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INFORMATION ABOUT NAMIBIA'S LAW

RULE OF LAW SERIES

Rule of Law Article #1 WHY THE RULE OF LAW MATTERS

Why should you care about a dry-sounding principle like the rule of law? Namibia, like a three-legged pot, is founded on three basic pillars: democracy, the rule of law and justice for all. So says the very first sentence of the very first article of the Namibian Constitution.

It may sound abstract, but if you are ever arrested for a crime you did not commit, or dismissed from a job unfairly, you are likely to develop a sudden and keen interest in the rule of law.

The rule of law means that everyone – all individuals and all institutions including judges, magistrates, government officials, the police and the army – must follow the Constitution and the law. No one is above the law.

The rule of law means that everyone must follow laws that are publicly known, fairly applied and enforced by independent courts. The rule of law preserves equality and ensures that no one can be singled out for vengeance or favouritism. The rule of law is what protects you from being locked up arbitrarily. The rule of law is what keeps life sufficiently orderly and predictable to allow for security and development.

We all use the concept of rules all the time, in many aspects of our lives. For example, imagine a soccer game where no one knew or followed the rules, or where the referee favoured one side over the other. It would be chaos. No one would want to play or watch.

Without the rule of law, people with the most money and power would be able to do what they wanted. Police and government officials and powerful companies, and their friends, could act as they please. This kind of society would be both unstable and unfair.

The rule of law means that the law applies to everyone in the same way, no matter who they know or how 'important' they think they are. People with money should not be able to buy their way out of trouble or into favour if the rule of law is being followed.

We are all equal under the law. There are no VIPs. If a country has corrupt officials or corrupt courts, the public might stop respecting the law altogether - which would be like chaos on the soccer field.

The rule of law also means that the laws of Namibia must be enacted through a fair and transparent process. This is why Parliament is open to the public, and why all statutes enacted by Parliament are published in a bulletin called the *Government Gazette*, which anyone can read.

The Ministry of Justice is in the process of establishing a new law-making procedure which will increase opportunities for public participation and make the entire process more transparent. This will help give meaning to the provision in the Namibian Constitution which says that all power vests in the people of Namibia, who exercise their sovereignty through the democratic institutions of the State. It will also advance the constitutional right of citizens “to participate in peaceful political activity intended to influence the composition and policies of the Government”. Public involvement ensures a meaningful democracy.

The rule of law also requires respect for basic human rights norms that have been accepted in democratic countries throughout the world – such as freedom of speech, freedom from torture, the right to human dignity and the right to a fair trial. Without protection for fundamental human rights, there can be no justice for all.

As you can see, democracy, rule of law and justice for all are interconnected concepts. Namibia as a three-legged pot cannot stand if any of its legs are broken.

The High Court of Namibia has stated: “The collapse of a rule of law in any country is the birth to anarchy. A rule of law is a cornerstone of the existence of any democratic government and should be proudly guarded and protected.”¹ According to the Supreme Court, where the rule of law has little or no application, “anarchy, conflict and chaos are certain to follow”.²

This is the first in a series of articles about the rule of law. The following articles will explore this principle in more detail, pointing to some problems and challenges which need attention to ensure that the rule-of-law leg of the Namibian pot stays strong.

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¹ *Sikunda v Government of the Republic of Namibia and Another* (2) 2001 NR 86 (HC); repeated in *Fire Tech Systems CC v Namibia Airports Co Ltd* 2016 (3) NR 802 (HC).

² *African Personnel Services (Pty) Ltd v Govt of the Republic of Namibia* 2009 (2) NR 596 (SC).