissolved in 1946, South Africa refused to surrender South West Africa to the Trusteeship System of the newly formed United Nations (UN) Organisation. This led the UN to refer the case to the International Court of Justice (ICJ). Following a series of advisory opinions from the ICJ that supported the UN's judgement over the illegality of South Africa's occupation, the UN terminated South Africa's former mandate. While South Africa's presence was declared unlawful, the ICJ's rulings had little practical effect on loosening the country's grip on South West Africa, which was renamed 'Namibia' by the UN in 1968.

In the late 1970s international pressure for a solution to the dispute began to mount. During this time, the UN formally recognised Namibia's national liberation movement, the South West Africa People's Organisation (Swapo), as the legitimate representative of the Namibian people. South Africa reacted to the stalemate by proposing an internal settlement in 1975 known as the 'Turnhalle Conference', a framework for establishing a new government for South West Africa.

The accompanying election organised by the South African authorities in 1978 was won by the Democratic Turnhalle Alliance, an amalgamation of political parties developed at the conference in an attempt to counterbalance Swapo. The Turnhalle Conference and the subsequent election were boycotted by Swapo and failed to gain international recognition.

In 1978, the UN passed Resolution 435 which made provision for Namibian independence in accordance with a settlement plan put forward by the five members of the Security Council (Canada, France, West Germany, the United Kingdom and the United States) known as the 'Western Contact Group'. The plan included measures to hold free elections to create a constituent assembly that would be responsible for drafting a constitution for the Republic of Namibia. It took a further ten years to reach a settlement.

Namibia's first democratic and internationally recognised elections took place in 1989 under the aegis of the United Nations. A 72-member Constituent Assembly consisting of members of different political parties was subsequently formed. The Constitution was adopted unanimously on February 9 1990 and it came into force on March 21 1990, the day of Namibian independence. In this chapter, a summary will be provided of the external and internal influences that led to the beginnings of the Namibian state and ultimately shaped its Constitution.

## **GLOBAL FACTORS**

Namibia's first constitutional process came about after more than a decade of negotiations, and involved a range of external parties. The reason for the international community's concern with Namibia lay largely in the fact that the apartheid ideology of the South African administration was being applied to this territory as well. Changes in international relations particularly due to the ongoing Cold War also played a role in producing the final settlement that was to materialise.

### ***THE PATH TO UNSCR 435***

In April 1977, the Western Contact Group was created to mediate the deadlock between South Africa and the United Nations in respect of Namibia. The Contact Group launched the 'Proposal for a settlement of the Namibian situation' which included the following provisions: the appointment of a Special Representative by the UN Secretary-General, who, working with the South African-appointed Administrator-General of the territory, would be responsible for ensuring the conduct of free and fair elections and an "orderly transition to independence" in the territory. The result of the elections would form the basis of a constituent assembly, which would be responsible for drawing up a Namibian Constitution.

Under the final proposal that came to be known as UN Security Council Resolution 435 (UNSCR 435), the UN Secretary-General was to establish the United Nations Transition Assistance Group (UNTAG) that would be headed by Martti Ahtisaari, the Special Representative of the Secretary-General, to oversee the elections and South Africa's withdrawal. UNSCR Resolution 435 officially signalled the beginning of Namibia's transition to independence.

## **THE TRANSITION TO INDEPENDENCE**

During this period of negotiation, a civil war was raging in Angola which had important political implications for Namibia's independence in so far as the Cold War was concerned. The Angolan Civil War was one of the most prominent conflicts of the Cold War and involved a configuration of global forces including the United States, the Soviet Union, South Africa and Cuba. The tense relationship between the two superpowers created an unwillingness on the part of the United States to support struggles for independence in countries where the Soviet Union had any influence. As Namibia shares a border with Angola and as Swapo soldiers were engaged in their own cross-border war with South Africa in South West Africa and Angola, Namibian independence became tied to peace in Angola. In this regard, the US developed a policy of linkage whereby Namibia's liberation became dependent upon Cuba's withdrawal from Angola.

In the late 1980s, a new era of *perestroika* associated with the Soviet leader Mikhail Gorbachev and intended to reform the Soviet political and economic system began to emerge. With it, ideological tensions between the Soviet Union and the United States of America that had fuelled wars around the world for over 35 years began to dissipate. By 1987, the impact of the superpower detente was being felt by all parties involved in the Angolan and Namibian disputes.

## **OTHER FACTORS**

While external factors played an important role in securing Namibia's independence, developments inside Namibia and within the region, particularly in South Africa, had considerable influence in both determining and shaping the final settlement. South Africa had been brought to the negotiating table through a combination of Namibian activism and international pressure (with the added threat of political and economic sanctions). While feeling compelled to participate in the negotiations, South Africa wanted to ensure the installation of a 'friendly' even 'proxy' government on its border. It therefore initially tried to hinder progress until it could produce an alternative to Swapo that could win the proposed UN-supervised election, envisaged as part of UNSCR 435. Subsequent developments, however, led to a strategic shift in South African policy towards Namibia.

## **THE 1982 CONSTITUTIONAL PRINCIPLES AND ELECTIONS IN ZIMBABWE**

Two related developments occurred following the adoption of UNSCR 435 that helped to shift South Africa's position towards the region: the independence of Zimbabwe and the subsequent drafting of the 1982 'Principles concerning the Constituent Assembly and the Constitution for an independent Namibia'. Swapo's subsequent declarations to pursue a pragmatic approach to independence based on the Zimbabwean model also had a calming effect in alleviating South Africa's anxieties towards the cause of independence. Anxious for political guarantees similar to those that had paved the way for Zimbabwean independence, the Western Contact Group further introduced a series of safeguards known as the 1982 Constitutional Principles designed to ensure that any incoming government would be limited in its ability to bring about dramatic changes to the constitutional order once in power.

## **THE WINDS OF CHANGE**

The dynamics of the military conflict in Angola also changed in the late 1980s. The South Africans' failure to capture the strategic town of Cuito Cuenevale, after coming up against strong Angolan and Cuban resistance, in 1987 highlighted the costs of the war in Angola for Pretoria – in terms of both money and casualties. Swapo fighters' long-standing war of attrition on the northern border through attacks by its armed wing – the People's Liberation Army of Namibia – added to the military pressure. Negotiations offered a way out of the impasse for all sides to the conflict.

In addition to the financial burden of the continuing war in Angola, the economic costs of occupying Namibia were also increasing. After 1986 South Africa's financial difficulties were further exacerbated with the adoption of economic sanctions by the United States and by the decision of certain Western banks not to renew the government's outstanding loans in protest at South Africa's Apartheid system and intransigence on the Namibian dispute. Inside Namibia, South Africa's latest attempt at an internal settlement following the Turnhalle Conference of 1975 known as the Transitional Government of National Unity from 1985 to 1989 had, like its predecessors, failed to gain the legitimacy either domestically or internationally to which it aspired.

The 1980s saw an upsurge in pro-independence activism inside Namibia with rise of Swapo-supporting union and student movements. In addition, the Council of Churches in Namibia played a key role in highlighting human rights abuses and raising such issues internationally. Popular protests intensified as the decade continued culminating in a widely-supported schools strike in 1988 in opposition to South African military bases being situated near schools. The founding of *The Namibian* newspaper in 1985 was crucial in giving coverage to the independence campaigning and South African human rights abuses.

Under pressure from all sides, South Africa began to yield. This opened the path for the creation of the United Nations Transition Assistance Group for Namibia and with it the transition to long-awaited independence.

On 22 December 1988 an agreement between Angola, Cuba and South Africa known as the New York Tripartite Accords was signed. This created the conditions for, among others, the retreat of South Africa from Namibia.

## **WRITING THE NAMIBIAN CONSTITUTION**

The first Namibian election took place from 7 to 11 November 1989. Over 96% of the population voted. Seven political parties gained enough support to participate in the Constituent Assembly. With forty-one seats, Swapo had a clear majority; followed by the Democratic Turnhalle Alliance with twenty-one, the United Democratic Front with four, the Action Christian National with three, and the National Patriotic Front, the Federal Convention Namibia and the Namibia National Front with one member each.

The Assembly's mandate was fourfold: to prepare a constitution for Namibia; to adopt the Constitution with a two-thirds majority; to declare Namibia independent on a predetermined date; and lastly, to lay the foundation for a government based on the new constitution. As no

single party was able to achieve the two-thirds majority, it was clear from the outset that compromises would be necessary.

Here, relevant aspects and debates of the constitutional process will be highlighted for their importance in understanding the scope and provisions of the Constitution that was created.

## **THE ESTABLISHMENT OF THE CONSTITUENT ASSEMBLY**

The Assembly first met on 21 November. Hage Geingob, Swapo's Election Director, was elected Chairman of the Assembly. A Standing Committee on Standing Orders and Rules and Internal Arrangements (the 'Standing Committee') representing all parties was established to support the drafting process. The Assembly's work can be divided into four key stages:

- 1 Preparation of constitutional proposals (21 November to 20 December 1989)
- 2 Deliberations of the Standing Committee (20 December 1989 to 24 January 1990)
- 3 Adoption of final draft (25 January to 9 February 1990)
- 4 Preparation for independence (10 February to 20 March 1990)

On 16 March, the Constituent Assembly met for the last time for the ceremonial signing of the Constitution by all the members of the Assembly. The Constitution came into force on Independence Day on 21 March 1990.

## **IMPORTANT ASPECTS OF THE CONSTITUTION-MAKING PROCESS**

### *THE DRAFTING PROCESS*

The business of writing a constitution was conducted at a relatively fast pace. As the Untag operation was due to end on 31 March 1990, it was expected that the work of the Assembly would not be extended beyond this date. As the Assembly was first convened on 21 November 1989, this would have allowed a little over four months to complete the Constitution and to achieve independence before 1 April 1990.

Another important aspect of the constitution-making process concerned its actual drafting. Although substantive decisions regarding the provisions of the Constitution were all taken by members of the Constituent Assembly, virtually all of the work on preparing the Constitution was done in committee. Furthermore, the actual drafting was almost exclusively left to three South African lawyers, who worked closely with the Standing Committee on Standing Rules and Orders and Internal Arrangements. 'Constitutional advisers' were also seconded by external organisations such as the Commonwealth, the Organisation of African Unity and by the United Nations. These advisers never became directly and formally involved in the drafting process, but could only influence it peripherally by their access to senior members of the Assembly.

Lastly, the proceedings of the Assembly were relatively informal. Although verbatim records were apparently prepared for each meeting of the Assembly and the Standing Committee for consultation by members, none of these have ever been published.

### *ELEMENTS OF SUCCESS*

The following factors played a crucial role in the ease and success with which the drafting of the Constitution was completed:

- Since no party commanded the required two-thirds majority to adopt the Constitution, it was clear that all parties would have to work together to reach consensus. This was aided by the spirit of reconciliation in which the Constituent Assembly met.
- Swapo, which had a majority in the Constituent Assembly and consequently nominated the Chairman and controlled several committees, showed considerable readiness to work with the other political parties and a willingness to compromise even on a number of fundamental constitutional issues. Sam Nujoma set the tone of the proceedings in a conciliatory opening speech, which was followed by constructive speeches from all of the representatives of delegations and created an atmosphere of cooperation. Hage Geingob's election to the position of Chairman of the Assembly combined impartiality and decisiveness with a degree of humour and informality. His one-to-one interactions with many of the Constituent Assembly members even prior to the first meeting of the assembly helped create a favourable climate for the work of the Constituent Assembly.
- The previously negotiated and internationally agreed 1982 Constitutional Principles which laid the foundations for the Constitution were unanimously accepted by Swapo as a framework for the deliberations. The Principles not only embodied values, but provided a clear and concise checklist on which the different parties had to a greater or lesser extent based their constitutional proposals. This further aided the ease with which the Assembly was able to reach broad agreement on various constitutional issues.
- The knowledge that Namibia was under international scrutiny, and the sense of urgency and commitment to reach the long delayed goal of Namibian independence led to a greater willingness among all parties to 'give and take'. Cooperation and pragmatism were the orders of the day.
- The external expert legal advice available to the Constituent Assembly combined with the knowledge brought by the members themselves contributed to the efficiency with which the final document was produced.

## **KEY CONSTITUTIONAL DELIBERATIONS**

There were generally few areas of serious contention between the political parties. As National Patriotic Front (NPF) leader Moses Katjuongua said, "everybody wanted to be seen as a democrat during these negotiations." However, the following three issues ought to be noted for their significance:

### **1 EXECUTIVE VS. CEREMONIAL PRESIDENCY**

There was general agreement between the framers of the Constitution that executive power should not be unchecked. There were, however, differing views on how these powers could be subjected to oversight. The Democratic Turnhalle Alliance (DTA), the NPF and the rest of the smaller parties argued in favour of a ceremonial president. Swapo and the Namibia National

Front (NNF), on the other hand, supported an executive presidency subject to appropriate constitutional checks and balances. Swapo members were also unanimous in their belief that executive presidency was essential for building a unified state – Namibia needed a leadership structure that would promote cohesiveness in bringing together the various ethnic and racial groups that had been divided under apartheid rule. In the final outcome, it was agreed to make the president the head of state and of government, provided that he or she shall share executive power with the cabinet comprising the prime minister and ministers.

## **2 ORGANISATION OF THE LEGISLATURE**

As the Constituent Assembly turned its attention to working out details about the nature of the legislature, some of the concerns of the members of the assembly were to bring about accountability and establish a system of checks and balances. Swapo favoured a one-chamber National Assembly, while all other parties supported a bicameral parliament with the second chamber having advisory functions and some veto powers. In the spirit of compromise, Swapo accepted the concept of a bicameral parliament. It also believed that the regional aspects of the second house would be very useful in bringing democracy closer to the people. This thinking was tandem with Swapo's belief in the de-concentration of power from the centre to the periphery to make decisions more relevant to the developmental needs of the regions.

## **3 NATURE OF THE ELECTORAL SYSTEM**

Lastly, there was considerable debate in the Constituent Assembly on the choice of the electoral system. Swapo preferred single-party constituencies, while the DTA preferred a system of proportional representation. In the end, three electoral systems emerged. The president was to be elected on a majoritarian (50% + 1) system. Members of the National Assembly were to be elected on a proportional representation basis. Finally, members of regional councils were to be elected from constituencies in a first-past-the-post system.

## **LIMITATIONS OF THE CONSTITUTIONAL PROCESS**

In some subsequent assessments of the Namibian constitution-making process, criticism was levelled at the fact that the proceedings of the Constituent Assembly were not open to the public or media and that work on the Constitution was carried out in secrecy. These factors also opened the door for criticism in later years that important issues and principles were agreed on and written into the Constitution, without ever having being raised, discussed or agreed upon in the broader Namibian society prior to or even during the election. This problem could of course have been overcome if the proposed Constitution was made subject to a subsequent referendum or even if there was a further election to choose the governing party after the adoption of the Constitution.

This criticism is, however, tempered by two considerations: the fact that a manifestly very democratic instrument emerged and, as a result, there was relatively little public debate on most aspects of the Constitution. Furthermore, in two subsequent general elections in 1994 and 1998, Namibians showed increased support for Swapo which indicated that they did, at least, not question the acceptance of the provisions of the Constitution by Swapo representatives.

## **PRINCIPLE FEATURES OF THE CONSTITUTION**

The Namibian Constitution is composed of twenty-one chapters and one hundred and forty-eighty articles. A summary of the principle provisions is provided below. While a comprehensive analysis of the individual provisions of the Constitution is beyond the scope of this section, it is worth highlighting a few of its most interesting and important features. One of the most conspicuous of these is the repeated reference to colonialism, racism and apartheid, a clear legacy of the country's past. Linked to this is perhaps the way in which certain issues are spelt out in detail such as the role of the police or the importance of citizenship. The Constitution also contains an exceptional system of checks and balances which are delineated meticulously. Lastly, the Constitution can be seen as a guide to the government's legislative programme in its listing of the various issues to be addressed under 'Principles of State Policy' such as welfare of the people, equality of opportunity for women, and protection of the environment, among others. This can again be put down to Namibia's historical legacy.

### ***THE PREAMBLE***

The Constitution begins with an introduction called a 'Preamble' which explains the importance of the Constitution. The Preamble states that Namibia is a "sovereign, secular, democratic and unitary State" and is committed to the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family."

### ***ORGANS OF STATE***

As the Constitution is the supreme law of the land, the organs of state are governed by a system of checks and balances. This is done through the separation of powers between the three branches of government, which are composed of:

- 1 the executive (the President and the Cabinet)
- 2 the legislature (Parliament)
- 3 the judiciary (the courts of law)

### ***OTHER PROVISIONS***

The Constitution covers many other issues such as citizenship, fundamental human rights and freedoms, public emergency, state of national defence and martial law, state policy, regional and local government, official appointments, the police and defence forces and the prison service, and finance, among others.

### ***PROCEDURE FOR AMENDMENT***

As the Constitution is made to protect the Namibian people, amendments can only be made if the following criteria are met:

- 1 two-thirds of the members of the National Assembly and two-thirds of the members of the National Council approve the change, or
- 2 two-thirds of the members of the National Assembly and two-thirds of all citizens approve the change via a referendum.

## **THE BILL OF RIGHTS IN THE CONSTITUTION**

The Constitution contains a Bill of Rights that outlines fundamental human rights and freedoms. Under Article 131 of the Constitution, the rights and freedoms contained in Chapter 3 are entrenched, which means that provisions may not be repealed or amended insofar as such repeal or amendment weakens these rights and freedoms. This provision, however, does not stop the legislature from enhancing fundamental rights provisions. Chapter 10 also provides for the establishment of an Ombudsman to address violations of fundamental rights and freedoms.

## **FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS**

The rights contained in Chapter 3 include protection of life; protection of liberty; respect for human dignity; abolition of slavery or forced labour; equality and freedom from discrimination, arbitrary arrest and detention; access to a fair trial; the guaranteeing of privacy and respect for family; the rights of children; the right to acquire property; the right to political activity; the right to administrative justice, culture, and education. The Constitution also makes a provision to protect and provide for the advancement of Namibians who have suffered discrimination based on race or sex in the past, which is known as 'affirmative action'. The fundamental freedoms contained in Chapter 3 include freedom of speech and expression; freedom of thought, conscience and belief; freedom of religion; freedom to assemble peaceably and without arms; freedom of association; freedom to withhold labour; freedom to move freely throughout Namibia; freedom to reside and settle in any part of Namibia; freedom to leave and return to Namibia; and freedom to practise any profession, or carry on any occupation, trade and or business.

## **PROTECTION AND LIMITATION OF HUMAN RIGHTS UNDER THE CONSTITUTION**

The significant role that the protection of human rights plays in the Namibian Constitution cannot be overstated. In the case of Namibia, support for the inclusion of a Bill of Rights in the Constitution came from the Constitutional Principles. Furthermore, given Namibia's struggle for liberation, it would have been unthinkable for the state not to include a provision for human rights. These were, after all, the very principles that Namibians had fought for. The role of the United Nations also played an important part in ensuring that human rights gained pre-eminence in the Constitution and many of the basic rights and freedoms contained therein are largely, but not exclusively, and derived from the Universal Declaration of Human Rights.

The fact that the framers of the Constitution felt so strongly about human rights is reflected in the incorporation of various legal mechanisms in the Constitution to safeguard these rights. Article 5 of Chapter 3, for example, makes it clear that all organs of government are bound by the fundamental rights and freedoms enshrined in the Constitution. The Constitution also places limitations upon those elected to exercise political power so that they cannot on their own suspend or change the Constitution to suit their political agenda. Also, the provisions guaranteeing human rights are entrenched and any amendment that would repeal, diminish or detract from them is prohibited. This entrenchment is reinforced by Article 25 which prohibits

any legislative or executive action in contravention of these rights. Moreover, Article 22 states that wherever the Constitution contemplates a limitation of any fundamental rights, such limitation shall be of general application and not directed at any individual. It is also worth noting that under Article 24(3), the majority of these rights cannot be derogated from (repealed) or suspended.

While the Constitution is exemplary in terms of its stance on human rights, it does not, however, follow that all the rights and freedoms guaranteed are absolute. Some rights are self-limiting in order to avoid the abuse of rights and to strike the right balance between meeting the needs of the individual and the public interest. The Namibian Constitution under Article 26(5)(b) also allows the President, in times of national crisis, to act in a manner that might be considered an encroachment upon the guaranteed human rights and liberties.

## CONCLUSION

The Namibian Constitution has been hailed by many as exemplary. It owes its success in part to the international events, actors and influences that came to bear on its evolution. However, this is not to say that the Constitution is a foreign import. Rather, it would be more appropriate to say that it came into force as part of a unique international process involving political compromise between various external and internal stakeholders. The United Nations, in particular, played a significant role in bringing about the independence of Namibia and one that was more crucial than in the liberation of any other African state. The contents of the document therefore reflect this unique international character. However, in the final analysis, the Namibian Constitution is a result of a serious debate between representatives of seven political parties, matured by a process of 'give and take'. The product is a balanced and progressive document based on the rule of law and respect for human rights. It takes into account not only Namibia's past, but its future aspirations. If it fulfils what it promises, it will be a genuine source of protection and peaceful development for all Namibian citizens. In the words of Gerard Erasmus in his paper 'The Constitution: Its Impact on Namibian Statehood and Politics', "Constitutions are not self-enforcing: they merely create a value framework and scope for action. It depends on individuals, civil society, the media and political parties whether this potential is used and how that is done."

### DISCUSSION EXERCISE:

Having read this section of *The Constitution in the 21st Century* what would you say were the three main factors – domestic and international – which led to Namibian independence

How much is the Namibian Constitution a product of Namibia and how much is it a product of international developments?

In what ways do you think the Constitution might have been different if the process of writing the supreme law had taken into account widespread consultation with various sectors of Namibian society?

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## FOUNDING PERSPECTIVE

# PENDUKENI IIVULA-ITHANA



### WE HAD THE SAME INTENTION

The writing of the Constitution in 1989 cannot really be addressed without giving the background as to where the party that wrote the Constitution came from. The majority of the members from the Swapo side were just in the country for six months since their return from exile. One particular event had kept Swapo members very apprehensive of what was likely to happen and that was the attack on the Swapo fighters on April 1 1989. Our return to the country from May, June up to September was just a few months after that attack and at the back of our minds was the question of the sincerity of South Africans who were still in charge. Meeting for the first time, seeing each others' faces for the first time, although we kept hearing about each others' names, was very intense and very emotional but whatever the circumstances were I think in all our minds we all wanted to see Namibia getting independent. From whatever perspective I think that ran through the intentions of everybody.

### AGREEING THE 1982 PRINCIPLES

One of us proposed that the Constituent Assembly, before proceeding to the actual drafting, should adopt the 1982 Constitutional Principles. These were the principles that formed chapter 3, the human rights provisions and that kind of averted everybody's fears ... from then on we could talk about the setting up of institutions knowing that the protection of human rights was in place.

### DRAFTING COMMITTEE DID THE HARD WORK

The drafting committee did the hard work. Members of the drafting committee kept informing their political parties and as such we moved almost together although we were not meeting at the Constituent Assembly to go over each and every aspect we kept the parties aware and therefore at the end everything did not have to be debated again in the Constituent Assembly. That small committee did a wonderful job within such a short period of time.

I was really surprised by the skilfulness of the chairperson [Hage Geingob] and some of the committee members because they knew when to proceed, when to pause and when to hold back because we were not just negotiating through and through – there were times we had to leave an issue behind in order to let heads cool down and do some consultations and we would come back to the same issue after a day or two and proceeded just like that. The spirit of reconciliation was there and the maturity of all those involved as well and the desire to attain our independence because we knew if the if we prolonged we would prolong also the stay of the South Africans.

### **MAYBE WE ARE TAKING THINGS FOR GRANTED**

I can guarantee that the spirit of the unity of the Namibian people, the spirit of reconciliation, the spirit of give and is still there. However, there are a small number of people who think differently in Namibia. For example the uprising which was confined to a small number of people in the Caprivi region [in 1999]. Most of the people are opposed to what [Mishake] Muyongo has done because of what they see in Namibia – the unity of our nation. Maybe what we can discuss is whether there is effort to maintain that spirit or an enthusiasm to talk about these issues, maybe we are taking it for granted.

### **ONLY A SMALL MINORITY OPPOSE**

Probably one could only talk about certain few individuals who want to retain the benefits and privileges provided under the system of Apartheid but those are a minority. I know in the longer term they are going to be eliminated, natural causes are just going to eliminate them eventually because they will get old and will die out. Young children today go to the same schools and they are all mixing up and all the privileges are open to everybody, although we cannot yet say it is on an equal basis but the spirit is allowing us to forge ahead in this spirit of national reconciliation.

### **LIFE IS NOT PROTECTED**

The Constitution abolishes capital punishment. That sentence ever since 21 March 1990 has never been implemented here because our Constitution has outlawed it. One would even think that having a Constitution that outlaws capital punishment, Namibians would also refrain from taking others' lives and unfortunately that is not the case. The abuse and killing of women and children and others is still happening in our society and that is a challenge to our Constitution. We can have a Constitution that protects lives but yet we have citizens who do not refrain from terminating a life of another – then our Constitution seems not to have entered in our heads.

### **INTERNALISING THE CONSTITUTION**

While institutionally we can talk of the adherence to stipulations of the Constitution, socially many people have not yet internalised the Constitution. That is the biggest challenge. The only people that I think that have understood the Constitution are people working in the judiciary, some of the institutions of the government, the students studying law at the university of Namibia but the large majority of our people have probably not yet opened the booklet of the Constitution. The other challenge is that we have to translate the booklet into other languages.

### **PROPERTY CLAUSE PERPETUATES INJUSTICE**

The issue of including property rights within the Chapter 3 of the Constitution has really helped the injustice of the past to continue just because when colonialism was introduced in Namibia it was accompanied by expropriation of the land by the colonisers. The large majority of the blacks were removed from what was considered to be the prime land into the desert like the Damara-speaking people who lived somewhere around the Windhoek area and were

moved to Khorixas. Today they have no right to ask for compensation or claim their ancestral land rights because property rights were made part of the human rights chapter which cannot be amended in the Constitution. If I had the opportunity to change anything in the Constitution I would change that land reform aspect.

