

# Introduction

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*Independence of the judiciary* is an important paradigm and a loaded phrase. It stems from the doctrine of the separation of state powers into three branches, namely the legislature, the executive and the judiciary. Having state power divided into three distinct branches implies a meaningful division of labour and, more importantly, a mechanism of power control through checks and balances is in place to prevent absolutist and totalitarian regimes. Legal theorists and practitioners are in agreement that an independent judiciary is the foundation of the rule of law, and an important and indispensable building block – or even cornerstone – of a justice and democratic state.

This book takes the importance of an independent judiciary as a given, and does not intend to defend or debate the issue. Rather, cognisance is taken of the constitutional and other relevant statutory provisions to ensure an independent judiciary in Namibia. The commendable pioneering work of the Namibian judiciary in protecting the fundamental rights and freedoms of the Namibian people is also recognised.

Experiences in other countries in all parts of the world have shown that a good legal framework and an honourable bench are a necessary but not sufficient condition for an independent judiciary. There are heterogeneous factors that can have an effect on such independence, including historically or culturally inherited practices, the socio-economic and ethnic contexts of judicial officers, as well as the procedure of appointment and tenure of office of those that are tasked with upholding the law.

This book offers an insight into the inner life of Namibia's judicial system: its structure and the mechanisms inherent in the system to ensure the independence of the judiciary. It discusses the implications and limitations of an independent judiciary in the country, and debates the independence and uniqueness of the Namibian prosecutorial authority. A section on the independence of the Lower Courts concentrates on magistrates' courts and traditional courts. In view of the enactment of the new Labour Act, special attention will be given to the labour courts in a forthcoming publication. The superior Courts – the High Court and the Supreme Court – and their independence are deliberated upon, as is the system of appointing judges through the Judicial Service Commission. The role of the executive branch of the state in safeguarding the independence of the

judiciary in Namibia is critically scrutinised as well. Moreover, a comparative study on the endangered independence of some international tribunals versus the Namibian judiciary serves to alert the reader to take nothing for granted.

Although not being immediate parts of the judiciary, the legal fraternity and the Office of the Ombudsman play an important role in the context of the judiciary; hence, their independence is also discussed. In addition, to ensure that Namibia has a judiciary that acts professionally and independently, the current system of legal education in Namibia is analysed and recommendations are made on how it can be improved. The chapter questions whether a culture of academic freedom exists, and whether independent and critical thinking and decision-making have been nurtured among judicial officers.

These are all significant questions in determining the real independence of the judiciary. In their quest, the contributors' intention has not been to minimise or deny the tremendous efforts and achievements of the judiciary in Namibia; rather, these studies aim to contribute to sustaining its independence.

Nonetheless, it is important to be critical of the status quo at all times in order to guard against potential dangers that threaten the judiciary's independence in the long term. Too many respected judiciaries have sunk into mediocrity because their independence was eroded over time. Thus, respect for the Namibian judiciary – as amply illustrated in this volume – demands that we take a strong stand against anything that might compromise its independence. This book is meant to challenge our thinking, expand our understanding, and consolidate our commitment to the independence of the judiciary in Namibia.

Any final errors of fact or interpretation remain the sole responsibility of the various authors.

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