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**REPUBLIC OF NAMIBIA**

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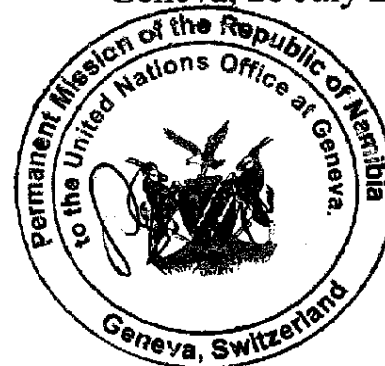
Chemin Louis Dunant, 15  
CH -1202, Geneva

The Permanent Mission of the Republic of Namibia to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to submit herewith Namibia's response to the call for contribution for the report on Bar Associations.

The Permanent Mission of the Republic of Namibia to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 20 July 2018

Office of the High Commissioner  
for Human Rights  
Palais Wilson  
Geneva



**Please provide information on the way the legal profession is organised and regulated in your country. What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other)**

The Law Society of Namibia (LSN) is established under Section 40 of the Legal Practitioners Act, Act 15 of 1995. This section provides as follows: *“There is hereby established the Law Society of Namibia which shall by that name be a body corporate with perpetual succession and a common seal, and which shall be capable of suing and being sued and, subject to the provision of this Act, do and suffer all such acts and things as bodies corporate may lawfully do and suffer.”*

The objects and powers of the LSN are prescribed in Sections 41 and 42 of the Act, respectively.

**Indicate the main legal provisions protecting the right of lawyers to freely join or create a local, national or international association and mention the existing associations**

Article 21(1)(e) of the Constitution of the Republic of Namibia, 1990 provides as follows: *“All persons shall have the right to freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties.”*

There is nothing prohibiting members of the Law Society to freely join or create other associations.

**Society of Advocates**

The Society of Advocates is a voluntary association for legal practitioners (lawyers in Namibia are referred to as legal practitioners), who are practising for their own account. It adopted its first constitution on 3 August 1983. In terms of this Constitution, the Bar Council is the Society's executive body. The Society of Advocates in Namibia offers the professionals and the public expertise in a variety of specialised fields. The members of the Society of Advocates are exempted from holding fidelity fund certificates. They do not receive direct instructions or money from clients, as they accept briefs from other legal practitioners holding fidelity fund certificates. The members of the Society of Advocates must do pupillage and pass a further examination before becoming members of the Society of Advocates.

**Namibian Law Association – NLA**

The NLA is a voluntary association. Legal practitioners from previously disadvantaged communities established the NLA on 1 April 1995, because of difficulties for members to gain access to the legal profession as legal practitioners. It was deemed necessary to extend the principle of affirmative action, as provided for in the Namibian Constitution, to individuals who were socially, economically or educationally disadvantaged by past discriminatory laws or practices.

The consciousness movement of progressive legal practitioners known as the Black Legal Caucus Forum, composed mostly of lawyers hailing from disadvantaged communities in Namibia, meeting on 17 October 2015 and 14 May 2016 at Windhoek, decided to revive the NLA.

The Annual General Meeting (AGM) on Saturday, 11 June 2016, at the Supreme Court in Windhoek, completed the revival of the NLA.

As an association of progressive legal practitioners, who appreciate that the legal profession is inherently one of service to society and that legal practitioners are part of the society they serve, the NLA is committed to ensuring, amongst other things, that all Namibians have full access to affordable legal services and the justice system.

#### **Namibian Women Lawyers Association – NWLA**

The NWLA is a voluntary association and was formed in 2015 as a non-profit, diverse association by female legal practitioners from both private and public sector to create a platform for female legal practitioners. The main aim is to advocate for equality of women under the law, mentor, network and act as collective voice assisting each other and the vulnerable in society with training and legal advice.

The group currently consists of more than 460 female lawyers sharing a wealth of knowledge and experience to advance the interest of the legal fraternity focusing on the empowerment of women.

The NWLA shares a strategic partnership with the Office of the First Lady assisting with pro bono legal help and is very passionate about its social responsibility hence the strong involvement with the vulnerable in society.

#### **Corporate Lawyers**

There is also a Corporate Lawyers Association.

#### **Does a professional association of lawyers play a role in the regulation of the profession? If so, please provide information on:**

a) **The exact denomination of the body;**

In terms of Section 43 of the LPA, every person enrolled as a legal practitioner in terms of this Act shall be a member of the statutory Law Society of Namibia.

As at June 2018, there are 814 active legal practitioners.

All legal practitioners have the right to attend annual meetings and to vote for Councillors and topics on the agenda and to provide input to the Rules of the Law Society. All Rule amendments must be approved at an AGM of the LSN. Current substantial changes in a new bill result from input by all legal practitioners, all legal practitioners' associations and stakeholders.

b) **The legal basis for its establishment (e.g. constitutional provisions, ordinary law or other);**

The LSN (the only statutory Law Society) was established under Section 40 of the LPA.

