

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.

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). It shall also be possible by Act of Parliament to make provision for retirement at ages higher than those specified in this Article.

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.