

Legal education and academic freedom in Namibia

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Introduction

Academic freedom and *education* are concepts that are increasingly interlinked and finding wider significance. In Namibia, academic freedom is afforded the status of a fundamental freedom by the Namibian Constitution in terms of Article 21(1)(b), which states the following:

All persons shall have the right to:

(a) ...

(b) *freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;*

However, the question is what scope of application academic freedom actually enjoys in Namibia. As yet, no petition has reached any Namibian court regarding the interpretation of academic freedom in the country. If such a petition were ever to reach the Namibian houses of justice, it would be interesting to see how a bench would deal with the matter. For now, however, one can only speculate on the extent of the concept's application with reference to the structures and legislation which govern academia in the country.

Of particular interest in this paper is how academic freedom relates to legal education in Namibia, the latter being a relatively new concept in the independent state, following the inception of the Law Faculty at the University of Namibia (UNAM) in 1994.

With Namibia already having had its first UNAM law graduate called to the High Court bench, with surely more to follow, this paper ultimately questions whether the legal education system in the country allows for and nurtures a culture of independent and critical thinking and decision-making.

Legal education and academic freedom: A conceptual excursion

Any exposition of the status quo of academic freedom in legal education in Namibia should essentially begin with a consideration of the underpinnings of two principal concepts, *legal education* and *academic freedom*. An overriding consideration in this quest is the important role academic institutions play in

shaping and influencing ideas and information. Therefore, it is essential in a faculty such as law for academic freedom to be guarded at all costs.

Academic freedom is a concept which, in its most modern form, originated in Germany, with Alexander von Humboldt being credited with being the force behind its formulation during the 18th and 19th centuries.¹ In German, the concept is referred to as *Lehrfreiheit* (“freedom to teach”) and *Lernfreiheit* (“freedom to learn”), both of which are now universally recognised and accepted principles. Essentially, the concept of academic freedom from the point of view of an academic institution holds that any of its faculties should be free to teach, devoid of any influence from management, government, donors, or other third parties. These circumstances do not obtain in cases like Ethiopia, where, if scholars –²

... attempt to teach, learn or communicate ideas or facts that are inconvenient to the regime, they will likely find themselves targeted for public vilification, job loss, harassment or even worse.

Interpretation of academic freedom in Namibia

Academic freedom is an obscure concept in Namibia, as it is not certain how it is interpreted or applied by role players. A case in point occurred on 22 August 2007, when a well-known Zimbabwean academic was scheduled to deliver a critical lecture on the state of affairs in his country. At the last minute, UNAM withdrew its consent for the lecture to be held on campus, without giving reasons for its decision. The lecture was jointly organised by UNAM and a local NGO. The latter raised its concern for academic freedom and freedom of expression in the country in general, and at UNAM in particular. It seems the NGO had acted in good faith in organising the lecture with UNAM, and at no stage before the scholar’s arrival had the university expressed any problem with the speaker or the topic, which was “Landscapes of poverty: Daily life and social crisis in Zimbabwe”. In another recent incident, under the same circumstances as the UNAM lecture, the Polytechnic of Namibia withdrew permission for a press conference to be held on its campus, i.e. without previously showing any objection to either the speaker or the topic, but cancelling at the last minute without providing reasons for doing so. The press conference, dealing with the discovery of mass graves in northern Namibia, was organised by a local human rights organisation. The cancellation of the venues for these two critical events

1 See www.wilhelm-von-humboldt.com.

2 For a discussion on the state of academic freedom in Ethiopian tertiary institutions, see Alemayehu, MG. 2008 [online]. *Tyranny in the academy*. Available at http://ethiopolitics.com/news_1/20080204200.html last accessed 3 November 2008.

gives an indication of the status or importance of academic freedom and freedom of expression in independent academic institutions in Namibia.

