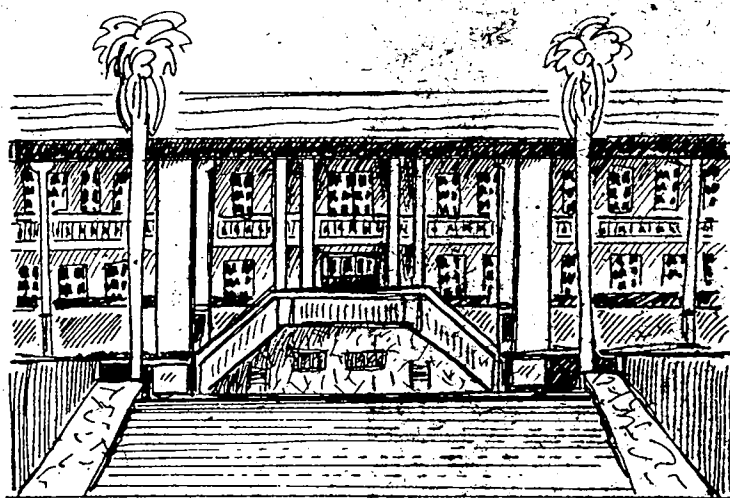


HOW LAWS ARE MADE



Legal Assistance Centre
WINDHOEK ~ NAMIBIA ~ 1996

INTRODUCTION

In order to understand how laws are made, it is important to be clear about what laws are and how they work.

It is also important to understand what Parliament is and how the members of Parliament represent us.

This booklet will explain these issues first. Then it will take you through the law-making process step by step.

PUBLISHING INFORMATION

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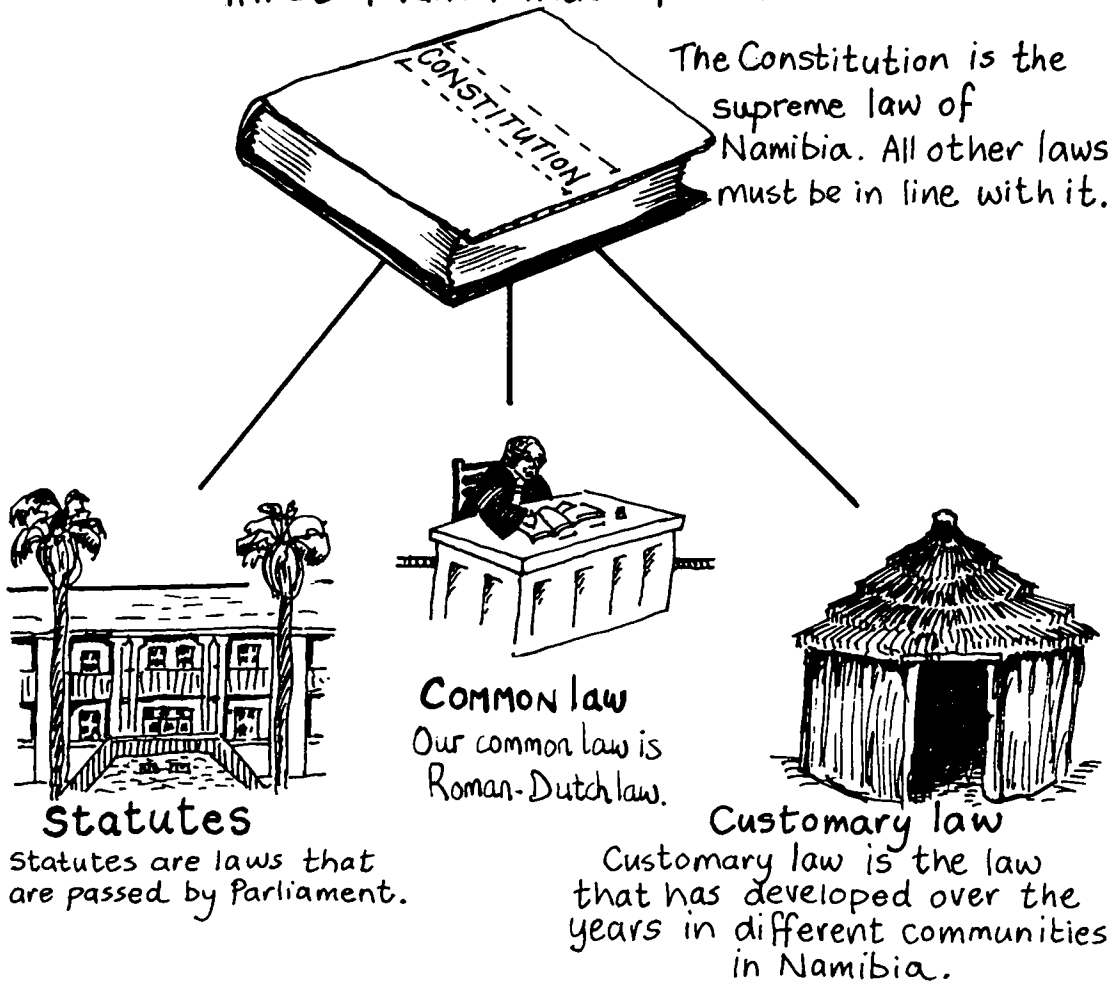
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WHAT IS "LAW"?

There are three main kinds of law in Namibia: (1) statutes (2) common law and (3) customary law.

Three Main Kinds of Law



STATUTES

Statutes are the laws that are passed by Parliament. At independence, Namibia also inherited some statutes that were passed by other legislative bodies before independence. Other words for statutes are "legislation" and "Acts of Parliament".

Parliament can make changes to statutes which have already been passed. These changes are called amendments.

COMMON LAW

Our common law is Roman-Dutch law, which we have inherited through colonialism from South Africa. The Namibian Constitution recognises the common law as it presently exists in Namibia, provided that it is not in conflict with the Constitution.

The common law can be found in written form in reported court cases and in textbooks on law.

Parliament can change the common law by passing a statute which says something different to the existing common law.



CUSTOMARY LAW

Customary law is the law that has developed over the years in different communities in Namibia.

Questions involving customary law are usually decided by chiefs, headmen or other traditional leaders.

Customary law is unfortunately not written down. This can lead people in the same community to interpret laws differently.

