

Statute Law

Statutes are laws that have been passed by Parliament since independence, or laws that were passed by other legislative bodies before Namibian independence. Other terms for statutes are “legislation” and “Acts of Parliament”. Parliament can also make changes, called “amendments”, to statutes which have already been passed.

How statutes are made

Parliament has the main responsibility for making statute law, but all three branches of government play a part in this important task. A proposal for a statute is called a “bill”. Most bills are proposed by ministers, although any Member of Parliament can propose a bill. Sometimes the idea for a new statute comes from a government body called the Law Reform and Development Commission or from some other government agency or even from a non-governmental organisation. Anyone can suggest an idea for a statute, but the bill must be tabled in Parliament by a Member of Parliament.

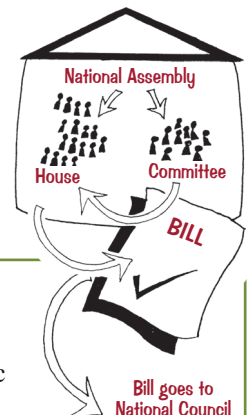


STEP 1: A proposal for a statute is prepared. The proposal is usually discussed with interested persons and groups while it is still in draft stage.



STEP 2: The proposal must be approved by Cabinet and checked by the official legal drafters and the Attorney-General. The proposal is first examined and approved by the Cabinet Committee on Legislation, and then by Cabinet as a whole. Once the idea for the statute is approved, legal drafters in the Ministry of Justice finalise the wording of the bill. The bill must also be checked by the Attorney-General, who has a duty to make sure that all laws passed by Parliament are in line with the Constitution.

STEP 3: The bill is presented to the National Assembly. This is called “tabling” the bill, because it is put on the table of the Speaker of the National Assembly. The National Assembly can discuss the bill and make changes to it if it wishes. The bill might be sent to a Parliamentary Committee for special study. The bill must be approved by more than one-half of the members of the National Assembly to go forward.



PROCEDURE IN THE NATIONAL ASSEMBLY

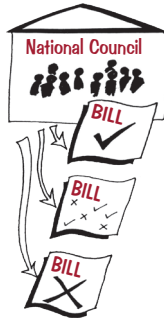
First reading - tabling the bill: The Minister who is proposing the bill tables it in the National Assembly. A copy of the bill is given to every member of the National Assembly, and the title of the bill is read out. There is usually no debate about the bill at this stage. The bill is now a public document and is available to any member of the public who requests it.

Second reading - approving the main ideas: The title of the bill is read out again, and the National Assembly discusses the main ideas in the bill. The member who is proposing the bill will give a speech summarising it and explaining why it is needed. Two things can happen at this stage: (a) If the National Assembly agrees with the main idea of the bill, it can go into the committee stage. (b) If the National Assembly disagrees with the main idea of the bill, the bill cannot go forward. It can be re-introduced after thirty days in the same form, or with some changes.

Committee stage - examining the bill in detail: The bill may be examined in detail by a special committee which will possibly hold public hearings or consultations with stakeholders before making recommendations to the National Assembly. Alternatively, the bill may go straight to the “Committee of the Whole” where it is examined by the entire membership of the National Assembly acting as a committee, without being referred to a specialised committee. At this stage, the National Assembly will go through the proposed bill in detail. Anyone in the National Assembly can propose an amendment to the bill, including the member who introduced it. Amendments can be approved only if they are consistent with the principles of the bill agreed upon at the “second reading”.

