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TRIBUTE TO AKHO NTANJANA



Why should young and promising eagles suddenly perish and be taken away from us forever? I am gutted and unable to understand why.

Akho Ntanjana was on a meteoric rise – he was excelling in his career and slowly transforming into a trailblazer in his own unique way. He was a quiet, focused, forward looking young man and destined to reach great heights.

Akho worked tirelessly on the accreditation of this journal by the Department of Higher Education and Training – a long and arduous process. The receipt of the accreditation letter made him smile – he was relieved and fulfilled when he achieved his objective. He reminded us all that the real work was about to begin to maintain the accreditation.

Akho will be sorely missed by his SAJEI colleagues, the SAJEI Editorial Board members, the authors, the JUTA team and, more specifically, by his mother, wife, and siblings. May his soul rest in peace and rise in glory.

DR GOMOLEMO MOSHOEU

Production editor

Well done, Akho!

You have run your race; now, it is for us to take the baton
and continue on your well-defined route.

Thank you for being our guiding light.

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Enhancing Judicial Excellence

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Constitutional Review of the Republic of Namibia

by Sakeus Akweenda

First Edition. Juta. 2023

The *Constitutional Review of the Republic of Namibia* by Dr Sakeus Akweenda is a significant contribution to Namibia's legal literature. The author is a legal practitioner in Namibia with qualifications from the University of London, United Kingdom. Dr Akweenda previously served as a state law advisor in the Office of the Attorney-General and as the general manager in the legal and regulatory department of the Namibia Power Corporation. He is also the author of several articles in high-impact, accredited legal journals.

The publication comprehensively covers Namibian constitutional law. The book comprises 35 chapters. The interpretation of the Namibian Constitution and the protection of fundamental rights are at the text's core. The author also addresses the enforcement of fundamental rights and the circumstances under which they can be lawfully limited. The first two chapters discuss the history of Namibian territory since 1884, the establishment of a State, and the founding values of a system of transformative constitutionalism. The central theme revolves around the aspirations of the Namibian people, the community it aims to create, and the division of power between the Executive, the Legislature, and the Judiciary. Chapter 3 evaluates the principles of interpretation of the Constitution. These include the grammatical meaning, the language, and the purposive/context-based approach. The chapter incorporates the Court's reasoning in several landmark decisions such as the *S v Acheson*, *In re Corporal Punishment by Organs of the State*.

Chapter 4 considers Namibia's constitutional and national identity and its national symbols, language, and citizenship. Namibia abides by the trials-political doctrine, as evaluated in Chapter 5. Power is divided between the Executive, the Judiciary, and the Legislature. The chapter succinctly discusses the executive branch's authority, including the president's powers as the head of State, the appointment of the vice president and prime minister, the functions and powers of these state functionaries, and the succession of the president's office. The author also refers to the principle of ministerial accountability and the need for ministers to act *intra vires*. Chapters 6 and 7 examine the legislative power, authority, functions, and duties of Parliament in a constitutional democracy, the qualification and elections of the members of the legislature, the disqualification process, the election of the speaker of Parliament, the required quorum of the National Assembly, and the dissolution of Parliament. Chapter 6 provides succinct guidance on the rules of procedure, committees, standing orders, privileges and immunities of members of Parliament. Chapter 7 draws comparative insights from the

jurisprudence of the Constitutional Court of South Africa. Chapter 8 is a study of the judicial authority in Namibia and includes reference to the office of the Chief Justice and the constitutional principles underlying the judiciary, ie, judiciary independence and impartiality. The chapter also discusses the relevance of foreign law/precedence and how courts in Namibia may utilise these. Chapter 9 succinctly deals with the regional and local government's structures, powers, duties, and functions. Chapter 10 considers the Attorney-General's appointment, powers, functions, and critical role. Chapters 11 to 16 are dedicated to *capita selecta* of certain fundamental rights, including the rights to freedom, life and liberty, human dignity, slavery, servitude and forced labour law, equality, freedom from discrimination, arrest and detention, fair trial, privacy, family and children's rights, property, political activity, culture, and education.

Fundamental rights in the Namibian Constitution are not absolute. The author elaborates on the limitation clause in Chapter 15. Chapter 16 introduces the right to administrative justice, which must be fair, reasonable, rational, and procedurally fair. Chapter 17 is devoted to the enforcement of fundamental rights and freedoms through mechanisms such as class actions and public interest litigation. It further elucidates the process of review and collateral challenges. Chapter 18 evaluates substantive equality and how the courts carry out their mandate in line with the transformative ideals of the Namibian Constitution. The following chapters examine permissible and impermissible derogations, the duties and responsibilities of the Ombudsperson, and the principles of State policy such as the promotion of the welfare of the people and foreign relations, asylum, the principle of economic order, foreign investments, sovereign ownership of resources, and the application of State policy. The author then moves to common and customary law as sources of Namibian law and their relationship with the Constitution and the courts' constitutional duty to develop common law and, by necessary implication, customary law when it falls short of constitutional dictates. The author then logically moves to a discussion of the appointment process, powers, and removal processes from the office of the Prosecutor-General. After that, the book evaluates the measures and provisions related to anti-corruption in Namibia, the role of the Judiciary Service Commission and the Public Service Commission, the Electoral Commission, the security cluster of the State, the Security Commission, the Defence Force, the Police Force, Intelligence Service, and the Correctional Service of Namibia. Chapter 28 considers Namibia's approach to international law as a monist State, whereafter the author reflects on the law in force at independence and the associated transitional provisions. The following chapters include analyses of the state revenue fund, the office of the Auditor-General, the Central Bank, and the National Planning Commission. The last chapters consider instances

of public or state emergencies, national defence, martial law, the schedule of the Constitution, and repeal and amendments to the Constitution.

The book is easy to read and includes updated jurisprudence, legislative provisions, and a complete reference list and index. The author's experience, insights, and attention to detail combine to produce an engaging and balanced scholarly publication that is essential reading for academics, practitioners, judges, attorneys, students, and scholars interested in Namibia's constitutional law.

DR NTANDOKAYISE NDLOVU AND DR ARTHUR VAN COLLER

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