*Pendukeni Iivula-Ithana is Namibia's Justice Minister and Swapo Secretary-General. She has previously served as Attorney General, Minister of Lands and Minister of Youth and Sport.*

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## FOUNDING PERSPECTIVE

# MICHAELA HÜBSCHLE



### CHAPTER 3 IS SACROSANCT

I think we have Chapter 3 which guarantees the rights of everyone in the country, although we have had abuses of these articles. If you talk about the respect for human dignity you come to Article 8 (2b) that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. You know what happened in the Caprivi case [following a separatist rebellion], those arrested were tortured. Sometimes you find that during election campaigns people get very suspicious if you gather as a group to campaign. You find a lot of intimidation at some political party rallies. I think more should be done to convince people to respect that some people will think differently from how you feel about certain issues. So for me Chapter 3 is untouchable and I hope it will never be changed. Although it is actually guaranteed never to be changed you never know what people are up to. But I hope it will not happen.

### ENVIRONMENTAL PROTECTION

Article 95 (1) deals with the maintenance of ecosystems, essential ecological processes and biological diversity of Namibia. It also says we should not allow any dumping or recycling of foreign nuclear and toxic waste in Namibia. This is really close to my heart. We need to ensure it is implemented.

### UNITY UNDER THREAT

Going back to 1990, we had a saying of 'One Namibia, One Nation' and the emphasis was there – the excitement of independence, we are free, we have a peaceful, wonderful country. But I think over the past few years I could see setbacks. People are always emphasizing the

background of a person and things like I come from this region, you are a white person, you come from Rehoboth. I did not see this in the years from 1990 to 1995. I sincerely hope it will never happen that we have a situation like in Rwanda and Burundi. So we should be careful ... we should look at how to nurture this culture of care and tolerance. I challenge some of the people around me – you have a wonderful domestic worker but do you know where she stays, do you care about her family, what are you doing to make her work more comfortable. Some people look at me and say ‘oh please!’ but I think it is very important.

#### **MORE TO BE DONE**

Looking back the on the discussions in the Constituent Assembly I wouldn't want to change anything. I think the Constitution is a fantastic piece of work.

I do not want the Constitution to change, I just want more things to be implemented. As an environmentalist I am very much concerned about Article 95 (l) on things like keeping toxic waste out of Namibia. I do not want Namibia to be turned into a toxic dumping place. I want to keep the protection of our environment so that we can enjoy the tranquility of this beautiful land of the brave for generations to come.

#### **TWO-THIRDS**

I think it does not matter from which background you come from but the two-thirds majority is not healthy for any democratic state I think it is more interesting if we try to strike a balance. The first five years in parliament [after independence] were very interesting because you could not just bulldoze laws through and simply do away with the questions and motions which you were uncomfortable with.

*Michaela Hübschle is a civil society activist.*

*She is a former Deputy Minister of Prisons and a National Assembly MP from 1990 to 2000.*

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## FOUNDING PERSPECTIVE

# PETER KATJAVIVI



### ACHIEVING CONSENSUS WAS CRITICAL

There were lots of exchanges back and forth on whether to use the Swapo draft or the DTA draft [as a basis] but at the end of the day, it was agreed unanimously [to use the Swapo draft]. The next stage was to get into chapter by chapter to deliberate upon various aspects that we needed to address. The second issue I remember was our common agreement that we cannot vote on particular points but we have to agree every aspect by consensus. That was very important for us as members of different political parties to gain trust in each other and to accept the fact that this is not something that has been imposed but something we are achieving together – whether you come from a big or small party. That is basically how we managed to get off the ground,

### CONTROVERSIAL ISSUES

There were two controversial issues: One issue was what kind of structure of parliament we envisioned and whether to have a single chamber or a National Assembly and a National Council. The second chamber was an issue because the Swapo representatives were taking into consideration that we were a small country of 2 million people.

The second issue was the debate on doing away with the death sentence which made us pause, think and reflect on how we were going to secure a moral basis on which we could build. [It was felt that] Namibia must set an example and rise above emotionalism to build something new that we can stand and defend. Then the churches came along with other supportive institutions around the globe, and then we knew we were on the right path and so we had nothing to fear.

### THE CONSTITUTION IS NOT FOR ONE GENERATION

The drafting of the Constitution really contributed to our country's unity and policy of reconciliation. When you agree to do things through consensus that means there is give and take ... we were thinking about the future generation. The Constitution is not written for a particular generation, it has to serve Namibia through the ages and it must be accepted by the country as whole.

### PROTECTION OF THE ENVIRONMENT

The Constitution has been hailed by the international community as innovative, advancing democracy and being extremely exemplary in terms of the issues covered. One of these was protection of the environment. Today the debate on climate change has reached a peak, that's very important. And 20 years ago Namibia was already at the forefront in recognizing the envi-

ronment as important because of our experience here – we are a country of contrasts, suffering from extreme droughts from time to time and heavy rainfall and floods. Today Namibia does well in that field of environment and human rights as well.

**PROUD TO BE NAMIBIAN**

As a Namibian I hold my head high when I am addressing an [international] meeting and I speak with confidence because I come from a country which is a proud, multi-party democracy, stable, at peace with itself and with its neighbours. And that is the kind of Namibia most Namibians would like to have – not a country that is caught up in a warfare, tearing itself apart, this will not make anyone proud of being called a Namibian.

*Peter Katjavivi is the Swapo Chief Whip in the National Assembly.*

*He previously served as the Director-General of the National Planning Commission, ambassador to various countries and Vice-Chancellor of the University of Namibia*

### 3. THE CONSTITUTION IN CONTEXT

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BY FREDERICO LINKS

**A**t the time of its coming into force, on March 21 1990, the Constitution of Namibia was widely hailed as an exemplary democratic document and a noble attempt to move on from the brutality of South African Apartheid rule, which would only officially come to an end in that country in 1994.

Under Apartheid a racially skewed society, in terms of political and economic power and social opportunity, had been created and maintained in the then South West Africa by National Party governments in South Africa, to the detriment of the great majority of the territory's inhabitants.

The new Constitution of Namibia was thus envisaged as a radical break from the past and the foundation on which to build a democratic and humane state and nation founded on liberal values as enshrined in the bill of human rights under Chapter 3.

It has to be kept in mind that Namibian independence coincided with major global ideological and political shifts and upheavals, which saw the collapse of the Iron Curtain and the dismantling of the Soviet Union's hold over Eastern Europe. The collapse of the communist bloc in Europe initiated a tide of democratisation and a surge in the spread of democratic values worldwide.

Against this backdrop, the emerging Namibian democracy, as envisaged in the nascent nation's Constitution, was considered a beacon of hope on a continent long ravaged by colonialism, despotism, and failed nation-building projects and brought to its knees by the decades-long geo-political tug-of-war between Cold War foes.

In this context, at its founding the new Namibian nation was established as a laws-based society, with the Constitution of Namibia as the supreme law. And what primarily brought heaps of praise down on this new nation as it took its first steps was the inclusion of the bill of rights in its Constitution.

With Chapter 3 of the Constitution of Namibia, a wide number of human rights and freedoms are recognised and enshrined as fundamental to the development and engendering of democracy and a democratic national culture.

In view of this, with Namibia having turned 21 in March 2011, it has become time to assess the durability of the enshrined provisions of Chapter 3 of the Constitution – to what extent the fundamental human rights and freedoms have stood the test of time. More explicitly, it is necessary at this point to evaluate the possible threats that have arisen, and probably still lurk, in interpretation and practice over the first 20 years of Namibian nationhood that might give cause for concern or celebration as this nation moves forward.

## QUESTIONS OF DEFINITION AND INTERPRETATION

Over the first 20 years of the existence of the Constitution's bill of rights and freedoms a number of challenges or tests have been launched or have arisen against the provisions of Chapter 3. This is probably as it should be, because if the constitutional document, most especially the bill of rights and freedoms, which stand as the core principles of the Namibian nation state, is to have any meaning then it should be tested in practice. For only in this way can the legal adequacy and appropriateness of these provisions and the various laws which have flowed forth from them over the years, be adjudged to be applicable and relevant to ordinary lived reality.

It has to be remembered that the bill of rights and freedoms is founded on two distinct but inseparable principles, namely (a) the greatest good to the greatest many and (b) the sanctity of the individual. It is basically the recognition that in order for there to be harmony in society there has to be harmony among individuals, which is best ensured by making all individuals equal before the law.

In this regard, the bill of rights and freedoms, as contained in the Constitution of Namibia, is constructed and should be read as positive, in that it aims to foster mutual respect between individuals and between the community, including the state, and the individual. Because of this, as it stands, the bill of rights and liberties cannot be said to be restrictive or overly prescriptive, but is decidedly broad and bold in its provisions.

The discussion in this chapter will follow the sequence of rights and freedoms as they appear in the Constitution, starting with Article 6: Protection of life. That said, only the most prominent and thought-provoking instances or cases of threats and challenges involving a human right or freedom have been discussed here. In this discussion, it is important to remember that fundamental rights and freedoms do not stand separate from one another, but are interconnected and together constitute the human rights culture of the country.

## FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

### 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.*

At face value it would seem that the Constitution is quite clear on the inalienability of the right to life. In terms of the court system being able to pass a death sentence for an act of criminality, including treason, the Constitution explicitly prohibits such an action, known as capital punishment.

Essentially, the right to life means that a human being has the right not to be killed by another human being. In Namibia the right to life is unqualified – meaning that even judicial authorities are not allowed to order the ending of a person's life as they are in some countries. The right to life is at the centre of debates on capital punishment, euthanasia, abortion, self-defence, and war.

In Namibia calls for the institution of the death sentence have been vociferously made over the years, especially in the wake of particularly violent crimes, such as the rape and murder

of high school pupil, Magdalena Stoffels, in July 2010. Even a sitting government minister, Abraham Iyambo, now Minister of Education, has in the past called for the re-introduction of the death sentence, which existed in pre-independence Namibia, for the crime of murder.

Concerning abortion, the debate revolves around whether an unborn human can be regarded as a human person who should have the same right to life as humans after birth. In 1996, then Minister of Health and Social Services, Dr Libertina Amathila, sought to have the Abortion and Sterilisation Bill passed by Parliament. This would have legalised abortion in Namibia. However, outcry from religious groups stopped the bill in its tracks. (See box)

The argument against abortion relies on the wording “*The right to life shall be respected and protected. No law may prescribe death as a competent sentence*”, the implicit reasoning being that an unborn foetus is a “person”.

It would have been interesting to see what the legal ramifications would have been had the Abortion and Sterilisation Bill become law. Government would have had to argue that such a law was not in conflict with the provisions of Article 6.

That said, it would probably be safe to suggest that the issue of abortion is far from dead and buried in Namibia and could quite possibly become a constitutional challenge in the future.

## ABORTION

Abortion remains illegal in Namibia despite reported instances of infanticide, baby dumping, and “backstreet abortions,” where pregnant women, out of desperation, have to resort to covert and unsafe abortions. Women in Namibia often resort to such extreme measures because they cannot afford to care for their future child. Some of these impoverished women may already have other children who require their attention and resources, and the birth of another child may jeopardize the entire family’s well-being because of the extra expenses.

In 1996, then Minister of Health and Social Service, Dr Libertina Amathila, put forth a draft bill, the Abortion and Sterilisation Bill, the purpose of which was to legalise abortion in Namibia. Under the provisions of the bill, women in Namibia would be eligible to have an abortion during the first 12 weeks of their pregnancy. Amathila believed that such a bill was necessary in order to curb the growing rates of baby dumping, backstreet abortions, and because contraceptives were not, and are still not, readily available to the rural and impoverished women of Namibia.

But many conservative and religious groups in Namibia, mainly church-affiliated organisations, were completely opposed to the idea, saying that foetuses also deserved a right to life, citing the second article in the Constitution, which states that, “The right to life shall be respected and protected,” and other sources such as the Bible. The pro-life groups also argued that legal abortions would replace and eliminate the need for contraceptives, which would lead to higher rates of abortions and thus a greater loss of human life. The debate was so intense, and the campaigners so insistent, that the bill was finally abandoned in 1999. Unfortunately, the issues of infanticide, baby dumping, and unsafe abortions are still prevalent in Namibia, and each year, many women and newborns die.

## DISCUSSION EXERCISE

The Constitution states that human life should be “respected and protected”. How do you think the need to respect the life of a foetus should be balanced against the need to protect the health and safety of the mother, who might be put in danger by choosing to undergo an unsafe procedure?

### ARTICLE 7: PROTECTION OF LIBERTY

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

No challenge has ever been launched against this provision because the wording is quite clear, in that various other laws, such as the Criminal Procedure Act, which are “procedures established by law”, are empowered to deprive a person of personal liberty on the grounds of suspicion or guilt in the perpetration of criminal activity, such deprivation being in the interest of public safety.

It is clear that this provision was incorporated to protect individuals from arbitrary deprivation of their personal liberty, without cause or recourse, and could be read as a direct consequence of police state tactics, which included arbitrary arrest and detention, employed during the Apartheid era.

### 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.*

In respect of this article, there have been two cases which can be looked at in terms of interpretation and practice. The first case is relatively minor, though precedent setting, whereas the second has become a major test of various provisions of the Constitution, in that not only does it touch on respect for human dignity, but incorporates the articles dealing with arrest and detention (**Article 11**), entitlement to a fair trial (**Article 12**) and administrative justice (**Article 18**). Human dignity can be defined as the recognition that everyone should be treated with respect.

*Lukas Tcoeb v. The State:* In 1994 Lukas Tcoeb was charged with two counts of murder and one count of theft and was convicted on all three charges and sentenced to life in prison. In 1996, Tcoeb appealed the sentence, with his lawyers arguing that life imprisonment without any chance of parole was an act of cruelty. However, then Chief Justice Ismael Mahomed, who presided, did not find the argument compelling, or the punishment inconsistent with Article 8, and denied the appeal and confirmed Tcoeb’s sentence. While the argument put forward on Tcoeb’s behalf sounds novel, its dismissal would appear to have been straightforward as well

as creating legal precedent in the interest of public safety.

The second and more significant case is the long-running Caprivi treason trial.

In August 1999, a few months before the National Assembly and Presidential elections, an armed insurrection sought the secession of the Caprivi Region from Namibia. The insurrection was fairly quickly crushed by Namibian security and armed forces. Many of those alleged to be separatist fighters and their supporters were arrested. The controversial trial of these suspects has become known as the Caprivi treason trial.

The trial, in which 112 accused – out of an initial 131 (19 having died over the last decade) – have been charged with 278 counts, including treason, before the High Court for more than seven years with as yet no end in sight, has by all accounts raised a series of constitutional issues.

With regard to Article 8, the inviolability of human dignity, of immediate and critical relevance is Sub-Article (2)(b) – *No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment* – on the basis of which it can be argued that the High Court in March 2010 pronounced that 26 statements, which have been put forward in evidence, by some of the accused were inadmissible because of evidence suggesting that the statements had been gained through “*torture or cruel, inhuman or degrading treatment or punishment*”, in other words through alleged assault by police officers.

As already mentioned, the Caprivi Treason Trial has also impacted on other constitutional provisions, and concerning Article 11: Arrest and Detention, the threat exists in regard to sub-article (3) – *All persons who are arrested and detained in custody shall be brought before the nearest Magistrate or other judicial officer 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 or other judicial officer.*

Against the backdrop of Article 11, it has been alleged that the accused in the case were not brought before a court within 48 hours after their arrest, in August 1999, with critics stating that most of the accused were only brought before a magistrate long after the constitutionally stipulated 48 hours.

In respect of Article 12: Fair Trial, the often highlighted threat concerns sub-article (1)(b), which states: *A trial referred to in Sub-Article (a) hereof shall take place within a reasonable time, failing which the accused shall be released.* The threat becomes self-evident when considering that all the accused were arrested in August 1999 while the initial phase of the trial only started in October 2003. The trial proper only kicked off in earnest in August 2004, almost exactly five years after the arrests were made. Compounding this, so the reasoning goes, is the fact that since 2003, the trial has now been ongoing for more than eight years and still with no end in sight, a duration which cannot be considered as being “within a reasonable time”. The most often heard sentiment in this regard is ‘justice delayed, is justice denied’.

And logically the issue of administrative justice, Article 18, comes into the discussion. Article 18 states: *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 legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal.* The question here is whether “administrative bodies and administrative officials” are acting “fairly and reasonably” in their handling of the Caprivi Treason Trial?

All these concerns can be drawn back to and flow through the inviolability of human dignity provisions of Article 8 and these concerns could arguably, at some level, be construed as evidence of an “*organ of the State*” disrespecting the treason accused’s right to human dignity.

These are by no means the only concerns at play in the Caprivi Treason Trial, but these appear to be the most serious threats to the constitutional order.

When considering all the perceived constitutional and procedural breaches and infringements, as discussed above, it would appear hard to argue with the suggestions that on the whole the Caprivi Treason Trial has become a judicial travesty, sentiments that have been variously voiced over the years. For the fact is that, according to Article 24 (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)(a), (b), (c) and (e) hereof, or the denial of access by any persons to legal practitioners or a Court of law*”.

While there is no way of knowing when the Caprivi Treason Trial will be finalised, viewing it as we are from mid 2011, it is conceivable that once such finalisation has been achieved, a long process of appeals will follow. If and when that happens, it would be interesting to see how many, if any at all, of the concerns discussed in this section are used as a basis for appealing against a ruling, whatever it may be.

### DISCUSSION EXERCISE

Do you think the Caprivi Treason Trial has been handled within the letter and spirit of the Constitution?

## ARTICLE 9: SLAVERY AND FORCED LABOUR

*No person shall be held in slavery or servitude.*

As can be seen, sub-article (1) is clear. However, in reality the situation in Namibia is apparently quite disturbing. When discussing Article 9 it is necessary to discuss it in conjunction with **Article 15: Children’s Rights**, as it would appear that slavery and forced labour affect children, especially those in rural areas, the most.

The threat under these two articles appears to be very much a living thing in that over the years it has been alleged that child labour and enslavement have become and are widespread realities within rural communities, especially across the northern regions of the country.

For example, in early October 2010, a 53-year-old man was arrested in the north of the country and was charged with child labour and domestic abuse, partly for having put a four-year-old boy from another town to work as a goatherd.

Children are often forced into agricultural work because of poverty, usually caused by the money poor families are forced to spend on HIV/AIDS treatment or related medication. Most of these children are simply trying to help out their parents by looking for work, but because they are young and vulnerable, they can be easily taken advantage of. In most cases, formal contracts are never drawn up, which allows the employers to operate outside the legal system. In these kinds of cases, it is very difficult, technically, to place blame because of a lack of contracts, which allows these employers to easily exploit loopholes in the system in order to avoid responsibility.

The tragedy is compounded in that this sort of exploitation is probably only or mostly possible where ignorance of the constitutional protections is prevalent. Because the practice of child labour appears to be widespread, it suggests that a sizable proportion of the country's population is, knowingly and/or unknowingly, involved in and party to criminal conduct.

If the situation is as bad as by all accounts it appears to be, then many Namibians can arguably be accused of roundly violating the letter and spirit of their own constitutionally protected bill of rights.

### DISCUSSION EXERCISE

Children have always been working in one way or another, especially in impoverished rural communities where their labour often forms an important contribution to household activities. Considering the Constitution and the reality, would it be appropriate for a child to be denied the income and benefits of employment if, in the absence of any other support, that is the only income that sustains the child or it's family?

## 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.*

Over the first 20 years of the Constitution of Namibia there have been two prominent and notable tests of the provisions of Article 10.

The most important and far-reaching test came in 1991, in the first landmark case almost immediately after independence, when then Deputy Minister of Wildlife, Conservation and Tourism, Ben Ulenga, was involved in a high profile racial discrimination case.

Ulenga and his driver were refused accommodation by the owner of the Onduri Hotel at Outjo, Burkhard Friedrichsmeier, on the basis of their skin colour. This incident of prejudice led to two court cases and later in 1991 to the enactment of the Racial Discrimination Prohibition Act. The purpose of the Act was to elaborate on Article 10 and the provisions under **Article 23: Apartheid and Affirmative Action**.

The goal of this Act was to enhance the overarching provisions enshrined in these constitutional articles with more specific and precise conditions and terms. For example, the Act declared criminally punishable the practice of racism and apartheid, “...in relation to public amenities, the provision of goods and services, immovable property, educational and medical institutions, employment, associations, religious services, and involving the incitement of racial disharmony and victimisation...”

In at least this instance it could be argued that the threat has been legislatively and administratively neutralised, even though racial discrimination could be said to still exist, although largely hidden and informal. This of course touches on to what extent individuals live out the spirit of this article in their everyday relations, which is something a law cannot regulate.

In the other notable test, from 1999, Article 10 was used as a basis to attack an administrative decision, in the case of *Frank v. Chairperson of the Immigration Selection Board* (see accompanying box). In the case a lesbian couple had taken a state department to court alleging unfair treatment and discrimination on the basis of their sexual orientation. The High Court found in favour of the applicant and the challenge has set a legal precedent.

However, nowhere in the Constitution does it state that people shall not be discriminated against based on their sexual orientation. Namibia’s Labour Act of 1992 did state that no person could be discriminated against based on his or her sexual orientation, but this clause was removed in the amended Labour Act of 2007.

## **FRANK V. CHAIRPERSON OF THE IMMIGRATION SELECTION BOARD**

In 1999, the case of *Frank v. Chairperson of the Immigration Selection Board*, was heard before the High Court. The case began when two women, one a Namibian citizen, the other a German citizen, lodged litigation against the Namibian Immigration Selection Board, in the Ministry of Home Affairs, which had denied the German woman’s application for permanent residence.

The High Court ordered the Immigration Selection Board to award the woman permanent residence, with the condition that they also give reasons why the woman’s initial application was denied. One of the reasons cited by the Immigration Selection Board was that the two women were engaged in a long-term lesbian relationship and had been living together as a married couple. The court found this reasoning improper and in conflict with Article 10 of the Constitution.

## **HOMOSEXUALITY: A CASE OF GENDER DISCRIMINATION**

In Namibia, homosexual activity between men is an offence punishable by law because sodomy, the practice of anal intercourse, is illegal. However, there is no such discrimination against Namibia’s lesbian community. According to Dianne Hubbard, a prominent local scholar and legal activist, this goes against Article 10 of the Constitution, because it becomes not an issue of sexual orientation, but rather of gender because men are being treated differently from women, regardless of their sexual orientation. Do you think this is a strong and reasonable argument?

## ARTICLE 13: PRIVACY

*(1) No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as 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.*

The most notable threat identified to this constitutional provision is a fairly recent one, namely the controversial Communications Act, enacted in November 2009.

In the run-up to its enactment, the then Communications Bill drew a lot of criticism over Part 6, which has infamously become known as the “Spy Clause”, which gives national law enforcement and security agencies the authority to interfere with the privacy of the “correspondence or communications” of individuals in the interest of national security and safety.

Many politicians, scholars and media practitioners considered the Bill to be unconstitutional in terms of Article 13, which guarantees all Namibian citizens the right to privacy of their homes, correspondence or communication. While Article 13 does state that these rights can be revoked during exceptional circumstances (i.e. when Namibia’s national security, public safety or economic welfare is threatened), many still deemed Part 6 unconstitutional because it was too arbitrary.

In this regard, Ombudsman John Walters, said, “My understanding of Part 6 of the Bill (providing for interception) is that law enforcement agencies will be entirely free to decide whether circumstances will justify recourse and being allowed unlimited discretion in determining the scope and duration of the surveillance.” Essentially, what Walters was communicating was that there were no safeguards incorporated in the Bill that would prevent potential abuse of power by Namibian law enforcement agencies, and thus, no way to protect the rights of Namibian citizens.

Furthermore, some people believed that the law would be detrimental to building an open and democratic society. Norman Tjombe, then director of the Legal Assistance Centre (LAC), stated at the time, “...that people would rather not want to discuss pertinent matters of concern for fear that it may invoke the wrath of those who have access to the communications, thus impeding on healthy political debate among citizens, which is not good for any democracy – young or old.”

As could be expected, the state countered that the proposed law, now the Communications Act, was in line with international best practice and in no way in conflict with any provisions of the Constitution.

However, while questions and uneasiness remain, the constitutional credibility of the Communications Act has gone unchallenged at this juncture.

Against this background, it could reasonably be speculated that this particular law could become the subject of litigation, in which it would be tested against Article 13 of the Constitution, at some point down the line. If such were to happen, it would be interesting to hear the opposing arguments.

## 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 that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire 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.*

One of the most controversial, emotional and much debated issues in Namibia since independence has been the question of land reform and redistribution. Land, then, or more specifically the ownership of land, constitutes the major test of this particular constitutional provision.

The sensitivity of the land issue is derived from its having a bearing on and being central to discussions on just about every socio-political aspect of modern Namibian society – from race, culture, heritage to economic opportunity and up-liftment – to the point that it has become a perennial source of festering dissatisfaction.

According to Dr Justine Hunter, formerly of the Namibia Institute for Democracy (NID), at “independence, 52% of the agricultural farmland was in the hands of the white commercial farmer community, who made up 6% of the Namibian population. The remaining 94% of the population had to put up with owning only 48% of the agricultural land”. The combustibility of this issue appears self-evident.

However, it is quite clear by the wording, that the Constitution makes provision for, in keeping with the high-mindedness underlying the rule of law, an ordered system, which does not negate the property rights of those who acquired land or any other moveable or immovable property in the pre-independence era, despite only very limited property rights having been afforded to the great majority of Namibians during that era.

In line with the provisions of this article, and especially as far as property rights concern land ownership and acquisition, government has since independence introduced the Agricultural Land Reform Act, as well as various related laws and policies, to ensure and orchestrate the equitable distribution of land.

However, it would be interesting to discover to what extent the seemingly exceedingly high price of land, whether farm land or urban, along with high levels of endemic poverty and disenfranchisement, influence the constitutionally protected property, and associated economic, rights of a vast swathe of Namibian citizens, and to what extent this gives value, or devalues, their citizenship.

Is there a case to be made that, when considering all that has been discussed so far and all that can be considered as credible indicators beyond this discussion, such as prevailing economic and social conditions, constitute in themselves not just the greatest promise, but also the

greatest threat to national order and aspirations?

It is definitely something to ponder.

