

Foreword

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The doctrine of the separation of powers is largely credited to the French jurist Montesquieu, who held that a democratic system of governance, where the will of the people reigns supreme, should be entrenched. In other words, a situation where power is concentrated in any one entity should be avoided. He therefore propounded that the state should be divided into three branches, namely the legislature, judiciary and the executive. Each branch would then have its own role, a veritable division of labour as it were. Attendant to that system of separation of powers are the necessary checks and balances among the three branches. The system is commendable; while dividing state power into three distinct branches, it fetters the power of each branch through necessary power control mechanisms.

In terms of the separation of powers, the executive is responsible for making government policies; the legislature is the law-making branch, while the judiciary is responsible for interpreting the laws made by the legislature. The existence of an independent and impartial courts and tribunal is essential to any judicial system that seeks to guarantee the enforcement and protection of human rights.

The framers of the Namibian Constitution, conscious of the benefits of a state based on the Montesquieu model of governance, inserted in the Constitution Sub-articles (2) and (3) of Article 1, which respectively state the following:

- (2) *All power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State.*
- (3) *The main organs of the State shall be the Executive, the Legislature and the Judiciary.*

Furthermore, the independence of the Namibian judiciary is specifically protected by Article 78 of the Constitution in very broad terms, which unambiguously include protection from interference by members of the executive or legislative branches of state or any other person.

The book *The Independence of the Judiciary in Namibia* is an important contribution to this topic, about which there has hitherto not been much public debate in the country. The publication examines some of the nuances that the principle of independence of the judiciary can take. The treatment of the subject

is specific as it highlights the Namibian judiciary by providing both a historical setting and analysing the scope and extent of its independence.

I have no doubt that, because of its quality of scholarship, the book will find greater appeal to legal practitioners, academics and researchers. Students, policy-makers, the business community and the general public will also find it a useful reference.

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