



**NAMIBIA UNIVERSITY**  
**OF SCIENCE AND TECHNOLOGY**  
**FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION**  
**DEPARTMENT SOCIAL SCIENCES**

<b>QUALIFICATION: BACHELOR OF PUBLIC MANAGEMENT</b>	
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<b>DURATION: 3 HOURS</b>	<b>MARKS: 100</b>

<b>FIRST OPPORTUNITY 2024 EXAMINATION QUESTION PAPER</b>	
<b>EXAMINER(S)</b>	MRS. E.M. WABOMBA
<b>MODERATOR:</b>	Ms. R. VAN ZYL

<b>INSTRUCTIONS</b>
1. Answer ALL the questions. 2. Write clearly and neatly. 3. Number the answers clearly.

**PERMISSIBLE MATERIALS**

1. Examination paper
2. Examination script
3. The Constitution of Namibia

**THIS QUESTION PAPER CONSISTS OF 7 PAGES (Excluding this front page)**

### **QUESTION 1**

**Choose a correct answer from the options given in each of the following statements. Only write down the letter with a correct answer for each statement. Use BLOCK CAPITAL LETTERS.**

**[20 x 2 = 40 marks]**

- 1.1 When one says Human Rights are inherent, what does that means?
- (a) The human beings are given these rights by the Constitution.
  - (b) Human Rights were born after the second world-war – after 1948
  - (c) One should not be discriminated against based on sex, race, gender social status etc.
  - (d) These Rights are acquired by virtue of being born and being a human being.
- 1.2 It is acknowledged in the modern world that a human beings share equal qualities and should enjoy equally the number of entitlements. Modern states have adopted the above worldly. How does Namibia ensure that such rights are protected?
- (a) Making women equal to men in all places
  - (b) By inserting the Bill of Rights in the Namibian Constitution
  - (c) By enacting the Affirmative Action Act
  - (d) Through the Employment Equity Commission
- 1.3 Listed below are the rights that fall under the first generation rights. Identify the set of rights that correctly names the first generation rights. ( Blue Rights)
- (a) Right to life, Freedom of expression, Freedom of Association and Right to housing and health.
  - (b) Freedom of religion, Freedom from arbitrary arrest and detention, Freedom of assembly and movement, the Right to Equal treatment and Right to clean environment.
  - (c) Right to life, Freedom of Expression, Freedom of association, Freedom from arbitrary arrest and detention and Right to Equal treatment
  - (d) Civil and political rights, Freedom of religion, Freedom of association, Freedom from arbitrary arrest and detention and Right to Education
- 1.4 The Constitution as legislation does the following; which statement is correct.

- (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

1.5 When a provision of a law is in conflict with the Constitution, is referred to as being;

- (a) Applicable only to a certain extend
- (b) incorrect but still applicable
- (c) Is only against the Constitution and no other law
- (d) Invalid

1.6 Rights and Freedoms as entrenched in the Namibian Constitution should be respected and upheld, by both natural and juristic persons. Whereby juristic persons means;

- (a) Namibian governmental bodies
- (b) Namibian Ministries including directors
- (c) All public and private companies including those registered as such
- (d) Official holding senior positions in government

1.7 Below are the list of institutions set up by the Namibian Constitution for protection and promotion of Human Rights. Which one is listed correctly?

- (a) The court, office of the Ombudsman and government entities
- (b) Police department and correctional services including any other offices like immigration office Anti – Corruption Commission, police departments and correctional services and the office of the Prosecutor General
- (c) The court, office of the Ombudsman, the army, Anti – corruption Commission and the police
- (d) The court, Office of the Ombudsman, Anti – Corruption Commission, police departments and correctional services and the office of the Prosecutor General

1.8 The Right to life means;

- (a) It is a source of all personal rights
- (b) A police officer 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

1.9 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

1.10 A Right to protection of liberty is a right which is; which statement is not correct.

- (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

1.11 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.

- 1.12 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 vote and therefore feels discriminated as a citizen in terms of Art 10 of the Namibian Constitution.
- 1.13 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
- 1.14 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
- 1.15 The following constitute the requirements of a fair trial;
- (a) Obtaining evidence, preventing an accused from adequately preparing for the trial, treating the accused fairly before and during the conduct of the trial
  - (b) Obtaining evidence, not preventing the accused from adequately preparing for the trial, treating the accused fairly only before the trial and not during the trial
  - (c) Obtaining evidence in a constitutional manner, preventing an accused from adequately preparing for the trial, treating the accused fairly before and during the trial.
  - (d) Obtaining evidence in a Constitutional manner, not preventing an accused from adequately preparing for the trial, treating the accused fairly before court and during the trial.