### DISCUSSION EXERCISE

When viewing the provisions on property rights – which some have argued, at some level, could be considered the enshrining of persisting historical and structural inequality, the existence of which undermines the meaningful enjoyment of various other protected rights and freedoms – could the constitution itself be said to be the greatest threat to constitutional order and public good?

## 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 and join political parties and; subject to such qualifications prescribed by law as are necessary 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, unless otherwise provided herein.*
- (3) The rights guaranteed by Sub-Article (2) hereof 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 are necessary in a democratic society.*

When considering the above provisions, especially sub-article (1), and reading it alongside related fundamental freedoms enshrined under **Article 21: Fundamental Freedoms**, then it would seem reasonable to suggest that the threat, the danger, has grown near and present, when looking at political events since 2008.

The year-and-a-half leading up to the November 2009 National Assembly and Presidential elections were marked by unprecedented levels of widespread and blatant political intolerance and intimidation, and even the occasional flare-up of political violence, in independent Namibia.

To mention just a few incidents, in November 2009, on the eve of the national elections, Swapo Party and Rally for Democracy and Progress (RDP) supporters clashed at Walvis Bay following an RDP rally in the township of Kuisebmond. Rival supporters threw stones and beer bottles at each other and were dispersed by the police. Earlier in the same month, police confiscated eight pistols, a shotgun, nine knives, four machetes, a hammer, and an axe, among other weapons, from people going to the RDP rally at Outapi. The police arrested three people during

the clashes at the town. And in an act of incitement, in February 2009, Hardap regional Governor Katrina Hanse-Himarwa reportedly urged Swapo Party supporters in the region to “never allow any political party, or any enemy, in any form or any nature or any shape or any colour to invade this territory, which we have declared a Swapo Party territory” at a rally at Gochas.

All this quite clearly is and was contrary to the spirit of “peaceful political activity” as envisaged and enshrined under Article 17, as well as the fundamental freedoms of “(d) peaceful assembly without arms” and “(e) freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties”.

Should this trend continue into future electoral cycles, who is to say it will not escalate into widespread and strident disregard and trampling of other constitutional provisions, egged on by an attitude of seeming tolerance of intolerance?

It is conceivable that such acts, given the wont of politicians and political groups to manipulate, will become more commonplace on the political landscape if they remain unchallenged and unchecked in their blatant constitutional violation.

In this regard, it was heartening to hear President Hifikepunye Pohamba, in support of the Constitution, come out publicly and call on citizens “to cultivate a culture of peaceful, non-provocative election campaigning. Any act of political violence taints the image of our country and discredits our credentials as a peace-loving country founded on the principles of multi-party democracy...”

However, can words alone be judged enough to placate what appears to be a growing political culture, diametrically opposed to the positive spirit of peaceful assembly and association?

### DISCUSSION EXERCISE

Considering political events over the last few years and the levels of intolerance displayed by some politicians and political party supporters during recent campaigns, would it be fair to suggest that Namibia as a constitutional democracy is under threat from its own citizens?

### ARTICLE 19: CULTURE

*Every person shall be entitled to enjoy, practice, 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.*

There exists one notable instance of where this constitutional provision has allegedly been violated.

Even before independence in 1990, the government of then South West Africa began considering plans for new energy projects in the country. One of the proposed ideas was a new hydroelectric dam on the Kunene River, one of Namibia’s five perennial rivers, that acts as

a natural border between Namibia and Angola. This scheme was carried over at Namibia's independence, and in 1991 government seriously started looking at the construction of a dam at Epupa, on the Kunene River.

The proposed Epupa Dam would flood approximately 190 square kilometres of land on the Namibian side of the river. However, the area where the dam is to be situated is part of Himba ancestral lands. The Himba are a pastoral people and, as such, require a great deal of grazing land to sustain their livestock, therefore, the loss of 190 square kilometres would put a lot of strain on Himba livelihoods. Consequently, the Himba in the vicinity of Epupa would be forced to seek other grazing lands, which would in turn lead to competition, and potentially conflict, over land with other Himba peoples in Kaokoland. Compounding this, the Epupa Dam project would also flood Himba burial sites.

The Himba and their lawyers, the Legal Assistance Centre (LAC), have argued that the project was undermining their right to practice and maintain their culture.

On the other hand, the state could probably argue that the Himba's constitutionally protected right to practice and maintain their culture on the land of their ancestors does not trump the greater national interest, given the existence of a national water shortage and ever-approaching power shortages.

If a case should ever be argued on this issue, on the face of it, it is uncertain which party's arguments would win the day, given that both sides appear to be capable of mounting quite considerable and compelling arguments in the defence of their cause.

Be that as it may, the legal subjugation of a constitutionally protected right should be handled with great sensitivity and foresight and should never be taken lightly, not even in the face of obvious greater and popular public good.

### DISCUSSION EXERCISE

Considering the constitutional protection of culture and cultural practices, would you say that the Himbas' access to ancestral lands and burial sites outweighs the needs and national interest – water and electricity – of Namibian society as a whole?

## ARTICLE 20: EDUCATION

- (1) *All persons shall have the right to education.*
- (2) *Primary education shall be compulsory and the State shall provide 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.*
- (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 this may be authorised by Act of Parliament on grounds of health or other considerations pertaining to the public interest.*

For the purposes of this discussion only the above listed provisions of this article are applicable.

Despite the good intentions of the enshrining of “free of charge” compulsory primary education, Namibia is struggling to live up to the provisions of this article. In a very real sense, the state can be accused of conduct in flagrant contradiction of the above provisions, in that in practice public schooling is not free of charge.

However, there are several key factors, not all of which pertain directly to the provision of education, at play which mitigate against the wholesale blaming of the state for society’s failure to make these provisions a reality.

Crucial amongst these factors are endemic poverty and the high prevalence of HIV/AIDS, which negatively impact on the ability of struggling families, quite often single-parent headed households, to arrange for adequate schooling for their children. Under this provision it is probably possible to glean the most clear example of how socio-economic conditions undermine not just the right to education, but various other rights which have at their core the implicit principle of the right to a quality life, however we wish to define it in modern times.

That said, where the state, as a primary protector of children’s rights, has to shoulder its proportion of the responsibilities is in the provision of adequate classrooms, study materials and appropriately qualified teachers, all of which, it could be argued, are “reasonable facilities” and perennial shortcomings undermining in some way the basic human right as encapsulated in the provisions of this article.

It is necessary to state here, that if considered collectively, the failure to provide adequately, not to mention substantially, on this particular right, influences or shapes the quality of the enjoyment of basically all other rights contained in Chapter 3. In short, the quality, the very future and sustainability, of Namibian democracy is dependent on the quality of education it extends. Well-educated citizens make better and more informed choices, not just with regard to their own lives, but also within broader society. Also, evidence indicates that the better informed people are, the more socially involved and politically active they are.

### **DISCUSSION EXERCISE**

Given the long-standing and persistent problems of the education system, to what extent would it be practical and desirable to launch a challenge, on the basis of these constitutional provisions, against the state, which is entrusted with providing education “free of charge” in order to “render effective this right”?

## ARTICLE 21: FUNDAMENTAL FREEDOMS

In the interest of brevity, only two fundamental freedoms, various others having already been considered in the preceding discussions, will be highlighted and analysed in the context of threats and challenges, namely:

(1) *All persons shall have the right to:*

(a) *freedom of speech and expression, which shall include freedom of the press and other media;*

*And:*

(j) *practice any profession, or carry on any occupation, trade or business.*

With regard to the above freedoms, a threat, in the case of sub-article (1)(a) remains very real and in practice, and a test, in the case of sub-article (1)(j) has been successfully concluded, but the outcome was still very much inconclusive at the time of writing.

Concerning sub-article (1)(a), in 2001 the government, at the behest of former President Sam Nujoma, instituted an advertising ban against *The Namibian* newspaper over its critical reporting on the conduct of senior ruling party and government officials. Shortly after the announcement of the ban on advertising in the newspaper, the former president also decreed that henceforth government would not buy the newspaper either. This second ban, while state money was not being used to buy the newspaper for officials, proved almost irrelevant as civil servants usually bought the newspaper out of their own pockets.

Sadly, the constitutionality of the advertising ban was never tested by the newspaper and government's conduct and its argument that it is free to give its business to whosoever it pleases went unchallenged. However, against the background of sub-article (1)(a), it is hard to understand how this argument would hold legal water, given that the ban could be rightly construed as no more than a reactive punitive and victimising act, which in no way can be argued as being in line with the constitutional protection of "freedom of the press and other media".

With regard to sub-article (1)(j), with the enactment of the amended Labour Act in 2007, labour hire operations were effectively declared illegal, under Section 128 of the Act.

This prompted a prominent local labour hire firm to initiate a constitutional challenge against the Labour Act. Heard before the High Court, the bid to have the ban on labour hire overturned, on the basis that it was in violation of the relevant constitutional provision, namely Article 21 (1)(j), was unsuccessful. After a failed appeal in the High Court the firm took the issue to the Supreme Court.

In December 2009 the Supreme Court found that the ban on labour hire, as contained in Section 128 of the Labour Act, was unconstitutional. But while the firm's challenge has been successful, government has expressed the determination to outlaw labour hire, which has been compared to slavery and is seen as a thro-back to the crude labour contract system of the apartheid era. And in that sense, the outcome remains inconclusive.

As can be seen, the bill of rights and freedoms in the Namibian Constitution has been tested on numerous occasions over the years since 1990, and it has become obvious that on the whole the human rights provisions as enshrined in the supreme law of the land have been respected and the widespread belief in the worthiness of these principles remains intact as the constitu-

## **SOMETHING ELSE TO CONSIDER: THE THIRD TERM**

Since we have been concerned with the discussion of threats and tests that have arisen to various constitutional provisions, whether they have been litigated or not, there is one other which it would be appropriate here to include, even though it does not fall under the enshrined provisions of Chapter 3 of the constitution. This particular threat would appear to have come and gone, in the sense of its actual application at least, but who can say, for its replication might become a consideration again at some future point in time.

The reference here is of course to the constitutional amendment passed in 1998 to allow former Swapo Party and Namibian President Sam Nujoma to stand for a third term in office. It is enshrined in the Namibian Constitution that an individual may only serve two terms as president of the country. With the 1999 National Assembly and Presidential elections approaching, ruling party politicians called for the Constitution to be amended in order for then President Nujoma to serve another term in office.

The Namibian Constitution First Amendment Act of 1998, was signed into force on December 7 1998, on the back of an overwhelming two-thirds majority approval in both the National Assembly and the National Council, and effectively paved the way for former President Nujoma to be eligible for a third term as the country's president. However, it should be remembered that the Swapo Party had two-thirds majorities in both houses of parliament, so it wasn't that the amendment was endorsed by all parties.

The amendment affected both Articles 29 (Term of Office) of Chapter 5 (The President), and Article 134 (Election of the First President), of Chapter 20 (The Law in Force and Transitional Provisions).

Article 134 states:

- (1) *Notwithstanding the provisions of Article 28 hereof, the first President of Namibia shall be the person elected to that office by the Constituent Assembly by a simple majority of all its members.*
- (2) *The first President of Namibia shall be deemed to have been elected under Article 28 hereof and upon assuming office shall have all the powers, functions, duties and immunities of a President elected under that Article.*

With the following sentence added through the amendment:

- 3) *Notwithstanding Article 29(3), the first President of the Republic of Namibia may hold office as President for three terms.*

In the run-up to this amendment and in its immediate wake the amendment was greeted with considerable unease both in the country and outside, and concerns

were expressed that it was sending the wrong message about the state of the Namibian democracy, especially as the ruling party appeared to be bulldozing the amendment through parliament.

In a 2010 interview for this book, political commentator Dr Henning Melber summarised the mood and concerns surrounding the third term at the time, stating:

“There was some fear that this could set an example following the Zimbabwean model, where Zanu-PF (Zimbabwe African National Union–Patriotic Front) used its majority to change the constitution whenever it pleased its interest to create a pseudo-legality to a “rule of law”, which in actual fact was a “law of the rulers”. In retrospect, these fears were not confirmed since this constitutional change was not the precedent some of us were afraid that it might be. Hence it must be seen in a much less critical light more than a decade later.”

Back in 1999, in an effort to try and placate concerns raised by the media and opposition parties, former Prime Minister Hage Geingob stated in an interview:

“President Nujoma’s third term is a one-time only provision. There are no precedents to be set. Technically speaking, his first term was transitional. He was elected, not by people as the Constitution requires, but by a Constituent Assembly. And given the fact that he’s a founding father and we want peace to continue, let’s allow him to continue for five more years only.

“We did not touch the restrictive clause of the Constitution, which limits the presidential term to two five-year-terms. Instead, we amended the transitional clause to say that the first president shall be elected by a Constituent Assembly and shall serve for three five-year terms. So it is specific to Sam Nujoma. The third term is a reward – if you want to put it that way – to Sam Nujoma by the Namibian people because he has done such a good job. The amendment does not automatically make Sam Nujoma president for a third term. He still must stand for elections and people can vote him out if they don’t want him. So the will of the people will be done.”

Against this backdrop, while the third term has come and gone, the political conditions remain which allowed the ruling party to enact a constitutional amendment, which should never be something foregone or easily achievable, requiring approval of a two-thirds majority of both the National Assembly and National Council. When looking at it in this way, the possibility still exists that a ruling party, whether the current one or another, can employ its “majority to change the constitution whenever it pleased its interest to create a pseudo-legality to a ‘rule of law’, which in actual fact is a ‘law of the rulers,’” to quote Henning Melber.

If looked at in this way, can it, then, be said that the threat has passed?

## DISCUSSION EXERCISE

To what extent would you say government's ban on advertising in *The Namibian* undermined the principle of 'freedom of the press and other media'?

tional document and order enter their third decade.

Considering all the incidents and events of the first twenty years in the life of the Namibian Constitution as sketched here, it is apparent that the document has become an important measuring tool of the state of not just Namibian democracy, but also the rule of law in the country.

That serious challenges remain is obvious and probably best exemplified by the continuing and indefinite Caprivi Treason Trial, which too has been ongoing for almost a decade now. The plethora of legal and constitutional concerns raised by this case illustrates and underlines the importance of having something like a constitution, as it provides the background against which the legality of the state's actions can be evaluated.

However, the Constitution, any constitution, is not only there to regulate the relations between the state and the citizen, but also relations between citizens, and this is precisely the departure point of provisions such as the bill of rights and freedoms – in a sense, not only ensuring and assuring adherence to principles of fairness, respect, decency and courtesy in the conduct of the state, but also between individuals – as the lessons of the past have taught all the need for harmonious and tolerant interaction and engagement within and amongst the various ethnic and cultural groups that constitute the heterogeneous population of the Republic of Namibia.

In this light, it should be highlighted and underlined that a constitution, any constitution, and the values it upholds are only as relevant and lively as the belief in and maintenance of such values by a broad cross-section of the populace of any society. This belief and the striving to live out the principles and values of the constitutional order, such as Namibia's, by the ordinary citizen to an extent determines the quality of democracy and governance in a given society, and suggests a deep knowledge and understanding of the values and principles of constitutional provisions, such as those of **Chapter 3: Fundamental Human Rights and Freedoms** in the Namibian Constitution.

Considering this, at this juncture in Namibian history and nationhood it has to be asked to what extent Namibians, on the whole, are aware and knowledgeable of the values as enshrined in Chapter III, for political and social events since around 2004 or so do appear to indicate a growing climate of intolerance and re-emerging and rising divisions across the societal landscape. Based on this, it can be argued that even though many Namibians have been living the liberal values of the human rights section of the Namibian Constitution for twenty years, a great many are still largely ignorant to some degree of these provisions and the underlying values.

In this sense, the maintenance of the constitutional order – the very essence of the democratic dispensation in the country – has become a challenge for the citizen, every citizen, to uphold.

In order for the country to go forward as a democratic society with the purpose of maximising the well-being and happiness of the ordinary citizen, then the intrinsic humaneness of the values of **Chapter 3: Fundamental Human Rights and Freedoms** of the constitution have to be internalised by all. Only in this way can any society which believes in the maintaining of a democratic order hope to survive as such. And it is true that with greater knowledge comes greater responsibility, and this is what gives any democracy its depth and meaning.

When looking back in 2030 over the course of the first 40 years of Namibia and the Namibian Constitution, it would be interesting to see to what extent society has become infused with the underlying values of the constitutional order and whether, at that stage, Namibians would be able to look back and say that challenges have been overcome within the spirit of mutual respect and decency, the culture that the human rights provisions in the Constitution are intended to impart.

It is thus, when that day comes in 2030, the responsibility of every individual Namibian to inculcate and engender, not just within themselves, but broader society as well, the values which are aimed at fostering and maintaining harmony, peace and stability across the spheres of society. Only in this way will the Namibian Constitution remain of relevance in a society that will still long grapple with the contradictions of its long formative experience.

The question in 2030 then might be: To what extent have events and movements of the first 20 years enhanced or detracted from developments, whether constitutional or socio-political, over the ensuing 20 years?

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## FOUNDING PERSPECTIVE

### DIRK MUDGE



#### SPIRIT OF GOODWILL

I could not imagine that former enemies could join hands in a spirit of goodwill and patriotism determined to write a Constitution for a democratic and peaceful Namibia. We almost immediately became friends and I will always remember the way in which my DTA colleagues and I were accepted unconditionally as co-writers of the Constitution.

#### TWO PROPOSALS

We were fortunate to have had at least two complete proposals on the table – Swapo’s constitutional proposals, believed to be formulated by a South African Judge Ismail Mohamed,

and a DTA constitution drafted and improved over a period of more than a decade and finally formulated by a committee under the Chairmanship of Judge Victor Hiemstra. Having been part of this process and having studied the constitutions of many other countries I was prepared to make a contribution which I was allowed to do. But we were also privileged to have a very capable chairman, Hage Geingob. He was a real consensus maker and often succeeded in “marrying” Swapo and DTA proposals.

#### **LAND REFORM NOT DISCUSSED**

Land reform was never discussed and the Constitution does not contain an article providing for land reform. It is true that the Herero-speaking members of the [drafting] committee on several occasions insisted that this issue should be discussed. It never happened. Land reform only came to the fore two years after independence when a Land Conference was called. Expropriation of property did not constitute a new principle. Laws providing for the expropriation of immovable and movable property existed before independence provided that it could only be done in the public interest. During the discussion of this principle I emphasised that we are not discussing land reform but the expropriation of land to build a road, school, or pipeline in the interest of a community or town i.e. in the public interest.

#### **SECULAR STATE**

Mr Pretorius of ACN identified the provision for a secular state as a point of material dispute but he did not at any stage motivate his objection to the provision. I also had a problem with regard to a secular state as proposed in the working paper. I tried my best to convince colleagues that in our view a provision should be made for the supremacy of God in the affairs of our country and I wanted know exactly what the correct interpretation of a secular state was. Our legal advisors were very helpful by providing us with a legal and constitutional interpretation of the word secular. It simply means a separation between state and church and that there will not be a state-religion or a church recognised by the state as was the case in the past when the National Party government and Afrikaans churches were political allies. For me Nahas Angula made it absolutely clear when he said: “We do not want another Iran here.”

#### **PREAMBLE DIFFERENCES**

There were differences about the wording of the Preamble. Mr Hans-Erik Staby maintained that references to “the struggle against colonialism, racism, and apartheid” should not appear in the Preamble because a Constitution should rather focus on the future and not on the past. I supported Mr. Staby and was of the opinion that a Constitution should not contain words which might not make sense in future when citizens might not know what these words mean. Swapo insisted on keeping it as originally formulated and we agreed because we realised that we, as white Namibians, might be over-sensitive to references to the atrocities of the past.

I am sad to say that national reconciliation has not been fully achieved. It is an ongoing process. I daresay that from the side of the white population a change of heart is noticeable and at grassroots level we experience the same from black people. I myself never experienced

animosity from the side of my black countrymen and women. The problem normally lies with the politicians.

#### **A LIVING DOCUMENT**

It is absolutely crucial that our Constitution should become a living document. I have often in the past emphasized that a constitution must not only be written on paper but on or in the hearts of people. The Constitution is now on paper but how can it become a living document if the majority of the population remains ignorant about the contents thereof? But they need more than just knowledge of the contents of the Constitution they must be made aware of the ideals and the intentions of those who wrote it.

*Dirk Mudge is a retired politician.*

*He was the Chairman of the Democratic Turnhalle Alliance from 1977 to 1995.*

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## **FOUNDING PERSPECTIVE**

# **KOSIE PRETORIUS**



#### **MINUTES NEVER PUBLISHED**

For reasons only known to the government the minutes of that sub-committee of 21 members [the drafting committee] were not made public until now. I make use of it and they say I can make use of mine but they are not open for the public. The public cannot do research on those minutes and I hope one day they will reach the point that some other people, some other parties will support me to convince the Cabinet to make it available in the libraries or universities.

Universities and other educational institutions cannot do research with the minutes of the sub-committee to see what the real intentions of the lawmakers were.

Many years ago, I am not afraid to say it, when Hage Geingob wanted to write on the Constitution, he was looking for his minutes and nobody could find them so his officials came to me and borrowed my minutes. Then again after that Dr. Mose Tjitendero [former Speaker of the National Assembly] also wanted them – so they came back to me so I said if they sign for it, I will give it to them. I gave it to them and then they returned it to me.

#### **CONTROVERSIAL ISSUES**

The controversial part was that religion was never taken into account. As a result of establishing the secular state, the churches were pushed aside. My second point was the focus only

on rights and nothing about responsibilities – that was a big mistake. Young people are only educated about their rights but there is nothing about responsibilities.

#### **DEBATE WAS RUSHED**

The real debate was in the sub -committee but that effort to make it a very short time of 80 days to reach consensus – that played a very important role but in a negative sense because the habit of rushing everything is very bad for democracy.

#### **TOLERANCE NO LONGER THERE**

The spirit of tolerance that brings us to listen to what the other man is saying is not present in parliament any more.

#### **RULE OF LAW**

I think the most positive contribution of the Constitution is that we now have the rule of law.

#### **WESTERN INFLUENCE**

The [drafting] committee took on Western ideas. I want to say the Western liberal, individualistic approach, while the African approach is the group approach. We should have made the best out of the African approach but that was not done.

*Kosie Pretorius represented the Action Christian National in the Constituent Assembly. He has been the Chairman of the opposition party Monitor Action Group since 1991 and was a National Assembly MP until 2005.*

## 4. THE CONSTITUTION IN THE FUTURE

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BY JUSTINE HUNTER & NAITA HISHOONO

**A**lmost twenty years after Namibia gained its independence, the so-called “born-free” generation was asked to cast its vote for the first time during the 2009 National Assembly and Presidential elections. The aim of this chapter is to examine the understanding of political processes that shaped the Constitution among young Namibians. At the same time, we wanted to capture the perceptions and visions of a new generation of young leaders whose views and ideas might shape the future of this country. In particular, we were interested in their opinions on constitutional principles that have recently been discussed in the public realm.

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**WILLEM AMUTENYA**

**PRESIDENT:  
STUDENT REPRESENTATIVE COUNCIL,  
UNIVERSITY OF NAMIBIA (UNAM)**

**\*BORN: 18 JUNE 1988**



**Do you have a copy of the Constitution? Do you see Namibia’s supreme law as a source of guidance and inspiration in your profession and as a compass in your personal life?**

The Constitution guarantees the right to education. I have got a copy since my first year at Unam. I need the Constitution for guidance and I believe that education in Namibia should be free to all.

**As a Namibian born just a few years before Independence what is your understanding of the political processes that shaped the Constitution?**

I was born just before Independence and I believe that the Constitution was written to help those that suffered during the war for liberation and colonial times. The Constitution was drafted to overcome the hardship people suffered during the colonial era. As a principle of the Constitution, national reconciliation should not compromise the social and economic welfare of the people.

**The Preamble of the Constitution says that the people of Namibia should strive for achieving national reconciliation. What does this mean to you?**

Reconciliation means that two people should meet half-way. Unfortunately, there are still people in privileged positions that do not want to meet others half-way. We do not want to fight for economic reconciliation anymore, we have already done this.

**Article 3 stipulates that the official language should be English. Do you think that the usage of English is a benefit or a liability for the majority of the Namibian people?**

The fact that English is Namibia's official language is an advantage to those that have the opportunity to study and to receive a good education. For those, especially the elderly people, that never had access to proper education, the usage of English is of disadvantage. To support children's language skills early in life, English should be the official language at all schools.

**Article 6 says that the right to life shall be respected and protected, and that no law may prescribe death as a sentence. In recent years some people demanded the reintroduction of the death sentence, for instance for child murderers. What is your opinion on that?**

We should respect this Article of the Constitution, as sentencing criminals to death would not solve the root problems of our society. Among those root causes are poverty and hunger. We have to resolve problems in our society that cause people to be involved in criminal activities.

**What is your view on land reform? Article 16 stipulates that property may be expropriated in the public interest subject to the payment of just compensation.**

Land reform has yet not been properly implemented. It is preached only. The land is owned by the rich and privileged, with some of them owning three or four farms. Yet, there are so many people that are homeless and that do not have any land. The poor remain poor. People should be given land to cultivate and make a living. This way, everybody will be well off. However, people should be given the opportunity to receive information on how to cultivate the land in a proper manner. We should have agricultural programmes to educate people that stay in the villages on how to advance their production.

**What is your view on Article 23 and its stipulations for Affirmative Action, benefiting those that were disadvantaged by past discriminatory laws and practices?**

It is a good policy but still we find people that do not receive the necessary services. Fellow Namibians must understand that people that were born in exile never received a proper education. Most of the people that lived in the camps in Angola were given guns to fight but they did not get the opportunity to educate themselves. Only a few of those exiled Namibians were sent to school and to universities. But most of those that were in exile cannot find jobs in independent Namibia because they do not have any education. They should be employed in the police force and the military. There are groups of formerly disadvantaged Namibians, such as war veterans and exile kids that receive help from the government.

**Do you believe that Article 95 that provides for the welfare of the Namibian people as a Principle of State Policy has adequately been put into practice?**

Yes. The government takes care of the welfare of the people by providing access to health care services, housing and basic needs such as clean water. But more needs to be done when it comes to the education system. Some schools still do not have electricity or sanitation.