Parliament can change customary law by passing a statute that applies to all communities in Namibia.

TESTING LAWS AGAINST THE CONSTITUTION

The Constitution is the Supreme Law of Namibia. This means that all other laws must be tested against the Constitution. Any law that is in conflict with the Constitution is unconstitutional. In other words, it is not valid – it is not really a law and does not have to be obeyed. It is the job of the courts to decide whether a law is unconstitutional.

For example, there are statutes which say that if someone is convicted of a crime, that person can be punished by being struck with a cane. This is called “corporal punishment”. But the Constitution says that everyone must have respect for human dignity. It also says that no persons can be punished in any way that is cruel, inhuman or degrading. So the Namibian Supreme Court has said that the statutes which allow corporal punishment are unconstitutional. This means that they are invalid - they will have to be changed.

Common law can also be tested against the Constitution. For example, in rape cases, the courts



have said for many years that magistrates and judges must be very cautious about believing the story of a woman who says that she was raped. But the Constitution says that men and women must be treated equally, and this special rule was almost never applied in cases where the victims of sexual crimes were men. So the High Court of Namibia said that the courts should not apply this rule in rape cases any more.

Customary law can also be tested against the Constitution, but no one in Namibia has asked the courts to do this yet. The courts are not allowed to look around them and see if there are any laws that might be unconstitutional. They must wait until someone comes to them with a specific problem.

WHAT IS PARLIAMENT?

Our Parliament has two parts: the National Assembly and the National Council.

THE NATIONAL ASSEMBLY

The National Assembly has the power to make laws for Namibia. The members of the National Assembly must represent all the people of Namibia. They are guided in their decisions by the Constitution, by the public interest and by their own beliefs about right and wrong.

There are 72 members of the National Assembly who are elected by the people of Namibia every five years. Every Namibian citizen who is at least 18 years old has the right to vote. Voters vote for the political party of their choice. Then the political parties choose the individuals who will go to the National Assembly on their behalf.

Every Namibian citizen who is at least 21 years old can stand for election to the National Assembly, except for people who have committed serious crimes or are unfit for office in other ways that the Constitution describes.

The President chooses six other persons who have special

experience or skills to become members of the National Assembly. These six appointed members do not have the right to vote in the National Assembly.

Each time there is an election for the National Assembly, the members of the new National Assembly elect one member to be the Speaker and one member to be the Deputy-Speaker.

The Speaker acts as the chairperson of the National Assembly and makes sure that the discussion and debate is orderly. The Deputy-Speaker acts as the chairperson if the Speaker is not present.

All the members of the National Assembly must take an oath to uphold and defend the Constitution.

The members of the National Assembly are the servants of the people of Namibia. They are required to behave with dignity, and they must not do anything to enrich themselves improperly or to place themselves apart from the people.



Each member of Parliament takes an oath to uphold the constitution.

The members of the National Assembly may not hold any other jobs while they are in office. This is to avoid conflicts of interest. In other words, a member of the National Assembly must think about what is best for Namibia, and not about what might help his or her private business. Members of the National Assembly are not allowed to use their positions to make money in any way.

The National Assembly has the power to make any laws that are in the best interests of the people of Namibia, so long as the laws are in line with the Constitution.

The meetings of the National Assembly must be open to the public, unless two-thirds of the members of the National Assembly decide that the meetings must be closed for a certain time, or while a certain issue is being discussed.

THE NATIONAL COUNCIL

The National Council helps the National Assembly with its task of making laws.

The National Council has two members from each of the 13 regions in Namibia, for a total of 26 members.

The residents of each region elect people from their region to the Regional Council. Each Regional Council then chooses two of its members to serve on the National Council for six years.

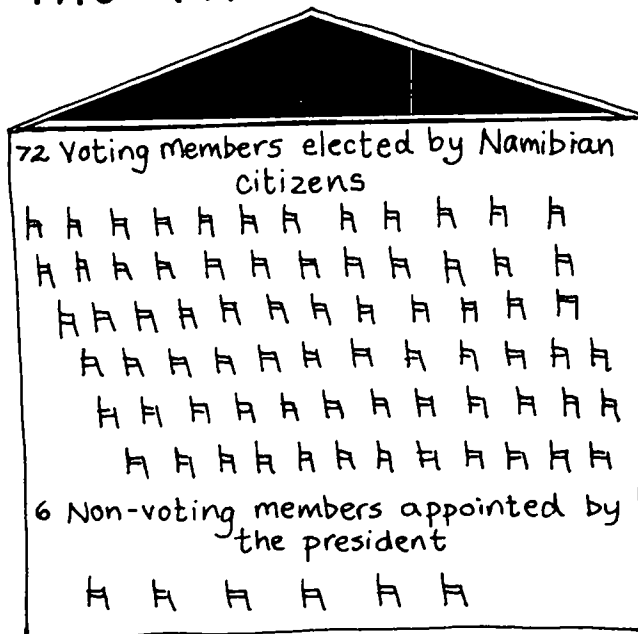
The members of the National Assembly represent people in every part of Namibia, but the members of the National Council represent only the people in their region. This system helps to balance the interests of each part of the nation against the interests of the nation as a whole.

Like the members of the National Assembly, the members of the National Council must take an oath to obey and defend the Constitution.

The main task of the National Council is to give advice to the National Assembly about the laws that the National Assembly is considering.

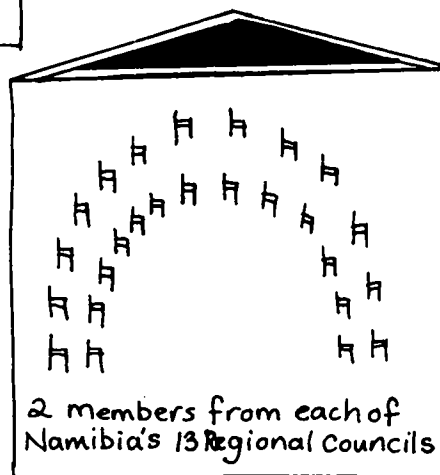
The National Council does not have the power to make laws on its own. It can only make suggestions to the National Assembly.

The Two Houses of Parliament



National Assembly

National Council



Like the members of the National Assembly, the members of the National Council are required to behave with dignity, and they must not do anything to enrich themselves improperly or to place themselves apart from the people.