- 1.16 A Right to privacy is a basic Human Right because it is aimed at;
- (a) Giving preservation of an individual of the choice as to how much one wants other to know about them
  - (b) Allowing people to know one's personal affairs, in case they need to protect themselves.
  - (c) It is a right to be left alone but without minimum degree
  - (d) b and c
- 1.17 A right to a child is also that of nationality. Meaning a child is;
- (a) Recognized by the nationality of the parents
  - (b) Is denied access to many more other rights without a nationality
  - (c) Entitled to a state even without a nationality
  - (d) None of the above
- 1.18 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
- 1.19 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
- 1.20 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

## **QUESTION 2**

**DETERMINE WETHER THE STATEMENTS BELOW ARE TRUE OR FALSE [10 X 2= 20 MARKS]**

- 2.1 Parliamentary sovereignty is whereby parliament is supreme and can make any law it pleases and no court can test the substance of such legislation against standards of fairness or equality.
- 2.2 After creating a new Constitution, the parliamentary sovereignty is now applied alongside Constitutional Supremacy and sometimes by ignoring value judgement
- 2.3 Entrenchment refers to; constitutional provisions which cannot be altered but can only be done to make the situation more favorable.
- 2.4 Entrenched provision need 50% of members of parliament to be present and 50% of cabinet.
- 2.5 In law when one refers to locus standi as a legal term, what does it mean? – That for one to have access to court does not need to have a right to be heard
- 2.6 The underlying principle of the fact that the legislation must be published is that it must be made known to only those people that are directly affected.
- 2.7 Chronological order of categorizing legislation simply means is based on historical background and therefore more important.
- 2.8 Delegated legislation derives from person or bodies which are vested with subordinate legislative powers under the subordinate legislation.
- 2.9 Common law presumptions were preliminary assumptions as to the meaning of legislation and one could have referred to them, before independence as not being rebuttable common law Bill of Rights.
- 2.10 The intention of the legislation is mostly not to alter common law in a great way rather than more it is necessary.

### **QUESTION 3**

Albert Mupenda, a 30-year-old man was arrested and charged for raping 11-year-old Rosalia Matsi in Otjiwarongo on the 1<sup>st</sup> of January this year. He was arrested and informed in English the reason for his arrest. He was then detained from the 2<sup>nd</sup> of January until the 30<sup>th</sup> July, when he was brought before a Magistrate in Windhoek for trial. The Magistrate ordered that the trial be held in secret because of the age of Rosalia. Albert requested that he be provided with a lawyer who would be paid by his family members. The request was refused by the Magistrate with the following words: "We shall not provide you with a lawyer, because the girl that you raped is only 11 years old". At the start of the trial, Albert informed the court in Kwangali that he cannot understand English and thus would like an interpreter so as to enable him to follow the court proceedings during the trial. This request was also refused. The trial was conducted in English with no interpreter and Albert was found guilty and sentenced to 14 years imprisonment. Which rights have been infringed? [10]

### **QUESTION 4**

- a) Identify at what levels human rights protected. (3)
  - b) What instruments protect human rights at each level? (5)
  - c) What is the main difference between the rule of law and the rechtsstaat principle? (2)
- [10]

### **QUESTION 5**

The Street and Traffic Regulations of the Windhoek Municipality forbids the conducting of the business of hawking, vending or peddling on any street in Windhoek. Markus needs extra money and starts selling fruit, sweets and chips outside the back gates of Namibian University of Science and Technology, namely in Brahmsstrasse. He argues the Namibian Constitution guarantees freedom to trade and as it is the supreme law, it overrides the said regulation. Discuss the validity of his argument? [10]

### **QUESTION 6**

Which factors in the historical and comparative dimensions assist to find the purpose of the legislation. [10]

TOTAL [100]



The following persons shall be citizens of Namibia by marriage:

- (a) those who are not Namibian citizens under Sub-Article (1) or (2) hereof and who:
  - (aa) in good faith marry a Namibian citizen or, prior to the coming into force of this Constitution, in good faith married a person who would have qualified for Namibian citizenship if this Constitution had been in force; and
  - (bb) subsequent to such marriage have ordinarily resided in Namibia as the spouse of such person for a period of not less than ten (10) years; and
  - (cc) apply to become citizens of Namibia;
- (b) for the purposes of this Sub-Article (and without derogating from any effect that it may have for any other purposes) a marriage by customary law shall be deemed to be a marriage: provided that nothing in this Constitution shall preclude Parliament from enacting legislation which defines the requirements which need to be satisfied for a marriage by customary law to be recognised as such for the purposes of this Sub-Article.

