

# Govt agrees to change contested research law



By Werner Menges

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**The minister of education must ask Namibia's parliament to repeal and replace several sections of the Science, Research and Technology Act that were the subject of a constitutional challenge in the High Court.**

This is in terms of a settlement agreement signed by lawyers representing the Legal Assistance Centre's Legal Assistance Trust, the company Free Press of Namibia, which is the publisher of The Namibian, the Institute for Public Policy Research (IPPR), the minister of education, the National Commission on Research, Science and Technology, the attorney general and the president on 30 October.

On a request from the parties, deputy judge president Hosea Angula has made the settlement agreement an order of the High Court.

With the agreement, a case against the president, education minister, the National Commission on Research, Science and Technology and the attorney general that the Legal

Assistance Trust, the Free Press of Namibia and the IPPR filed at the Windhoek High Court in March 2015 has now been settled.

The Legal Assistance Trust, the Free Press of Namibia and the IPPR were asking the court to strike the Research, Science and Technology Act of 2004 down as unconstitutional, or to strike down specific sections of the act and a number of regulations under the act as unconstitutional.

They claimed the act, which came into operation at the start of November 2011, is in conflict with the Constitution's protection of the right to free speech and expression and the freedom of the press, and infringes on the right to freedom of thought, conscience and belief and the freedom to practise any profession, occupation or trade.

They also claimed that the act, which compels research institutes and researchers to deliver their research material to the National Commission on Research, Science and Technology, interferes with the right to privacy of communication.

In an affidavit filed at the court, Legal Assistance Centre (LAC) director Toni Hancox claimed the act is "completely overbroad" and would affect not only institutions like the LAC, the IPPR and The Namibian, which in the normal course of their work carry out research, but would also hamper the activities of, for example, lawyers, doctors, architects and institutions of learning, due to "onerous requirements" laid down in the act and its regulations.

One of the regulations issued under the act and challenged as being unconstitutional states that the commission is the coordinating body for all research conducted in Namibia. In her affidavit, Hancox said this would include research that lawyers do on behalf of their clients, and research done by doctors for the treatment of their patients.

The same regulation also requires a research institute or researcher to apply for a permit or certificate to authorise them to carry out research.

Another regulation makes it a requirement that research "must be beneficial to Namibia" for a research institute or researcher to be registered with the commission.

The act states that no research institution may conduct any research in Namibia without being registered with the commission.

The questioned provisions in the act "are extremely onerous" and the LAC, The Namibian and the IPPR "are simply not in a position to comply with these requirements" to apply for a research permit every time they carry out research as part of their daily activities, Hancox stated.

The four respondents opposed the constitutional challenge, but informed the court earlier this year that they received legal advice to try to settle the matter.

In the settlement agreement, it has been agreed that the minister will within six months withdraw and replace, where appropriate, the regulations which the three applicants wanted to be struck down as unconstitutional.

It has also been agreed that the minister will within 12 months table a bill in parliament to repeal and replace, where appropriate, sections of the act that were alleged to be unconstitutional.

Those parts of the act include sections stating that the president is the patron of research, science and technology in Namibia and may give “general policy directives” to the commission, requiring research institutes and researchers to register with the commission before they may carry out research in the country, and requiring researchers to give information on their research and its outcome to the commission.

The parties involved in the litigation also agreed that the education minister should circulate to the three applicants a draft of the bill to amend the act for their consideration and input, at least four months before the end of the 12-month period within which the bill should be tabled in parliament.

If the bill is not tabled in parliament within 12 months and passed within 24 months, the applicants reserve their rights to again challenge the constitutionality of the act and its regulations, it was agreed as well.

The four respondents agreed to pay N\$30 000 as a contribution to the applicants’ legal costs.