

## **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 six (6) 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.

## **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