Citizenship by registration may be claimed by persons who are not Namibian citizens under Sub-Articles (1), (2) or (3) hereof and who were ordinarily resident in Namibia at the date of Independence, and had been so resident for a continuous period of not less than five (5) years prior to such date: provided that application for Namibian citizenship under this Sub-Article is made within a period of twelve (12) months from the date of Independence, and prior to making such application, such persons renounce the citizenship of any other country of which they are citizens.

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 (whether before or after the date of Independence); and
- (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.

**Article 6 Protection of Life**

The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

**Article 7 Protection of Liberty**

No persons shall be deprived of personal liberty except according to procedures established by law.

**Article 8 Respect for Human Dignity**

- (1) The dignity of all persons shall be inviolable.
- (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
- (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 9 Slavery and Forced Labour**

- (1) No persons shall be held in slavery or servitude.
- (2) No persons shall be required to perform forced labour.
- (3) For the purposes of this Article, the expression "forced labour" shall not include:
  - (a) any labour required in consequence of a sentence or order of a Court;
  - (b) any labour required of persons while lawfully detained which, though not required in consequence of a sentence or order of a Court, is reasonably necessary in the interests of hygiene;
  - (c) any labour required of members of the defence force, the police force and the correctional service in pursuance of their duties as such or, in the case of persons who have conscientious objections to serving as members of the defence force, any labour which they are required by law to perform in place of such service;
  - (d) any labour required during any period of public emergency or in the event of any other emergency or calamity which threatens the life and well-being of the community, to the extent that requiring

such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation;

- (e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

**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 shall admit in evidence against such persons testimony which has been obtained from such persons in violation of Article 8(2)(b) hereof.
- (2) No persons shall be liable to be tried, convicted or punished again for any criminal offence for which they have already been convicted or acquitted according to law; provided that nothing in this Sub-Article shall be construed as changing the provisions of the common law defences of "previous acquittal" and "previous conviction".
- (3) No persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

## Article 13 Privacy

- (1) No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.
- (2) Searches of the person or the homes of individuals shall only be justified:
  - (a) where these are authorised by a competent judicial officer;
  - (b) in cases where delay in obtaining such judicial authority carries with it the danger of prejudicing the objects of the search or the public interest, and such procedures as are prescribed by Act of Parliament to preclude abuse are properly satisfied.

## Article 14 Family

- (1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

## Article 15 Children's Rights

- (1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.
- (2) Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development.

For the purposes of this Sub-Article children shall be persons under the age of sixteen (16) years.

- (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

- (3) to be elected to public office, unless otherwise provided herein.

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 condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.

#### **Article 20 Education**

- (1) All persons shall have the right to education.
- (2) Primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge.
- (3) Children shall not be allowed to leave school until they have completed their primary education or have attained the age of sixteen (16) years, whichever is the sooner, save in so far as this may be authorised by Act of Parliament on grounds of health or other considerations pertaining to the public interest.
- (4) All persons shall have the right, at their own expense, to establish and to maintain private schools, or colleges or other institutions of tertiary education: provided that:
  - (a) such schools, colleges or institutions of tertiary education are registered with a Government department in accordance with

- (b) any law authorising and regulating such registration; the standards maintained by such schools, colleges or institutions of tertiary education are not inferior to the standards maintained in comparable schools, colleges or institutions of tertiary education funded by the State;
- (c) no restrictions of whatever nature are imposed with respect to the admission of pupils based on race, colour or creed;
- (d) no restrictions of whatever nature are imposed with respect to the recruitment of staff based on race or colour.