**The Constitution provides for the President to be elected directly by the people for not more than two terms. The amendment of Article 134 of the Namibian Constitution states the following: “Notwithstanding Article 29 (3), the first President of the Republic of Namibia may hold office as President for three terms.” What is your opinion on the “third-term” constitutional amendment of 1998?**

I agree with the third term because Sam Nujoma has sacrificed his life for the people. Sam Nujoma is the man that gave us hope and bravely fought for our country. He brought people together and he brought us independence. Namibia wants Comrade Sam Nujoma to be President. He has united all Namibians; therefore we still believe that he can continue with his leadership.

**In your opinion, is there anything missing in the Namibian Constitution? For instance, the South African Constitution stipulates freedom of sexual orientation while Article 10 of the Namibian Constitution requires only that persons may not be discriminated against on the basis of sex. What is your opinion on that? Or are there any other issues you might like to raise?**

I would really add nothing. However, some of the human rights articles should be amended in some form, as people of our country are being killed by criminals that just get lenient sentences.

**Do you think that the Constitution provides a strong basis for the protection of basic human rights? Please provide examples.**

Yes it does. Even murderers are not given the capital punishment.

**Do you think the Constitution, more or less as it is now, will still be the supreme law of Namibia in 50 years’ time? If not, how do you think the Constitution will have changed?**

The Constitution is the best supreme law. We just need to implement policies in line with the Constitution.

**Where do you see the Namibian democracy in 20 years from now? What is your personal Vision 2030?**

Every Namibian should be proud of the Constitution. Every person enjoys human rights and democracy. The only problem that needs to be addressed is education. We should introduce a project on the Constitution so that every Namibian understands what it entails and what democracy means.

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**SHARONICE D. BUSCH**

**VICE PRESIDENT:  
NAMIBIA NATIONAL STUDENT'S ORGANIZATION  
(NANSO)  
SPEAKER: CHILDREN'S PARLIAMENT**

**\*BORN: 23 MARCH 1990**



**Do you have a copy of the Constitution? Do you see Namibia's supreme law as a source of guidance and inspiration in your profession and as a compass in your personal life?**

I have copies of the Constitution in both Afrikaans and English. Even in my profession, I regard the Constitution as a source of guidance and we even dedicate time to discuss how the Constitution should be applied to young activists and the student movement. This way not only the progress of students but also of society at large can be enhanced.

**As a member of the "born-free generation" what is your understanding of the political processes that shaped the Constitution?**

Two days after Independence, I was "born free". The origin of our Constitution is the liberation struggle that was led by the founding fathers of our nation. They realised that national reconciliation and a national identity is needed in Namibia, especially because we experienced the separation of ethnic groups during the colonial times. The Constitution is a document that gives us as a nation the right to govern and rule. The constitutional process gave us a national identity.

**In general, do you think the Constitution has been respected since Independence?**

Yes, I think that we have respected the Constitution for the past twenty years.

**How would you judge the Constitution's relevance for Namibians today?**

Namibians should use the Constitution as guidance in their private and professional lives.

**Do you think there is enough emphasis on studying the Constitution (its history and the principles within it) in the Namibian education system? Did you study the Constitution at school or at a tertiary institution?**

I think that more emphasis needs to be laid on how people understand the Constitution.

**The Preamble of the Constitution says that the people of Namibia should strive for achieving national reconciliation. What does this mean to you?**

National reconciliation helps us to face the challenges in Namibian society in political and economic terms. National reconciliation is an imperative if we want to develop as a nation and accomplish Vision 2030. We have to set aside minor problems as we have to be more productive and competitive, not just among fellow Namibians but also in the global village.

**Article 3 stipulates that the official language should be English. Do you think that the usage of English is a benefit or a liability for the majority of the Namibian people?**

Namibia has a wide range of ethnic languages and dialects but we have to realise that our communication should not be restricted to the boundaries of our country. English is important if we want to communicate with the rest of the world because it is recognised internationally. Therefore, it is a benefit that English is our official language.

**Article 6 says that the right to life shall be respected and protected, and that no law may prescribe death as a competent sentence. In recent years some people demanded the reintroduction of the death sentence, for instance for child murderers. What is your opinion on that?**

I feel that the death sentence should be reintroduced. Our criminal law does obviously not change social behaviour and we have to keep the interests of our communities in mind. In my opinion, crimes like an adult raping a two-year-old child cannot be justified and nobody should get away with it.

**What is your view on land reform? Article 16 stipulates that property may be expropriated in the public interest subject to the payment of just compensation.**

In principle, I feel that land reform is a brilliant idea. The challenge is the implementation. We have to keep in mind that discrimination takes place because only certain tribes benefit from land reform policies.

**What is your view on Article 23 and its stipulations for Affirmative Action, benefiting those that were disadvantaged by past discriminatory laws and practices?**

Article 23 is well-written because Affirmation Action should be implemented to the benefit of all Namibians that were previously disadvantaged. However, when it comes to job applications I believe that it should also be based on merit. If a black person is not competent enough to do the job, I do not see a problem in a white person being employed. We should not allow reverse discrimination to take place.

**Do you believe that Article 95 that provides for the welfare of the Namibian people as a Principle of State Policy has adequately been put into practice?**

The welfare of our people remains an immense challenge to the Namibian government. We need more experts that help us to narrow the gap between rich and poor. Social research is also crucial for us to make informed and analytical decisions.

**The Constitution provides for the President to be elected directly by the people for not more than two terms. The amendment of Article 134 of the Namibian Constitution states the following: “Notwithstanding Article 29 (3), the first President of the Republic of Namibia may hold office as President for three terms.” What is your opinion on the “third-term” constitutional amendment of 1998?**

His Excellency, Sam Nujoma is the Founding Father of Namibia so I had no problem with him being re-elected. He was a good president and he paved the way for our young democracy.

**If you were a Member of Parliament, are there any articles in the Constitution that you would want to be amended or even abolished?**

Instead of amending it, we should review our strategy in terms of implementing the Constitution. I believe that if we start amending or changing parts of the Constitution, at the end of the day the entire document might be changed.

**In your opinion, is there anything missing in the Namibian Constitution? For instance, the South African Constitution stipulates freedom of sexual orientation while Article 10 of the Namibian Constitution requires only that persons may not be discriminated against on the basis of sex. What is your opinion on that? Or are there any other issues you might like to raise?**

If I had the power to amend the Constitution, I would include Articles that support the empowerment of the youth. I feel that many of our elderly leaders are reluctant to give power to young leaders. This is a huge challenge, as there are many young people with leadership qualities.

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**TREVOR CHIKA**

**PRESIDENT: STUDENT REPRESENTATIVE COUNCIL,  
POLYTECHNIC OF NAMIBIA**

**\* BORN: 16 APRIL 1987**



**Do you have a copy of the Constitution? Do you see Namibia's supreme law as a source of guidance and inspiration in your profession and as a compass in your personal life?**

I have a copy of the Constitution that gives me guidance in my professional and personal life. It is the supreme law and should be regarded as the bible of the country. The rule of law in Namibia implements the principles of the Constitution in 99.5% of all cases.

**As a Namibian born just a few years before Independence what is your understanding of the political processes that shaped the Constitution?**

The constitutional process was part of the independence process from colonial rule. I refer to colonial rule by the Germans and the South Africans. The constitutional principles were enshrined to guarantee the welfare of the people.

**How would you judge the Constitution's relevance for Namibians today?**

It is only relevant to those people that are able to read the languages of the Constitution, English and Afrikaans. Therefore, the Constitution needs to be translated into all local languages. However, we have to be careful that the translations are correct.

**Do you think there is enough emphasis on studying the Constitution (its history and the principles within it) in the Namibian education system? Did you study the Constitution at school or at a tertiary institution?**

The school curriculum does not emphasise the importance of the Constitution enough. Therefore, school children must read it in their own time.

**The Preamble of the Constitution says that the people of Namibia should strive for achieving national reconciliation. What does this mean to you?**

National reconciliation means nation-building, forgiving and forgetting. I would not say that we have achieved this yet. Black people are still victimised and stigmatised. We only hear about reconciliation as a utopian term in public speeches but we do not see it in our daily lives.

**Article 3 stipulates that the official language should be English. Do you think that the usage of English is a benefit or a liability for the majority of the Namibian people?**

The official language English is both, an asset and a liability. As we have so many local languages, it would be difficult to select one of them as official. It would look as if the selected language would be superior to all other languages. The disadvantage of using English as an official language is that it is not spoken at home.

**Article 6 says that the right to life shall be respected and protected, and that no law may prescribe death as a competent sentence. In recent years some people demanded the reintroduction of the death sentence, for instance for child murderers. What is your opinion on that?**

Nobody has the right to take somebody else's life. I do not agree with the death penalty that is common practice in many other countries.

**What is your view on land reform? Article 16 stipulates that property may be expropriated in the public interest subject to the payment of just compensation.**

The purpose of the policy is acceptable but too many issues remain unresolved. These issues need to be addressed by the government; otherwise you will see more violence because people are fighting over the land. My question is: In which interest does land reform in Namibia work? Wealthy ministers should not be beneficiaries.

**What is your view on Article 23 and its stipulations for Affirmative Action, benefiting those that were disadvantaged by past discriminatory laws and practices?**

In my opinion, Affirmative Action is reverse discrimination. It was formulated in order to assist those that were deprived from education and employment during colonial times. Mainly black women are benefiting from Affirmative Action and white men are victimised. Men have the mentality that they should be the head of the household. On the other hand, the process is slow because men are still dominating the workplace. Even in politics, women do not have equal representation. Somehow, women are not interested in political issues because they believe that they do not affect them anyhow.

**Do you believe that Article 95 that provides for the welfare of the Namibian people as a Principle of State Policy has adequately been put into practice?**

It is a state principle that has yet not been satisfactory implemented. Political decision makers are not really placing great emphasis on poverty alleviation. The government must be aware of the fact that the poor people are the majority in our country.

**The Constitution provides for the President to be elected directly by the people for not more than two terms. The amendment of Article 134 of the Namibian Constitution states the following: “Notwithstanding Article 29 (3), the first President of the Republic of Namibia may hold office as President for three terms.” What is your opinion on the “third-term” constitutional amendment of 1998?**

It was not a mockery of democracy as it was meant for the benefit of everybody. The Constitution was amended for a good cause and as long as people support the idea and there is consensus on this issue, I do not see a problem.

**If you were a Member of Parliament, are there any articles in the Constitution that you would want amended or even abolished?**

If I was a Member of Parliament I would improve those sections dealing with education. We must also prove whether sections of the Constitution really make sense and if they do not, they should be amended. The problem is not so much the spirit of the Constitution but how laws are implemented. For instance, the sentences for stock theft are harsher than for murder. How can one justify that cattle are more valuable than human life?

**In your opinion, is there anything missing in the Namibian Constitution? For instance, the South African Constitution stipulates freedom of sexual orientation while Article 10 of the Namibian Constitution requires only that persons may not be discriminated against on the basis of sex. What is your opinion on that? Or are there any other issues you might like to raise?**

There is nothing missing in the Constitution as such. The problem is to the low extent to which some of the principles of the Constitution are reflected in our daily lives. For instance, security guards at supermarkets check the bags of black people and not those of whites. Human rights are protected but still people are discriminated against. We have to talk about these problems, speak out instead of burying our heads. Somehow we are contradicting ourselves.

**Do you think that the Constitution provides a strong basis for the protection of basic human rights? Please provide examples.**

Yes it does but the guiding principles of human rights are not properly adhered to. There is definitely a need for law reform. Civil society organisations such as the National Society for Human Rights (NSHR) are also important players as they create consciousness and awareness on human rights in Namibia.

**Do you think the Namibian Constitution, more or less as it is now, will still be the supreme law of Namibia in 50 years' time? If not, how do you think the Constitution will have changed?**

I believe that the Constitution might change over the next 50 years as certain sections might not be as relevant anymore.

**Where do you see the Namibian democracy in 20 years from now? What is your personal Vision 2030?**

My personal Vision 2030 is that our education and health systems are properly taken care of. Education is crucial to development and deserves definitely more attention.

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**LUCY KANGOMBE**

**RADIO PRODUCER AND PRESENTER:  
RADIO FRESH FM**

**\* BORN: 20 MAY 1987**

**Do you have a copy of the Constitution? Do you see Namibia's supreme law as a source of guidance and inspiration in your profession and as a compass in your personal life?**

I regard the Constitution as guidance for my personal growth but not as an inspiration in my professional life. The media serves as the watchdog of this country but not much credit is given to the media by the Constitution. We are informing Namibians about what is going on in the world but we do not get much credit for that. We should have an Article in the Constitution that gives the media the platform it deserves.



**In general, do you think the Constitution has been respected since Independence?**

It has been respected by those that know the Constitution. But how many Namibians are aware of it? The so-called "born-free" generation, what do they really know about the Constitution?

**How would you judge the Constitution’s relevance for Namibians today?**

It is relevant with regard to the law-making process and the implementation of legislation.

**Do you think there is enough emphasis on studying the Constitution (its history and the principles within it) in the Namibian education system? Did you study the Constitution at school or at a tertiary institution?**

Not at all, I only read the Constitution when I was studying in my third year at the College of the Arts. At school, we did not learn about the Constitution.

**The Preamble of the Constitution says that the people of Namibia should strive for achieving national reconciliation. What does this mean to you?**

We should all be a happy human family.

**Article 3 stipulates that the official language should be English. Do you think that the usage of English is a benefit or a liability for the majority of the Namibian people?**

Nowadays, everywhere you go you must be able to understand and speak English.

**Article 6 says that the right to life shall be respected and protected, and that no law may prescribe death as a competent sentence. In recent years some people demanded the reintroduction of the death sentence, for instance for child murderers. What is your opinion on that?**

I think that the death sentence should be reintroduced. People commit crimes, they go to jail and then they are released. When they return into society, they commit crimes again. In the case that the death sentence cannot be reintroduced, I believe that we would need harsher sentences for severe crimes such as rape.

**What is your view on land reform? Article 16 stipulates that property may be expropriated in the public interest subject to the payment of just compensation.**

That should be decided on an individual basis, depending on the age and profession of people. For instance, it does not make sense to expropriate the land of old people and throw them on the streets.

**The Constitution provides for the President to be elected directly by the people for not more than two terms. The amendment of Article 134 of the Namibian Constitution states the following: “Notwithstanding Article 29 (3), the first President of the Republic of Namibia may hold office as President for three terms.” What is your opinion on the “third-term” constitutional amendment of 1998?**

I do not think that the “third-term” was a good idea. We have been busy establishing a nation and a democracy and change is good.

**If you were a Member of Parliament, are there any articles in the Constitution that you would want amended or even abolished?**

Yes, for instance when it comes to punishment for severe crimes. Perpetrators are somehow protected while an entire community suffers.

**Do you think that the Constitution provides a strong basis for the protection of basic human rights? Please provide examples.**

Yes, for instance Article 8 stipulates that no persons shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Where do you see the Namibian democracy in 20 years from now? What is your personal Vision 2030?**

We really should be the democratic country we claim to be because right now democracy is not really happening.

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**MANDELA KAPERRE**

**SECRETARY GENERAL:  
NATIONAL YOUTH COUNCIL**

**\* BORN: 4 JUNE 1982**



**Do you have a copy of the Constitution? Do you see Namibia's supreme law as a source of guidance and inspiration in your profession and as a compass in your personal life?**

Yes, I have a Constitution and make reference to it from time to time. There has been an amendment of the Constitution recently. With those kinds of national issues, it is important to reflect back on the Constitution and to see what its initial purpose was.

**As a Namibian born a few years before Independence what is your understanding of the political processes that determined the history of origin of the Constitution?**

I think that I have a good understanding of the political processes that led to the Constitution. It was the result of the protracted negotiations based fundamentally on the 1982 Constitutional Principles that we as Namibians and the liberation movement had to accept before we could start negotiating our independence. Those 1982 Principles were the philosophical foundation of the Constitution. Of course, the Constituent Assembly was involved in processes of giving and taking, as the Constitution had to build on consensus.

**In general, do you think the Constitution has been respected since Independence?**

For example, the Constitution refers to human dignity and rights and one of the state policies is poverty alleviation. In terms of implementation, there have been obstacles in achieving those objectives. However, to a large extent, the judiciary and the executive have been very effective in trying to respect and implement the Constitution.

**How would you judge the Constitution's relevance for Namibians today?**

Constitutions are conservative documents and they usually only change in times of crisis. However, I believe that the Constitution does not prioritize enough our history and the social inequality we experience as a result. The difference between individual and group rights should also be recognized. As such, the national interest sometimes conflicts with my personal beliefs. However, the national interest is more relevant than the individual.

**Do you think there is enough emphasis on studying the Constitution (its history and the principles within it) in the Namibian education system? Did you study the Constitution at school or at a tertiary institution?**

Both, at secondary school and at university I studied the Constitution. At university, I studied history and, of course, the supreme law was adequately addressed.

**The Preamble of the Constitution says that the people of Namibia should strive for achieving national reconciliation. What does this mean to you?**

That is pretty straight forward. We have been divided in the past and we have to unite.

**Article 3 stipulates that the official language should be English. Do you think that the usage of English is a benefit or a liability for the majority of the Namibian people?**

As an African man, my philosophy is the promotion of African heritage, including languages. On the other hand, I believe that selecting English as official language has been a pragmatic move. It is fine and good but the Constitution should emphasise local languages as well. For example, I do not understand why Members of Parliament are not allowed to express themselves in native languages.

**Article 6 says that the right to life shall be respected and protected, and that no law may prescribe death as a competent sentence. In recent years some people demanded the reintroduction of the death sentence, for instance for child murderers. What is your opinion on that?**

I think that the right to life is sacrosanct. We do not solve a problem by saying: You killed so I can kill you as well. The entire world is slowly moving away from applying the death penalty and, thus, for us it would be rather problematic to move in the opposite direction.

**What is your view on land reform? Article 16 stipulates that property may be expropriated in the public interest subject to the payment of just compensation.**

The Constitution does not effectively recognise the structural post-colonial economic and social injustice. So, I do not think that the supreme law addresses these issues sufficiently in terms of its provisions. Expropriation has even been challenged in court, while the right to property is explicitly mentioned in the Constitution. Land redistribution is necessary to achieve a just and equal society. The liberation struggle has been a struggle for political power, so that those in power can change the state for the benefit of its people. We have certainly achieved the objective of democratic freedom but a structural reform remains elusive. You just cannot fight the economic battle if you do not understand it.

**What is your view on Article 23 and its stipulations for Affirmative Action, benefiting those that were disadvantaged by past discriminatory laws and practices?**

While referring to Affirmative Action in the Constitution is certainly important, the problem that remains is the ownership of means of production. But ownership is guaranteed by the right to property. As long as the Constitution does not provide a basis for equity, it will not make the means of production accessible to all citizens. I think that emphasis must be laid on broad-based economic redistribution. Finally, I do not trust this elitist approach of recycling and redistributing resources just among the same business elite. For Affirmative Action to be meaningful, it has to translate into grassroots empowerment.

**Do you believe that Article 95 that provides for the welfare of the Namibian people as a Principle of State Policy has adequately been put into practice?**

There have certainly been many attempts to ensure the welfare of the people. However, we cannot deny the fact that we are a middle-income country with the highest income disparity in the world and a fairly undiversified economy. If we were a high-income country with an equally distributed economy, we could certainly provide for the welfare of the people. Probably, it is structurally just too difficult to achieve these objectives. For instance, I am in support of the Basic Income Grant (BIG), but with Namibia's small population and overburdened economy it is just too difficult to have the revenue necessary. Although government has made good attempts to ensure the welfare of the people, it has not adequately looked at all the possibilities, such as BIG. It is disheartening but we must just look at other systems of welfare that are in place, such as the health system and support for orphans and vulnerable children. We must take extraordinary efforts that are beyond the existing paradigm.

**The Constitution provides for the President to be elected directly by the people for not more than two terms. The amendment of Article 134 of the Namibian Constitution states the following: "Notwithstanding Article 29 (3), the first President of the Republic of Namibia may hold office as President for three terms." What is your opinion on the "third-term" constitutional amendment of 1998?**

At times, there was a lot of confusion about the "third term" and the constitutional amendment. In retrospect, I believe that it was probably in the best interest of the country. We are a

young nation that tries to consolidate not just democracy but also leadership and traditional patterns. Looking back, it was a good thing that we had continuation of political leadership.

**If you were a Member of Parliament, are there any articles in the Constitution that you want to be amended or even abolished?**

Certainly, there are articles that one would like to question. An example would be that the individual interests are overemphasized and the national interest has been sidelined. I would also like to see the strengthening of traditional leadership in running affairs of the country. I would also support that the Office of Ombudsman should have more teeth to bite. Certain institutions should be strengthened and not abolished. I would also like to see children's rights strengthened. Children have already access to education; however, free education up to tertiary institutions would be useful.

**Do you think that the Constitution provides a strong basis for the protection of basic human rights? Please provide examples.**

Yes, very much, for instance citizens' rights, children's rights, the right to life and dignity and political freedom. All these rights have been enshrined in the Constitution and have been protected to a great extent.

**Do you think the Namibian Constitution, more or less as it is now, will still be the supreme law of Namibia in 50 years' time? If not, how do you think the Constitution will have changed?**

Well, I doubt it and would be extremely disappointed if it would. The new generations might ensure the constitutionality of the African community. SADC and further regional integration should be something we should reckon with. We might align with provisions on regional and continental level. Maybe the Constitution might be abolished and we might have a supranational supreme law on the African continent. Integration is of utmost importance and extremely necessary.

**Where do you see the Namibian democracy in 20 years from now? What is your personal Vision 2030?**

I would hope that elected leaders would ensure development and decentralisation. I would also like to see stronger institutions and a real separation of powers between legislature and executive. Traditional authorities should have an influence on state policy. To respond to socio-economic needs and unemployment, I would like to see the system of tertiary institutions to be expanded. My personal Vision 2030 would concentrate on the economy.

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**TWAPEWA KATHIKWA****BUSINESS WOMAN:  
PEWA COSMETICS & XWAMA RESTAURANT****\* BORN: 3 NOVEMBER 1979****Do you have a copy of the Constitution? Do you see Namibia's supreme law as a source of guidance and inspiration in your profession and as a compass in your personal life?**

I do not have a copy of the Constitution but, nevertheless, the bill of rights serves as a guideline in my personal life. The supreme law does not inspire me to same extent in my professional life. As a business woman, one must not put too much emphasis on individual rights but see yourself as part of society.

**As a Namibian born a few years before Independence what is your understanding of the political processes that determined the history of origin of the Constitution?**

Due to colonisation and the war, we did not develop a sense of national identity. The Constitution serves as a guideline for nation-building among different tribes and religions. However, due to poverty and the lack of education people are not able to fully utilise what is written in the Constitution.

**In general, do you think the Constitution has been respected since Independence?**

It has been respected; however, the bill of rights should be more often referred to by the people.

**How would you judge the Constitution's relevance for Namibians today?**

In general, I believe that the Constitution should not be changed even though society might change. The Constitution is the supreme law and the foundation for all legislation to be passed by Parliament.

**Do you think there is enough emphasis on studying the Constitution (its history and the principles within it) in the Namibian education system? Did you study the Constitution at school or at a tertiary institution?**

There is definitely not enough emphasis on studying the Constitution at school.

**The Preamble of the Constitution says that the people of Namibia should strive for achieving national reconciliation. What does this mean to you?**

Divisions will always remain because people are just too different. We have to learn to accept each other if we want to succeed in nation-building. There is still a lot of discrimination

happening in Namibia. People still suffer because of things that happened in the past and it is not easy for them to forget.

**Article 3 stipulates that the official language should be English. Do you think that the usage of English is a benefit or a liability for the majority of the Namibian people?**

I do not believe that it was a good choice to select English as the official language. Instead all local languages should be official languages. It is our duty to pass on our cultural heritage, including local languages, to future generations.

**Article 6 says that the right to life shall be respected and protected, and that no law may prescribe death as a competent sentence. In recent years some people demanded the reintroduction of the death sentence, for instance for child murderers. What is your opinion on that?**

I personally feel that if a person takes the life of somebody else, he or she does not deserve to live. We do not have exemplary punishment, so people regard criminal activities as their profession.

**What is your view on land reform? Article 16 stipulates that property may be expropriated in the public interest subject to the payment of just compensation.**

My view on land reform is that people have to possess land. How else will they ever get a sense of ownership? People need land to feel proud, to grow their crop and to feed their families. The best land in the commercial areas is not owned by indigenous Namibians. Would Namibians own land in China? They won't because the Chinese will give their land to their own people. In Namibia, the government has to give land to the Namibian people.

**What is your view on Article 23 and its stipulations for Affirmative Action, benefiting those that were disadvantaged by past discriminatory laws and practices?**

In the past, laws discriminated people. We do not want to chase white people out of Namibia; instead we want to engage them in our programmes. People should get opportunities that they did not have before. Currently, Affirmative Action just creates a few millionaires while the majority of the people are poor. This way, problems just remain the same.

**Do you believe that Article 95 that provides for the welfare of the Namibian people as a Principle of State Policy has adequately been put into practice?**

In my opinion, welfare for the people has not been ensured. The government just wants to please everybody but it should also be able to make some painful decisions, such as distributing land to the poor.

**The Constitution provides for the President to be elected directly by the people for not more than two terms. The amendment of Article 134 of the Namibian Constitution states the following: "Notwithstanding Article 29 (3), the first President of the Republic**

**of Namibia may hold office as President for three terms.” What is your opinion on the “third-term” constitutional amendment of 1998?**

I support the idea that the Founding Father served an additional term because there were so many issues that he needed to address. The current President also has to address many issues and it is almost impossible to do this in only five years.

**If you were a Member of Parliament, are there any articles in the Constitution that you would want amended or even abolished?**

If I was a Member of Parliament, I would like to revise economic policies. Legislation passed since Independence failed to encourage local entrepreneurship. We should strengthen local businesses, no matter what skin colour the entrepreneurs have.

**In your opinion, is there anything missing in the Namibian Constitution? For instance, the South African Constitution stipulates freedom of sexual orientation while Article 10 of the Namibian Constitution requires only that persons may not be discriminated against on the basis of sex. What is your opinion on that? Or are there any other issues you might like to raise?**

I feel that sexual orientation is really a personal decision and should therefore be respected.

