



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION

DEPARTMENT OF SOCIAL SCIENCES

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DURATION: 3 HOURS	MARKS: 100

SUPPLEMENTARY / SECOND OPPORTUNITY EXAMINATION QUESTION PAPER	
EXAMINER(S)	MRS E.WABOMBA
MODERATOR:	Ms. R. VAN ZYL

INSTRUCTIONS
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 Namibian Constitution

THIS QUESTION PAPER CONSISTS OF 4 PAGES (Excluding this front page)

QUESTION 1

- a) Government created human rights. Is this statement true or false? Give a reason for your answer. (2)
 - b) Chapter three of the Namibian Constitution is said to be entrenched. What in short is the meaning of the word "entrenched". (1)
 - c) Human rights are said to be inherent and inalienable. What is meant by the terms "inherent and inalienable"? (6)
 - (d) What is the basis of the distinction between civil and political rights, socio-economic rights and solidarity rights? (6)
- [15]**

QUESTION 2

- a) What is the basic reason for having a constitution in any country? (2)
 - b) Identify how the Constitution which we have now in Namibia, differs from the constitution in place before independence. (4)
 - c) What is the main difference between the rule of law and the rechtsstaat principle? (2)
- [8]**

QUESTION 3

Takawira Zenda is a Zimbabwean national living in Namibia and works for NAM Bank with a valid work permit. Is Mr. Takawira Zenda entitled to the following rights? Explain Briefly.

- (a) The right to date and marry a Namibian citizen. (2)
 - (b) The right to vote in general elections. (2)
 - (c) The right to move freely to different towns and villages in northern Namibia. (2)
 - (d) The right to life. (4)
- [10]**

QUESTION 4

During the early hours of the morning of 9 January 2024, an earthquake of huge magnitude, hit the central region of Namibia, causing high buildings to collapse and certain display windows of shops shattered, as a result of which looters had access to the contents of several stores and they thus removed articles of great value. The shop owners all gathered to express their concern as to the chaos that reigned. As a result the President proclaimed a state of emergency as a measure to stop the lawlessness occurring in the streets of Windhoek, and proclaimed a curfew, prohibiting persons from being on the streets between 18:00 and 6:00 hours. During this state of emergency, the police arrested Petrus and a group of his friends who were looting Edgars in Wernhill Park. The said police beat them up before throwing them into jail and they were brought before the magistrate on 13 January 2024. Discuss whether rights were infringed or more specifically, which rights would, under normal certain circumstances, have been infringed, but under the emergency situation were not infringed.

[10]

QUESTION 5

Mr. Sipho, an adult male and a South African National, on holiday in Namibia with his wife, was accused of domestic violence towards his wife and of raping her in their hotel room. At the trial he was not told that he may have representation. Further he requested to see the medical documentation which was in the hands of the prosecution, which proved his violence towards his wife. To this the magistrate answered, that he had no such right, as he was a violent man who must be punished.

- a) Which human rights have been infringed? (5)
- b) Can Sipho's wife be forced to give testimony against her husband? Give a reason for your answer. (3)

[8]

QUESTION 6

- a) Explain the effect the new constitutional order has on the validity of the pre-constitutional law in terms of validity. (5)
- b) Explain, with regard to the relationship between legislation and common law, what happens when legislation contradicts the common law and the said legislation is later repealed. (5)
- c) It is said that presumptions are common law rules used in the interpretation process. Some have been entrenched in the Namibian Constitution, whereas others have not been entrenched in the Constitution. Explain with regard to the relationship between legislation and common law, how these two categories of presumptions will be treated differently. (3)

[13]

QUESTION 7

Suppose the Railways and Harbours Pension Act is unconstitutional. If it is declared unconstitutional by a court, it could create a gap in the legal system. How would the courts go about to avoid this situation?

[8]

QUESTION 8

In term of the Immigration Control Act, Act no. 7 of 1993, the Minister has the power to prescribe the procedures regulating the entry of persons into Namibia at a port of entry by regulation made in terms of the Section 58(1) (c).

- a) Identify two types of legislations in the above scenario. (4)
- b) Who gives the organ or person or institution making the legislations you have mentioned in (a) above the authority to do so? (2)
- c) Who can change the legislations you have mentioned in (a)? (2)
- d) If the legislations you have mentioned in (a) are not changed in hundred years, will they become obsolete due to lapse of time? Briefly explain. (2)

[10]

QUESTION 9

An enactment changes the common law crime of bigamy without expressly stating that it is doing away with the common law. Explain with due regard to a common law rule, how the new law will be interpreted.

[5]

QUESTION 10

- a) Suppose a legislative provision states that any objection to a notice must be given within 7 days after receiving the said notice. I receive the notice on Wednesday the 6th of September 2017. When will be the last day on which I can object? Give a reason for your answer. (3)
- b) What will the position be if the last day is a public holiday? (3)

[6]

QUESTION 11

Suppose the Prohibition of Dependence Forming Substances and Rehabilitation Institutions Act states that if a minor child is proven to be addicted to a drug such as speed, the said child will be institutionalised to cure the said child of such dependency and the parents/guardian of the said child so institutionalised will pay all the expenses of this said institutionalisation. Ingrid, the minor child of Mr and Mrs Katumbu is proven to be addicted to heroin and institutionalised. The said institution in which she is placed in terms of the above mentioned Act, sends the accounts for all the costs incurred for Ingrid to Mr. and Mrs Katumbu. A year later, Ingrid is cured of her addiction and leaves the said institution. However the said institution continues to send accounts to the Katumbas' who refuse to pay. Should this action be taken to court, which method of interpretation and rule will be applied by the court, supporting non-payment of any further accounts? [2]

QUESTION 12

In terms of the Commercial Land Reform Act 6 of 1995, any person who wishes to sell their commercial land must first offer the said land to the state. The said offer must contain certain prescribed particulars about the commercial land that is to be sold. Mr. Sacks, who wishes to sell his farm Arap and sends his offer to the Ministry of Lands and Resettlement, but fails to provide all the necessary information about the said farm. How will the courts go about deciding whether that section of the Commercial Land Reform Act needs strict or substantial compliance? [5]

TOTAL MARKS: 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

- any law authorising and regulating such registration;
- (b) 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 badly, 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 within fourteen (14) days from the date when the National Assembly first sits in session after the date of the commencement of any such regulations.
- (7) 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.