Unlike the members of the National Assembly, the members of the National Council are allowed to hold other jobs while they are in office. But they must be open about their business interests so that everyone will know if their jobs or their investments are affecting their decisions.

THE THREE BRANCHES OF GOVERNMENT

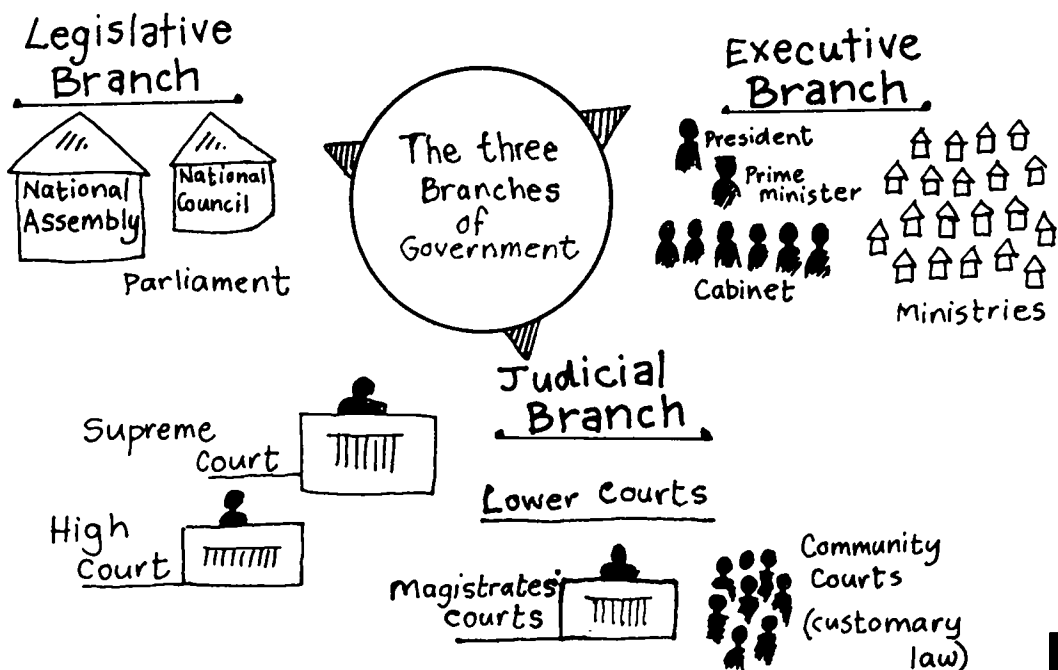
The Constitution sets up three branches of government:

- (1) The executive (President and Cabinet);
- (2) The legislature (Parliament);
- (3) The judiciary (the courts).

The power to run the government is divided up among the three different branches so that there can be a system of checks and balances.

This means that the three branches share duties and keep an eye on each other. This helps to make sure that no one in the government becomes too powerful. It also helps to make sure that the government's power is not abused.

Although Parliament has the main responsibility for making laws, all three branches of government play a part in this important task.



HOW LAWS ARE MADE

The steps for making laws are described in the Constitution, and in the Standing Rules and Orders of the National Assembly and the National Council. Here is how the process works.

STEP 1: THE BILL

The first step in the law-making process is to prepare a bill, which is a proposal for a law.

A bill can be suggested by the President, by Cabinet, by any member of Parliament, by the Law Reform and Development Commission, or even by a non-governmental organisation or an interested member of the public. In practice, the law-making process usually starts when a Minister decides that a new law is needed.

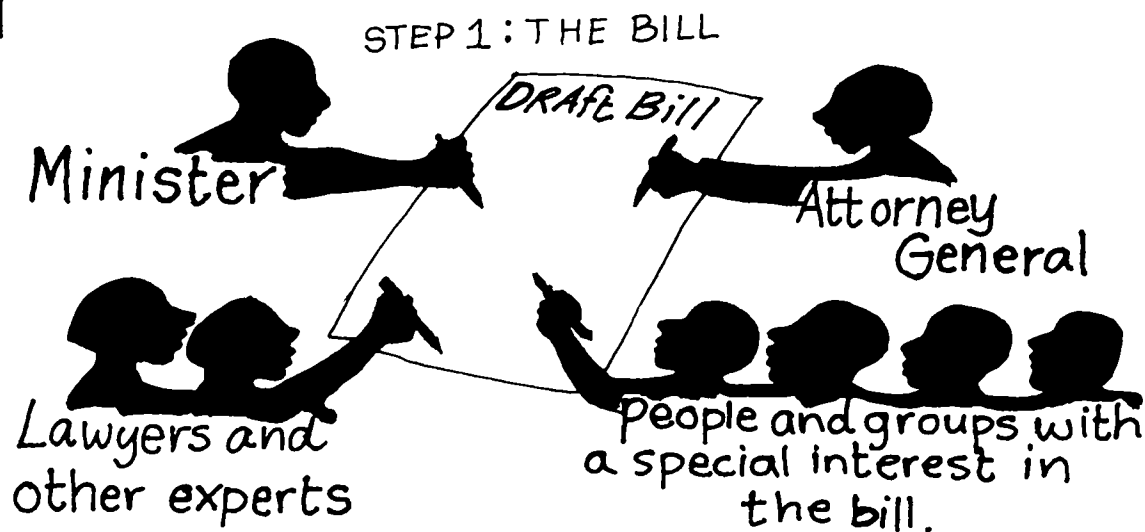
First the ministry will go to the Attorney-General's Office for legal advice. The Attorney-General must make sure that there is really a need for a new law. The Attorney-General must make sure that the idea for the new law will be in line with the Constitution.

Next the ministry will prepare a first draft of the proposed law – a first try at writing the law. This draft is usually prepared by a lawyer, or by someone who knows the law. Sometimes the ministry will ask a lawyer from outside the government to assist it in preparing the bill. For example, officials from

the International Labour Organisation and lawyers from various non-governmental organisations helped the Ministry of Labour and Human Resources Development to prepare the bill which eventually became the Labour Act.

