



**NAMIBIA UNIVERSITY  
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION**

**DEPARTMENT OF SOCIAL SCIENCES**

<b>QUALIFICATION : BACHELOR OF PUBLIC MANAGEMENT</b>	
<b>QUALIFICATION CODE: 07BPMN</b>	<b>LEVEL: 6</b>
<b>COURSE CODE: LPM521S</b>	<b>COURSE NAME: LAW FOR PUBLIC MANAGERS</b>
<b>SESSION: JANUARY 2024</b>	<b>PAPER: THEORY AND CASE STUDIES</b>
<b>DURATION: 3 HOURS</b>	<b>MARKS: 100</b>

<b>SECOND OPPORTUNITY EXAMINATION</b>	
<b>EXAMINER(S)</b>	Emmy Wabomba
<b>MODERATOR</b>	Mariette Hanekom

<p style="text-align: center;"><b>INSTRUCTIONS</b></p> <ol style="list-style-type: none"><li>1. The paper has 6 main questions.</li><li>2. ALL the questions are compulsory.</li><li>3. Read carefully before answering.</li><li>4. Number the answers clearly and according to the structure in the examination question paper.</li><li>5. Use full sentences and proper paragraphs when answering questions. The inappropriate use of bullet-points will be penalised, as will poor spelling and grammar and illegible handwriting.</li></ol>
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**PERMISSIBLE MATERIAL**  
Namibian Constitution

**THIS EXAMINATION PAPER CONSISTS OF 8 PAGES** (Including this front page)

## QUESTION 1

Choose the correct answer from the given options in each of the following questions. Only mark the correct letter on the answer sheet provided next to the corresponding question number. Should you mark more than one answer to a question, your answer(s) will not be marked.

- 1.1 The Right to life means:
- (a) It is a source of all personal rights
  - (b) A police is entitled to protect this right by even killing
  - (c) Criminals ,especially those that kill have to be punished by killing
  - (d) It can be suspended sometimes
- 1.2 One of the following statements is not true about the right to life:
- (a) Death penalty does not exist in Namibia
  - (b) The Right to life is a right not to be killed
  - (c) A person may not kill another in self- defense
  - (d) A duty is imposed on the state to create conditions which will enable all persons to enjoy human existence
- 1.3 A Right to protection of liberty is a right which is: (choose the correct statement)
- (a) Right to be detained without trial
  - (b) Right not to be deprived of freedom without cause
  - (c) A right to be left alone to pursue conception of good life.
  - (d) The limitations in terms of Art 22 of the Namibian constitution is not applicable
- 1.4 Which of the statement is correct about the Right to Human dignity.
- (a) Is a duty to treat people right but not part of morality
  - (b) Only the state has a duty to treat citizens with respect, meaning applies vertically.
  - (c) It holds at all times and all places
  - (d) Infliction of pain and suffering is sometimes justified in civil matters.

- 1.5 In terms of Article 10 of the Namibian Constitution which of the statements below is wrong?
- (a) Different treatment should not be given to people in a same situation.
  - (b) Different treatment is allowed without justifiable reasons
  - (c) Different treatment would not be allowed if it is grounded on other reasons than those excluded by the Constitutional demand
  - (d) John is a Namibian citizen and is 17 years old. He is not allowed to votes and therefore feels discriminated as a citizen in terms of Art 10 of the Namibian Constitution.
- 1.6 Article 11 of the Namibian Constitution provides for a Right ONLY to be arrested and detained in a lawful manner. It is therefore a right to:
- (a) Security and entitlement of citizens but individuals should be arrested
  - (b) Be arrested as an individual and reason of arrest be determined at the police station
  - (c) Be lawfully arrested and valid reason to arrest being key to these rights.
  - (d) None of the above
- 1.7 Although a right of freedom is guaranteed by the Namibian Constitution, these rights are sometimes limited by Art 22 of the same Constitution. Which list below has the correct list of these rights?
- (a) Freedom of movement, Right to human dignity and fair trial
  - (b) Freedoms of movement, right to privacy and freedom of expression.
  - (c) Arrest, fair trial, right to life and right to property.
  - (d) a and b
- 1.8 A Right to property can be referred to as:
- (a) Poverty right
  - (b) A personal right
  - (c) An absolute right as attached to ownership.
  - (d) A right to incorporeal things