**Do you think that the Constitution provides a strong basis for the protection of basic human rights? Please provide examples.**

The Constitution provides a strong basis for human rights, even for the rights of criminals.

**Do you think the Namibian Constitution, more or less as it is now, will still be the supreme law of Namibia in 50 years’ time? If not, how do you think the Constitution will have changed?**

I do not feel that Namibia will change in the next couple of years. However, I will not preclude that future generations might change the Constitution.

**Where do you see the Namibian democracy in 20 years from now? What is your personal Vision 2030?**

My Vision 2030 is for local businesses and entrepreneurs to be empowered. We need to support our Namibian economy instead of just consuming foreign products. This way we will also deal with a number of other issues such as the high suicide rates which might be also caused by unemployment.

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**MICHAEL MULUNGA**

**WINNER: POLYTECHNIC ENTREPRENEURSHIP  
COMPETITION  
NAMIBIA BUSINESS INNOVATION CENTRE,  
POLYTECHNIC OF NAMIBIA**

**\*BORN: 24 APRIL 1989**



**Do you have a copy of the Constitution? Do you see Namibia’s supreme law as a source of guidance and inspiration in your profession and as a compass in your personal life?**

I have a copy of the Constitution which allows us to enjoy freedom and peace in Namibia. I feel safe and secure with the protection the supreme law offers. The only problem is that the Namibian Constitution is based on Roman Dutch Law and is, thus, not really ours.

**As a Namibian born just a few years before Independence or even as a member of the “born-free generation”: What is your understanding of the political processes that determined the history of origin of the Constitution?**

Namibia adopted the Constitution in 1990. However, the Constituent Assembly took laws from South Africa and just applied them to Namibia. We should really have reviewed these laws and should have engaged in public debate. It was not right that just a group of people decided on the Constitution without taking people’s views into consideration.

**In general, do you think the Constitution has been respected since Independence?**

The Constitution has been respected by all political parties.

**How would you judge the Constitution’s relevance for Namibians today?**

The Constitution we have is relevant but we should come up with a supreme law that is truly Namibian.

**Do you think there is enough emphasis on studying the Constitution (its history and the principles within it) in the Namibian education system? Did you study the Constitution at school or at a tertiary institution?**

In school, we just studied the bill of rights. At university, we only discuss articles that are relevant for the economy of the country.

**The Preamble of the Constitution says that the people of Namibia should strive for achieving national reconciliation. What does this mean to you?**

During the apartheid era, people were turned against each other. In order to develop the country, reconciliation brings people together and helps us to resolve the past.

**Article 3 stipulates that the official language should be English. Do you think that the usage of English is a benefit or a liability for the majority of the Namibian people?**

Using English as the official language can be an asset but also a liability. In South Africa, they have eleven official languages. Members of Parliament are comfortable with using the language they like. I believe that they use interpreters. Nobody is forced to use a language that he or she does not feel comfortable with.

**Article 6 says that the right to life shall be respected and protected, and that no law may prescribe death as a sentence. In recent years some people demanded the reintroduction of the death sentence, for instance for child murderers. What is your opinion on that?**

We must respect the right to life. It is not right to take a person's life because this is nothing else than killing a person.

**What is your view on land reform? Article 16 stipulates that property may be expropriated in the public interest subject to the payment of just compensation.**

Our land is still in the hands of minorities. However, we cannot just forcefully grab the land like it happened in Zimbabwe. In a peaceful manner, people that own more than one farm should give land to landless people that can use it productively.

**What is your view on Article 23 and its stipulations for Affirmative Action, benefiting those that were disadvantaged by past discriminatory laws and practices?**

Affirmative Action is good in principle. However, some people are benefiting more from it than others. This can be a stumbling block on the road to reconciliation.

**Do you believe that Article 95 that provides for the welfare of the Namibian people as a Principle of State Policy has adequately been put into practice?**

Community welfare is not taken seriously in Namibia. For instance, some garden projects are just benefiting families with political connections, not the entire community.

**The Constitution provides for the President to be elected directly by the people for not more than two terms. The amendment of Article 134 of the Namibian Constitution states the following: "Notwithstanding Article 29 (3), the first President of the Republic of Namibia may hold office as President for three terms." What is your opinion on the "third-term" constitutional amendment of 1998?**

The amendment just benefited the President and nobody else in the country. They did not ask for the people's opinions on this matter. This way, the supreme law favoured the ruling party, not the opposition parties.

**If you were a Member of Parliament, are there any articles in the Constitution that you want amended or even abolished?**

I would apply some changes to the Constitution, mainly relating to education, health care and youth empowerment.

**In your opinion, is there anything missing in the Constitution? For instance, the South African Constitution stipulates freedom of sexual orientation while Article 10 of the Namibian Constitution requires only that persons may not be discriminated against on the basis of sex. What is your opinion on that? Or are there any other issues you might like to raise?**

Not really.

**Do you think that the Constitution provides a strong basis for the protection of basic human rights? Please provide examples.**

Yes, it does but there are two sides of the story. In some cases, for instance the killings of schoolgirls like Magdalena Stoffels; we are somehow protecting the human rights of murderers. But we also have to protect the rights of the victims and their families. That can be contradictory. However, I do not question that the Constitution protects our human rights, but we have to practice what we preach. Some groups, such as albinos, are still marginalised and discriminated against.

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**MARIE JEANNE  
MUHOZA NDIMBIRA**

**PROGRAMME COORDINATOR: PHYSICAL ACTIVE  
YOUTH (PAY) PROGRAMME**

**\*BORN: 1 MAY 1981**



**Do you have a copy of the Constitution? Do you see Namibia's supreme law as a source of guidance and inspiration in your profession and as a compass in your personal life?**

I have a copy of the Constitution which is an important guidance in my life.

**As a Namibian born just a few years before Independence what is your understanding of the political processes that shaped the Constitution?**

I remember the time when the Constitution was written. I was about nine years old. In order to overcome our history of apartheid and colonisation, the Constitution guarantees human rights and strives for equality.

**In general, do you think the Constitution has been respected since Independence?**

During the first years after Independence, the Constitution was fresh in the minds and often referred to. That does not happen to the same extent anymore.

**How would you judge the Constitution's relevance for Namibians today?**

I think that it is relevant. The problem is that people just do not know how the Constitution can positively influence their lives.

**Do you think there is enough emphasis on studying the Constitution (its history and the principles within it) in the Namibian education system? Did you study the Constitution at school or at a tertiary institution?**

No, a lot more needs to be done.

**The Preamble of the Constitution says that the people of Namibia should strive for achieving national reconciliation. What does this mean to you?**

All Namibians should work hard to reconcile, deal with our past, and overcome the things that hurt us and strive for a common goal and a shared vision. Unfortunately, we are not trying hard enough to achieve reconciliation.

**Article 3 stipulates that the official language should be English. Do you think that the usage of English is a benefit or a liability for the majority of the Namibian people?**

English should remain the official language as sharing a language that all Namibians can use to communicate can only be of benefit. However, school education should be in local languages.

**Article 6 says that the right to life shall be respected and protected, and that no law may prescribe death as a sentence. In recent years some people demanded the reintroduction of the death sentence, for instance for child murderers. What is your opinion on that?**

The death sentence should not be reintroduced. Even if a person is a criminal, we do not have the right to take somebody else's life. Instead of putting criminals in prison cells over periods of thirty years, we should design programmes in which they can be useful for society and be productive.

**What is your view on land reform? Article 16 stipulates that property may be expropriated in the public interest subject to the payment of just compensation.**

Land reform is a very sensitive topic to discuss because of the unequal distribution of land. I support the "willing seller-willing buyer" strategy as this is a good way of implementing land reform programmes.

**What is your view on Article 23 and its stipulations for Affirmative Action, benefiting those that were disadvantaged by past discriminatory laws and practices?**

I believe in Affirmative Action but it needs a time plan and directions for the future. Applying changes at the work place should not be the only way to overcome the past.

**The Constitution provides for the President to be elected directly by the people for not more than two terms. The amendment of Article 134 of the Namibian Constitution states the following: “Notwithstanding Article 29 (3), the first President of the Republic of Namibia may hold office as President for three terms.” What is your opinion on the “third-term” constitutional amendment of 1998?**

I do not support the amendment as I believe that we have to build capacities among future leaders.

**If you were a Member of Parliament, are there any articles in the Constitution that you would plead for to be amended or even abolished?**

I would not change anything in the Constitution but I would make sure that it is more widely distributed and that all Namibians have access to it.

**In your opinion, is there anything missing in the Namibian Constitution? For instance, the South African Constitution stipulates freedom of sexual orientation while Article 10 of the Namibian Constitution requires only that persons may not be discriminated against on the basis of sex. What is your opinion on that? Or are there any other issues you might like to raise?**

I support the idea of freedom of sexual orientation.

**Do you think that the Constitution provides a strong basis for the protection of basic human rights? Please provide examples.**

Our Constitution protects the human rights of every Namibian. In understanding the history of this country, we know why the bill of rights is of utmost importance.

**Do you think the Namibian Constitution, more or less as it is now, will still be the supreme law of Namibia in 50 years’ time? If not, how do you think the Constitution will have changed?**

The Constitution should not be changed, especially not the bill of rights.

**Where do you see the Namibian democracy in 20 years from now? What is your personal Vision 2030?**

Young Namibians will determine what this country will be like in 20 years time. We certainly have to deal with problems such as food security, education, health and other developmental issues.

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**PATRICK SAM**

**DIRECTOR: PHYSICAL ACTIVE YOUTH (PAY)  
PROGRAMME**

**\*BORN: 4 MARCH 1983**



**Do you have a copy of the Constitution? Do you see Namibia's supreme law as a source of guidance and inspiration in your profession and as a compass in your personal life?**

Yes, I have a copy of the Constitution which I regard as the highest authority in the country. Although there are certainly sections that need amendment, the Constitution shapes the relations of the Namibian people.

**As a Namibian born just a few years before Independence what is your understanding of the political processes that shaped the Constitution?**

There were multiple factors that brought our independence. Among them are World War I and Namibia being a mandatory territory, World War II, the Cold War, the involvement of Cuba and Angola, the role of the US-administration under Ronald Reagan in supporting the apartheid regime and, of course, the role that the United Nations played.

**In general, do you think the Constitution has been respected since Independence?**

Yes, it has been respected to a large extent but there are certain factors that have been disregarded not only by the government but also by the people. We have to understand that we are the government and that those people that serve in offices are actually our servants. The role of the Constitution remains limited because people lack social consciousness.

**How would you judge the Constitution's relevance for Namibians today?**

In the legal context, the Constitution is a very important document. In the case of a court case, one can insist on individual rights as enshrined in the supreme law. However, many people are not aware of the bill of rights because they do not have access to information. People do not understand that they have a right to education, freedom of expression and so on. In theory, human rights are protected but they need to be put into practice.

**Do you think there is enough emphasis on studying the Constitution (its history and the principles within it) in the Namibian education system? Did you study the Constitution at school or at a tertiary institution?**

I believe that many teachers fail to strengthen awareness and interest in the Constitution. Children have to relate to what is written in the supreme law, so that the teachers will get their full attention.

**The Preamble of the Constitution says that the people of Namibia should strive for achieving national reconciliation. What does this mean to you?**

National reconciliation means forgiveness. Humans need to understand their own weaknesses and need to forgive themselves for harming others. The policy of national reconciliation must embrace the interest of everybody, not just those of the majority. Every Namibian has a place in our country, nobody should be excluded. Mutual respect and understanding are necessary. Reconciliation is still an abstract and theoretical term that we need to put into practice. We have to bridge the gaps in our society.

**Article 3 stipulates that the official language should be English. Do you think that the usage of English is a benefit or a liability for the majority of the Namibian people?**

Although there are certain advantages, the official language English is indeed a liability. As a child you are comfortable in your local language but later you are taught English by people that are unable to get knowledge across in a professional manner. I believe that our communication skills should be built on our indigenous languages. In order to develop self-confidence, your mind should develop in your mother tongue because this is the language you use at home.

**Article 6 says that the right to life shall be respected and protected, and that no law may prescribe death as a competent sentence. In recent years some people demanded the reintroduction of the death sentence, for instance for child murderers. What is your opinion on that?**

Magdalena Stoffel's tragedy was extremely sad but we also have to be aware of the fact that the person that committed the crime has had his own experiences in life. When people become insane, what is the society's responsibility? What did people that commit atrocities later in life experience at home? Maybe this person was also physically abused but this crime went unreported. We have to get to the root of the problem that lies in our society. If somebody feels self-respect and loved, the person would not commit those kinds of crimes. We need to create a conducive and optimal environment for human development.

**What is your view on land reform? Article 16 stipulates that property may be expropriated in the public interest subject to the payment of just compensation.**

It is a very complicated issue because political independence does not automatically translate into economic power and access to resources. We cannot just grab the land like Robert Mugabe did, because we have to think about our international reputation. Furthermore, if we want to redistribute socio-economic resources, we have to be very clear what the aim of land reform should be. Are we talking about economic development or just resettlement? We should not confuse the purpose of economic development with the symbolism of owing land. We must not forget that there are many economic gains in commercial farming. We have to train people in agriculture and farming so that they can use the land commercially. The white minority still owns most of the land and the black man feels that he is not benefiting and that he is hungry.

The next thing that happens is the hungry man robbing and killing the farmer that had worked his entire life on the land.

**What is your view on Article 23 and its stipulations for Affirmative Action, benefiting those that were disadvantaged by past discriminatory laws and practices?**

I believe in Affirmative Action but it should not just benefit a black minority elite. We need broadly-based economic empowerment. Once you have been oppressed, you must be careful not to become like the oppressor yourself. At the same time, people that were advantaged in the past continue to be so. This policy should benefit the “currently disadvantaged” and not the “historically disadvantaged”. We still have a fifty percent unemployment rate in Namibia and that is why we should be careful.

**Do you believe that Article 95 that provides for the welfare of the Namibian people as a Principle of State Policy has adequately been put into practice?**

Certainly, the government’s intentions are good but sometimes institutions are weak and policies are not effectively implemented.

**The Constitution provides for the President to be elected directly by the people for not more than two terms. The amendment of Article 134 of the Namibian Constitution states the following: “Notwithstanding Article 29 (3), the first President of the Republic of Namibia may hold office as President for three terms.” What is your opinion on the “third-term” constitutional amendment of 1998?**

In retrospect, I believe the problem lies with the implications an amendment of the Constitution had. Policies do not necessary change if you have different personalities ruling the country. Thus, I would put greater emphasis on political systems and institutions and not so much on personalities.

**If you were a Member of Parliament, are there any articles in the Constitution that you would plead for to be amended or even abolished?**

To guarantee the separation of powers, I would suggest that Members of Parliament should not serve on the executive. In terms of time management, it is also not recommendable that a person is both at the same time, Member of Parliament and Minister. The percentage of women and young leaders in Parliament should also increase to guarantee better representation.

**In your opinion, is there anything missing in the Namibian Constitution? For instance, the South African Constitution stipulates freedom of sexual orientation while Article 10 of the Namibian Constitution requires only that persons may not be discriminated against on the basis of sex. What is your opinion on that? Or are there any other issues you might like to raise?**

I do not believe that something is actually missing in the Constitution. The problem is the implementation of policies. As said, people are not even aware of what is enshrined in the

Constitution. We should ensure that our opinions and perceptions are in line with the supreme law. We should know that the President is not the highest authority in the country but the Constitution is.

**Do you think that the Constitution provides a strong basis for the protection of basic human rights? Please provide examples.**

The Constitution does protect the basic human rights. We have to understand our history and that the violation of human rights was common place during apartheid times. The challenge is to make the bill of rights accessible to the people because it was designed by an elite circle. In our society, the elites are somehow disconnected from the people.

**Do you think the Namibian Constitution, more or less as it is now, will still be the supreme law of Namibia in 50 years' time? If not, how do you think the Constitution will have changed?**

In the case the Constitution should be amended, it should be done in the interest of the people and the change should be progressive in nature. Any changes to the supreme law should not deny people access to resources and the protection of human rights. I hope that we develop into a more human and tolerant society with a political and economic conscience. Young people believe that only previous generations were willing to sacrifice their lives for this country. I personally feel that the young generation should also strive for freedom.

**Where do you see the Namibian democracy in 20 years from now? What is your personal Vision 2030?**

Namibia re-established its society and reclaimed political power after genocide and the apartheid era, which had crushed our social fabric. Yes, we have made mistakes since Independence but I guess we were allowed to do so, taking into consideration where we came from. My vision of Namibia in 20 years is a place where people can make their dreams come true. We have amazing people here and even those that just visit Namibia can see that. We also have to stop imagining people in government as people standing above us because we actually elected them to serve us. They should not have their nose up in the air, they should be proud to serve us and to represent the masses.

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**ERIK SELL A.K.A EES**

**SOUND ENGINEER AND MUSICIAN:  
KWAITO, AFRO POP, REGGAE/HIP HOP**

**\*BORN: 5 OCTOBER 1983**



**Do you have a copy of the Constitution? Do you see Namibia's supreme law as a source of guidance and inspiration in your profession and as a compass in your personal life?**

Well, I do not have a copy of the Constitution with me and I very seldom think about the supreme law as guidance in my profession.

**In general, do you think the Constitution has been respected since Independence?**

To a large extent I do think that our Constitution is a foundation for Namibia. I think that it is great that you guys ask these questions and, in doing so, go deep into the minds of the Namibian people, just to keep the democratic fire burning. Especially since the African continent is not known for being very democratic in the past. Namibians can be glad that this country is not densely populated and that our democracy is stable.

**How would you judge the Constitution's relevance for Namibians today?**

I believe that the Constitution should be taken more seriously. I do not feel the urge to build huge monuments and costly state houses, while most people in the north of the country do not even have water or electricity.

**Do you think there is enough emphasis on studying the Constitution (its history and the principles within it) in the Namibian education system? Did you study the Constitution at school or at a tertiary institution?**

Yes, we studied the Constitution but in case you would ask me about some details, I would fail the test terribly. Well, I guess that it should be told in a manner that really emphasises the importance of the supreme law. It should be an integrated part of secondary schools' curriculum, and should not be taught only in Grade 8 but also up to Grade 12.

**The Preamble of the Constitution says that the people of Namibia should strive for achieving national reconciliation. What does this mean to you?**

Reconciliation means a lot to me because this is the way I was brought up. I feel that Namibia is doing a great job in striving for reconciliation.

**Article 3 stipulates that the official language should be English. Do you think that the usage of English is a benefit or a liability for the majority of the Namibian people?**

English is of great benefit but I also feel that native languages should be taught in school. I would love to speak Oshiwambo fluently but I never had the opportunity to learn it at school. It would really be good for nation-building if people could speak as many local languages as possible. Through communication we will be able to connect.

**Article 6 says that the right to life shall be respected and protected, and that no law may prescribe death as a competent sentence. In recent years some people demanded the re-introduction of the death sentence, for instance for child murderers. What is your opinion on that?**

In my religion, no human being has the right to decide that another person should receive the death penalty. There are plenty other ways to deal with murderers than to introduce the death penalty. The only way to fight crime in Namibia is to introduce a “no tolerance” police action mentality. This method was used to fight crime effectively at other places, such as New York.

**What is your view on land reform? Article 16 stipulates that property may be expropriated in the public interest subject to the payment of just compensation.**

There is a need for land reform but the way that it is executed is just wrong. Proclaimed to be in national interest, it is actually in the interest of a chosen few. The benefits will only last for a short while until all resources have been exploited just because there is a lack of agricultural knowledge and know-how. The money should rather be allocated to the educational sector, instead of putting it into land reform that costs millions of public funds and does not contribute to strengthening the economic power of the country.

**What is your view on Article 23 and its stipulations for Affirmative Action, benefiting those that were disadvantaged by past discriminatory laws and practices?**

Affirmative Action is apartheid, just in the opposite direction. The policy forces a sudden change which does not benefit the country at all. Apartheid cannot just be reversed in twenty years time. Due to Affirmative Action, a white African like me has absolutely no chance to get a job in the public sector. People are judged by their skin colour and not the abilities they have, and that does not strengthen our economy. Again, the state should rather invest in education which is a long-term achievement. Affirmative Action does not help to unite the Namibian nation.

**Do you believe that Article 95 that provides for the welfare of the Namibian people as a Principle of State Policy has adequately been put into practice?**

All I know is that a pension of 400 Namibia dollars per month is rather humiliating, especially when you see government officials driving around in luxury cars.

**The Constitution provides for the President to be elected directly by the people for not more than two terms. The amendment of Article 134 of the Namibian Constitution**

**states the following: “Notwithstanding Article 29 (3), the first President of the Republic of Namibia may hold office as President for three terms.” What is your opinion on the “third-term” constitutional amendment of 1998?**

Well, as this was just applied to Namibia’s Founding President, I do not really have a problem with the “third term”. During his presidential years, President Sam Nujoma was a very peaceful leader, with a few exceptions here and there.

**In your opinion, is there anything missing in the Namibian Constitution? For instance, the South African Constitution stipulates freedom of sexual orientation while Article 10 of the Namibian Constitution requires only that persons may not be discriminated against on the basis of sex. What is your opinion on that? Or are there any other issues you might like to raise?**

In my view, freedom of sexual orientation and non-discrimination on the basis of sex means more or less the same.

**Do you think the Namibian Constitution, more or less as it is now, will still be the supreme law of Namibia in 50 years’ time? If not, how do you think the Constitution will have changed?**

We have a great Constitution now, but the more work we put into details, the stronger the supreme law will become. As time changes, and people and society changes, the Constitution might not be exactly the same in 50 years’ time.

**Where do you see the Namibian democracy in 20 years from now? What is your personal Vision 2030?**

We will grow even stronger. Namibians are very fortunate in having such a democratic system. Just a few sectors need improvement and the government should definitely not lose its focus.

### EXERCISE

- Try to answer the whole array of questions we have asked these young leaders.
- Select the answers of one young Namibian, whose perceptions and views reflect more or less how you feel. However, are there any of this person’s insights that you do not agree with? Explain why.
- Identify the young interviewee whose answers you oppose most. Explain why.

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## FOUNDING PERSPECTIVE

# VEKUII RUKURO



### OPPOSING THE DEATH PENALTY

At that point in time I was representing the party called the Namibia National Front as well as Swanu [South West Africa National Union]. The debates were quite lively and nothing surprised me because there were a lot of controversial issues on which the parties differed quite fundamentally. The issues of the death penalty, land reform, Walvis Bay and if it should have remained a South African territory or not. The death penalty was a major issue and I found myself against the big guns like Swapo and DTA who were for the retention of the death penalty. As an argument I had to resort to certain measures to get my point across and I argued that I fought the system my whole life and I knew that the death penalty was abused and as a lawyer I knew that something could go wrong in the court of law and an innocent life could be taken wrongly. As it turned out the final day of the debate on the issue about the death penalty was the day that there was a major debate going on at the UN headquarters in New York about the very same issue. The Council of Churches in Namibia and members of public started sending letters to the editors and on the last day I pitched to my fellow freedom fighters by telling them that the death penalty was an instrument used against us and now you are trying to retain it to use it against our own people? In the final argument those who were pro retaining the death penalty caved in and the death penalty was abolished.

### STICK TOGETHER OR SINK TOGETHER

The parties came to the realization that they are in this together and as much as we might not like each other it was all about national reconciliation. We could either float together or sink together. Until this day there are still guys in Parliament who ‘cut each others’ throats’ in debates when it is in session but it remains a consistent democracy. In tea-breaks they all go to the cafeteria and are great pals.

### BLURRING THE LINES

The Constitution has been strengthened consistently by the decisions of our courts and test cases have been brought on various issues. Various principles on separation of powers and all the decisions by the judicial branch have strengthened the rule of the Constitution in Namibia. On the other hand there have been some serious challenges mainly coming from politics having to do with the majority, specifically the ruling party. The ruling party has tended to blur the lines between what is the government and what is the state because the ruling party tends to think that it is state and it is government. That can be a challenge especially when it comes to the issue of the separation of powers. As a member of the Swapo Party I don’t really appreciate

the fact that on national days we see the head of state putting on party colours. On a national day you would expect the head of state to rise above party politics because he is the father of the nation, the head of state.

#### **BICAMERAL OR UNICAMERAL?**

I would change the composition of Parliament from being two chambers to one. Instead of having a National Assembly and National Council I would rather just go for one legislative chamber. The National Assembly could be enlarged by putting in people from the National Council. It could make everything more effective for the purpose of parliamentary oversight. At the moment there are 78 members of Parliament in the National Assembly and more than half of them are ministers and deputy ministers so they are all part of the executive branch of government. You are then left with 20-odd members who must form independent parliamentary committees. Most of these are from the ruling party itself so what effective committee system do you have to check and scrutinize the bills coming from the executive branch and that is why sometimes we have poor quality legislation coming from the legislative branch of government. We don't have good functioning committees and the heartbeat of any parliament is a good committee system that can do research for debate. The other thing that we might want to look into is that we could have enough members of parliament [in one chamber] and they can be elected in the same way the National Assembly is elected and the other section can be elected how the National Council is currently elected.

*Vekuii Rukoro is the head of one of Namibia's commercial banks. He was previously the Attorney General and a National Assembly MP until 2000.*

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## **FOUNDING PERSPECTIVE**

### **HARTMUT RUPPEL**



#### **COMPROMISES REACHED**

The difficult and important issues on which compromise was reached included the executive vs ceremonial head of state; unicameral or bicameral parliamentary system; the voting system – constituency first past the post or party list through proportional representation.

#### **DEBATES HAVE BECOME ACRIMONIOUS**

The way of doing politics has changed since the Constituent Assembly. Debates now often seem to be acrimonious and not very

conducive to ventilating, debating and deciding issues or passing laws. The basis of mandates of representation in particularly the National Assembly is not so equal anymore – the executive is dominant in the legislature.

### **SLOW PROGRESS IS A THREAT**

Chapter 3 of the Constitution on Fundamental Rights and Freedoms is holding up well in all the circumstances; the judiciary is independent; parliament's role is not as clear and may have to be reviewed. The follow through on important Principles of State in Chapter 11 has been difficult and slow; human dignity, education and health for all, proper housing, access to courts, equal opportunity – all of that cannot be advanced or secured meaningfully if there is such a huge gap between rich and poor, significant un- and under-employment, poverty, and hopelessness.