Some ministries circulate bills for public comment or hold meetings to get public input on the bills they have prepared. For example, the Ministry of Health and Social Services circulated a draft Children's Act to interested persons for comment, and invited people from Namibia and other countries who work with children to a workshop to discuss the bill. But this practice differs from ministry to ministry. Not all ministries tell the public about the laws which they are planning to put before Parliament.

The draft bill which is prepared by the ministry is sometimes called a "layperson's draft". (A "layperson" is someone who does not have special training in a topic such as law.) This is because all the legal details are usually not dealt with until after the main points in the bill are approved by Cabinet.



STEP 2: CABINET

Before bills go to Parliament, they must be approved by Cabinet.

When the draft bill is ready, the ministry sends it to the Cabinet Committee on Legislation (CCL) along with a paper which explains the background to the bill.

At the time this booklet was written, there were three people on the CCL:

- The Minister of Trade and Industry
- The Attorney-General
- The Minister of Justice

The Minister will be invited to meet with the CCL to discuss the bill, along with any other ministry officials whom the Minister would like to bring. The CCL decides whether the matter should be taken to Cabinet, or whether further legal advice or consultations are necessary.

In practice, no bill goes forward

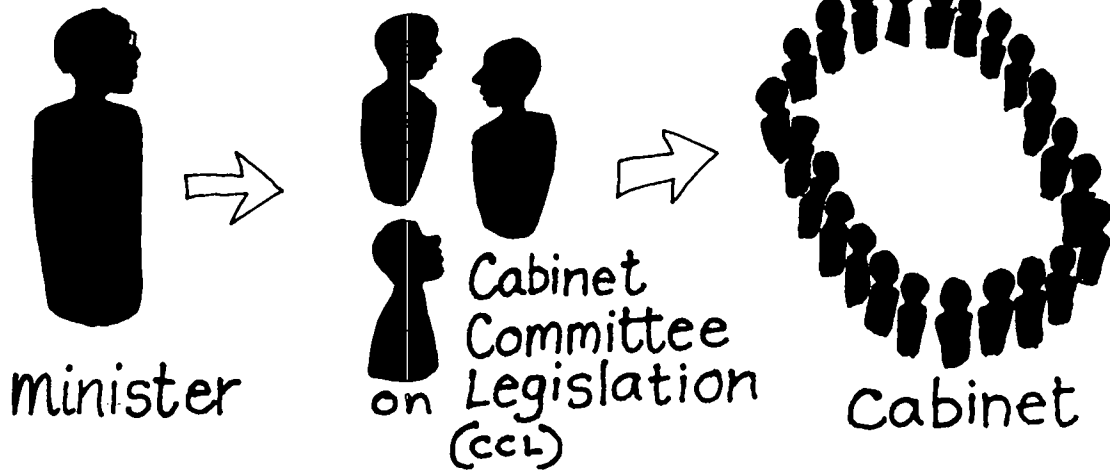
until it has the approval of the CCL. This means that the CCL is a very powerful body in the law-making process.

Once the CCL has approved the draft bill, it must be approved in principle by the entire Cabinet. (This means that the Cabinet approves the main points of the bill, but does not consider the smaller details.)

The draft bill, the explanation of the bill prepared for the CCL and the Cabinet resolution approving the bill are then sent to the Ministry of Justice. The Ministry of Justice arranges for legal drafters to finalise the bill. The draft bill prepared by the Ministry of Justice then goes back to the sponsoring ministry, the CCL and the Attorney-General for approval. At each of these stages, changes to the draft bill may be suggested.

After this process has been completed, the bill is ready to be placed before Parliament.

STEP 2: CABINET



What is Cabinet?

The Cabinet is a group of government ministers who advise the President. It is part of the executive branch of government. The members of the Cabinet are the President, the Prime Minister, the Deputy Prime Minister and the Ministers of each government department.

If more than half of the members of the National Assembly vote that they have no confidence in one of the people the President has chosen for the Cabinet, then the President must remove that person from the Cabinet. This is one example of checks and balances between the legislative branch and the executive branch.

STEP 3: THE NATIONAL ASSEMBLY

After a bill has been approved by Cabinet, it goes to the National Assembly.

First reading ► *tabling the bill in Parliament*

The Minister who is sponsoring the bill introduces it into the National Assembly. A copy of the bill is given to every member of the National Assembly, and the title of the bill is read out.

This step is called the "first reading" of the bill. There is usually no

debate about the bill at this stage.

Once the first reading of the bill has taken place, the bill is said to be "tabled" in Parliament. (This term probably came into use because a copy of the bill is laid upon the Speaker's table before it is read.)

The bill is now a public document and is available to any member of the public who requests it.

Second reading ► *approving the main ideas*

The next step is the “second reading” of the bill. The title of the bill is read out again, and the National Assembly discusses the main ideas in the bill. The Minister who is presenting the bill will often give a speech summarising the bill and explaining why it is needed.

Two things can happen at this stage:

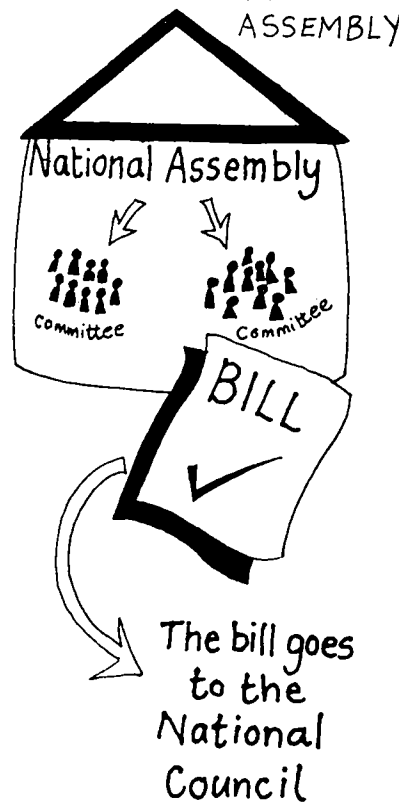
- (1) A bill can go forward only if it is approved by more than half of the members of the National Assembly. If a majority of the members are in favour of the bill, it goes straight from the second reading into the committee stage.
- (2) The National Assembly can decide that the bill should not go forward as it stands. If this happens, the bill is “off the table”. It can be re-introduced by the Minister after thirty days in the same form, or with some changes.