- 1.9 In terms of a right to property, there are other real rights that do not have an absolute right. Which one is the correct list of such real rights?
- (a) Servitudes, mortgages, computers and cars
  - (b) Cars, computers mortgages and servitudes
  - (c) Servitudes, mortgages and leases
  - (d) Leases, houses and cars
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- 1.10 Administrative action in terms of Art 18 of the Namibian Constitution includes the following:
- (a) Every action taken by a government department excluding the police
  - (b) Every action taken by a government department excluding the police and executives
  - (c) Every action taken by a government department including the police departments
  - (d) All of the above
- 1.11 Is the entrenchment of fundamental right to freedoms today associated with democracy—what is the correct answer below:
- (a) The minority are ignored through a democratic process and therefore affects some of Human Rights and should be avoided.
  - (b) Democratic rule ideally requires unanimous decision- making but cannot be achieved from human beings. Therefore humans beings should be content with the lesser means VIZ majority rule
  - (c) Unanimity is not attainable therefore, elections and other collective will to make decisions is used. However, that way there is no assurance that democracy has been preserved.
  - (d) None of the above.
- 1.12 According to Rechtsstaat:
- (a) The state must exercise its powers within their discretion and not only legal prescripts
  - (b) The rule of law denotes that the state must exercise its powers in accordance with legal prescripts
  - (c) Sate actions may promote substantive justice but should not necessarily act in terms of legal prescript to achieve such promotion.
  - (d) a and c

- 1.13 The rule of law means:
- (a) Supremacy of the law, equality before the law and not government officials but only private citizens plus parliamentary sovereignty
  - (b) Parliamentary sovereignty, equality including both government officials like private citizens are under a duty to obey the law and supremacy of the law
  - (c) Equality before the law, by private citizens who are under a duty to obey the law and not government officials, supremacy of the law and parliamentary sovereignty
  - (d) None of the above.
- 1.14 The right meaning of the word legislation Act is:
- (a) Legislation that is made by bodies that are given powers from the original act in terms of Art 44 of the constitution
  - (b) Subordinate legislation that is made by people / bodies that have powers from the original Act in terms of Art 44 of the Namibian Constitution.
  - (c) Legislation made in terms of Art 44 of the Namibian Constitution.
  - (d) None of the above.
- 1.15 An Act of Parliament may contain any of the following: (choose the correct statement)
- (a) Provision that authorizes the president to promulgate certain rules by proclamation
  - (b) A minister is authorized to promulgate certain rules in accordance with the prescripts of a particular statute
  - (c) A municipality is authorized to make regulations with regard to a particular affair
  - (d) A statutory body may be empowered to make regulations.
- 1.16 The relationship between common law and the legislation is that:
- (a) Common law is usually repealed by legislation if it is unconstitutional
  - (b) Common law is usually repealed by legislation if it limited in its application
  - (c) Common law is overruled by the legislation if it is unconstitutional and therefore declared invalid
  - (d) Most presumptions found in common law cannot be repealed nor overruled.

1.17 Promulgation means:

- (a) The legislation coming into operation
- (b) Existing old legislation dated prior to independence
- (c) Is a process of causing awareness through a process as stated in Art 65 (1) of the Namibian Constitution
- (d) Both adoption and publication are done simultaneously

1.18 The Constitution as legislation does the following: (Choose the correct statement)

- (a) Sets out the organs of the state, their relationship, powers functions and operation of all the other bodies in Namibia
- (b) Sets out duties and the rights of citizens and provides mechanisms and procedures of ensuring protection. Also sets out organs of the state, their relationship powers and functions.
- (c) a and b
- (d) None of the above

1.19 Legislation is:

- (a) Is the most important part of the Constitution
- (b) The most important source of the law
- (c) It's important because it forms part of the constitution
- (d) It is on the same level as common law in terms of hierarchy.

1.20 Interpretation of a statute means:

- (a) Reading the legislation to explain words that are not understood
- (b) Understanding a particular legal text in the legislation
- (c) Techniques that the court uses to explain difficult words of the legislation.
- (d) To construct words in the legislation.

*Each two marks [40 marks]*

**QUESTION 2 FOLLOWS ON THE NEXT PAGE**

## QUESTION 2

Indicate whether the statements below are true or false. No motivation needed.

- 2.1 Human Rights in Namibia can only be protected by one legislation, which is the Constitution.
- 2.2 Namibia uses the monistic system to ratify international instruments. That means the international instruments still have to be debated before they become law in Namibia.
- 2.3 Article 12 (d) of the Namibian Constitution, presumption of innocence, not every person is presumed innocent until proven otherwise because some cases are straightforward (*prima facie*) cases.
- 2.4 Under parliamentary sovereignty, the state can pass any law whatsoever and under constitutional supremacy the state can only pass laws that conforms to the Constitution.
- 2.5 After creating a new Constitution, the parliamentary sovereignty is now applied alongside Constitutional Supremacy and sometimes by ignoring value judgement.

