



**LEGAL ASSISTANCE CENTRE**  
*Fighting for human rights in Namibia since 1988*



# *Pro* Bono

## **INFORMATION ABOUT NAMIBIA'S LAW**

### **The Rule of Law and the Perils of taking the Law into One's Own Hands**

A recent film clip shared on social media, shows five members of Affirmative Repositioning (AR) entering the business premises of Zhou Jiahua, a Chinese businessman based in Windhoek's Northern Industrial area. The five men fiercely confront Jiahua. They accuse him of flouting a wide array of laws, such as not wearing a coronavirus face mask, not concluding contracts with his Namibian staff and not permitting them to go on sick leave, as well as sexually assaulting one employee. One of the AR men warns Jiahua that Namibia is a country with laws which he should respect, saying that if Jiahua continues with his "tendencies" to break the law, they will "close" his shop. This incident has brought up some pertinent questions about the current state of the rule of law in Namibia and the perils of taking the law into one's own hands.

#### **What is the Rule of Law?**

The notion of "Rule of Law" has its origins in the treaty of Magna Carta that was negotiated in 1215 between King John of England and a group of influential barons. By all accounts, King John was not a kind ruler. He would throw people in jail or starve them for the smallest of reasons, he took their wives and land, and he raised taxes as he pleased. Tired of the King's antics, the barons put an ultimatum to him: either to bring in some sweeping reforms to his rule, or to face civil war. The King reluctantly agreed to enact reforms and consequently the principles of the rule of law were established under the Magna Carta.

Two provisions under the Magna Carta that have stood the test of time are clauses 39 and 40. These stipulate that "No free man shall be seized, imprisoned, dispossessed, outlawed, exiled or ruined in any way, nor in any way proceeded against, except by the lawful judgement of his peers and the law of the land" and "To no one will we sell, to no one will we deny or delay right or justice."

Most importantly, the Magna Carta established the idea that under the rule of law, "no one is above the law", not even the King. Over the centuries the rule of law has developed into a universal and comprehensive list of rules that underpin the freedoms that societies living under constitutional democratic rule enjoy today. For example, the rule of law requires that all persons and organisations, including the government, are subject to and accountable to law. It also requires that the law must be clear, known and enforced. Under the rule of law, courts are independent and resolve disputes in a fair and public manner where all persons are presumed innocent until proven otherwise by a court. In addition, under the rule of law, no person shall be arbitrarily arrested, imprisoned, or deprived of their property. When a court metes out punishment, it must be done in line with due process that is proportionate to the offence. "Due process"

requires that investigation of a person for an alleged wrongdoing must be carried out in accordance with the law and by persons duly authorised for this purpose.

In terms of Article 1 of the Namibian Constitution, Namibia is founded on the principles of democracy, the rule of law and justice for all, where the power is vested in the people who exercise their sovereignty through the democratic institutions of the State. In simple terms, this means that Namibia is indirectly ruled by its people through the representatives that they elect every five years. The people of Namibia give these representative State institutions the mandate to enforce the law without fear or favour.

In essence this relationship is similar to a contractual agreement where the State is held accountable to its people and consistency in the application of the law is assured. Moreover, the separation of State power into three branches – namely the legislature (Parliament), the judiciary (the Courts) and the executive (the President and Cabinet) – ensures that the power of each of these branches is kept in check.

### **What happens if we take the law into our own hands?**

People take the law into their own hands for various reasons. For example, they may have lost trust in the institutions that are there to protect them, or it may be that the institutions that are supposed to protect the public are not doing their job. It may also happen that people think that the law is wrong or that adequate laws do not exist, and that they know what is actually right.

Unfortunately, history is replete with examples where mob justice and vigilante action have led to the death of innocent people, or where people have been denied an opportunity to seek justice for a wrong committed against them. For instance, lynching is a racist form of vigilante action that used to be a common practice in some of the southern states in the USA until the 1950s. Lynching typically involved actions by white supremacists, who would often kill someone by hanging, especially a black person, for an alleged offence without any legal trial. Quite often, the alleged offence would relate to allegations of sexual contact between black men and white women.

Another example reported a few years ago by *The Nation*, a Pakistani newspaper, involved a mob of about 400 people who attacked a Christian couple and set them on fire, alleging that they were involved in defiling a copy of the Holy Quran.

Closer to home, in July this year, supposed supporters of former South African President Jacob Zuma took the law into their own hands by looting and torching shopping centres across South Africa in protest against the jailing of the former President after he was handed a 15-month sentence for contempt of court. This incident led to the death of several people.

As diverse as these examples might be, there is one commonality among them – namely, that almost every time someone takes the law into their own hands, someone innocent dies or justice is denied. Differently put, taking the law into one's own hands could lead to injustices, or even to an effective end to law as a source of social order. This is because the person who purportedly metes out justice is most likely an interested party as opposed to an unbiased decision-maker. It is for this reason that our legal system provides that justice is best served by someone who is impartial, in the sense of having no direct interest in the outcome of the matter.

As mentioned earlier, the rule of law in Namibia is built on a constitutional democracy. This system allows us to actively participate in the improvement of our fundamental human rights. This can be done through using our rights to freedom of speech and by working with the government that we elected into power to change any rules that are unfair or unjust. If we are unhappy with the performance of our government representatives, it is our right to vote them out and put other persons into their places. At the

same time, because Namibia is governed by the rule of law, taking the law into one's own hands is often a crime in itself.

Taking matters into our own hands puts at risk the entire system of the rule of law and due process with its important checks and balances. If vigilante action is allowed to become the norm, this could plunge Namibia into a situation of chaos where the strong will crush the weak, and only the most merciless people will rise to the top.

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