Committee stage ► *examining the bill in detail*

After the second reading of a bill, it is examined in detail by a committee.

The National Assembly has the power to establish different committees to consider bills on different topics. These committees

STEP 3: NATIONAL ASSEMBLY



can be made up of members of the National Assembly who have special knowledge of certain topics.

Committees can get assistance from experts outside the National Assembly. They can hold public hearings to give members of the public a chance to discuss the bills.

The National Assembly has not yet used the committee system very much. So the “committee” which looks at the bill after its second reading is usually the Committee of the Whole Assembly – in other words, the entire membership of the National Assembly.

While it is sitting as a committee, the National Assembly goes through the proposed bill section by section. Any member of the National Assembly can propose an amendment to the bill at this stage, including the Minister who introduced the bill.

Any interested person or group who would like to propose a change to the bill could ask any member of the National Assembly to suggest the change at this point. Each section is approved individually, and all of the suggested amendments are voted on while the National Assembly is in the committee stage.

But amendments can be approved only if they are consistent with the principles of the bill agreed upon at the "second reading".

After the Committee of the Whole Assembly has finished going through the bill, it is again presented to the National Assembly (now sitting as the National Assembly rather than as a committee).

If the bill was sent to a special committee which did not include all of the members of the National Assembly, then that committee would bring the bill back to the whole National Assembly after the committee's work was finished.

Any amendments which have been approved are reported to the National Assembly.

This is the last chance for any members of the National Assembly to propose changes or to oppose the bill.

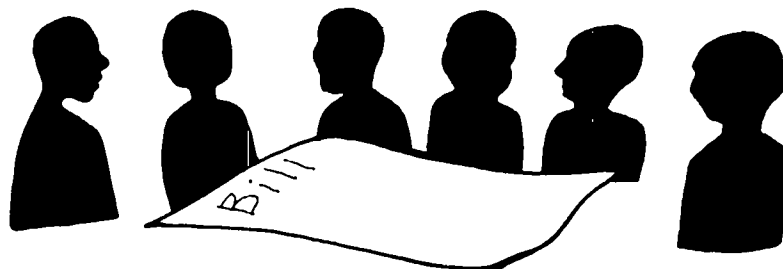
Third reading > final approval

The final stage is the "third reading" of the bill, when the title of the bill is read out for the third time.

No further debate can take place after the third reading of the bill.

Any bill which reaches this stage has the approval of the majority of the members of the National Assembly.

At this stage, the bill has been "passed" by the National Assembly.



Committee examines bill in detail.

STEP 4: THE NATIONAL COUNCIL

After the National Assembly approves a bill, it must send the bill to the National Council for advice.

The National Council can take up to three months to study the bill. The steps which are taken by the National Council are similar to those in the National Assembly, with a first, second and third "reading" of the bill.

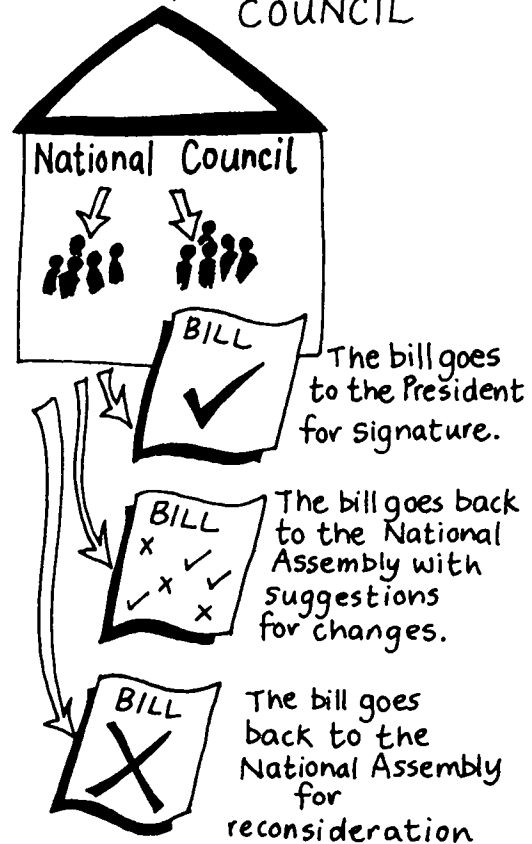
The National Council can send the bill to a committee for special study if it wishes.

The committees of the National Council can hold public hearings if they wish. For example, the National Council held public hearings on the Married Persons Equality Bill to find out how people in Namibia's different regions felt about the bill.

The National Council can take three different kinds of action:

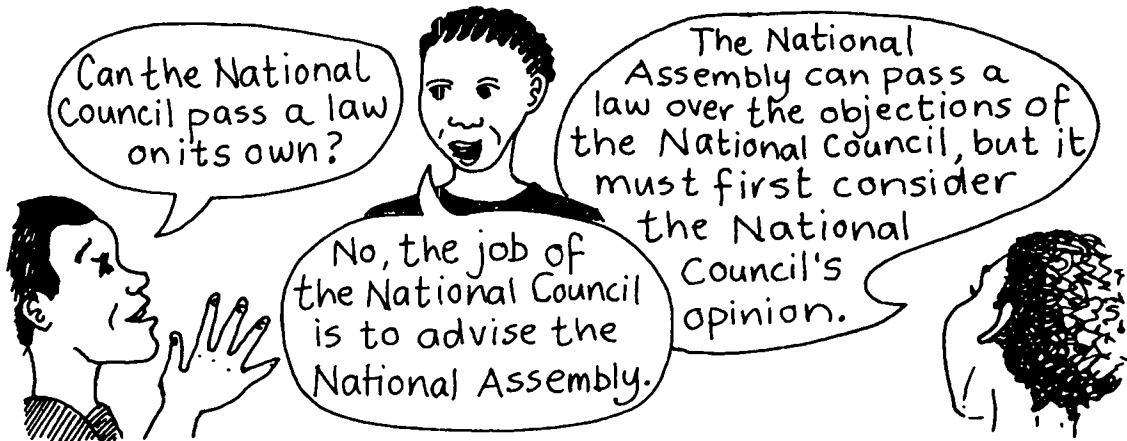
- (1) It can approve the bill as it is. This is called "confirming" the bill.
- (2) It can make suggestions for changes to the bill and send it back to the National Assembly. The National Assembly does not have to agree to all of the changes that the National Council suggests, but it must vote on the bill again after it has heard the suggestions from the National Council.