Another example of the interpretation that academic freedom is subject to in Namibia concerns a recent debate sparked at UNAM after two staff members were held in violation of university staff policy when they chose to hold political office while simultaneously serving as UNAM employees. In this regard, clause 3.1.13 of the UNAM Staff Terms and Conditions of Employment holds as follows:

A staff member may –

- (a) be a member of a legal political party;*
- (b) attend a legal public political party meeting and take part in the discussion, but may not preside or act as a speaker at such meeting;*
- (c) not conduct his/her political activities in such a way that he/she becomes an embarrassment to the University;*
- (d) not conduct party politics on campus or use bodies, meetings, etc. to promote specific political or [politically] orientated aims;*
- (e) not compile or deliver public addresses to further or prejudice the interests of a political party.*

Furthermore, clause 3.1.17 provides that –³

... council underwrites the principle of academic freedom subject to the provisions of the Act.

The question being asked by some is whether UNAM's policy on political participation interferes with the academic freedom of its staff members. However, it is submitted that the opposite contention could not be truer: if UNAM did *not* have such strong policies against political participation by its staff members, it does not take much imagination to conceive the possible threats to the independence of the institution and, eventually, the potential tarnishing of the academic freedom of staff and students alike. For example, one can only imagine the possible interference by political parties if UNAM staff were allowed to hold political office. After all, the lecture hall is meant for imparting knowledge, not political rallying.

Fundamental freedoms: The applicable constitutional provisions

As stated earlier in the quoted Article 21(1)(b), academic freedom is a constitutionally recognised freedom in Namibia. Notably, academic freedom has

3 The *Act* referred to here is the University of Namibia Act, 1992 (No. 18 of 1992), which makes no mention of academic freedom.

been included in the Article with freedom of thought, conscience and belief, while the freedom to practice any religion and to manifest such practice is contained as a separate freedom.⁴ The Namibian Constitution is only as old as the country's young democracy, established on independence in 1990. For this reason, many a petition has been brought to the Supreme Court calling for interpretation of some or other constitutional provision. Most often, such requests involve Chapter 3, which deals with fundamental human rights and freedoms.⁵

While a plethora of interpretations of the fundamental freedoms contained in the Constitution has already been offered by the courts to date, the question of academic freedom has not yet been presented to the courts. Therefore, for the time being, an interpretation of *academic freedom*, as contained in the Constitution, has to be considered with the general interpretation the courts have attached to fundamental freedoms.

While Article 21(1) sets out the relevant fundamental freedoms, Article 21(2) provides that –

The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Further, the limitation clause (Article 22) provides that any law aimed at limiting any fundamental right or freedom is required to –

- (a) *be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;*
- (b) *specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest.*

4 Article 21(1)(c) contains the freedom to practice any religion. Comparatively, Article 18 in the International Covenant on Civil and Political Rights provides that –
[e]veryone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

5 For an overview of Namibia's Constitutional jurisprudence since independence, see Amoo, S. 2008. "The constitutional jurisprudential development in Namibia since 1985". In Horn, N & Bösl, A. *Human rights and the rule of law in Namibia*. Windhoek: Macmillan Namibia, p 39.

Finally, Article 25(1) lays down concrete guidelines as to the enforcement of fundamental rights and freedoms, in terms whereof –

... Parliament or any subordinate legislative authority shall not make any law, and the Executive and the agencies of Government shall not take any action which abolishes or abridges the fundamental rights and freedoms conferred by this Chapter, and any law or action in contravention thereof shall to the extent of the contravention be invalid: ...

Furthermore, Article 25(2) lays down the rights an aggrieved person has to redress an alleged unlawful infringement of or threat to a fundamental right or freedom. The rights of the aggrieved person include access to a competent court, and the Ombudsman.

The legal education system in Namibia

The undergraduate study programme

Legal education in Namibia essentially falls within the ambit of only one tertiary institution: the University of Namibia. The undergraduate course is designed to allow students to obtain two bachelor's degrees⁶ within a period of five years. The LLB and BProc⁷ degrees qualify a graduate for entry to the Legal Practitioners' Training Course, and so become registered as a legal practitioner. As from 2007, the course has been offered part-time as well, which entails a longer study period.