#### **Article 21 Fundamental Freedoms**

- (1) All persons shall have the right to:
  - (a) freedom of speech and expression, which shall include freedom of the press and other media;
  - (b) freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;
  - (c) freedom to practise any religion and to manifest such practice;
  - (d) assemble peaceably and without arms;
  - (e) freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties;
  - (f) withhold their labour without being exposed to criminal penalties;
  - (g) move freely throughout Namibia;
  - (h) reside and settle in any part of Namibia;
  - (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 so ill, 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 discriminatory laws or practices, or for achieving a balanced structuring of the public service, the defence force, the police force, and the correctional service.
- (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) Where any persons are detained by virtue of such authorisation as is referred to in Sub-Article (1) hereof, the following provisions shall apply:
  - (a) they shall, as soon as reasonably practicable and in any case not more than five (5) days after the commencement of their detention, be furnished with a statement in writing in a language that they understand specifying in detail the grounds upon which they are detained and, at their request, this statement shall be read to them;
  - (b) not more than fourteen (14) days after the commencement of their detention, a notification shall be published in the Gazette stating that they have been detained and giving particulars of the provision of law under which their detention is authorised;
  - (c) not more than one (1) month after the commencement of their detention and thereafter during their detention at intervals of not more than three (3) months, their cases shall be reviewed by the Advisory Board referred to in Article 26 (5)(c) hereof, which shall order their release from detention if it is satisfied that it is not reasonably necessary for the purposes of the emergency to continue the detention of such persons;
  - (d) they shall be afforded such opportunity for the making of representations as may be desirable or expedient in the circumstances, having regard to the public interest and the interests of the detained persons.
- (3) Nothing contained in this Article shall permit a derogation from or suspension of the fundamental rights or freedoms referred to in Articles 5, 6, 8, 9, 10, 12, 14, 15, 18, 19 and 21(1)(a), (b), (c) and (e) hereof, or the denial of access by any persons to legal practitioners or a Court of law.

#### **Article 25 Enforcement of Fundamental Rights and Freedoms**

- (1) Save in so far as it may be authorised to do so by this Constitution, Parliament or any subordinate legislative authority shall not make any law, and the Executive and the agencies of Government shall not take any action which abolishes or abridges the fundamental rights and freedoms conferred by this Chapter, and any law or action in contravention thereof shall to the extent of the contravention be invalid, provided that:
  - (a) a competent Court, instead of declaring such law or action to be invalid, shall have the power and the discretion in an appropriate case to allow Parliament, any subordinate legislative authority, or the Executive and the agencies of Government, as the case may be, to correct any defect in the impugned law or action within a specified period, subject to such conditions as may be specified by it, in such event and until such correction, or until the expiry of the time limit set by the Court, whichever be the shorter, such impugned law or action shall be deemed to be valid;
  - (b) any law which was in force immediately before the date of Independence shall remain in force until amended, repealed or declared unconstitutional. If a competent Court is of the opinion that such law is unconstitutional, it may either set aside the law or allow Parliament to correct any defect in such law, in which event the provisions of Sub-Article (a) hereof shall apply.
- (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.

- (4) The National Assembly may by resolution at any time revoke a declaration approved by it in terms of this Article.
- (5) (a) During a state of emergency in terms of this Article or when a state of national defence prevails, the President shall have the power by Proclamation to make such regulations as in his or her opinion are necessary for the protection of national security, public safety and the maintenance of law and order.
- (b) The powers of the President to make such regulations shall include the power to suspend the operation of any rule of the common law or statute or any fundamental right or freedom protected by this Constitution, for such period and subject to such conditions as are reasonably justifiable for the purpose of dealing with the situation which has given rise to the emergency: provided that nothing in this Sub-Article shall enable the President to act contrary to the provisions of Article 24 hereof.
- (c) Where any regulation made under Sub-Article (b) hereof provides for detention without trial, provision shall also be made for an Advisory Board, to be appointed by the President on the recommendation of the Judicial Service Commission, and consisting of no more than five (5) persons, of whom no fewer than three (3) persons shall be Judges of the Supreme Court or the High Court or qualified to be such. The Advisory Board shall perform the function set out in Article 24 (2)(c) hereof.
- (6) Any regulations made by the President pursuant to the provisions of Sub-Article (5) hereof shall cease to have legal force if they have not been approved by a resolution of the National Assembly first sited in session after the date of the commencement of any such regulations. The President shall have the power to proclaim or terminate martial law. Martial law may be proclaimed only when a state of national defence involving another country exists or when civil war prevails in Namibia: provided that any proclamation of martial law shall cease to be valid if it is not approved within a reasonable time by a resolution passed by a two-thirds majority of all the members of the National Assembly.
- (7)