STEP 4: NATIONAL COUNCIL



- (3) The National Council can object to the principle of the bill and send it back to the National Assembly. (The "principle" of the bill is the basic idea behind the bill.) This means that the National Council does not think that the National Assembly should make the bill into a law. The National Assembly must then vote on the principle of the bill. If two-thirds of the members of the National Assembly still approve the bill, then it can go forward. If less than two-thirds of the members of the National Assembly still approve the bill, it cannot become a law.

Since the National Council is drawn from members of all the different regional councils, it is supposed to ensure that proposed laws serve the needs of people in different parts of the nation.

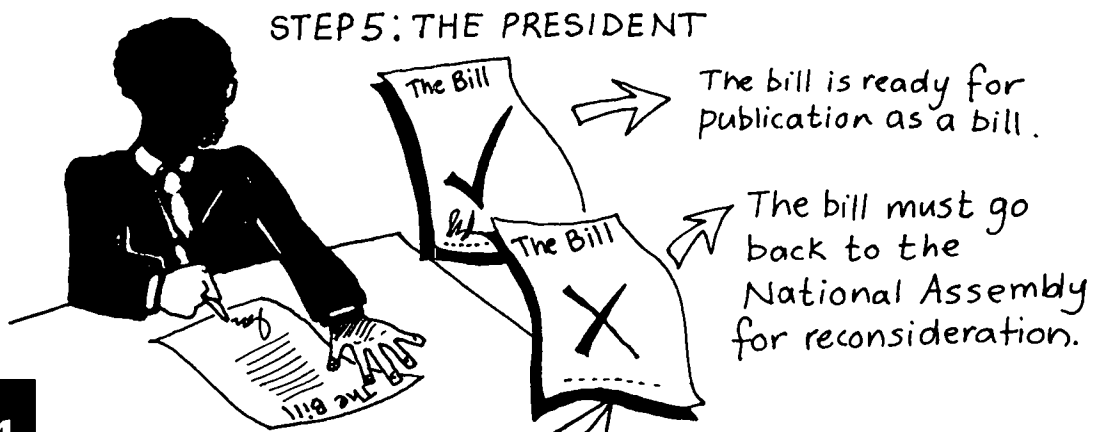


STEP 5: THE PRESIDENT

All bills must be signed by the President before they can become laws. If the President agrees with a bill, then he will sign it. The President must sign a bill if it has already been approved by two-thirds of the members of the National Assembly.

If the President disagrees with a bill and refuses to sign it, then the National Assembly must vote on the bill again. At this stage, the National Assembly might decide not to make the bill into a law, or it might make some changes to the bill. But if the bill is approved as it stands by at least two-thirds of the members of the National Assembly, then the President cannot stop it from becoming a law.

The President is the head of the executive branch of government. Signature by the President is one way that the executive branch becomes part of the law-making process.



STEP 6: THE COURTS (IN SOME CASES)

If the President refuses to sign a bill because he or she thinks the bill is in conflict with the Constitution, the courts may be asked to decide this question.

If the courts decide that the bill is in line with the Constitution, then the bill can go forward in the same way as other bills.

If the courts decide that the bill is in conflict with the Constitution, then the bill cannot become a law.

Even if a bill has already become a law, it is still possible for the courts to look at it. Anyone who is affected by the new law can ask a court to decide if it is in line with the Constitution.

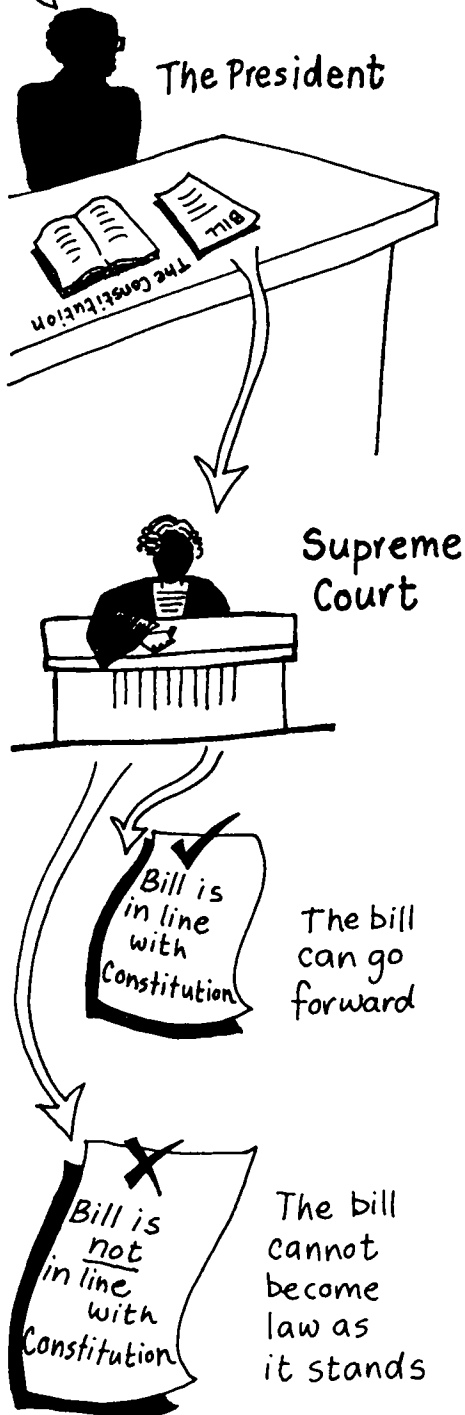
If the court decides that the new law is in conflict with the Constitution, then the law is not valid any more. It is no longer a law which people have to obey.

Questions about the Constitution must be decided by the High Court or the Supreme Court. Decisions about the Constitution made by the High Court can be checked by the Supreme Court in a process called an "appeal". The Supreme Court has the final say on whether a law is in line with the Constitution.

This is how the judicial branch may sometimes become involved in the law-making process.