*Each two marks [10 marks]*

## QUESTION 3

- a) Identify the characteristics of human rights. (7)
- b) Why are these rights called "human rights"? (2)
- c) What is government's duty in respect of human rights? Explain by referring to articles in the Namibian Constitution. (5)
- d) All human rights are absolute. Discuss this statement in detail. (9)

**[23]**

**QUESTION 4 FOLLOWS ON THE NEXT PAGE**

#### QUESTION 4

- a) When will the courts not be able to modify the text of the legislation? (2)
- b) Mr Smith has insured his house against damage by floods, storms, lightening, earthquakes and landslides. His house is set alight by his brother-in-law who wanted to avenge himself, as Mr Smith would not lend him money to buy his own house. Mr Smith claims from the insurance company but the said company refuses to pay out. Mr Smith sues the said insurance company for the damage cause to his house. What modification method and rule will be used in court to decide that the insurance company need not pay the claim? Explain how the rules operates. (5)
- [7]

#### QUESTION 5

- a) Magistrate Dirk Coetzee wants to interpret the common law rule with regards to the principle of natural justice. Can he use the rules of interpretation of statutes? Briefly explain. (2)
- b) Identify (6) six differences between the text-based approach and the text-in-context approach? (12)
- [14]

#### QUESTION 6

In the language dimension of the interpretation process certain basic principles must be followed. Explain these principles. [6]

**TOTAL 100 marks**



Namibian Constitution

- (5) Citizenship by naturalisation may be applied for by persons who are not Namibian citizens under Sub-Articles (1), (2), (3) or (4) hereof and who:
- (a) are ordinarily resident in Namibia at the time when the application for naturalisation is made; and
  - (b) have been so resident in Namibia for a continuous period of not less than ten (10) years; and

[Sub-Article (5)(b) is amended by the Namibian Constitution Second Amendment Act 7 of 2010.]

- (c) satisfy any other criteria pertaining to health, morality, security or legality of residence as may be prescribed by law.
- (6) Nothing contained herein shall preclude Parliament from authorizing by law the conferment of Namibian citizenship upon any fit and proper person by virtue of any special skill or experience or commitment to or services rendered to the Namibian nation either before or at any time after the date of Independence.
- (7) Namibian citizenship shall be lost by persons who renounce their Namibian citizenship by voluntarily signing a formal declaration to that effect.
- (8) Nothing in this Constitution shall preclude Parliament from enacting legislation providing for the loss of Namibian citizenship by persons who, after the date of Independence:
- (a) have acquired the citizenship of any other country by any voluntary act; or
  - (b) have served or volunteered to serve in the armed or security forces of any other country without the written permission of the Namibian Government; or
  - (c) have taken up permanent residence in any other country and have absented themselves thereafter from Namibia for a period in excess of two (2) years without the written permission of the Namibian Government:

provided that no person who is a citizen of Namibia by birth or descent may be deprived of Namibian citizenship by such legislation.

- (9) Parliament shall be entitled to make further laws not inconsistent with this Constitution regulating the acquisition or loss of Namibian citizenship.

### CHAPTER 3

#### Fundamental Human Rights and Freedoms

##### Article 5 Protection of Fundamental Rights and Freedoms

The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed.

## Namibian Constitution

**Article 10 Equality and Freedom from Discrimination**

- (1) All persons shall be equal before the law.
- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

**Article 11 Arrest and Detention**

- (1) No persons shall be subject to arbitrary arrest or detention.
- (2) No persons who are arrested shall be detained in custody without being informed promptly in a language they understand of the grounds for such arrest.
- (3) All persons who are arrested and detained in custody shall be brought before the nearest Magistrate or other judicial officer within a period of forty-eight (48) hours of their arrest or, if this is not reasonably possible, as soon as possible thereafter, and no such persons shall be detained in custody beyond such period without the authority of a Magistrate or other judicial officer.
- (4) Nothing contained in Sub-Article (3) hereof shall apply to illegal immigrants held in custody under any law dealing with illegal immigration: provided that such persons shall not be deported from Namibia unless deportation is authorised by a Tribunal empowered by law to give such authority.
- (5) No persons who have been arrested and held in custody as illegal immigrants shall be denied the right to consult confidentially legal practitioners of their choice, and there shall be no interference with this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security or for public safety.