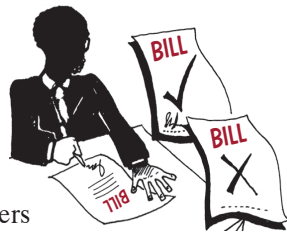
Third reading - deciding on the bill: At the final stage, the title of the bill is read out for the third time and it is passed (or rejected). No more amendments to the bill can be made at this stage. Bills are usually passed by consensus, without taking a vote. ►

STEP 4: The National Assembly sends the bill to the National Council for advice. Since the National Council has members from all of Namibia's different regions, it may have a different perception of the bill. The National Council can take up to three months to study the bill. It can make three kinds of recommendations:



- (1) The National Council can **APPROVE** the bill as it is.
- (2) The National Council can make **SUGGESTIONS FOR AMENDMENTS** to the bill and send it back to the National Assembly. The National Assembly does not have to put in the changes suggested by the National Council, but it must vote on the bill again after it has considered the suggestions. The National Assembly may propose other amendments to the bill at this stage.
- (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 reconsider. If two-thirds of the members of the National Assembly still approve the bill, then it can go forward. But if fewer than two-thirds of the members of the National Assembly approve the bill, it cannot become a law.

STEP 5: All bills must be signed by the President (who is part of the executive branch of government) before they can become laws.



- (1) If the President **AGREES** with the bill, then he or she will sign it. The President *must* sign the bill if it has been passed by two-thirds of the members of the National Assembly.
- (2) If the President **DISAGREES** with the bill, then he or she can refuse to sign it. Then the National Assembly must reconsider the bill before it can become law. There are three possibilities at this stage: (a) The National Assembly might decide not to make the bill into a law, or it might make changes to the bill. (b) If the same bill is approved by fewer than two-thirds of the National Assembly members, then the President can still refuse to sign the bill. (c) If the same bill is approved by at least two-thirds of the National Assembly members, then the President cannot make any more objections.

STEP 6 (IN SOME CASES): If the President refuses to sign the bill because he or she believes that it is in conflict with the Constitution, then the Attorney-General may decide to send the bill to the courts (which are part of the judicial branch of government).

- (1) If the courts decide that the bill is in conflict with the Constitution, then the bill cannot become law.
- (2) If the courts decide that the bill is not in conflict with the Constitution, then the bill can go forward in the same way as other bills.

How to find out what a statute says

No bill can become a law until it is published, because the rule of law requires that laws must be accessible to everyone. Every statute and amendment is published in the *Government Gazette*, which is published every week. Anyone can subscribe to this publication, and it is available online and in many libraries. Laws and their amendments are published separately, so it is sometimes difficult to figure out what a statute says if it has been amended over the years. There are resources which can help with this:

- **Namlex:** The Legal Assistance Centre (LAC) publishes *Namlex*, an index of all statutes in force and their amendments. *Namlex* is organised by topic and contains brief descriptions of each law as well as references to relevant rules and regulations, court cases and commentary. It is available for free on the LAC website: www.lac.org.na.
- **Annotated statutes:** An annotated statute is a document showing *the original statute as amended up to the present day*, with notes explaining the sources of the amendments that have changed the statute over time. This is the most convenient way to see exactly what statute law is in force. Annotated statutes have been prepared and updated as a joint project by the Government and LAC, and are available for free at www.lac.org.na and www.parliament.na.

Testing statute law against the Constitution

Even if the Attorney-General predicts that a proposed law will be in line with the Constitution, the courts might decide otherwise. The courts have the final say on this question. For example, there are **statutes** saying that a person convicted of a crime 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, and that no person can be punished in any way that is cruel, inhuman or degrading. The Supreme Court ruled that the statutes allowing corporal punishment by state institutions are invalid because they violate the right to dignity. This means that these statutes do not apply in Namibia anymore.

Interpreting statute law

The courts apply and interpret the statutes that Parliament passes. Sometimes people disagree on what a statute means in everyday life. Then it is the courts' job to interpret the statute. If Parliament disagrees with a court's interpretation, it can amend the statute to clarify it – as long as the amendment is in line with the Constitution. For example, the **Arms and Ammunition Act** requires that firearms which are not in use must be locked up in “a strongroom or other place of safety or safe”. The court had to decide if this rule was followed in a case where a man stored his pistol in a small portable safe on the back seat of a car without an alarm, which was parked at a public bar at night. The court found that this did not meet the firearm storage requirements. The law is intended to prevent firearms from falling into the hands of criminals or children, and this aim was not served. So the court found the man guilty of failing to keep his firearm secure. ■