STEP 6: THE COURTS (in some cases)

I think this bill may be in conflict with the Constitution

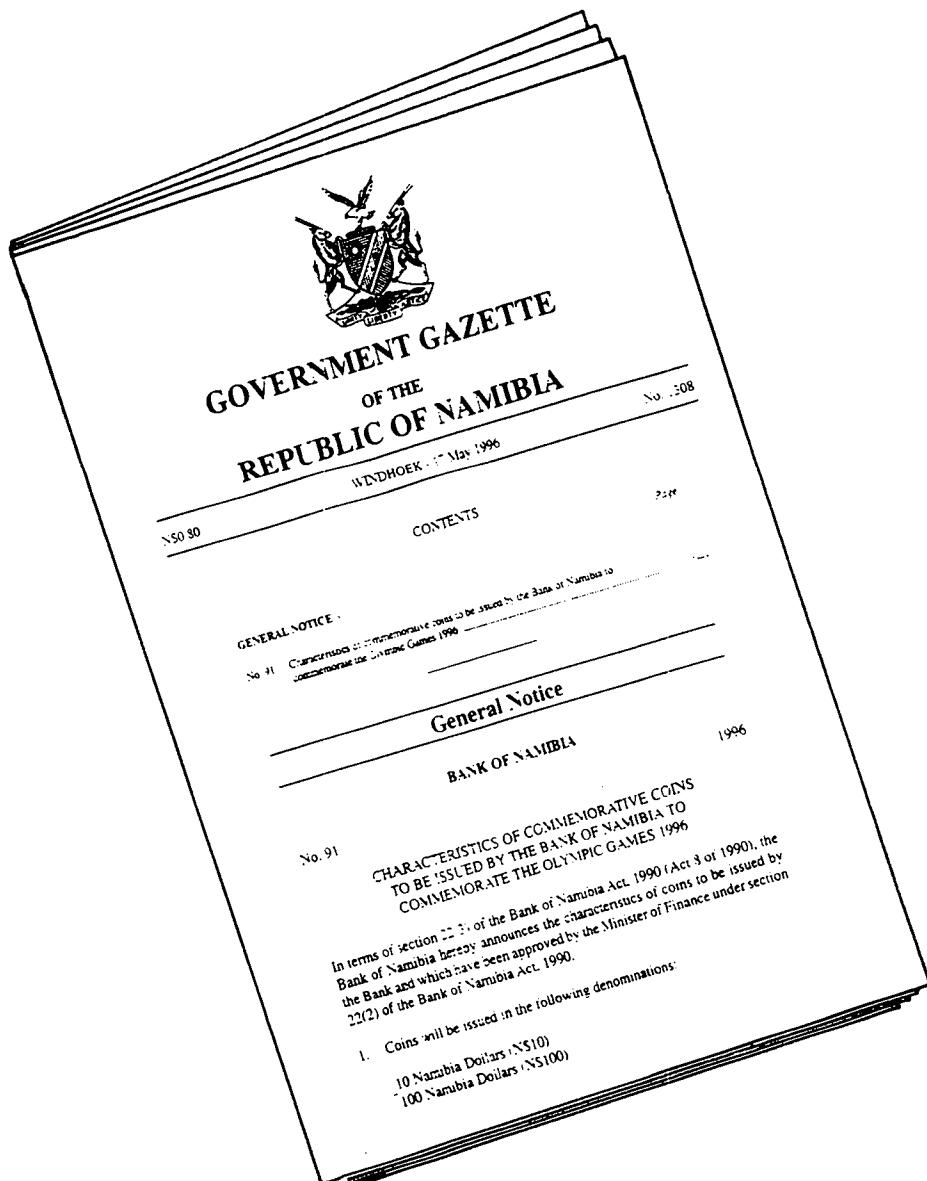


STEP 7: THE GOVERNMENT GAZETTE

A law can come into force only after it has been published in the Government Gazette. This paper contains laws and legal notices. It is published regularly by the government. Anyone can subscribe to it for a small fee. It is available in Namibia's major reference libraries.

A law usually comes into force on the day that it is published in the Government Gazette. But sometimes the law itself says that it will come into force on another day.

For example, laws sometimes say that they will come into force on a day which will be announced by the Minister. This announcement must also be published in the Government Gazette.



CHECKS AND BALANCES

Before a bill becomes a law, it may be examined by people in all three branches of government. This system is one way to make sure that bills are considered very carefully before they become the laws of Namibia. It also helps to make sure that the interests of all the people of Namibia are protected.

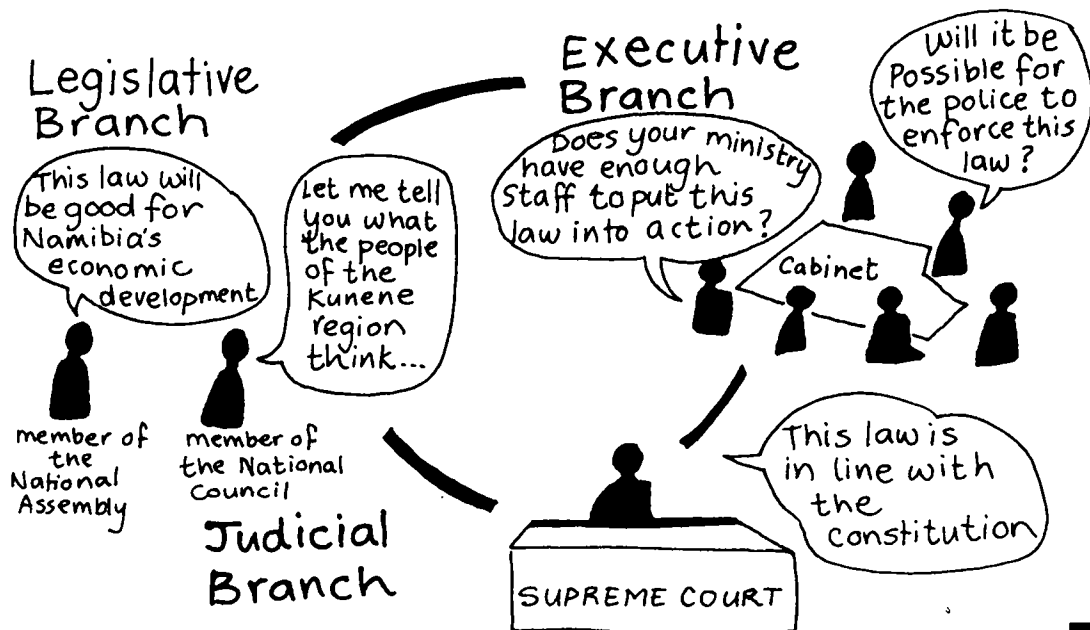
Because the different government bodies and branches have different duties, they may think about an idea for a new law in different ways.