**Article 12 Fair Trial**

- (1)
  - (a) In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law: provided that such Court or Tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a democratic society.
  - (b) A trial referred to in Sub-Article (a) hereof shall take place within a reasonable time, failing which the accused shall be released.
  - (c) Judgments in criminal cases shall be given in public, except where the interests of juvenile persons or morals otherwise require.
  - (d) All persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them.
  - (e) All persons shall be afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice.
  - (f) No persons shall be compelled to give testimony against themselves or their spouses, who shall include partners in a marriage by customary law, and no Court

**Namibian Constitution**

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- (3) No children under the age of fourteen (14) years shall be employed to work in any factory or mine, save under conditions and circumstances regulated by Act of Parliament. Nothing in this Sub-Article shall be construed as derogating in any way from Sub-Article (2) hereof.
- (4) Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to compel the minor children of an employee to work for or in the interest of the employer of such employee, shall for the purposes of Article 9 hereof be deemed to constitute an arrangement or scheme to compel the performance of forced labour.
- (5) No law authorising preventive detention shall permit children under the age of sixteen (16) years to be detained.

**Article 16 Property**

- (1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.
- (2) The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.

**Article 17 Political Activity**

- (1) All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form and join political parties and, subject to such qualifications prescribed by law as are necessary in a democratic society, to participate in the conduct of public affairs, whether directly or through freely chosen representatives.
- (2) Every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty-one (21) years to be elected to public office, unless otherwise provided herein.
- (3) The rights guaranteed by Sub-Article (2) hereof may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are necessary in a democratic society.

**Article 18 Administrative Justice**

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal.

**Article 19 Culture**

Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the

## Namibian Constitution

- (i) leave and return to Namibia;
  - (j) practise any profession, or carry on any occupation, trade or business.
- (2) The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

**Article 22      Limitation upon Fundamental Rights and Freedoms**

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Chapter is authorised, any law providing for such limitation shall:

- (a) be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;
- (b) specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest.

**Article 23      Apartheid and Affirmative Action**

- (1) The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices.
- (2) Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the defence force, the police force, and the correctional service.

[Sub-Article (2) is amended by the Namibian Constitution Second Amendment Act 7 of 2010.]

- (3) In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

**Article 24      Derogation**

- (1) Nothing contained in or done under the authority of Article 26 hereof shall be held to be inconsistent with or in contravention of this Constitution to the extent that it authorises the taking of measures during any period when Namibia is in a state of national defence or any period when a declaration of emergency under this Constitution is in force.

## Namibian Constitution

- (2) Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.
- (3) Subject to the provisions of this Constitution, the Court referred to in Sub-Article (2) hereof shall have the power to make all such orders as shall be necessary and appropriate to secure such applicants the enjoyment of the rights and freedoms conferred on them under the provisions of this Constitution, should the Court come to the conclusion that such rights or freedoms have been unlawfully denied or violated, or that grounds exist for the protection of such rights or freedoms by interdict.
- (4) The power of the Court shall include the power to award monetary compensation in respect of any damage suffered by the aggrieved persons in consequence of such unlawful denial or violation of their fundamental rights and freedoms, where it considers such an award to be appropriate in the circumstances of particular cases.

## CHAPTER 4

Public Emergency, State of National Defence  
and Martial Law**Article 26 State of Emergency, State of National Defence and Martial Law**

- (1) At a time of national disaster or during a state of national defence or public emergency threatening the life of the nation or the constitutional order, the President may by Proclamation in the Gazette declare that a state of emergency exists in Namibia or any part thereof.
- (2) A declaration under Sub-Article (1) hereof, if not sooner revoked, shall cease to have effect:
  - (a) in the case of a declaration made when the National Assembly is sitting or has been summoned to meet, at the expiration of a period of seven (7) days after publication of the declaration; or
  - (b) in any other case, at the expiration of a period of thirty (30) days after publication of the declaration;

unless before the expiration of that period, it is approved by a resolution passed by the National Assembly by a two-thirds majority of all its members.

- (3) Subject to the provisions of Sub-Article (4) hereof, a declaration approved by a resolution of the National Assembly under Sub-Article (2) hereof shall continue to be in force until the expiration of a period of six (6) months after being so approved or until such earlier date as may be specified in the resolution: provided that the National Assembly may, by resolution by a two-thirds majority of all its members, extend its approval of the declaration for periods of not more than six (6) months at a time.

- (5) Citizenship by naturalisation may be applied for by persons who are not Namibian citizens under Sub-Articles (1), (2), (3) or (4) hereof and who:
- (a) are ordinarily resident in Namibia at the time when the application for naturalisation is made; and
  - (b) have been so resident in Namibia for a continuous period of not less than ten (10) years; and

[Sub-Article (5)(b) is amended by the Namibian Constitution Second Amendment Act 7 of 2010.]