The other associations of legal practitioners are voluntary associations, separate legal entities created falling under the laws of contract and governed by constitutions drafted and undersigned by members.

c) **Whether the association has been established as an independent and self-governing association;**

The powers and objects of the LSN are prescribe in Sections 41 and 42 of the LPA.

All voluntary associations are self-governing in terms of their constitutions.

d) **The composition and appointment process of the executive body of the association;**

Section 44 (2)(a) of the LPA prescribe that elections for the LSN executive body (the Council) must be held at the annual general meeting. Sections 45 – 53 deals with, inter alia, the Council of the LSN, Vacancies on Council, Duties of the Council, Powers of Council, Committees of Council, Meetings of Council, Income of Council, Powers of Council to make rules.

Eight Legal Practitioners are serving on Council.

With regard to the voluntary associations, it is dependent on each constitution.

**Please provide information on the relationship between the association of lawyers and the Executive, Legislature and powers. In particular, please provide information on the role of the Ministry of Justice and the Judiciary in relation to the establishment and functioning of this association.**

The line Minister of the LSN is the Minister of Justice.

All amendments to the Act will be considered by the Minister of Justice.

The Rules of the LSN, after approval by the annual general meeting by the members, must be signed off by the Chief Justice for promulgation.

The Disciplinary Committee (Section 34 of the LPA) is an independent statutory committee, falling under the auspices of the Ministry of Justice, and conducts disciplinary hearings against legal practitioners. The LSN may appoint 4 members and the Secretary is appointed by the Minister of Justice.

The Board for Legal Education (Section 8 of the LPA) is another independent statutory board, falling under the auspices of the Ministry of Justice. The LSN may appoint 3 members and the Secretary is appointed by the Minister of Justice. It comprises of 11 members and approves inter alia the syllabus, setting the guidelines for practical training and supervision the qualification examination.

The Courts and the Judicial officers are involved in the admission, outcomes of the DC hearings responsible for the suspension and removal from the roll of legal practitioners found guilty. All legal practitioners are 'officers of the court'.

All associations may freely approach any government institution. Many are politically active, with long-standing open relationships with government agencies and ministers, inter alia the Minister of Justice.

**Please provide information on the role that professional associations of lawyers play with regard to:**

a) **The admission process to the legal profession and the licensing of lawyers**

In terms of Section 3 of the LPA, admission and authorisation to practice as a legal practitioner or be enrolled as such is governed in accordance with the provisions of the Legal Practitioners Act.

Section 4 of the LPA deals with the requirements of admission.

Furthermore, legal practitioners who want to practice must be issued either with fidelity fund certificates or must be exempted from holding fidelity fund certificates or be in government services or at a law centre or clinic.

Members of voluntary associations, provided input to the current Act as well as the new Bill.

b) **The conduct of disciplinary proceedings against lawyers.**

Sections 32 – 39 of the LPA deals with the discipline and removal from and restoration on the roll.

Voluntary associations provided input to the current Act as well as the new Bill.

c) **The provision of legal aid**

Legal Aid is solely governed by government.

d) **The protection of individual lawyers from any form of intimidation, hindrance, harassment or improper interference in the exercise of their functions.**

By the public – the Namibian Police.

By legal practitioners – the Law Society of Namibia.

**Is the membership in the professional association of lawyers mandatory to practice law? In case of membership is a prerequisite to practice law, please provide detailed information on the measures the state has taken to ensure access to justice in cases where there is a shortage of lawyers in the whole country or part of its territory**

In the case of the statutory LSN, membership is mandatory.

In the case of the Society of Advocates, their members must pass an examination and be issued with an exemption certificate.

In respect of the other voluntary associations, it will depend on their constitutions.

Nothing in the LPA mandates compulsory pro bono work. The LSN created an LSN Rule of Law Trust 18 years ago to fundraise to assist indigent clients. The LSN is also, with the assistance of the Ombudsman's Office, arranging free legal advice days in the regions and in Windhoek. The LSN has provided the Minister of Justice with a proposal regarding access to justice.

The Legal Assistance Centre has been providing pro bono services for the past 30 years.

According to a recent desk top research by the Legal Assistance Centre on the Regulation of the Legal Profession: Issues and Ideas – Change Project:

*“Access to legal aid at all stages of the criminal justice system is generally unavailable;*

*Budgetary allocation for legal aid is minimal;*

*Persons accused of a crime cannot expect legal advice for mounting a defence or information to plea to a serious charge, nor for representation in cases where convictions can lead to a prison sentence;*

*Lawyers are a few in number and generally unavailable in rural areas;*

*Law students are under-used;*

*Community legal services are not available in every district and are not accessible to every person in need of such services;*

*The Government does not have an overarching legal aid strategy to maximise the use of the resources available.”*

Government Legal Aid Directorate.

Access to justice is not due to shortage of legal practitioners in the bigger cities, but rather strenuous and often ineffective judicial processes and cost of legal services.