For example, the members of the National Assembly are elected by all the people in Namibia, so they may think more about the interests

of Namibia as a single nation. The members of the National Council all come from Regional Councils, so they may think more about the needs of the different parts of Namibia.

The people in the executive branch, such as the President and the members of Cabinet, may be in a better position than the people in the legislative branch to think about how a new law will be put into practice.

The courts in the judicial branch have the proper expertise to make sure that a new law will be in line with the Constitution.



LOBBYING

You are also an important part of the law-making process. "Lobbying" means trying to influence the law-making process. For example, you might lobby a Minister or a member of Parliament to introduce an idea for a new law. You might lobby members of Parliament to vote for or against a bill. You might lobby the President to sign or not to sign a bill.

The members of Parliament are the representatives of the people of Namibia. This means that they have a duty to listen to the opinions of the people.

How can you find out about bills before they become laws?

Sometimes individual ministries will consult the public about proposed laws in advance. Information about important laws is sometimes available through newspapers, television or radio. NBC broadcasts a summary of the meetings of Parliament.



Parliament could use its committee system to involve the public more deeply in the law-making process. For example, committees could hold public hearings in different parts of the country. They could also consult groups and individuals with special knowledge or interest in a bill.

The National Assembly has the power to decide to hold a referendum on questions of national concern. A referendum is a way of consulting all the people of Namibia to find out how they feel about an issue. It is like an election, except that the voters choose an opinion rather than a political party. For example, voters might be asked a question such as "Should the Constitution be amended to allow the President to hold office for more than two terms?". Then each voter would make a mark next to "yes" or "no".

The Law Reform and Development Commission has the power to hold public hearings to give people a chance to comment on ideas for new laws.

Some people believe that all bills should be published in the *Government Gazette* long before they become laws, so that everyone who wants can have a chance to make comments.

There are many ways to involve the public in the law-making process, but not all of them are being used. As a result, members of the public sometimes do not know about a bill in time to lobby effectively.

You can ask ministries and members of Parliament to take more steps to inform the public about bills in the future.

You can let your political party know that you would like more information about proposed laws.

You can also demand that the media give more detailed coverage to proposed laws and the law-making process.



How can you lobby for or against a bill?

You could write a letter to the Minister who proposed the bill. You could ask the Minister to meet with you or your organisation to discuss the bill. You could write a letter to some of the members of Parliament.



You could get together a petition (a letter signed by many people), or you could organise a demonstration in a public place to make your views known.



You could write a letter to the editor of a newspaper or call in to a radio show. Your organisation could make a press statement and try to get it printed in a newspaper, or announced on radio or television.

In these ways you could explain your views to others and try to get other people to help you lobby.

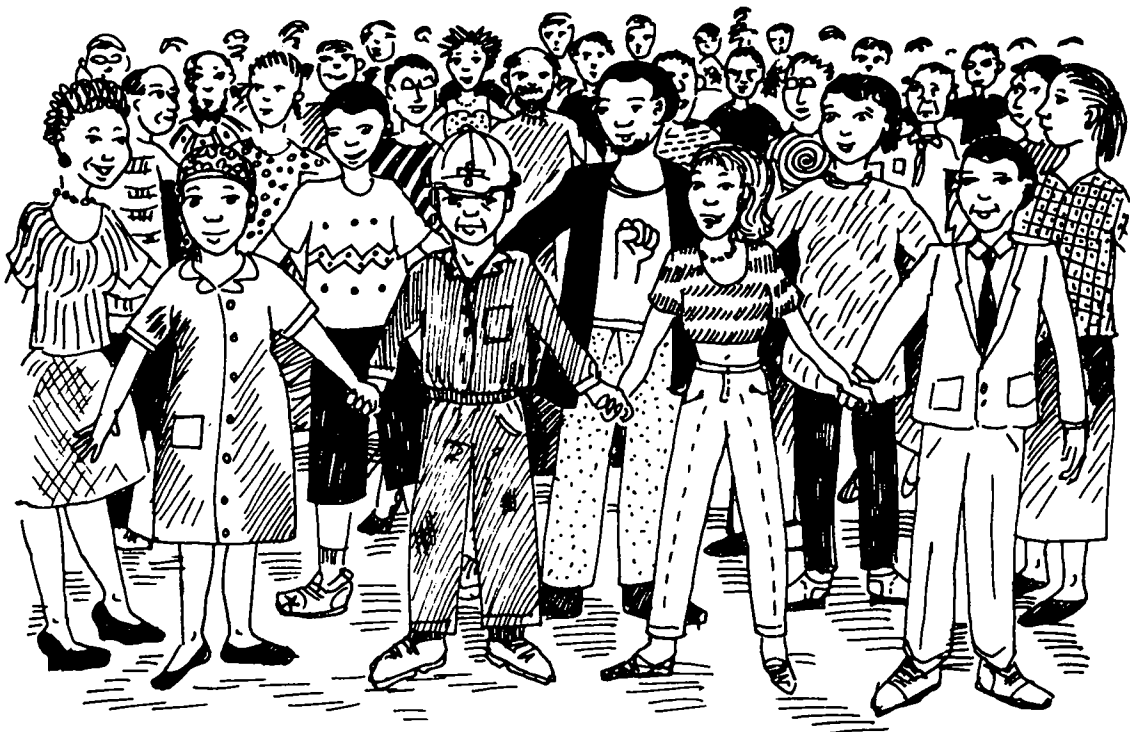
You could talk to organisations in your community and try to get them to speak out on the issue. Your opinion will carry more weight if it is shared by other people.

A STRONG DEMOCRACY

In a strong democracy, the government is open about its plans and ideas. In a strong democracy, there are lots of opportunities for public participation in the law-making process.

It is up to you to speak out and make sure that your voice is heard. Let your law-makers know that you want a chance to be part of the law-making process.

Help to make Namibia more democratic!



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