### **LONG ROAD TO RECONCILIATION**

Reconciliation is a process. It is about identifying, admitting, dealing with and overcoming differences, prejudices, past hurt and injustice. For reconciliation to succeed it requires a real commitment – not just lip service – to shared values, symbols, a future; it is about tolerance, about listening and changing. Reconciliation cannot be legislated and enforced as we would do to regulate traffic. We have made progress, but the national reconciliation we are talking about in the preamble of our Constitution, are we there? No. I don't think so.

### **CREATING A JUST SOCIETY**

We must deliver on the expectations of a fair and just society our Constitution promises. I don't think we have failed, but we have not gone fast or far enough. If disillusionment sets in the Constitution will come under increasing threat.

### **BEE LAW IS NEEDED**

Generally we take our rights seriously – and so does the State. That said, there is one area which I feel requires far greater attention than is the case so far: it concerns the follow through on Article 23, which outlaws the practice of racial discrimination, but authorizes Parliament to make laws (notwithstanding the right in Article 10 of all persons to equality before the law and not to be discriminated on the grounds of also race and colour) to provide for the redressing of the imbalances which arose from pre-Independence discriminatory laws or practices. Considering the political importance of redressing past wrongs and their consequences on the one hand, and the potential far-reaching constraint such measures may mean for the exercise of a very fundamental human right in modern, democratic societies, the right to equality, it is imperative that in addition to existing affirmative action laws, black economic empowerment is legislated for clearly, in unambiguous terms, and urgently.

## **PROUDLY NAMIBIAN**

Namibians were elected to write the Constitution. They gathered together, negotiated, debated, compromised, wrote and adopted for themselves a Constitution to govern an Independent Namibia. It is a proudly Namibian Supreme Law. Clearly, we did not re-invent the wheel. The fact that rights and freedoms fought for by generations of progressive and courageous people all over the world, institutions and concepts which were developed over many centuries of constitution-making and the creation of sovereign nations are accommodated in our own Constitution does certainly not make it foreign or less of an expression of the will of the Namibian people who elected the founding mothers and fathers to write the Constitution.

*Hartmut Ruppel is a lawyer.*

*He was Namibia's first Attorney General and a National Assembly MP until 2000.*

## FURTHER READING

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# APPENDIX A:

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## 1982 CONSTITUTIONAL PRINCIPLES

### PRINCIPLES CONCERNING THE CONSTITUENT ASSEMBLY AND THE CONSTITUTION FOR AN INDEPENDENT NAMIBIA

#### A. CONSTITUENT ASSEMBLY

1. In accordance with the United Nations Security Council resolution 435(1978), elections will be held to select a Constituent Assembly which will adopt a Constitution for an independent Namibia. The Constitution will determine the organization and powers of all levels of government.
  - Every adult Namibian will be eligible, without discrimination or fear of intimidation from any source, to vote, campaign and stand for election to the Constituent Assembly.
  - Voting will be by secret ballot, with provisions made for those who cannot read or write.
  - The date for the beginning of the electoral campaign, the date of elections, the electoral system, the preparation of voter rolls and other aspects of electoral procedure will be promptly decided upon so as to give all political parties and interested persons, without regard to their political views, a full and fair opportunity to organize and participate in the electoral process.
  - Full freedom of speech, assembly, movement and press shall be guaranteed.
  - The electoral system will seek to ensure fair representation in the Constituent Assembly to different political parties which gain substantial support in the election.
2. The Constituent Assembly will formulate the Constitution for an Independent Namibia in accordance with the principles in Part B below and will adopt the Constitution as a whole by a two-thirds majority of its total membership.

#### B. PRINCIPLES FOR A CONSTITUTION FOR AN INDEPENDENT NAMIBIA

1. Namibia will be a unitary, sovereign, and democratic state.
2. The Constitution will be the supreme law of the State. It may be amended only by a designated process involving the legislature and/or votes cast in a popular referendum.
3. The Constitution will determine the organization and powers of all levels of government. It will provide for a system of governance with three branches; an elected executive branch which will be responsible to the legislative branch; a legislative branch to be elected by universal and equal suffrage which will be responsible for the passage of all laws; and an independent judicial branch which will be responsible for the interpretation of the Constitution and for ensuring its supremacy and the authority of the law. The executive and legislative branches will be constituted by periodic and genuine elections which will be held by secret vote.
4. The electoral system will be consistent with the principles in A.1 above.

5. There will be a declaration of fundamental rights, which will include the rights to life, personal liberty and freedom of movement; to freedom of conscience; to freedom of expression, including freedom of speech and a free press; to freedom of assembly and association, including political parties and trade unions; to due process and equality before the law; to protection from arbitrary deprivation of private property or deprivation of private property without just compensation; and to freedom from racial, ethnic, religious or sexual discrimination. The declaration of rights will be consistent with the provisions of the Universal Declaration of Human Rights. Aggrieved individuals will be entitled to have the courts adjudicate and enforce these rights.
6. It will be forbidden to create criminal offences with retrospective effect or to provide for increased penalties with retrospective effect.
7. Provisions will be made for the balanced structure of the public service, the police service and defence services and for equal access by all to recruitment of these services. The fair administration of personnel policy in relation to these services will be assured by appropriate independent bodies.
8. Provisions will be made for the establishment of elected council for local and/or regional administration.

## **APPENDIX B:**

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### **RESOLUTION 435 OF 29 SEPTEMBER 1978**

#### **THE SECURITY COUNCIL,**

Recalling its resolutions 385 (1976) of 30 January (1976) and 431 (1978) and 432 (1978) of 27 July 1978,

Having considered the report of the Secretary-General submitted pursuant to paragraph 2 of resolution 431 (1978) and his explanatory statement made in the Security Council on 29 September 1978 (S/12969),

Taking note of the relevant communications from the Government of South Africa to the Secretary-General.

Taking note also of the letter dated 8 September 1978 from the President of the South West Africa People's Organization to the Secretary-General,

#### **REAFFIRMING THE LEGAL RESPONSIBILITY OF THE UNITED NATIONS OVER NAMIBIA,**

1. Approves the report of the Secretary-General on the implementation of the proposal for a settlement of the Namibian situation and his explanatory statement;
2. Reiterates that its objective is the withdrawal of South Africa's illegal administration from Namibia and the transfer of power to the people of Namibia with the assistance of the United Nations in accordance with Security Council resolution 385 (1976);
3. Decides to establish under its authority a United Nations Transition Assistance Group in accordance with the above-mentioned report of the Secretary-General for a period of up to 12 months in order to assist his Special Representative to carry out the mandate conferred upon him by the Security Council in paragraph 1 of its resolution 431 (1978), namely, to ensure the early independence of Namibia through free elections under the supervision and control of the United Nations;
4. Welcomes the preparedness of the South West Africa People's Organization to co-operate in the implementation of the Secretary-General's report, including its expressed readiness to sign and observe the cease-fire provisions as manifested in the letter from its President of 8 September 1978;
5. Calls upon South Africa forthwith to co-operate with the Secretary-General in the implementation of the present resolution;
6. Declares that all unilateral measures taken by the illegal administration in Namibia in relation to the electoral process, including unilateral registration of voters, or transfer of power, in contravention of resolutions 385 (1976), 431 (1978) and the present resolution, are null and void;
7. Requests the Secretary-General to report to the Security Council not later than 23 October 1978 on the implementation of the present resolution.

## APPENDIX C:

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### MEMBERS OF THE CONSTITUENT ASSEMBLY 1989-90

\*THE FOLLOWING MEMBERS SIGNED THE CONSTITUTION ON FEBRUARY 9 1990

#### SWAPO

- Hage Geingob - Chairman
- Mose Tjitendero
- Ben Amathila
- Nahas Angula
- Nico Bessinger
- Danie Botha
- Moses Garoeb
- Hidipo Hamutenya
- Hadino Hishongwa
- Michaela Hübschle
- Nickey Iyambo
- Peter Katjavivi
- Kaire Mbuende
- Peter Mweshihange
- John Ya Otto
- Hartmut Ruppel
- Ngarikutuke Tjiriange
- Ben Ulenga
- Anton Von Wietersheim
- Peter Tshirumbu
- Rev. Matti Amadhila
- Sam Nujoma
- Hendrik Witbooi
- Libertina Amathila
- H Hausiku
- Willem Biwa
- Jerry Ekandjo
- Theo-Ben Gurirab
- Marco Hausiku
- Joshua Hoebeb
- Pendukeni Iivula-Ithana
- Richard Kapelwa-Kabajani
- Willem Konjore
- David Meroro
- Nathaniel Maxuulili
- Hifikepunye Pohamba
- Pashukeni Shoombe
- Andimba Toivo ya Toivo
- Buddy Wentworth
- Siegfried Wohler
- Rev. Zephania Kameeta

#### DEMOCRATIC TURNHALLE ALLIANCE

- Mishake Muyongo
- Ben Africa
- Magareth Barnes
- Johannes Gaseb
- Joseph Haraseb
- Piet Junius
- Katuutire Kaura
- Fanuel Kozonguizi
- A Majavero
- A Nuule
- C van Wyk
- Dirk Mudge
- Barney Barnes
- Gottlieb Dan
- Alois Gende
- Jeremia Jagger
- Geelboy Kashe
- Constance Kgosimang
- Daniel Luipert
- Andrew Matjila
- Hans-Erik Staby

**UNITED DEMOCRATIC FRONT**

- Justus Garoëb
- Eric Biwa
- Reggie Diergaardt
- Gabriel Siseho

**ACTION CHRISTIAN NATIONAL**

- Kosie Pretorius
- William Aston
- Jan de Wet

**FEDERAL CONVENTION OF NAMIBIA**

- Mburumba Kerina

**NAMIBIA NATIONAL FRONT**

- Vekuii Rukoro

**NATIONAL PATRIOTIC FRONT**

- Moses Katjuongua

## **APPENDIX D:**

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### **THE CONSTITUTION OF THE REPUBLIC OF NAMIBIA (INCLUDING AMENDMENTS FROM 1998 AND 2010)**

#### **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;

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

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;

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

Whereas we the people of Namibia -

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

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.

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## **CHAPTER 1 THE REPUBLIC**

### **ARTICLE 1 ESTABLISHMENT OF THE REPUBLIC OF NAMIBIA AND 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 enclave, harbour and port of Walvis Bay, as well as the off-shore islands 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 Flag, the description of which is set out in Schedule 6 hereof.
- (2) Namibia shall have a National Coat of Arms, 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.
- (3) (a) The National Seal of the Republic of Namibia shall show the 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 private schools or in schools financed or subsidised by the State, subject to compliance with such requirements as may be imposed by law, to ensure proficiency in the official language, or for pedagogic reasons.
- (3) Nothing contained in Sub-Article (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.

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## **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) who were 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 this Sub-Article shall not apply to persons claiming citizenship of Namibia by birth if such persons 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, or if the fathers or mothers of such persons claiming citizenship were ordinarily resident in Namibia at the date of the birth of such persons and had been so resident for a continuous period of not less than five (5) years prior to such date;
  - (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) who are career representatives of another country; or
    - (cc) who are members of any police, military or security unit seconded for service within Namibia by the Government of another country; or
    - (dd) who are illegal immigrants:
 

provided further that Sub-Articles (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:
- (a) 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
  - (b) 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, prior to the coming into force of this Constitution, in good faith married a person who would have qualified for Namibian citizenship if this Constitution 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 ten (10) 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 applied for by persons who are not Namibian citizens under Sub-Articles (1), (2), (3) or (4) hereof and who:
- (a) are ordinarily resident in Namibia at the time when the application for naturalisation is made; and
  - (b) have been so resident in Namibia for a continuous period of not less than ten (10) years (whether before or after the date of Independence); and
  - (c) 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 the date of Independence.
- (7) Namibian citizenship shall be lost by persons who renounce their Namibian citizenship 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 date of Independence:
- (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 any other country without the written permission of the Namibian Government; or
  - (c) have taken up permanent residence in any other country and have 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 or descent 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.

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## **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 Executive, Legislature 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.

#### **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 SLAVERY AND FORCED LABOUR**

- (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” shall not include:
  - (a) any labour required in consequence of a sentence or order of a Court;
  - (b) any labour required of 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 correctional 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 requiring 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 judicial officer 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 or other judicial officer.
- (4) Nothing contained in Sub-Article (3) hereof shall apply to 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 persons who have been arrested and held in custody 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.

**ARTICLE 12 FAIR TRIAL**

- (1) (a) In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be 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 is

necessary in a democratic society.

- (b) A trial referred to in Sub-Article (a) hereof 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 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 marriage by customary law, and no Court shall admit in evidence against such person's testimony which has been obtained from such persons in violation of Article 8(2)(b) hereof.
- (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.

#### **ARTICLE 13 PRIVACY**

- (1) No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as 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 status shall have the right to marry and to found a family. They shall be 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 hereof 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 that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire 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 Government. All citizens shall have the right to form and join political parties and, subject to such qualifications prescribed by law as are necessary 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, unless

otherwise provided herein.

- (3) The rights guaranteed by Sub-Article (2) hereof may only be abrogated, 11 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 are necessary 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 legislation, 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 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.
- (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 this may be authorised by Act of Parliament on grounds of health or other considerations pertaining to the public interest.
- (4) All persons shall have the right, at their own expense, to establish and to maintain private schools, or colleges or other institutions of tertiary education: provided that:
  - (a) such schools, colleges or institutions of tertiary education are registered with a Government department in accordance with any law authorising and regulating such registration;
  - (b) the standards maintained by such schools, colleges or institutions of tertiary education are not inferior to the standards maintained in comparable schools, colleges or institutions of tertiary education 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 freedom of the press and other media;
  - (b) freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;
  - (c) freedom to practise any religion and to manifest such practice;
  - (d) assemble peaceably and without arms;
  - (e) freedom of association, which shall include 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 Namibia;
  - (h) reside and settle in any part of Namibia;
  - (i) leave and return to Namibia;
  - (j) practise any profession, or 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 necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, 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 Chapter 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 hereof 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 at such practices.
- (2) Nothing contained in Article 10 hereof 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 for the implementation of policies and programmes aimed at redressing social,

economic or educational imbalances in the Namibian society arising out of discriminatory laws or practices, or for achieving a balanced structuring of the public service, the defence force, the police force, and the correctional service.

- (3) In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, 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 hereof 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 in a state of national defence or any period when a declaration of emergency under this 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) hereof, 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 may be desirable or expedient in the circumstances, having regard to the public interest and the interests of the detained persons.
- (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)(a), (b), (c) and (e) hereof, or the denial of access by any persons to legal practitioners 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 subordinate legislative authority shall not make any law, 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 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, any 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 may be specified by it. In such event and until such correction, or until the expiry of the time limit set 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 the date of 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) hereof shall apply.
- (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 competent Court 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) hereof 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 provisions of this Constitution, should the Court come to the conclusion that such rights or freedoms have been unlawfully 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 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.

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## **CHAPTER 4**

### **PUBLIC EMERGENCY, STATE OF NATIONAL**

#### **DEFENCE AND MARTIAL LAW**

##### **ARTICLE 26 STATE OF EMERGENCY, STATE OF NATIONAL DEFENCE AND MARTIAL LAW**

- (1) At a time of national disaster or during a state of national defence or public emergency threatening the life of the nation or the constitutional order, the President may by Proclamation 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 after publication of the declaration;

or

(b) in any other case; at the expiration of a period of thirty (30) days after 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. 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 after 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. The National Assembly may by resolution at any time revoke a declaration approved by it in terms of this Article.

(a) During a state of emergency in terms of this Article or when a state of national defence prevails, the President shall have the power by Proclamation to make such regulations as in his or her opinion are necessary for the protection of national security, 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 hereof.

(c) Where any regulation made under Sub-Article (b) hereof provides for detention without trial, provision shall also be made for an Advisory Board, to be appointed by the President on the recommendation of the Judicial Service Commission, and consisting of no more than five (5) persons, of whom no fewer than three (3) persons shall be Judges of the Supreme Court or the High Court or qualified to be such. The Advisory Board shall perform the function set out in Article 24(2)(c) hereof.

(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.

(7) The President shall have the power to proclaim or terminate martial law. Martial law may be proclaimed only when a state of national defence involving another country exists or when civil war prevails in Namibia: provided that any proclamation of martial law shall cease to be valid if it is not approved within a reasonable time by a resolution passed by a two-thirds majority of all the members of the National Assembly.

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## **CHAPTER 5**

### **THE PRESIDENT**

#### **ARTICLE 27 HEAD OF STATE AND GOVERNMENT**

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

#### **ARTICLE 28 ELECTION**

- (1) The President shall be elected in accordance with the provisions of this Constitution and subject thereto.
- (2) Election of the President shall be:
  - (a) by direct, universal and equal suffrage; and
  - (b) 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 of Namibia by birth or descent, over the age of thirty-five (35) years, and who is eligible to be elected to office as a member of the National Assembly 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) (a) 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.
  - (b) In the event of the dissolution of the National Assembly in the circumstances provided for under Article 57(1) hereof, the President's term of office shall also expire.
- (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 ground 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 President.

- (3) A person shall hold office as President for not more than two terms.
- (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 (1) year before the date on which Presidential elections are required to be held, the vacancy shall be filled in accordance with the provisions of Article 34 hereof;
  - (b) if the vacancy occurs more than one (1) 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 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 the President dissolves the National Assembly under Articles 32(3)(a) and 57(1) hereof, a new election for President 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 hereof 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 (3) hereof.

#### **ARTICLE 30 OATH OR AFFIRMATION**

Before formally assuming office, a President-elect shall make 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 defend as the Supreme Law the Constitution of the Republic of Namibia, and faithfully to obey, 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 CIVIL AND CRIMINAL 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 that office:

- (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 FUNCTIONS, POWERS AND DUTIES**

- (1) As the Head of 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 the 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 the 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 the 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) hereof, 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) hereof;
  - (b) determine the times for the holding of special 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 reprieve offenders, either unconditionally or subject to such conditions as the President 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, declare that a state of national defence exists: provided that this power shall be exercised subject to the terms of Article 26(7) hereof;
  - (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 Attorney-General;
    - (dd) the Director-General of Planning;
    - (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, to appoint:
- (a) 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;
    - (cc) the Prosecutor-General;
  - (b) on the recommendation of the Public Service Commission:
    - (aa) the Auditor-General;
    - (bb) the Governor and the Deputy-Governor of the Central Bank;
  - (c) on the recommendation of the Security Commission:
    - (aa) the Chief of the Defence Force;
    - (bb) the Inspector-General of Police;
    - (cc) the Commissioner-General of Correctional Service.
- (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 the 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 to 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 on the recommendation of the Public Service Commission:
- (a) constitute any office in the public service 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) All appointments made and actions taken under Sub-Articles (3), (4), (5), (6) and (7) hereof shall be announced by the President by Proclamation in the Gazette.
- (9) 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 or corrected on such terms as are deemed expedient and proper should there be a resolution proposed by at least one-third of all the members of the National Assembly and passed by a two-thirds majority of all the members of the National Assembly disapproving any such action and resolving to review, reverse or correct it.
- (10) Notwithstanding the review, reversal or correction of any action in terms of Sub-Article (9) 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**

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 deaths, to their surviving spouses.

#### **ARTICLE 34 SUCCESSION**

- (1) If the office of 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 Sub-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 is 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 a 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 Sub-Article (1) hereof 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 to consultation with the Cabinet.

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## **CHAPTER 6**

### **THE CABINET**

#### **ARTICLE 35 COMPOSITION**

- (1) The Cabinet shall consist of the President, the 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) hereof, for the purposes of administering and executing the functions of the Government.
- (2) The President may also appoint a Deputy-Prime Minister to perform such functions as may 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 Prime Minister shall be the leader of Government business in Parliament, shall co-ordinate the work of the Cabinet and shall 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, including members nominated under Article 46(1)(b) hereof, and the National Council 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 OR AFFIRMATION**

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 this purpose, in the terms set out in Schedule hereof.

#### **ARTICLE 39 VOTE OF NO CONFIDENCE**

The President shall be obliged to terminate the appointment of any member of the Cabinet, if the National Assembly by a majority of all its members resolves that it has no confidence in that member.

#### **ARTICLE 40 DUTIES AND FUNCTIONS**

The members of the Cabinet shall have the following functions:

- (a) to direct, co-ordinate and supervise the activities of Ministries and Government departments including parastatal enterprises, and to review and advise the President and the National Assembly on the desirability and wisdom of any prevailing subordinate legislation, regulations or orders pertaining to such parastatal enterprises, 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 Government policies;
- (f) to take such steps as are authorised by law to establish such economic organisations, institutions and parastatal enterprises on behalf of the State as are directed or authorised by law;
- (g) to formulate, explain and analyse for the 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 directives 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 and vigorous for the purposes of ensuring that the scourges of apartheid, tribalism and colonialism do not again manifest themselves in any form in a free and independent Namibia and to protect and assist disadvantaged citizens of 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 to 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 positions 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 positions as such or use information entrusted to them confidentially as such members of the Cabinet, directly or indirectly to enrich themselves.

#### **ARTICLE 43 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 may 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 on the recommendation of the Public Service Commission.
- (2) The Secretary to the Cabinet shall also serve as a depository of the records, minutes and related documents of the Cabinet.

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## **CHAPTER 7**

### **THE NATIONAL ASSEMBLY**

#### **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.

#### **ARTICLE 45 REPRESENTATIVE NATURE**

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 this Constitution, by the public interest and by their conscience.

#### **ARTICLE 46 COMPOSITION**

- (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. Every Namibian citizen who has the qualifications described in Article 17 hereof shall be entitled to vote in the elections for members of the National Assembly and, subject to Article 47 hereof, shall be eligible for candidature as a member of the National Assembly;
  - (b) not more than six (6) persons appointed by the President under Article 32(5)(c) hereof, 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 49 hereof, the 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 OF MEMBERS**

- (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 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; or
  - (b) have at any time prior to Independence been convicted of an offence, if such conduct would have constituted an offence within 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 no person 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 public service of Namibia; or
  - (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 public service shall be deemed to include the defence force, the police force, the correctional service, parastatal enterprises, Regional Councils and Local Authorities.

#### **ARTICLE 48 VACATION OF SEATS**

- (1) Members of the National Assembly shall vacate their seats:
- (a) if they cease to have the qualifications which rendered them eligible to be members of the National Assembly;
  - (b) 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;
  - (c) if they resign their seats in writing addressed to the Speaker;
  - (d) if they are removed by the National Assembly pursuant to its rules and standing orders permitting or requiring such removal for good and sufficient reasons;
  - (e) if they are absent during sittings of the National Assembly for ten (10) consecutive sitting days, without having obtained the special leave of the National Assembly on grounds specified in its rules and standing orders.
- (2) If the seat of 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 National 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) hereof shall be on party lists and in accordance with the principles of proportional representation as set out in Schedule 4 hereof.

#### **ARTICLE 50 DURATION**

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 for in Articles 32(3)(a) and 57(1) hereof.

#### **ARTICLE 51 SPEAKER**

- (1) At the first sitting of a newly elected National Assembly, the National Assembly, with the Secretary acting as Chairperson, shall elect a member as Speaker. The National Assembly shall then elect another member as Deputy-Speaker. The Deputy-Speaker shall act 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 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 neither the Speaker nor the Deputy-Speaker is available for duty, the National Assembly, with the Secretary acting as Chairperson, shall elect a member to act as Speaker.

#### **ARTICLE 52 SECRETARY AND OTHER OFFICERS**

- (1) Subject to the provisions of the laws pertaining to the public service and the directives of the National Assembly, the Speaker shall appoint a person (or designate a person in the public 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.
- (2) Subject to the laws governing the control of public monies, the Secretary shall perform his or her functions and duties under the control of the Speaker.
- (3) The Secretary shall be assisted by officers of the National Assembly who shall be persons in the public 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 and the performance of its functions.

#### **ARTICLE 54 CASTING VOTE**

In the case of an equality of votes in the National Assembly, the Speaker or the Deputy-Speaker or the presiding member shall have and may exercise a casting vote.

#### **ARTICLE 55 OATH OR AFFIRMATION**

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

#### **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 of all the members of the National Assembly and has been confirmed by the National Council the President shall be obliged to give his or her assent thereto.
- (3) Where a 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 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 shall then lapse.

#### **ARTICLE 57 DISSOLUTION**

- (1) The National Assembly may be dissolved by the President on the advice of the Cabinet if the Government is unable to govern effectively.
- (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 ninety (90) days from the date of such dissolution.

#### **ARTICLE 58 CONDUCT OF BUSINESS AFTER DISSOLUTION**

Notwithstanding the provisions of Article 57 hereof:

- (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, COMMITTEES AND STANDING ORDERS**

- (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 committees, and formulate such standing orders as may appear to it to be expedient or necessary.
- (2) The National Assembly shall in its rules of procedure make provision for such disclosure as may be considered to be appropriate in regard to the financial or business affairs of its members.
- (3) For the purposes of exercising its powers and performing its functions any committee of the National Assembly established in terms of Sub-Article (1) hereof shall have the power to subpoena persons to appear before it to give evidence on oath and to produce any documents required by it.

**ARTICLE 60 DUTIES, PRIVILEGES AND IMMUNITIES OF MEMBERS**

- (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 National Assembly both during the sittings of the National Assembly as well as in their acts and activities outside the National Assembly;
  - (b) 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 all 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**

- (1) Save as provided in Sub-Article (2) hereof, 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) hereof may be denied if the National Assembly adopts a motion supported by two thirds of all its members 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 all the members of the National Assembly and the debate on such motion shall not be open to members of the public.

## **ARTICLE 62 SESSIONS**

- (1) 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;
  - (b) for at least two (2) sessions during each year, to commence and terminate on such dates as the National Assembly from time to time determines;
  - (c) for such special sessions as directed by Proclamation by the President from time to time.
- (2) During such sessions the National Assembly shall sit on such days and during such times of the day or night as the National Assembly by its rules and standing orders may provide.
- (3) The day of commencement of any session of the National Assembly may be altered by Proclamation by the President, if the President is requested to do so by the Speaker on grounds of public interest or convenience.

