

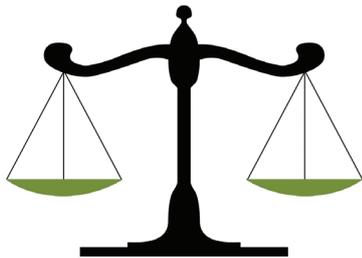
Rule of Law

What is the rule of law?

The rule of law is the principle that all persons and institutions in a country, including the government, must follow laws which are publicly known to everyone, applied fairly to everyone, and enforced by independent courts. This principle also requires that a country's laws must be consistent with basic international human rights norms and standards.

Article 1(1) of the Namibian Constitution says:

- (1) The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all.



Key principles of the rule of law

1. The country must be governed by law, not by force.
2. The law must apply to everyone. No one is above the law.
3. The law must treat everyone equally.
4. The processes for enacting and applying laws must be fair and transparent.
5. The law must protect basic human rights.

Example: Think of how the principles of the “rule of law” apply to a soccer game. Everyone knows the rules of the game. All of the players on both teams must play according to the rules. There is an impartial referee who makes sure that everyone follows the rules. This referee must treat both teams and all of the players fairly, without showing any favouritism for one side or the other. The players may not agree with the decisions of the referee, but they must respect those decisions if they want to keep playing the game. Some of the spectators may disagree with the decisions of the referee, but they realise that the referee plays an important role in keeping the game fair. The team which loses must accept the loss without a struggle if they want to be able to play again. People who play soccer in different countries follow the same basic rules and norms because they want to be able to have international cooperation around the sport, such as taking part in World Cup matches. Imagine a soccer game without these rules. It would be chaos. No one would want to play, and no one would want to watch. The outcome would not be meaningful.



Rules =
orderly
game



No rules =
chaos and
confusion

1. The country must be governed by law, not by force.

The rule of law is very important for an orderly society. Without the rule of law, people with power would be able to prevail over people with less power. The police could arrest anyone for any reason. Government officials could act as they please. Private groups and citizens could do whatever they wanted to, as long as they had enough money or power to make others do their will. It is not possible to have a stable and just society without the rule of law.

2. The law must apply to everyone. No one is above the law.

Everyone must follow the law. This includes high-ranking government officials and traditional leaders. For example, in Namibia, people who have been charged with crimes have included even a Supreme Court justice, a government minister and a senior headman. ►

Even the **President** is subject to the rule of law. Parliament can remove a President from office by a two-thirds vote on the grounds that he or she is guilty of a violation of the Constitution or a serious violation of the laws of the land. However, there are some rules about court cases against the President, to make sure that government runs smoothly. A President who is in office can be sued in *civil* proceedings for acts which are part of his or her official duties – and this happens from time to time in practice in Namibia. No *criminal* cases can be brought against a President during his or her tenure in office. The President can be sued on civil or criminal grounds for personal actions which were *not* part of his or her official Presidential duties *only after the end of the term of office* – and even then, *only if Parliament has removed the President from office and passed a resolution saying that a court case against the President would be in the public interest.*

Members of Parliament must also follow the laws of Namibia. However, they have immunity from legal action for things which they say in Parliament, in terms of the Powers, Privileges and Immunities of Parliament Act 17 of 1996. This limited immunity is designed to encourage robust Parliamentary debate.

The rationale for Presidential immunity is to protect Presidents from distracting and possibly politically-motivated lawsuits during their time of office. Immunity beyond that period is intended to safeguard the dignity of the office of the President. However, after the end of the term of office, the high threshold for bringing lawsuits against the former President for acts done in his or her personal capacity may go further than necessary for these purposes.

3. The law must treat everyone equally.

Laws cannot be made for specific individuals, but must apply generally to persons who are similarly situated.

For example, Parliament enacted a law which changed the qualifications for becoming a legal practitioner. This law was challenged on the grounds that it was designed to facilitate the appointment of one particular individual to the post of Prosecutor-General. The Court upheld the law because there was no evidence that Parliament enacted it to help a specific person, and because the law applied generally to anyone who could satisfy the amended requirements for becoming a legal practitioner.

Another example concerns freedom of speech. Laws protecting freedom of speech must apply equally to people who want to criticise government and to people who want to speak in favour of government. There was in the past a Namibian regulation which made a disciplinary offence for a member of the police force to comment unfavourably in public on the administration of the police force or any other government department. The Court found that this law was an invalid interference with the freedom of speech.

4. The processes for enacting and applying laws must be fair and transparent.

Under the rule of law, the procedures for making laws must be generally respected by the people as being legitimate. Laws must be enacted in an open and fair process, and they must be publicly available to everyone so that everyone can know what the laws of the nation say.

For example, in Namibia, all the laws enacted by Parliament are published in the *Government Gazette* and are also made available online free to the public. All court cases are made available online for anyone to read.

Laws must be applied by independent courts who can protect citizens against the unfair use of power by the state, by private individuals or by any organisation. Laws must also be enforced fairly by police and other law enforcement agencies who do not show favouritism. If a country has a corrupt judiciary or police force which can manipulate the laws, the public might stop respecting the law altogether and the rule of law might break down.

In Namibia, the independence of the judiciary is protected through the balance of powers. (See *Know Your Government Factsheet No. 2* on the three branches of government.) Protection against corruption is provided by the Office of the Ombudsman as well as the Anti-Corruption Commission. (See *Know Your Government Factsheet No. 8* on government watchdogs.)

5. The law protects basic human rights.

To have legitimacy, laws must be generally consistent with international human rights norms, such as protection for equality, freedom from torture and other cruel, inhuman or degrading treatment, and the right to a fair trial.

Before independence, laws were made through undemocratic processes. The laws designed to uphold the apartheid regime were also inconsistent with international human rights norms such as protection against race discrimination. As a result, the apartheid laws violated the principles of the rule of law and were rightfully not respected by the public. Now Namibia has a Constitution which follows key international human rights norms and establishes a fair and democratic process for law-making. Independent Namibia follows the rule of law. ■