- (c) satisfy any other criteria pertaining to health, morality, security or legality of residence as may be prescribed by law.
- (6) Nothing contained herein shall preclude Parliament from authorizing by law the conferment of Namibian citizenship upon any fit and proper person by virtue of any special skill or experience or commitment to or services rendered to the Namibian nation either before or at any time after the date of Independence.
- (7) Namibian citizenship shall be lost by persons who renounce their Namibian citizenship by voluntarily signing a formal declaration to that effect.
- (8) Nothing in this Constitution shall preclude Parliament from enacting legislation providing for the loss of Namibian citizenship by persons who, after the date of Independence:
- (a) have acquired the citizenship of any other country by any voluntary act; or
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Article 10 Equality and Freedom from Discrimination

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- (4) Nothing contained in Sub-Article (3) hereof shall apply to illegal immigrants held in custody under any law dealing with illegal immigration: provided that such persons shall not be deported from Namibia unless deportation is authorised by a Tribunal empowered by law to give such authority.
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Article 12 Fair Trial

- (1) (a) In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law: provided that such Court or Tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a democratic society.
- (b) A trial referred to in Sub-Article (a) hereof shall take place within a reasonable time, failing which the accused shall be released.
- (c) Judgments in criminal cases shall be given in public, except where the interests of juvenile persons or morals otherwise require.
- (d) All persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them.
- (e) All persons shall be afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice.
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- (3) No children under the age of fourteen (14) years shall be employed to work in any factory or mine, save under conditions and circumstances regulated by Act of Parliament. Nothing in this Sub-Article shall be construed as derogating in any way from Sub-Article (2) hereof.
- (4) Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to compel the minor children of an employee to work for or in the interest of the employer of such employee, shall for the purposes of Article 9 hereof be deemed to constitute an arrangement or scheme to compel the performance of forced labour.
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- (3) The rights guaranteed by Sub-Article (2) hereof may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are necessary in a democratic society.

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**Article 19 Culture**

Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the



- (i) leave and return to Namibia;
  - (j) practise any profession, or carry on any occupation, trade or business.
- (2) The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

#### Article 22 Limitation upon Fundamental Rights and Freedoms

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Chapter is authorised, any law providing for such limitation shall:

- (a) be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;
- (b) specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest.

#### Article 23 Apartheid and Affirmative Action

- (1) The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices.
- (2) Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the defence force, the police force, and the correctional service.

[Sub-Article (2) is amended by the Namibian Constitution Second Amendment Act 7 of 2010.]

- (3) In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

#### Article 24 Derogation

- (1) Nothing contained in or done under the authority of Article 26 hereof shall be held to be inconsistent with or in contravention of this Constitution to the extent that it authorises the taking of measures during any period when Namibia is in a state of national defence or any period when a declaration of emergency under this Constitution is in force.

- (2) Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.
- (3) Subject to the provisions of this Constitution, the Court referred to in Sub-Article (2) hereof shall have the power to make all such orders as shall be necessary and appropriate to secure such applicants the enjoyment of the rights and freedoms conferred on them under the provisions of this Constitution, should the Court come to the conclusion that such rights or freedoms have been unlawfully denied or violated, or that grounds exist for the protection of such rights or freedoms by interdict.
- (4) The power of the Court shall include the power to award monetary compensation in respect of any damage suffered by the aggrieved persons in consequence of such unlawful denial or violation of their fundamental rights and freedoms, where it considers such an award to be appropriate in the circumstances of particular cases.

#### CHAPTER 4

##### Public Emergency, State of National Defence and Martial Law

###### Article 26 State of Emergency, State of National Defence and Martial Law

- (1) At a time of national disaster or during a state of national defence or public emergency threatening the life of the nation or the constitutional order, the President may by Proclamation in the Gazette declare that a state of emergency exists in Namibia or any part thereof.
- (2) A declaration under Sub-Article (1) hereof, if not sooner revoked, shall cease to have effect:
  - (a) in the case of a declaration made when the National Assembly is sitting or has been summoned to meet, at the expiration of a period of seven (7) days after publication of the declaration; or
  - (b) in any other case, at the expiration of a period of thirty (30) days after publication of the declaration;

unless before the expiration of that period, it is approved by a resolution passed by the National Assembly by a two-thirds majority of all its members.
- (3) Subject to the provisions of Sub-Article (4) hereof, a declaration approved by a resolution of the National Assembly under Sub-Article (2) hereof shall continue to be in force until the expiration of a period of six (6) months after being so approved or until such earlier date as may be specified in the resolution: provided that the National Assembly may, by resolution by a two-thirds majority of all its members, extend its approval of the declaration for periods of not more than six (6) months at a time.