The LLB is based on the theoretical aspects of different areas of the law, with the main focus of the subjects being Namibian law. The problem here is that the teaching material is largely based on South African literature, given the historical and legal ties between the two countries. Furthermore, students are expected to complete one paper and one test per semester for each subject. At the end of each semester, a final examination is written, which determines whether the student has a sufficient grasp of the subject to enable him/her to advance to the next stage of studies.

It is an unfortunate state of affairs that Namibia does not possess a wealth of academics who are dedicated full-time to academia. This is especially the case in the legal field.

6 A three-year Baccalareus Juris (B Juris) degree, followed by a two-year Legum Baccalareus (LLB). The law Faculty also offers a Master's degree (Legum Magister/LLM), which is done through research only.

7 This degree was offered in South Africa prior to the introduction of the LLB; it is not offered at UNAM.

At present, law students at UNAM are taught by full-time academic staff as well as lawyers in full-time practice. There has been some debate as to whether this set-up is in line with UNAM Regulations on academic staff members engaging in full-time professions while in UNAM's employ. This practice undoubtedly also casts a shadow over how dedicated a lecturer would be if his main source of income is from outside the university walls.

Nonetheless, the quality of education received by UNAM's law students is regarded, in SADC at least, as being good; for example, graduates who further their studies in South Africa are able to function well at leading universities there. However, it is submitted that there is definitely room for some improvement and some suggestions to this end will be made later in this paper.

Practical legal training in Namibia

Practical legal training is the second step, in most cases, in one's legal education to become a fully-fledged member of the legal fraternity. In Namibia, such practical training is mostly aimed at would-be legal practitioners. Before the creation of the Justice Training Centre in Namibia and the concomitant system of legal education, candidate legal practitioners were expected to work as an articulated clerk for a law firm for a period of two years, after which s/he would write an examination for admission as a legal practitioner.

Training for legal practitioners

The Justice Training Centre

The Justice Training Centre (JTC) is a UNAM Department. According to section 16 of the Legal Practitioners Act, 1995 (No. 15 of 1995), the JTC is required to provide a postgraduate course for the training of candidate legal practitioners. The course is followed by a mandatory qualifying examination under the control of the Board for Legal Education.⁸ After successful completion of the legal practitioners' course and practical training at a law firm (known as an *attachment* to such firm), a candidate legal practitioner may apply to the High Court of Namibia to be admitted to the roll of legal practitioners.

Section 5(1) of the Legal Practitioners Amendment Act, 2002 (No. 10 of 2002) contains a contentious issue for the admittance of legal practitioners, because it allows persons with a certain amount of experience (five years) in government

8 The Board for Legal Education is created by section 8 of the Legal Practitioners Act.

to be admitted as legal practitioners without having gone through the JTC.⁹ The amendment has been viewed with some suspicion as having been promulgated to allow one particular person to be admitted as a legal practitioner, i.e. that the amendment amounted to ad hominem legislation. In fact, the Law Society of Namibia and the Namibia Law Association challenged the constitutionality of the amendment in *Ekandjo-Imalwa v The Law Society of Namibia and Another* as well as in *The Law Society of Namibia and Another v The Attorney-General of the Republic of Namibia and Others*.¹⁰ In casu, Acting Judge Du Plessis was faced with several questions to decide on, most importantly whether the amendment was in conflict with Article 88(1) of the Constitution, which sets out the requirements of appointment for Prosecutor-General, including the following:

No person shall be eligible for appointment as Prosecutor-General unless such person:

- (a) *possesses legal qualifications that would entitle him or her to practise in all the Courts of Namibia; ...*

After a consideration of all the facts and arguments before it, the court decided that the amendment did in fact pass the constitutional test, and that it was not ad hominem legislation because the amendment had been introduced into Parliament before new candidates had been considered for the Prosecutor-General's post (which requires the candidate to be an admitted legal practitioner).

