

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 of Prisons.
- (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.

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.