## **ARTICLE 63 FUNCTIONS AND POWERS**

- (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 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) 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 have historically not enjoyed democratic representation and participation;
  - (e) to agree to the ratification of or accession 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 parastatal enterprises, and from time to time to require any senior official thereof to appear before 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 for the purposes of ensuring that the scourges of apartheid, tribalism and colonialism do not again manifest themselves in any form in a free and independent Namibia and to protect and assist disadvantaged citizens of Namibia who have historically been the victims of these pathologies;

- (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 64 WITHHOLDING OF PRESIDENTIAL ASSENT**

- (1) Subject to the provisions of this Constitution, the President shall be entitled to withhold his or her assent to a bill approved by the National Assembly if in the President's 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 competent Court.
- (3) Should such Court thereafter conclude that such bill is not in conflict with the provisions of this Constitution, 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. 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 Article 56(3) and (4) hereof shall apply.
- (4) Should such Court conclude that the disputed bill would be in conflict with any provisions of this Constitution, the said bill shall be deemed to have lapsed and the President shall not be entitled to assent thereto.

**ARTICLE 65 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 the National Assembly shall promptly cause two (2) fair copies of such Act in the English language to be enrolled in the office of the Registrar of the Supreme Court and such copies shall be conclusive evidence of the provisions of the 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 66 CUSTOMARY AND COMMON LAW**

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

**ARTICLE 67 REQUISITE 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.

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## **CHAPTER 8**

### **THE NATIONAL COUNCIL**

#### **ARTICLE 68 ESTABLISHMENT**

There shall be a National Council which shall have the powers and functions set out in this Constitution.

#### **ARTICLE 69 COMPOSITION**

- (1) The National Council shall consist of two (2) members from each region referred to in Article 102 hereof, to be elected from amongst their members by the Regional Council for such region.
- (2) The elections of members of the National Council shall be conducted according to procedures to be prescribed by Act of Parliament.

#### **ARTICLE 70 TERM OF OFFICE OF MEMBERS**

- (1) Members of the National Council shall hold their seats for five (5) years from the date of their election and shall be eligible for re-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 less than six (6) months before the expiry of the term 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 69(2) hereof.

#### **ARTICLE 71 OATH OR AFFIRMATION**

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

#### **ARTICLE 72 QUALIFICATIONS OF MEMBERS**

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) hereof to be a member of the National Assembly.

#### **ARTICLE 73 CHAIRPERSON AND VICE-CHAIRPERSON**

The National Council shall, before proceeding to the dispatch of any other business, elect from its members a Chairperson and a 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 74 POWERS AND FUNCTIONS**

- (1) The National Council shall have the power to:
  - (a) consider in terms of Article 75 hereof all bills passed by the National Assembly;
  - (b) investigate and report to the National Assembly on any subordinate 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) recommend legislation on matters of regional concern for submission to and consideration by the National Assembly;
  - (d) perform any other functions assigned to it by the National Assembly or by an Act of Parliament.
- (2) The National Council shall have the power to establish 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 National Council's powers of review and investigations, and for such purposes shall have the powers referred to in Article 59(3) hereof.
- (3) The National Council shall in its rules of procedure make provision for such disclosure as may be considered to be appropriate in regard to the financial or business affairs of its members.
- (4) The duties of the members of the National Council shall include the following:
  - (a) all members of the National Council shall maintain the dignity and image of the National Council both during the sittings of the National Council as well as in their acts and activities outside the National Council;
  - (b) all members of the National Council 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.
- (5) Rules providing for the privileges and immunities of members of the National Council shall be made by Act of Parliament and all members shall be entitled to the protection of such privileges and immunities.

#### **ARTICLE 75 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 Articles 56 and 64 hereof.
- (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 (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 again 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 Articles 56 and 64 hereof.
- (5) (a) If a majority of two-thirds of all the members of the National Council objects to the principle of a bill, this shall be mentioned in its report to the Speaker. In that event, the report shall also indicate whether or not the National Council proposes that amendments be made to the bill, if the principle of the bill is confirmed by the National Assembly under Sub-Article (b) hereof, and if amendments are proposed, details thereof shall be set out in the report.
- (b) If the National Council in its report objects to the principle of the bill, the National Assembly shall be required to reconsider the principle. If upon such reconsideration the National Assembly reaffirms the principle of the bill by a majority of two-thirds of all its members, the principle of the bill shall no longer be an issue. If such two-thirds majority is not obtained in the National Assembly, the bill shall lapse.
- (6) (a) If the National Assembly reaffirms the principle of the bill under Sub-Article 5(b) hereof by a majority of two-thirds of all its members, and the report of the National Council proposed that in such event amendments be made to the bill, the National Assembly shall then deal with the amendments proposed by the National Council, and in that event the provisions of Sub-Article 4(b) shall apply *mutatis mutandis*.
- (b) If the National Assembly reaffirms the principle of the bill under Sub-Article 5(b) hereof by a majority of two-thirds of all its members, and the report of the National Council did not propose that in such event amendments be made to the bill, the National Council shall be deemed to have confirmed the bill, and the Speaker shall refer the bill to the President to be dealt with under Articles 56 and 64 hereof.
- (7) Sub-Articles (5) and (6) hereof shall not apply to bills dealing with the levying of taxes or the appropriation of public monies.
- (8) 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 Articles 56 and 64 hereof.
- (9) If the President withholds his or her assent to any bill under Article 56 hereof and the bill is then dealt with in terms of that Article, and is again passed 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 Articles 56 and 64 hereof.

#### **ARTICLE 76 QUORUM**

The presence of a 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 77 VOTING**

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 may exercise a casting vote in the case of an equality of votes.

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## **CHAPTER 9**

### **THE ADMINISTRATION OF JUSTICE**

#### **ARTICLE 78 THE JUDICIARY**

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

#### **ARTICLE 79 THE SUPREME COURT**

- (1) The Supreme Court shall consist of a Chief Justice and such additional Judges as the President, acting on the recommendation of the Judicial Service Commission, may determine.
- (2) The Supreme Court shall be presided over by the Chief Justice and shall hear and adjudicate upon appeals emanating from the High Court, including appeals which involve the interpretation, implementation and upholding of this 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.
- (3) Three (3) Judges shall constitute a quorum of the Supreme Court when it hears appeals or deals with matters referred to it by the Attorney-General under this Constitution: provided

that provision may be made by Act of Parliament for a lesser quorum in circumstances in which a Judge seized of an appeal dies or becomes unable to act at any time prior to judgment.

- (4) The jurisdiction of the Supreme Court with regard to appeals shall be determined by Act of Parliament.

#### **ARTICLE 80 THE HIGH COURT**

- (1) The High Court shall consist of a Judge-President and such additional Judges as the President, acting on the recommendation of the Judicial Service Commission, may determine.
- (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 this 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.
- (3) The jurisdiction of the High Court with regard to appeals shall be determined by Act of Parliament.

#### **ARTICLE 81 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.

#### **ARTICLE 82 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 and upon appointment Judges shall make an oath or affirmation of office in the terms set out in Schedule 1 hereof.
- (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, except Acting 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): provided that non-Namibian citizens are appointed as Judges under a fixed term contract of employment.

### **ARTICLE 83 LOWER COURTS**

- (1) Lower Courts shall be established 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 84 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 ground 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 involve 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 the removal of a Judge in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Judge from office.

### **ARTICLE 85 THE JUDICIAL SERVICE COMMISSION**

- (1) There shall be a Judicial Service Commission consisting 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 or her absence by the Judge appointed by the President.

### **ARTICLE 86 THE ATTORNEY-GENERAL**

There shall be an Attorney-General appointed by the President in accordance with the provisions of Article 32(3)(1)(cc) hereof.

### **ARTICLE 87 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 office of the Prosecutor-General;
- (b) to be the principal legal adviser to the President and Government;
- (c) to take all action necessary for the protection and upholding of the Constitution;
- (d) to perform all such functions and duties as may be assigned to the Attorney-General by Act of Parliament.

#### **ARTICLE 88 THE PROSECUTOR-GENERAL**

- (1) There shall be a Prosecutor-General appointed by the President on the recommendation of the Judicial Service Commission. No person shall be eligible for appointment as Prosecutor-General unless such person:
  - (a) possesses legal qualifications that would entitle him or her to practise in all the Courts of Namibia;
  - (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 Prosecutor-General.
- (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 prosecute and defend appeals in criminal proceedings in the High Court and the Supreme Court;
  - (c) to perform all functions relating to the exercise of such powers;
  - (d) to delegate to other officials, subject to his or her control and direction, authority to conduct criminal proceedings in any Court;
  - (e) to perform all such other functions as may be assigned to him or her in terms of any other law.

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## **CHAPTER 10**

### **THE OMBUDSMAN**

#### **ARTICLE 89 ESTABLISHMENT AND INDEPENDENCE**

- (1) There shall be an Ombudsman, who shall have the powers and functions set out in this Constitution.
- (2) The Ombudsman shall be independent and subject only to this 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 organs of the State shall accord such assistance as may be needed for the protection of the independence, dignity and effectiveness of the Ombudsman.
- (4) The Ombudsman shall either be a Judge of Namibia, or a person possessing the legal qualifications which would entitle him or her to practise in all the Courts of Namibia.

#### **ARTICLE 90 APPOINTMENT AND TERM OF OFFICE**

- (1) The Ombudsman shall be appointed by Proclamation by the President on the recommendation of the Judicial Service Commission.
- (2) The Ombudsman shall hold office until the age of sixty-five (65) but the President may extend the retiring age of any Ombudsman to seventy (70).

#### **ARTICLE 91 FUNCTIONS**

The functions of the Ombudsman shall 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 central or local), manifest injustice, 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 defence force, the police force and the correctional service 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 over-utilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character 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 Prosecutor-General;
  - (dd) bringing proceedings in a competent Court for an interdict or some other suitable remedy to secure the termination of the offending action or conduct, or the abandonment or alterations of the offending procedures;
  - (ee) bringing proceedings to interdict the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise ultra virus’,

- (ff) reviewing such laws as were in operation before the date of 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) the duty to investigate vigorously all instances of alleged or suspected misappropriation of public monies by officials and to take appropriate steps, including reports to the Prosecutor-General and the Auditor-General pursuant thereto;
- (g) the duty to report annually to the National Assembly on the exercise of his or her powers and functions.

#### **ARTICLE 92 POWERS OF INVESTIGATION**

The powers of the Ombudsman shall be defined by Act of Parliament and shall include the power:

- (a) to issue subpoenas requiring the attendance of any person before the Ombudsman and the production of any document or record relevant to any investigation by the Ombudsman;
- (b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent Court;
- (c) to question any person;
- (d) 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 any investigation of the Ombudsman.

#### **ARTICLE 93 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 a parastatal 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 defence force, the police force or the correctional service, but shall not include a Judge of the Supreme Court or High Court or, in so far as a complaint concerns the performance of a judicial function, any other judicial officer.

#### **ARTICLE 94 REMOVAL FROM OFFICE**

- (1) The Ombudsman may be removed from office before the expiry of his or her term of office by the President acting on the recommendation of the Judicial Service Commission.
- (2) The Ombudsman may only be removed from office on the ground of 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 the Ombudsman shall be removed from office on the grounds referred to in Sub-Article (2) hereof 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 into the necessity of the removal of the Ombudsman in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Ombudsman from office.

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## **CHAPTER 10A**

### **ANTI-CORRUPTION MEASURES**

#### **ARTICLE 94A ANTI-CORRUPTION MEASURES**

- (1) The State shall put in place administrative and legislative measures necessary to prevent and combat corruption.
- (2) There shall be established by an Act of Parliament an Anti-Corruption Commission with its powers and functions provided for in such Act.
- (3) The Anti-Corruption Commission shall be an independent and impartial body.
- (4) The Anti-Corruption Commission shall consist of a Director, a Deputy Director and other staff members of the Commission.
- (5) The National Assembly shall appoint the Director of the Anti-Corruption Commission and the Deputy Director upon nomination by the President.
- (6) The Director of the Anti-Corruption Commission and the Deputy Director shall be appointed for a period of five years and their qualifications for appointment and conditions and termination of service shall be determined in accordance with an Act of Parliament.

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## **CHAPTER 11**

### **PRINCIPLES OF STATE POLICY**

#### **ARTICLE 95 PROMOTION OF THE WELFARE OF THE PEOPLE**

The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following:

- (a) 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, the Government shall seek, through appropriate legislation, to provide maternity and related benefits for women;
- (b) 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) 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) membership of the International Labour Organisation (ILO) and, where possible, adherence to and action in accordance with the international Conventions and Recommendations of the ILO;
- (e) ensurance that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law;
- (f) ensurance that 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) 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 with due regard to the resources of the State;
- (h) a legal system seeking 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;
- (i) ensurance that workers are paid a living wage adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities;
- (j) consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people and to improve public health;
- (k) encouragement of the mass of the population through education and other activities and through their organisations to influence Government policy by debating its decisions;
- (l) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

#### **ARTICLE 96 FOREIGN RELATIONS**

The State shall endeavour to ensure that in its international relations it:

- (a) adopts and maintains a policy of non-alignment;
- (b) promotes international co-operation, peace and security;
- (c) creates and maintains just and mutually beneficial relations among nations;
- (d) fosters respect for international law and treaty obligations;
- (e) encourages the settlement of international disputes by peaceful means.

#### **ARTICLE 97 ASYLUM**

The State shall, where it is reasonable to do so, grant asylum to persons who reasonably fear persecution on the ground of their political beliefs, race, religion or membership of a particular social group.

#### **ARTICLE 98 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 99 FOREIGN INVESTMENTS**

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

#### **ARTICLE 100 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 the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned.

#### **ARTICLE 101 APPLICATION OF THE PRINCIPLES CONTAINED IN THIS CHAPTER**

The principles of state policy contained in this Chapter 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 based on them.

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## **CHAPTER 12**

### **REGIONAL AND LOCAL GOVERNMENT**

#### **ARTICLE 102 STRUCTURES OF REGIONAL AND LOCAL GOVERNMENT**

- (1) For purposes of regional and local government, Namibia shall be divided into regional and local units, which shall consist of such region 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, 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, a Local Authority shall include all municipalities, communities, 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 in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice.

#### **ARTICLE 103 ESTABLISHMENT OF REGIONAL COUNCILS**

- (1) The boundaries of regions shall be determined by a Delimitation Commission in accordance with the principles set out in Article 102 (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 104 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 105 COMPOSITION OF REGIONAL COUNCILS**

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

#### **ARTICLE 106 REGIONAL COUNCIL ELECTIONS**

- (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 an Act of Parliament and this Constitution: provided that there shall be no fewer than six (6) and no 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 Regional Council elections 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 107 REMUNERATION AND ALLOWANCES AND OTHER BENEFITS OF MEMBERS OF REGIONAL COUNCILS**

Members of Regional Councils are entitled to such remuneration and allowances and other benefits as determined in accordance with an Act of Parliament.

#### **ARTICLE 108 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 in connection therewith as may be assigned to them by Act of Parliament and as may be delegated to them by the President;
- (c) to raise revenue, or share in the revenue raised by the central Government within the regions for which they have been established, as may be determined by Act of Parliament;
- (d) to exercise powers, perform any other functions and make such by-laws or regulations as may be determined by Act of Parliament.

#### **ARTICLE 109 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 his or her Regional Council.
- (3) The Chairperson and the members of the Management Committee shall hold office for two (2) years and six (6) months and shall be eligible for re-election.

#### **ARTICLE 110 ADMINISTRATION AND FUNCTIONING 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 111 LOCAL AUTHORITIES**

- (1) Local Authorities shall be established in accordance with the provisions of Article 102 hereof.

- (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 vote in elections for Local Authority Councils if such persons have been resident within the jurisdiction of a Local Authority for not less than one (1) year immediately prior to such election and if such persons are qualified to vote in elections for the National Assembly.
- (4) Different provisions may be made by the Act of Parliament referred to in Sub-Article (2) hereof 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.

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## **CHAPTER 13**

### **THE PUBLIC SERVICE COMMISSION**

#### **ARTICLE 112 ESTABLISHMENT**

- (1) There shall be established a Public Service Commission which shall have the function of advising the President on the matters referred to in Article 113 hereof and of reporting to the National Assembly there on.
- (2) The Public Service Commission shall be independent and act impartially.
- (3) The Public Service Commission shall consist of a Chairperson and no fewer than three (3) and no more than six (6) other persons nominated by the President and appointed by the National Assembly by resolution.
- (4) 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 Act of Parliament. Every member of the Public Service Commission shall be eligible for reappointment.

#### **ARTICLE 113 FUNCTIONS**

The functions of the Public Service Commission shall be defined by Act of Parliament and shall include the power:

- (a) to advise the President and the Government on:
  - (aa) the appointment of suitable persons to specified categories of employment in the public service, with special regard to the balanced structuring thereof;
  - (bb) the exercise of adequate disciplinary control over such persons in order to assure the fair administration of personnel policy;

- (cc) the remuneration and the retirement benefits of any such persons;
- (dd) all other matters which by law pertain to the public service;
- (b) to perform all functions assigned to it by Act of Parliament;
- (c) to advise the President on the identity, availability and suitability of persons to be appointed by the President to offices in terms of this Constitution or any other law.

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## **CHAPTER 14**

### **THE SECURITY COMMISSION**

#### **ARTICLE 114 ESTABLISHMENT AND FUNCTIONS**

- (1) There shall be a Security Commission which shall have the function of making recommendations to the President on the appointment of the Chief of the Defence Force, the Inspector-General of Police and the Commissioner-General of Correctional Service and such other functions as may be assigned to it by Act of Parliament.
- (2) The Security Commission shall consist of the Chairperson of the Public Service Commission, the Chief of the Defence Force, the Inspector-General of Police, the Commissioner-General of Correctional Service and two (2) members of the National Assembly, appointed by the President on the recommendation of the National Assembly.

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## **CHAPTER 15**

### **THE DEFENCE AND POLICE FORCES AND THE CORRECTIONAL SERVICE**

#### **ARTICLE 115 ESTABLISHMENT OF THE DEFENCE FORCE**

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

#### **ARTICLE 116 CHIEF 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(4)(c)(aa) 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 117 REMOVAL OF THE CHIEF OF THE DEFENCE FORCE**

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 may prescribe procedures considered to be expedient for this purpose.

#### **ARTICLE 118 ESTABLISHMENT OF THE POLICE FORCE**

There shall be established by Act of Parliament a Namibian police force with prescribed powers, duties and procedures in order to secure the internal security of Namibia and to maintain law and order.

#### **ARTICLE 119 THE INSPECTOR-GENERAL OF POLICE**

- (1) There shall be an Inspector-General of Police who shall be appointed by the President in terms of Article 32(4)(c)(bb) hereof.
- (2) The Inspector-General of Police shall make provision for a balanced structuring of the police force and shall have the power to make suitable appointments to the police force, to cause charges of indiscipline among members of the police force to be investigated and prosecuted and to ensure the efficient administration of the police force.

#### **ARTICLE 120 REMOVAL OF THE INSPECTOR-GENERAL OF POLICE**

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

#### **ARTICLE 121 ESTABLISHMENT OF THE CORRECTIONAL SERVICE**

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

#### **ARTICLE 122 COMMISSIONER-GENERAL OF CORRECTIONAL SERVICE**

- (1) There shall be a Commissioner-General of Correctional Service who shall be appointed by the President in terms of Article 32(4)(c)(cc) hereof.
- (2) The Commissioner-General of Correctional Service shall make provision for a balanced structuring of the correctional service and shall have the power to make suitable appointments to the correctional service, to cause charges of indiscipline among members of the correctional service to be investigated and prosecuted and to ensure the efficient administration of the correctional service.

#### **ARTICLE 123 REMOVAL OF THE COMMISSIONER-GENERAL OF CORRECTIONAL SERVICE**

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

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## **CHAPTER 16**

### **FINANCE**

#### **ARTICLE 124 TRANSFER OF GOVERNMENT ASSETS**

The assets mentioned in Schedule 5 hereof shall vest in the Government of Namibia on the date of Independence.

#### **ARTICLE 125 THE STATE REVENUE FUND**

- (1) The Central Revenue Fund of the mandated territory of South West Africa instituted in terms of Section 3 of the Exchequer and Audit Proclamation, 1979 (Proclamation 85 of 1979) and Section 31(1) of Proclamation R 101 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 authority to dispose thereof shall vest in the Government of Namibia.
- (3) Nothing contained in Sub-Article (2) hereof 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; or
  - (c) where necessary, subsidies be allocated to regional and Local Authorities.
- (4) No money shall be withdrawn from the State Revenue Fund except in accordance with an Act of Parliament.
- (5) No body or person other than the Government shall have the power to withdraw monies from the State Revenue Fund.

#### **ARTICLE 126 APPROPRIATIONS**

- (1) The Minister in charge of the Department of Finance shall, at least once every year and thereafter at such interim stages as may 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 127 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 of 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.

- (2) The Auditor-General shall audit the State Revenue Fund and shall perform all other functions assigned to him or her by the Government or by Act of Parliament 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 all the members of the National Assembly vote for such removal on the ground of mental incapacity or gross misconduct.

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## **CHAPTER 17**

### **CENTRAL BANK AND NATIONAL PLANNING COMMISSION**

#### **ARTICLE 128 THE CENTRAL BANK**

- (1) There shall be established by Act of Parliament a Central Bank of the Republic of Namibia, which shall serve as the State's principal instrument to control the money supply, the currency and the institutions of finance, and to perform all other functions ordinarily performed by a central bank.
- (2) The Governing Board of the Central Bank shall consist of a Governor, a Deputy-Governor and such other members of the Board as shall be prescribed by Act of Parliament, and all members of the Board shall be appointed by the President in accordance with procedures prescribed by such Act of Parliament.

#### **ARTICLE 129 THE NATIONAL PLANNING COMMISSION**

- (1) There shall be established in the office of the President a National Planning Commission, whose task shall be to plan the priorities and direction of national development.
- (2) There shall be a Director-General of Planning appointed by the President in terms of Article 32(3)(i)(dd) hereof, who shall be the head of the National Planning Commission and the principal adviser to the President in regard to all matters pertaining to economic planning and who shall attend Cabinet meetings at the request of the President.
- (3) The membership, powers, functions and personnel of the National Planning Commission shall be regulated by Act of Parliament.

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## **CHAPTER 18**

### **COMING INTO FORCE OF THE CONSTITUTION**

#### **ARTICLE 130 COMING INTO FORCE OF THE CONSTITUTION**

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

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## **CHAPTER 19**

### **AMENDMENT OF THE CONSTITUTION**

#### **ARTICLE 131 ENTRENCHMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS**

No repeal or amendment of any of the provisions of Chapter 3 hereof, in so far as such repeal or amendment diminishes or detracts from the fundamental rights and freedoms contained and defined in that Chapter, shall be permissible under this Constitution, and no such purported repeal or amendment shall be valid or have any force or effect.

#### **ARTICLE 132 REPEAL AND AMENDMENT OF THE CONSTITUTION**

- (1) Any bill seeking to repeal or amend any provision of this Constitution shall indicate the proposed repeals and/or amendments with reference to the specific Articles sought to be repealed and/or amended and shall not deal with any matter other than the proposed repeals or amendments.
- (2) The majorities required in Parliament for the repeal and/or amendment of any of the provisions of this Constitution shall be:
  - (a) two-thirds of all the members of the National Assembly;  
and
  - (b) two-thirds of all the members of the National Council.
- (3) (a) Notwithstanding the provisions of Sub-Article (2) hereof, if a bill proposing a repeal and/or amendment of any of the provisions of this Constitution secures a majority of two-thirds of all the members of the National Assembly, but fails to secure a majority of two-thirds of all the members of the National Council, the President may by Proclamation make the bill containing the proposed repeals and/or amendments the subject of a national referendum.
  - (b) The national referendum referred to in Sub-Article (a) hereof shall be conducted in accordance with procedures prescribed for the holding of referenda by Act of Parliament.
  - (c) If upon the holding of such a referendum the bill containing the proposed repeals and/or amendments is approved by a two-thirds majority of all the votes cast in the referendum, the bill shall be deemed to have been passed in accordance with the provisions of this Constitution, and the President shall deal with it in terms of Article 56 hereof.
- (4) No repeal or amendment of this Sub-Article or Sub-Articles (2) or (3) hereof in so far as it seeks to diminish or detract from the majorities required in Parliament or in a referendum shall be permissible under this Constitution, and no such purported repeal or amendment shall be valid or have any force or effect.
- (5) Nothing contained in this Article:
  - (a) shall detract in any way from the entrenchment provided for in Article 131 hereof of the fundamental rights and freedoms contained and defined in Chapter 3 hereof;
  - (b) shall prevent Parliament from changing its own composition or structures by amending or repealing any of the provisions of this Constitution: provided always that

such repeals or amendments are effected in accordance with the provisions of this Constitution.

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## **CHAPTER 20**

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

#### **ARTICLE 133 THE FIRST NATIONAL ASSEMBLY**

Notwithstanding the provisions of Article 46 hereof, the Constituent Assembly shall be deemed to have been elected under Articles 46 and 49 hereof, and shall constitute the first National Assembly of Namibia, and its term of office and that of the President shall be deemed to have begun from the date of Independence.

#### **ARTICLE 134 ELECTION OF THE FIRST PRESIDENT**

- (1) Notwithstanding the provisions of Article 28 hereof, the first President of Namibia shall be the person elected to that office by the Constituent Assembly by a simple majority of all its members.
- (2) The first President of Namibia shall be deemed to have been elected under Article 28 hereof and upon assuming office shall have all the powers, functions, duties and immunities of a President elected under that Article.
- (3) Notwithstanding Article 29(3), the first President of Namibia may hold office as President for three terms.

#### **ARTICLE 135 IMPLEMENTATION OF THIS CONSTITUTION**

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

#### **ARTICLE 136 POWERS OF THE NATIONAL ASSEMBLY PRIOR TO THE ELECTION OF A NATIONAL COUNCIL**

- (1) Until elections for a National Council have been held:
  - (a) all legislation shall be enacted by the National Assembly as if this Constitution had not made provision for a National Council, and Parliament had consisted exclusively of the National Assembly acting on its own without being subject to the review of the National Council;
  - (b) this Constitution shall be construed as if no functions had been vested by this Constitution in the National Council;
  - (c) any reference in Articles 29, 56, 75 and 132 hereof to the National Council shall be ignored: provided that nothing contained in this Sub-Article shall be construed as limiting in any way the generality of Sub-Articles (a) and (b) hereof.
- (2) Nothing contained in Sub-Article (1) hereof shall detract in any way from the provisions of Chapter 8 or any other provision of this Constitution in so far as they make provision for the

establishment of a National Council, elections to the National Council and its functioning after such elections have been held.