⁹ Section 5(1) of the Amendment Act provides as follows:

[A] person shall be duly qualified for the purposes of s 4(1) if – ...

- (cA) *he or she holds a degree in law from the University of Namibia or a degree or equivalent qualification in law from a university or a comparable educational institution outside Namibia which has been prescribed by the Minister under subsection (4)(a) or (b) and who has been issued with a certificate –*

- (i) *by the Minister, after consultation with the Board for Legal Education, stating that he or she has for a continuous period of five years, and to the satisfaction of the Minister, performed duties in the service of the State as –*

- (aa) *a magistrate appointed under section 9 of the Magistrates' Courts Act, 1944 (Act 32 of 1944); or*

- (bb) *Director of Legal Aid or legal aid council appointed under section 3 of the Legal Aid Act, 1990 (Act No. 29 of 1990);*
or

- (ii) *by the Attorney-General, after consultation with the Board for Legal Education, stating that he or she has for a continuous period of five years, and to the satisfaction of the Attorney-General, performed duties in the service of the State as a prosecutor in the office of the Prosecutor-General ...*

¹⁰ 2003 NR 123.

Content of the postgraduate training course

In the legal practitioners' course, candidate legal practitioners are expected to attend lectures for 11 subjects¹¹ in total. For the most part, the lectures are of a very theoretical nature. They are basically a refresher course, particularly for those who did their undergraduate studies in Namibia. Some of the subjects offered are crucial to any legal training, namely legal drafting, civil and criminal procedure, drafting contracts, and the administration of estates. Students are taken through the salient issues in each subject for an effective period of one week, with each lecture lasting 90 minutes. As with the undergraduate programme, students are expected to write an assignment for each subject.

The lecturers at the JTC are mostly legal practitioners in full-time practice. This seems to be the only requirement for lecturing at JTC, as most of the nine current lecturers are not senior legal practitioners. It is not suggested here that this fact diminishes the quality of instruction received by the candidates, but it cannot be disputed that the experience of a practitioner who has been in the business for 20 years, for example, is more valuable in practical training than that of someone who has been practising law for only three years.

The attachment

A candidate legal practitioner is required to be attached to a legal firm for two years in order to qualify for admission to practice law professionally. The attachment has to be completed either during the course of his/her postgraduate studies or, where the candidate has already passed the qualifying examination, for a continuous period of six months.¹² The rationale is that, during this period of attachment, the student is expected to be exposed to the practical side of the profession.

The Board provides each candidate with what is known as a *Right of Appearance*, which allows his/her to appear before a magistrate's court. The certificate, if utilised effectively, would allow a candidate to gain a valuable understanding of the workings of the Lower Courts, which is where most Namibians have their first point of contact with the justice system.

11 These currently include Constitutional Law; Criminal Practice and Procedure in the Namibian Courts; Administration of Estates; Practice and Procedure relating to Commercial Transactions and the Drafting of Contracts; Practice of Labour Law and Alternative Dispute Resolution; Professional Ethics and Conduct, and Techniques in Litigation, including Salient Rules of Evidence; Motor Accident Law and Motor Vehicle Accident Claims; Law of Insolvency and Trusts; Civil Practice and Procedure; Wills; Legal Drafting; and Practical Bookkeeping and Accounts.

12 Section 5(2), Legal Practitioners Act.

The value or success of each attachment essentially depends on the legal practice in question. The candidate obtains instructions from his/her principal, i.e. the legal practitioner responsible for the candidate. However, a principal may very well only assign administrative duties and no practical legal work to a candidate. Another consideration is that not all practices concentrate on the same areas of the law. Thus, a candidate legal practitioner may receive practical training in a limited number of areas or even none at all – depending on the principal. What is worrying about this system is that the Board has little oversight over a candidate's work during an attachment. Granted, by studying the candidate's diary, the Board has to be satisfied that s/he has been sufficiently exposed during the time of attachment. However, as with most control mechanisms, this is open to abuse in a number of ways, as it is certainly very difficult to verify the accuracy of each and every candidate's diary presented to the Board.

