

fundamental rights and freedoms, where it considers such an award to be appropriate in the circumstances of particular cases.

## **CHAPTER 4**

### **Public Emergency, State of National Defence and Martial Law**

#### **Article 26 State of Emergency, State of National Defence and Martial Law**

- (1) At a time of national disaster or during a state of national defence or public emergency threatening the life of the nation or the constitutional order, the President may by Proclamation in the Gazette declare that a state of emergency exists in Namibia or any part thereof.
- (2) A declaration under Sub-Article (1) hereof, if not sooner revoked, shall cease to have effect:
  - (a) in the case of a declaration made when the National Assembly is sitting or has been summoned to meet, at the expiration of a period of seven (7) days after publication of the declaration;
  - or
  - (b) in any other case; at the expiration of a period of thirty (30) days after publication of the declaration unless before the expiration of that period, it is approved by a resolution passed by the National Assembly by a two-thirds majority of all its members. Subject to the provisions of Sub-Article (4) hereof, a declaration approved by a resolution of the National Assembly under Sub-Article (2) hereof shall continue to be in force until the expiration of a period of six (6) months after being so approved or until such earlier date as may be specified in the resolution: provided that the National Assembly may, by resolution by a two-thirds majority of all its members, extend its approval of the declaration for periods of not more than six (6) months at a time. The National Assembly may by resolution at any time revoke a declaration approved by it in terms of this Article.

- (a) During a state of emergency in terms of this Article or when a state of national defence prevails, the President shall have the power by Proclamation to make such regulations as in his or her opinion are necessary for the protection of national security, public safety and the maintenance of law and order.
  - (b) The powers of the President to make such regulations shall include the power to suspend the operation of any rule of the common law or statute or any fundamental right or freedom protected by this Constitution, for such period and subject to such conditions as are reasonably justifiable for the purpose of dealing with the situation which has given rise to the emergency: provided that nothing in this Sub-Article shall enable the President to act contrary to the provisions of Article 24 hereof.
  - (c) Where any regulation made under Sub-Article (b) hereof provides for detention without trial, provision shall also be made for an Advisory Board, to be appointed by the President on the recommendation of the Judicial Service Commission, and consisting of no more than five (5) persons, of whom no fewer than three (3) persons shall be Judges of the Supreme Court or the High Court or qualified to be such. The Advisory Board shall perform the function set out in Article 24(2)(c) hereof.
- (6) Any regulations made by the President pursuant to the provisions of Sub-Article (5) hereof shall cease to have legal force if they have not been approved by a resolution of the National Assembly within fourteen (14) days from the date when the National Assembly first sits in session after the date of the commencement of any such regulations.
- (7) The President shall have the power to proclaim or terminate martial law. Martial law may be proclaimed only when a state of national defence involving another country exists or when civil war prevails in Namibia: provided that any proclamation of martial law shall cease to be valid if it is not approved within a reasonable time by a resolution passed by a two-thirds majority of all the members of the National Assembly.