#### **ARTICLE 137 ELECTIONS OF THE FIRST REGIONAL COUNCILS AND THE FIRST NATIONAL COUNCIL**

- (1) The President shall by Proclamation establish the first Delimitation Commission which shall be constituted in accordance with the provisions of Article 104 (1) hereof, within six (6) months of the date of Independence.
- (2) Such Proclamation shall provide for those matters which are referred to in Articles 102 to 106 hereof, shall not be inconsistent with this Constitution and shall require the Delimitation Commission to determine boundaries of regions and Local Authorities for the purpose of holding Local Authority and Regional Council elections.
- (3) The Delimitation Commission appointed under such Proclamation shall forthwith commence its work, and shall report to the President within nine (9) months of its appointment: provided that the National Assembly may by resolution and for good cause extend the period within which such report shall be made.
- (4) Upon receipt of the report of the Delimitation Commission the President shall as soon as reasonably possible thereafter establish by Proclamation the boundaries of regions and Local Authorities in accordance with the terms of the report.
- (5) Elections for Local Authorities in terms of Article 111 hereof shall be held on a date to be fixed by the President by Proclamation, which shall be a date within six (6) months of the Proclamation referred to in Sub-Article (4) hereof, or within six (6) months of the date on which the legislation referred to in Article 111 hereof has been enacted, whichever is the later: provided that the National Assembly may by resolution and for good cause extend the period within which such elections shall be held.
- (6) Elections for Regional Councils shall be held on a date to be fixed by the President by Proclamation, which shall be a date within one (1) month of the date of the elections referred to in Sub-Article (5) hereof, or within one (1) month of the date on which the legislation referred to in Article 106 (3) hereof has been enacted, whichever is the later: provided that the National Assembly may by resolution and for good cause extend the period within which such elections shall be held.
- (7) Elections for the first National Council shall be held on a date to be fixed by the President by Proclamation, which shall be a date within one (1) month of the date of the elections referred to in Sub-Article (6) hereof, or within one (1) month of the date on which the legislation referred to in Article 69(2) hereof has been enacted, whichever is the later: provided that the National Assembly may by resolution and for good cause extend the period within which such elections shall be held.

#### **ARTICLE 138 COURTS AND PENDING ACTIONS**

- (1) The Judge-President and other 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 the Judge-President and Judges of the High Court of Namibia under Article 82 hereof on the date of Independence, and upon making the oath or affirmation of office in the terms set out in Schedule 1 hereof, shall become the first Judge-President and Judges of the High Court of Namibia: provided that if the Judge-President or any such Judges are sixty-five (65) years of age or older on such date, it shall be deemed that their appointments have been extended until the age of seventy (70) in terms of Article 82(4) hereof.

- (2) (a) The laws in force immediately prior to the date of Independence governing the jurisdiction of Courts within Namibia, the right of audience before such Courts, 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.
  - (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.
- 3) Pending the enactment of the legislation contemplated by Article 79 hereof:
    - (a) the Supreme Court shall have the same jurisdiction to hear and determine appeals from Courts in Namibia as was previously vested in the Appellate Division of the Supreme Court of South Africa;
    - (b) the Supreme Court shall have jurisdiction to hear and determine matters referred to it for a decision by the Attorney-General under this Constitution;
    - (c) all persons having the right of audience before the High Court shall have the right of audience before the Supreme Court;
    - (d) three (3) Judges shall constitute a quorum of the Supreme Court when it hears appeals or deals with matters under Sub-Articles (a) and (b) hereof: provided that if any such Judge dies or becomes unable to act after the hearing of the appeal or such matter has commenced, but prior to judgment, the law applicable in such circumstances to the death or inability of a Judge to the High Court shall apply *mutatis mutandis*;

- (e) until rules of the Supreme Court are made by the Chief Justice for the noting and prosecution of appeals and all matters incidental thereto, the rules which regulated appeals from the Supreme Court of South West Africa to the Appellate Division of the Supreme Court of South Africa, and were in force immediately prior to the date of Independence, shall apply *mutatis mutandis*.

**ARTICLE 139 THE JUDICIAL SERVICE COMMISSION**

- (1) Pending the enactment of legislation as contemplated by Article 85 hereof and the appointment of a Judicial Service Commission thereunder, the Judicial Service Commission shall be appointed by the President by Proclamation and shall consist of the Chief Justice, a Judge appointed by the President, the Attorney-General, an advocate nominated by the Bar Council of Namibia and an attorney nominated by the Council of the Law Society of South West Africa: provided that until the first Chief Justice has been appointed, the President shall appoint a second Judge to be a member of the Judicial Service Commission who shall hold office thereon until the Chief Justice has been appointed. The Judicial Service Commission shall elect from amongst its members at its first meeting the person to preside at its meetings until the Chief Justice has been appointed. The first task of the Judicial Service Commission shall be to make a recommendation to the President with regard to the appointment of the first Chief Justice.
- 2) Save as aforesaid the provisions of Article 85 hereof shall apply to the functioning of the Judicial Service Commission appointed under Sub- Article (1) hereof, which shall have all the powers vested in the Judicial Service Commission by this Constitution.

**ARTICLE 140 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 the date of 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, or in a Minister or other official of the Republic of South Africa shall be deemed to vest in the Government of the Republic of Namibia or in a corresponding Minister or official of the Government of the Republic of Namibia, and all powers, duties and functions which so vested in the Government Service Commission, shall vest in the Public Service Commission referred to in Article 112 hereof.
- (3) Anything done under such laws prior to the date of Independence by the Government, or by a 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 the Republic of Namibia, unless such action is subsequently repudiated by an Act of Parliament, and anything so done by the Government Service Commission shall be deemed to have been done by the Public Service Commission referred to in Article 112 hereof, unless it is determined otherwise by an Act of Parliament.

- (4) Any reference in such laws to the President, the Government, a 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 and any reference to the Government Service Commission or the government service, shall be construed as a reference to the Public Service Commission referred to in Article 112 hereof or the public service 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 to the Administrator-General in legislation enacted by such Administration 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 the Republic of Namibia.

#### **ARTICLE 141 EXISTING APPOINTMENTS**

- (1) Subject to the provisions of this Constitution, any person holding office under any law in force on 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 to the Attorney-General in legislation in force immediately prior to the date of Independence shall be deemed to be a reference to the Prosecutor-General, who shall exercise his or her functions in accordance with this Constitution.

#### **ARTICLE 142 APPOINTMENT OF THE FIRST CHIEF OF THE DEFENCE FORCE, THE FIRST Inspector-General of Police and the First Commissioner-General of Correctional Service**

The President shall, in consultation with the leaders of all political parties represented in the National Assembly, appoint by Proclamation the first Chief of the Defence Force, the first Inspector-General of Police and the first Commissioner-General of [Prisons] Correctional Service.

#### **ARTICLE 143 EXISTING INTERNATIONAL AGREEMENTS**

All existing international agreements binding upon Namibia shall remain in force, unless and until the National Assembly acting under Article 63(2)(d) hereof otherwise decides.

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## **CHAPTER 21**

### **FINAL PROVISIONS**

#### **ARTICLE 144 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 145 SAVING**

- (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 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 146 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 within the territory of Namibia prior to the date of Independence.
- (2)
  - (a) The word "Parliament" shall mean the National Assembly and, once the first National Council has been elected, shall mean the National Assembly acting, when so required by this Constitution, subject to the review of the National Council.
  - (b) Any reference to the plural shall include the singular and any reference to the singular shall include the plural.
  - (c) Any reference to the "date of Independence" or "Independence" shall be deemed to be a reference to the day as of which Namibia is declared to be independent by the Constituent Assembly.
  - (d) Any reference to the "Constituent Assembly" shall be deemed to be a reference to the Constituent Assembly elected for Namibia during November 1989 as contemplated by United Nations Security Council Resolution 435 of 1978.
  - (e) Any reference to "Gazette" shall be deemed to be a reference to the Government Gazette of the Republic of Namibia.

#### **ARTICLE 147 REPEAL OF LAWS**

The laws set out in Schedule 8 hereof are hereby repealed.

#### **ARTICLE 148 SHORT TITLE**

This Constitution shall be called the Namibian Constitution.

## **SCHEDULE 1**

### **OATH/AFFIRMATION OF JUDGES**

“I,..... do hereby swear/solemnly affirm that as a Judge of the Republic of Namibia I will defend and uphold the Constitution of the Republic of Namibia as the Supreme Law and will fearlessly administer justice to all persons without favour or prejudice and in accordance with the laws of the Republic of Namibia.

(in the case of an oath)

So help me God.”

## **SCHEDULE 2**

### **OATH/AFFIRMATION OF MINISTERS AND DEPUTY-MINISTERS**

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

(in case of an oath)

So help me God.”

## **SCHEDULE 3**

### **OATH/AFFIRMATION OF MEMBERS OF THE NATIONAL ASSEMBLY AND THE NATIONAL COUNCIL**

“I,....., do hereby swear/solemnly affirm that I will 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.”

## **SCHEDULE 4**

### **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) hereof, the total number of votes cast in a general election for these seats shall be divided by seventy-two (72) and the result shall constitute the quota

of votes 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 votes per seat and the result shall, subject to paragraph (3), constitute the number of seats to which that political party shall be entitled in the National Assembly.
- (3) 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 election, 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 of the highest surplus.
- (4) Subject to the requirements pertaining to the qualification of members of the National Assembly, a political party which qualifies for seats in terms of paragraphs (2) and (3) shall be free to choose in its own discretion which persons to nominate as members of the National Assembly to fill the said seats.
- (5) Provision shall be made by Act of Parliament for all parties participating in an election of members of the National Assembly to be represented at all material stages of the election process and to be afforded a reasonable opportunity for scrutinising the counting of the votes cast in such election.

## **SCHEDULE 5**

### **PROPERTY VESTING IN THE GOVERNMENT OF NAMIBIA**

- 1) All property of which the ownership or control immediately prior to the date of Independence vested in the Government of the Territory of South West Africa, or in any Representative Authority constituted in terms of the Representative Authorities Proclamation, 1980 (Proclamation AG 8 of 1980), or in the Government of Rehoboth, or in any other body, statutory or otherwise, constituted by or for the benefit of any such Government or Authority immediately prior to the date of Independence, or which was held in trust for or on behalf of the Government of an independent Namibia, shall vest in or be under the control of the Government of Namibia.
- 2) For the purpose of this Schedule, "property" shall, without detracting from the generality of that term as generally accepted and understood, mean and include movable and immovable property, whether corporeal or incorporeal and wheresoever situate, and shall include any right or interest therein.
- 3) All such immovable property shall be transferred to the Government of Namibia without payment of transfer duty, stamp duty or any other fee or charge, but subject to any existing right, charge, obligation or trust on or over such property and subject also to the provisions of this Constitution.
- (4) The Registrar of Deeds concerned shall upon production to him or her of the title deed to any immovable property mentioned in paragraph (1) endorse such title deed to the effect that the immovable property therein described is vested in the Government of Namibia and

shall make the necessary entries in his or her registers, and thereupon the said title deed shall serve and avail for all purposes as proof of the title of the Government of Namibia to the said property.

## **SCHEDULE 6**

### **THE NATIONAL FLAG OF THE REPUBLIC OF NAMIBIA**

The National Flag of Namibia shall be rectangular in the proportion of three in the length to two in the width, tierced per bend reversed, blue, white and green; the white bend reversed, which shall be one third of the width of the flag, is charged with another of red, one quarter of the width of the flag. In the upper hoist there shall be a gold sun with twelve straight rays, the diameter of which shall be one third of the width of the flag, with its vertical axis one fifth of the distance from the hoist, positioned equidistant from the top edge and from the reversed bend. The rays, which shall each be two fifths of the radius of the sun, issue from the outer edge of a blue ring, which shall be one tenth of the radius of the sun.

## **SCHEDULE 7**

### **IMPLEMENTATION OF THIS CONSTITUTION**

- 1) On the day of Independence, the Secretary-General of the United Nations shall administer to the President, elected in terms of Article 134 hereof, the oath or affirmation prescribed by Article 30 hereof.
- 2) The President shall appoint the Prime Minister and administer to him or her the oath or affirmation set out in Schedule 2 hereof.
- 3) The President shall administer to the first Judges of Namibia, appointed under Article 138(1) hereof, the oath or affirmation set out in Schedule 1 hereof.
- 4) On the day determined by the Constituent Assembly the National Assembly shall first meet, at a time and at a place specified by the Prime Minister.
- 5) The members of the National Assembly, with the Prime Minister as Chairperson, shall:
  - (a) take the oath or affirmation prescribed by Article 55 hereof before the Judge-President or a Judge designated by the Judge-President for this purpose;
  - (b) elect the Speaker of the National Assembly.
- 6) The National Assembly, with the Speaker as Chairperson, shall:
  - (a) elect a Deputy-Speaker;
  - (b) conduct such business as it deems appropriate;
  - (c) adjourn to a date to be determined by the National Assembly.
- 7) The rules and procedures followed by the Constituent Assembly for the holding of its meetings shall, *mutatis mutandis*, be the rules and procedures to be followed by the National Assembly until such time as the National Assembly has adopted rules of procedure and standing orders under Article 59 hereof.

## **SCHEDULE 8**

### **REPEALS OF LAWS**

South West Africa Constitution Act, 1968 (Act No. 39 of 1968)  
Rehoboth Self-Government Act, 1976 (Act No. 56 of 1976)  
Establishment of Office of Administrator-General for the Territory of South West Africa Proclamation, 1977 (Proclamation No. 180 of 1977 of the State President)  
Empowering of the Administrator-General for the Territory of South West Africa to make Laws Proclamation, 1977 (Proclamation No. 181 of 1977 of the State President)  
Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980)  
Representative Authority of the Whites Proclamation, 1980 (Proclamation AG.12 of 1980)  
Representative Authority of the Coloureds Proclamation, 1980 (Proclamation AG. 14 of 1980)  
Representative Authority of the Ovambos Proclamation, 1980 (Proclamation AG. 23 of 1980)  
Representative Authority of the Kavangos Proclamation, 1980 (Proclamation AG. 26 of 1980)  
Representative Authority of the Caprivians Proclamation, 1980 (Proclamation AG. 29 of 1980)  
Representative Authority of the Damaras Proclamation, 1980 (Proclamation AG. 32 of 1980)  
Representative Authority of the Namas Proclamation, 1980 (Proclamation AG. 35 of 1980)  
Representative Authority of the Tswanas Proclamation, 1980 (Proclamation AG. 47 of 1980)  
Representative Authority of the Hereros Proclamation, 1980 (Proclamation AG. 50 of 1980)  
Representative Authority Powers Transfer Proclamation, 1989 (Proclamation AG. 8 of 1989)  
Government of Rehoboth Powers Transfers Proclamation, 1989 (Proclamation AG. 32 of 1989)

### **NAMIBIAN CONSTITUTION FIRST AMENDMENT ACT, 1998**

To amend the Namibian Constitution so as to provide that the first President of Namibia may hold office as President for three terms, and to provide for incidental matters.

*(Signed by the President on 7 December 1998)*

**BE IT ENACTED** by the Parliament of the Republic of Namibia, in accordance with the requirements of Article 132 of the Namibian Constitution, as follows:

#### **AMENDMENT OF ARTICLE 134 OF THE NAMIBIAN CONSTITUTION**

1. Article 134 of the Namibian Constitution is amended by the addition of the following Sub-Article:

“(3) Notwithstanding Article 29(3), the first President of Namibia may hold office as President for three terms.”

#### **SHORT TITLE**

2. This Act shall be called the Namibian Constitution First Amendment Act, 1998.

## NAMIBIAN CONSTITUTION SECOND AMENDMENT ACT, 2010

To amend the Namibian Constitution so as to extend a waiting period required or acquiring Namibian citizenship by marriage from a period of not less than two years to a period of not less than ten years of ordinarily residing in Namibia as spouse subsequent to such marriage; to extend a waiting period required for non-Namibian citizens who may apply for Namibian citizenship by naturalisation from a period of not less than five years to a period of not less than ten years of continuous residence in Namibia; to decrease the limit of tenure of members of the National Council from six years to five years; to subject the appointment of non-Namibian citizens as judges to a fixed term contract of employment; to delete the word “corruption” from the functions of the Ombudsman; to insert an Article on Anti-Corruption Measures; to decrease the term of office of members of Management Committee from three years to two years and six months; to substitute the terms “correctional service” and “Commissioner-General of Correctional Service” for the terms “prison service” and “Commissioner of Prisons”; and to provide for incidental matters.

*(Signed by the President on 23 April 2010)*

**BE IT ENACTED** by the Parliament of the Republic of Namibia, in accordance with Article 132 of the Namibian Constitution, as follows:

### AMENDMENT OF ARTICLE 4 OF NAMIBIAN CONSTITUTION

1. Article 4 of the Namibian Constitution is amended –

(a) by the substitution for subparagraph (bb) of paragraph (a) of Sub-Article (3) of the following subparagraph:

“(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)] ten (10) years; and”;

(b) by the substitution for paragraph (b) of Sub-Article (5) of the following paragraph:

“(b) have been so resident in Namibia for a continuous period of not less than [five (5)] ten (10) years [(whether before or after the date of Independence)]; and”.

### AMENDMENT OF ARTICLE 9 OF NAMIBIAN CONSTITUTION

2. Article 9 of the Namibian Constitution is amended by the substitution for paragraph (c) of Sub-Article (1) of the following paragraph:

“(c) any labour required of members of the defence force, the police force and the [prison] correctional 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;”.

#### **AMENDMENT OF ARTICLE 23 OF NAMIBIAN CONSTITUTION**

3. Article 23 of Namibian Constitution is amended by the substitution for Sub-Article (2) of the following Sub-Article:

“(2) Nothing contained in Article 10 hereof 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 for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of discriminatory laws or practices, or for achieving a balanced structuring of the public service, the defence force, the police force, [the defence force,] and the [prison] correctional service.”.

#### **AMENDMENT OF ARTICLE 32 OF NAMIBIAN CONSTITUTION**

4. Article 32 of the Namibian Constitution is amended by the substitution for subparagraph (cc) of paragraph (c) of Sub-Article (4) of the following subparagraph:

“(cc) the Commissioner-General of [Prisons] Correctional Service.”.

#### **AMENDMENT OF ARTICLE 47 OF NAMIBIAN CONSTITUTION**

5. Article 47 of the Namibian Constitution is amended by the substitution for paragraph (b) of Sub-Article (2) of the following paragraph:

“(b) the public service shall be deemed to include the defence force, the police force, the [prison] correctional service, parastatal enterprises, Regional Councils and Local Authorities.”.

#### **AMENDMENT OF ARTICLE 70 OF NAMIBIAN CONSTITUTION**

6. Article 70 of the Namibian Constitution is amended by the substitution for Sub-Article (1) of the following Sub-Article:

“(1) Members of the National Council shall hold their seats for [six (6)] five (5) years from the date of their election and shall be eligible for re-election.”.

#### **AMENDMENT OF ARTICLE 82 OF NAMIBIAN CONSTITUTION**

7. Article 82 of the Namibian Constitution is amended by the substitution for Sub-Article (4) of the following Sub-Article:

“(4) All Judges, except Acting 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 ages higher than those specified in this Article]: provided that non-Namibian citizens are appointed as Judges under a fixed term contract of employment.”.

#### **AMENDMENT OF ARTICLE 91 OF NAMIBIAN CONSTITUTION**

8. Article 91 of the Namibian Constitution is amended by the substitution for paragraphs (a), (b) and (f) of the following paragraphs:

- “(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 central 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 defence force, the police force and the [prison] correctional service in so far as such complaints relate to the failure to achieve a balanced structuring of such services of equal access by all to the recruitment of such services or fair administration in relation to such services;
- (f) the duty 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;”.

#### **SUBSTITUTION OF ARTICLE 93 OF NAMIBIAN CONSTITUTION**

9. The following Article is substituted for Article 93 of the Namibian Constitution:

##### **“Article 93 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 a parastatal 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 defence force, the police force or the [prison] correctional service, but shall not include a Judge of the Supreme Court or High Court or, in so far as a complaint concerns the performance of a judicial function, any other judicial officer.”.

#### **INSERTION OF ARTICLE 94A OF NAMIBIAN CONSTITUTION**

10. The following Article is inserted after Article 94 of the Namibian Constitution:

##### **“CHAPTER 10A ANTI-CORRUPTION MEASURES**

##### **Article 94A Anti-Corruption Measures**

- (1) The State shall put in place administrative and legislative measures necessary to prevent and combat corruption.
- (2) There shall be established by an Act of Parliament an Anti-Corruption Commission with its powers and functions provided for in such Act.
- (3) The Anti-Corruption Commission shall be an independent and impartial body.

- (4) The Anti-Corruption Commission shall consist of a Director, a Deputy Director and other staff members of the Commission.
- (5) The National Assembly shall appoint the Director of the Anti-Corruption Commission and the Deputy Director upon nomination by the President.
- (6) The Director of the Anti-Corruption Commission and the Deputy Director shall be appointed for a period of five years and their qualifications for appointment and conditions and termination of service shall be determined in accordance with an Act of Parliament.”.

#### **SUBSTITUTION OF ARTICLE 107 OF NAMIBIAN CONSTITUTION**

11. The following Article is substituted for Article 107 of the Namibian Constitution:

##### **“Article 107 Remuneration and Allowances and Other Benefits of Members of Regional Councils**

[The remuneration and allowances to be paid to members of Regional Councils shall be determined by Act of Parliament] Members of Regional Councils are entitled to such remuneration and allowances and other benefits as determined in accordance with an Act of Parliament.”.

#### **AMENDMENT OF ARTICLE 109 OF NAMIBIAN CONSTITUTION**

12. Article 109 of the Namibian Constitution is amended by the substitution for Sub-Article (3) of the following Sub-Article:

- “(3) The Chairperson and the members of the Management Committee shall hold office for [three (3)] two (2) years and six (6) months and shall be eligible for re-election.”.

#### **SUBSTITUTION OF ARTICLE 114 OF NAMIBIAN CONSTITUTION**

13. The following Article is substituted for Article 114 of the Namibian Constitution:

##### **“Article 114 Establishment and Functions**

(1) There shall be a Security Commission which shall have the function of making recommendations to the President on the appointment of the Chief of the Defence Force, the Inspector-General of Police and the Commissioner-General of [Prisons] Correctional Service and such other functions as may be assigned to it by Act of Parliament.

(2) The Security Commission shall consist of the Chairperson of the Public Service Commission, the Chief of the Defence Force, the Inspector-General of Police, the Commissioner-General of [Prisons] Correctional Service and two (2) members of the National Assembly, appointed by the President on the recommendation of the National Assembly.”.

#### **SUBSTITUTION OF CHAPTER 15 OF NAMIBIAN CONSTITUTION**

14. The following Chapter is substituted for Chapter 15 of the Namibian Constitution:

*“The Defence and Police Forces and the Correctional Service*

##### **Article 115 Establishment of the Defence Force**

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

#### **Article 116 Chief 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(4)(c)(aa) 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 117 Removal of the Chief of the Defence Force**

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 may prescribe procedures considered to be expedient for this purpose.

#### **Article 118 Establishment of the Police Force**

There shall be established by Act of Parliament a Namibian police force with prescribed powers, duties and procedures in order to secure the internal security of Namibia and to maintain law and order.

#### **Article 119 The Inspector-General of Police**

- (1) There shall be an Inspector-General of Police who shall be appointed by the President in terms of Article 32(4)(c)(bb) hereof.
- (2) The Inspector-General of Police shall make provision for a balanced structuring of the police force and shall have the power to make suitable appointments to the police force, to cause charges of indiscipline among members of the police force to be investigated and prosecuted and to ensure the efficient administration of the police force.

#### **Article 120 Removal of the Inspector-General of Police**

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

#### **Article 121 Establishment of the Correctional Service**

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

### **Article 122 Commissioner-General of Correctional Service**

- (1) There shall be a Commissioner-General of Correctional Service who shall be appointed by the President in terms of Article 32(4)(c)(cc) hereof.
- (2) The Commissioner-General of Correctional Service shall make provision for a balanced structuring of the correctional service and shall have the power to make suitable appointments to the correctional service, to cause charges of indiscipline among members of the correctional service to be investigated and prosecuted and to ensure the efficient administration of the correctional service.

### **Article 123 Removal of the Commissioner-General of Correctional Service**

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

### **SUBSTITUTION OF ARTICLE 142 OF NAMIBIAN CONSTITUTION**

15. The following Article is substituted for Article 142 of the Namibian Constitution:

#### **“Article 142 Appointment of the First Chief of the Defence Force, the First Inspector-General of Police and First Commissioner-General of [Prisons] Correctional Service**

The President shall, in consultation with the leaders of all political parties represented in the National Assembly, appoint by Proclamation the first Chief of the Defence Force, the first Inspector-General of Police and the first Commissioner-General of [Prisons] Correctional Service.”

### **SAVINGS AND TRANSITIONAL PROVISIONS**

16. The Anti-Corruption Act, 2003 (Act No. 8 of 2003), is deemed to have been enacted pursuant to Article 94A, and –

- (a) the Anti-Corruption Commission established by that Act and which exists at the commencement of this Act is deemed to have been established as contemplated in that Article and continues to exist;
- (b) the Director of the Anti-Corruption Commission and the Deputy Director holding office at the commencement of this Act by virtue of their appointment under that Act continue to so hold office and are deemed to have been appointed in terms of that Article;
- (c) anything made or done in terms of or under that Act continues as such and is not affected by this Act.

### **SHORT TITLE AND COMMENCEMENT**

- 17.(1) This Act is called the Namibian Constitution Second Amendment Act, 2010, and commences on the date of its publication in the Gazette.
- (2) Sections 6 and 12 commence on the date the term of office of the existing members of the National Council ends.