The worst-case scenario would be where a candidate legal practitioner successfully passes the qualifying examination, and the Board is satisfied with his/her diary. The person is admitted as a professional legal practitioner, but s/he was only exposed to a repetition of what was already covered in the undergraduate programme. This means the practitioner has very little if any conception of the practical workings of the law.

One could argue that such a person would have ample opportunity to gain experience once s/he is in professional practice. It is submitted that this is a potentially irresponsible argument. The day the candidate is admitted and recognised as a legal practitioner, it becomes a matter of justice. What needs to be remembered is that procedural justice is just as imperative as substantive justice. An error in judgment regarding the administration of justice could mean the difference between a client receiving judgment or not, for example. It is not suggested here that justice training could be so all-encompassing as to provide a candidate with holistic practical experience, but it is contended that a shift in focus (possibly a shift in structure) of the postgraduate course could provide a better practical foundation to aspiring legal practitioners.

Training for other judicial officers: Prosecutors and magistrates

The training of judicial officers in Namibia is a contentious issue, especially when it comes to magistrates and prosecutors. Prosecutors need a minimum of a B Juris degree to be admitted to the legal profession. This degree, which UNAM offers, attempts to provide a solid theoretical foundation of the law for persons who choose not to follow up the degree with an LLB. Therefore, a prosecutor entering the profession at least has some basic knowledge of the law. However,

there is not really a strong emphasis on practical training: this is mainly left to practice. In practice, the Office of the Prosecutor-General annually offers new prosecution recruits an induction course, which introduces new staff to relevant legislation, case law, etc. In essence, the first day a new prosecutor enters his/her office is the day s/he has to take control of a courtroom, without any assistance. This is a less than ideal situation. This failure to effectively train prosecutors may be a contributing factor to some of the problems which are plaguing the Lower Courts system.

The training of magistrates is another area which is not ideal. Firstly, the requirements for being eligible as a magistrate are currently set out in section 14 of the Magistrates Act, 2003 (No. 3 of 2003), as follows:

Subject to section 29(2), a person who immediately before the date of commencement of this section did not hold a substantive appointment as magistrate is not qualified to be appointed as a magistrate under this Act unless –

- (a) such person –*
 - (i) is a legal practitioner who has practised as such for at least two years; or*
 - (ii) has passed in Namibia any examination in law declared by the Commission [The Magistrates Commission] in general or in any particular case to be a qualification of a satisfactory standard of professional education for the appointment of a person as magistrate; or*
- (b) such person has outside Namibia in a country which is a member of the Commonwealth passed any examination in law which is of a standard not lower than the minimum qualification required by that country for the appointment of a person as magistrate; or*
- (c) such person holds a diploma or degree in law obtained in collaboration or association with the United Nations or any organ or agency thereof, and which is generally directed to the education or training of magistrates; or*
- (d) such person has outside Namibia or any other country which is a member of the Commonwealth passed any examination in law which is considered by the Commission to be a qualification of a satisfactory standard of professional education for the appointment of a person as magistrate.*

However, the Magistrates Act entered into force after independence, i.e. at a time when many of the country's magistrates had already been appointed and these requirements were not applicable. Although a discussion on the appointment and qualification requirements for magistrates is beyond the scope of this paper, the requirements stated in the Act serve as an indication of the education or training that is expected to be provided to magistrates.

As far as the practical training of magistrates goes, the JTC's mandate includes –¹³

... pre-service (induction) and in-service (capacity[-]building) training courses for magistrates, interpreters, court clerks, police, defense, immigration, prison services and other law administrative and enforcement personnel.

However, this course has been dormant since 2000.¹⁴ Therefore, apart from some ad hoc workshops and training opportunities – that were not given to all magistrates, there is no set training programme specifically designed for magistrates. Thus, the prosecution and defence may appear before magistrates who are not competent to hear the matter before them due to one of two reasons: a lack of knowledge of the substantive law, or insufficient practical experience.

