

# Introduction

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The independence of Namibia in 1990 was an important landmark on the changing political landscape of Africa. The process towards this independence in itself was a unique and irreversible transformation, resulting in a sovereign democratic nation state. The United Nations played a significant role in the transition period, while the negotiations that led to the final settlement were a really international process, involving the colonial power South Africa, but also Cuba, the Soviet Union and the so-called Eminent Persons Group from Canada, France, Germany, Great Britain, and the United States.

The Constitution of the new nation is also unique, and is considered to be one of the most modern worldwide. It includes a Bill of Rights, which is based on the Universal Declaration of Human Rights and protects all the basic civil and political rights.

A democratic constitution was, and is not, a totally new invention in Africa. However, what makes the Namibian case exceptional is that, for the past 18 years, Namibia has maintained a working democracy, based on the rule of law and human rights principles.

This publication focuses on major aspects and the current condition of the management of the rule of law and the observance of basic human rights in Namibia, and attempts to critically analyse the successes and failures.

**Sam Amoo and Isabella Skeffers** set the pace with an article on the rule of law in Namibia. The article looks at the Constitution and then considers Namibia's rule of law record by referring to certain rule-of-law benchmarks: the separation of powers, constitutional privileges, executive privilege, parallel legal systems, retroactive and discriminatory legislation, government accountability in court, and access to justice and legal representation – to mention but a few.

In the second article, **Sam Amoo** looks at the Constitution through the eyes of the courts. The author makes an interesting statement by making 1985 – five years prior to independence – the birth date of Namibian constitutionalism. In

other words, constitutional jurisprudence began with Proclamation R101 in 1985. The Proclamation provided for the powers of the Transitional Government of National Unity, a body established by the South African government, tasked with transforming the apartheid system in the then South West Africa to a democratic entity. The post-independence High and Supreme Courts of Namibia received powers expected in a constitutional democracy, such as the power to review legislation and even common law. Yet, with the limited freedom the South West Africa Supreme Court had, it had laid the foundations of constitutional jurisprudence for an independent Namibia.

**Manfred Hinz** analyses the role of traditional governance and African customary law in an independent Namibia in comparison with other southern African states. Hinz's analysis of traditional governance and customary law in southern Africa is based on both his academic research of the subject and his intense participation in the legal processes that dealt with the issue in post-independence Namibia and neighbouring states. He sees African constitutionalism as a new phase for customary law and traditional governance, where it can develop in the spirit of the new African constitutionalism. For Hinz, African constitutionalism and traditional governance do not contradict but rather complement each other – especially in Namibia.

**John Nakuta** writes in a slightly alternative tone. While acknowledging the place of second generation rights in Namibian constitutionalism, he bemoans the fact that economic and social rights are still the stepchildren of human rights in Namibia. And while he acknowledges the important role that non-governmental organisations (NGO) and the general non-governmental community play in the protection of rights, he also discusses NGOs' failures to deal with the pressing needs of minorities, the poorest of the poor, and the disenfranchised.

**Oliver Ruppel** looks at the legal framework for the protection of third-generation rights, with special reference to the environment. While Namibia has developed a strong constitutional and legal framework for the protection of third-generation rights, the author points to the recent Ramatex debacle as a symptomatic indication that Namibia still falls far short of the expectations of international human rights standards.

**John Walters**, the Ombudsman of the Republic of Namibia, writes on the execution of his constitutional human rights mandate. He highlights his paper

with references to some of the prominent cases investigated by his Office, and an account of the Ombudsman's human rights awareness campaign.

**Oliver Ruppel** expounds on the role, functions and activities of the Human Rights and Documentation Centre (HRDC) at the Faculty of Law at the University of Namibia. The article also looks at the UNESCO chair on Human Rights and Democracy, established at the HRDC in 1994 with UNESCO support.

**Nico Horn** looks at the way in which the Namibian courts and municipal legislation have enforced and implemented the principles of the United Nations treaties. He concludes that, although Namibia has done more than most African countries to localise UN instruments, there are still gaps in Namibian legislation that need attention.

**Francois-Xavier Bangamwabo** deals extensively with the implementation of civil and political rights in Namibia by considering the extent to which international obligations are reflected within the Namibian Constitution and other relevant legislation. Bangamwabo is certainly much more optimistic than Ruppel and Nakuta. His optimism is possibly the result of the fact that first-generation rights are explicitly protected in Chapter 3 of the Constitution, while second- and third-generation rights form part of government policy in Article 95 of the Constitution. As an afterthought, Bangamwabo looks at the Optional Protocol on the Involvement of Children in Armed Conflicts. He points out that the domestic framework of this lesser-known treaty needs more attention.

**Salome Chomba** approaches the problem of implementation of the law in general, by looking at the expectations of the treaty bodies responsible for the monitoring of implementation of the various human rights treaties in member states. She concentrates on the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention against Torture and other Acts of Cruel, Degrading and Inhumane Treatment or Punishment (CAT), and the lesser-known Optional Protocol on the Sale of Children (OPSC). In each case, she concentrates on Namibia's country reports and the shortcomings in Namibian legislation and conduct as pointed out by the respective treaty bodies.

**Peter Shivute**, Chief Justice of the Republic of Namibia, has the last word, with an overview of the rule of law in Africa. He points to the importance of the rule of law as an instrument of development. Shivute emphasises the importance of

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the different role players in creating a just society based on the rule of law. While an independent judiciary is a *conditio sine qua non*, it must be complemented by a strong civil society and a well-organised independent legal profession.

In general, this publication has brought together 11 articles advocating for, celebrating, and critically analysing the rule of law and human rights in Namibia. These articles are sure to inspire all the stakeholders from the government, the judiciary, civil society, and the ordinary concerned citizen, to strive for a free, prosperous society and a justice state based on the rule of law.

Please note that any final errors or omissions that may remain are the responsibility of the individual authors.