A comparative example

It is conceded that each country has its own needs and that an exact duplicate of another system would not serve any purpose. In addition, although legal education systems over the world are as diverse as the number of countries and different legal systems in it, valuable examples may be drawn from some of these systems. Namibia's historical ties with South Africa allow the latter to be used as a reference point for Namibia in the discussion that follows.

Legal education in South Africa

Although it is imperative for Namibia to move away from duplicating South Africa's legal system, one cannot deny that there are valuable lessons or examples to be obtained from our neighbour's efforts. Learning from these efforts will only be successful if the conditions that make Namibia different are kept in mind at all times.

South Africa has a total of 21 law faculties at various academic institutions. For the most part, the undergraduate programmes are quite similar to those offered in Namibia as far as course content is concerned. One of the principal differences between the two countries is that students studying law in South Africa have the opportunity to specialise in elective subjects. Namibian law students do not have such choices.

¹³ See http://www.unam.na/centres/jtc/jtc_index.html.

¹⁴ According to the JTC records, a three-month course was only offered between 1998 to 2000.

Practical legal education in South Africa warrants a closer look as well, in order to consider its merits. The Law Society of South Africa runs legal training in that country through its Schools for Legal Practice. These are established in accordance with the South African Attorneys Act, 1979 (No. 53 of 1979). According to the Act, any person who wishes to apply for admission as an attorney is obliged to complete a period of at least two years as an articled clerk at a recognised law firm, in addition to completing a course of vocational training. If a candidate produces a certificate obtained from a School of Legal Practice, s/he is exempted from having to do a two-year articled clerkship and only has to do it for one year.

This standard requirement of two years of articled clerkship allows the candidate to be exposed to as wide a spectrum of the law as possible. Notably, the system was used in Namibia before the JTC was established. The South African system was criticised as being inaccessible to aspiring black lawyers in Namibia: historically, there were no black law firms, so it was difficult for black candidate legal practitioners to be attached to or be employed by a law firm prior to independence. Obviously, this time has passed, and a number black law firms operate in Namibia.

Thus, the question which presents itself is this: Does the justification for doing away with the two-year article system still subsist? Alternatively, does the current JTC system do justice to the requirement of practical legal training for candidate legal practitioners? It is conceded that there is no foolproof way of determining which system works better – except, of course, for directly correlating experience with time of exposure to legal practice. In other words, it is conceivable that a person who does a practical attachment for two years is more experienced than a person who does it for six months.

Recommendations

The question which flows from everything that has been said about the legal education system in Namibia, keeping in mind the issue of academic freedom is this: Does the system allow for and/or produce persons who are sufficiently educated and trained to enable them to make informed, sufficiently critical, independent decisions when practising law – whether it be on the bench as a judge or magistrate, defence counsel or prosecuting on behalf of the state? It is contended here that, although academic freedom is guaranteed on paper, certain conditions persist which possibly encroach on that freedom, and which could ultimately result in a judiciary which is not as competent as it should be. For

this reason, the following recommendations are submitted, which are largely aimed at providing a more practical foundation for legal education at UNAM and providing judicial officers with better skills through a structured training process.

Recommendation 1: Introduce more practical subjects to the undergraduate programme; alternatively, introduce more practical means of assessment to existing subjects

Undoubtedly, a fair amount of students use their B Juris degrees to either sit on the bench as magistrates or to prosecute. Since the B Juris is a sufficient condition for a graduate to prosecute and even qualify as a magistrate, UNAM should assume some responsibility for equipping students with some practical skills. For example, the undergraduate programme could contain a court orientation course. It would also be helpful to make moot courts a more permanent feature in the curriculum. Currently, the Faculty only has one local moot court, in which all students are expected to participate (in Criminal Procedure). The international moot courts¹⁵ are not compulsory, however.

Introducing additional practical means of assessment is especially important for students in that it would encourage them to think more critically about situations they may face in practice. In addition, it would foster a sense of confidence and independence in the students because they would get to know at least the basic structures and duties required of all role players in a court of law.

Recommendation 2: Restructure the JTC programme

It has become clear that the JTC programme needs to undergo serious restructuring in order to provide a better foundation for candidate legal practitioners entering the profession. What is not so clear is how best to do this.

The following are some recommended options:

15 UNAM students participate in the African Human Rights Moot Court Competition and the Phillip Jessup International Law Moot Court Competition on a purely voluntary basis. Indeed, students have to raise their own funds to participate, especially as regards the Jessup Competition, while the African Competition is sponsored by the University of Pretoria. Generally, encouragement by the UNAM Law Faculty for students to participate in these competitions is very limited. Although the reason for this is unclear, it is probably related to a question of finances.

- **Option 1 – Return to the previous two-year articulated clerk system (two-year attachment followed by a Board examination):**

As stated earlier, the original reason for discontinuing the articulated clerk system is no longer valid. There are now many more law firms in operation that could take in candidate legal practitioners. However, the JTC programme admits increasing numbers of students each year. Consequently, law firms in Windhoek are saturated with candidates, meaning that some cannot find an attachment. The two-year articulated clerk system would be more useful in this context, as candidates could do their articles anywhere in Namibia, without having to worry about attending classes in Windhoek at the JTC. In other words, the articulated clerk system would be more accessible than the current JTC system.

- **Option 2 – Effectively use current structures, i.e. the Legal Aid Clinic:**

The Legal Aid Clinic was established as a project of UNAM's Law Faculty in order to expose undergraduate law students to community work. As good as the idea was, however, it does not seem to be working in practice. Students generally do not get an opportunity to do any community work, as the Clinic is not really well known at community level, probably due to a lack of proper advertising. That being said, the Clinic might nonetheless provide a good platform for candidate legal practitioners who cannot find an attachment at a law firm. If effectively advertised, the Clinic could offer an alternative means of attachment for some of the candidates. To achieve this, the capacity of Clinic should be extended to accommodate all candidates, unless a schedule is worked out to have the candidates come in on a shift basis. This is an opportunity for Option 3.

- **Option 3 – Provide a more holistic form of attachment:**

Not all legal practitioners intend to practise law at a private firm. Some might venture into alternative avenues, including working for the state in prosecution or even on the bench. It would be quite advantageous, therefore, if the attachment could be done in phases. In other words, within a two-year period, candidates could assume attachments with different stakeholders such as a private legal practice, a magistrate's court, or a judge. This would closely resemble the system currently practised in Germany. The benefits of such a system would be twofold:

firstly, candidates would be exposed to all possible angles of the law and thereby gain a greater understanding of the workings of the justice system; and secondly, the justice system (especially the state) would benefit from having a constant flow of law graduates to assist in the administration of justice, without necessarily having to pay high salaries for such assistance.

Recommendation 3: Improve training for judicial officers (prosecutors and magistrates)

As noted earlier, the academic and practical training of magistrates and prosecutors currently leaves much to be desired. Not only does the lack of practical training compromise those who enter the magistracy, when it is offered, it comes too late. Therefore, it is imperative to provide would-be magistrates and prosecutors with continuous, systematic training on a structured basis, at an institution that is sufficiently staffed and resourced. This is ultimately an issue of national importance, as it undoubtedly affects any person's rights to a fair trial when s/he comes before an incompetent or grossly inexperienced judicial officer.

Conclusion

It is imperative for the rule of law in general and for the independence of the judiciary in particular that there is an active, ongoing and critical evaluation of the legal system and all its ancillary systems. More importantly, such evaluation needs to be done in a holistic manner. The legal education system, being such an ancillary system, forms an inseparable part of the bigger legal picture: it ultimately produces the judges, magistrates, prosecutors, the defenders of the law, and protectors of society. For this reason, it is important that a system in which academic freedom is nurtured should be encouraged in order to produce independent, free-thinking jurists who make decisions that are well-argued, reasoned and justified. Thus, high educational standards, which include both theoretical and practical training, are an indispensable part of any legal education system.