



LEGAL ASSISTANCE CENTRE
Fighting for human rights in Namibia since 1988



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INFORMATION ABOUT NAMIBIA'S LAW

ACCESS TO JUSTICE: WHO CAN BRING A CASE TO COURT?

Everyone has a right of access to the courts - but not everyone has a right to bring every kind of case. Who has the right to challenge a specific issue in court?

The principles governing when an individual or a group may bring an action in court with respect to a specific issue are referred to as “standing”.

Under Namibia’s current rules on standing, a person who brings a case to court must have a direct and substantial interest in the outcome of the case. This means that a person can bring a court case only to protect his or her own interests – and not to protect the rights of anyone else.

The rules on standing have several important purposes. One purpose is to make sure that the courts consider legal issues in specific factual contexts, instead of in the abstract. Courts can interpret laws best if they consider them in light of specific situations where those laws are being applied.

Another purpose of the rules on standing is to make sure that the court hears the best arguments for a particular interpretation of the law. A person with a meaningful interest in the outcome of a case will be most likely to present the court with solid reasons for deciding the case one way or another.

The rules on standing also discourage people from bringing frivolous cases that could waste the courts’ limited resources.

However, Namibia’s current rules on standing are very restrictive. The current rules fail to take into account the practical barriers that often prevent economically-disadvantaged, poorly-educated and otherwise marginalised groups from accessing the courts.

For example, some individuals may not realise that their rights have been violated or they may not be able to afford a lawyer to help them assert their rights. Some individuals may be reluctant to approach the court on their own because of fear of victimisation, or because of social or family pressures.

Narrow standing rules may also insulate some unlawful or unconstitutional conduct from judicial scrutiny – such as where a law which is arguably unconstitutional affects the entire public, but does not harm the legal interests of any specific individual or entity sufficiently to give them a basis to challenge the law in court.

For example, suppose that the government or a private company took some step that had a negative impact on the environment. This might harm the public generally, but it is possible that no particular individual would be directly and specifically affected. This could mean that no one would have standing to challenge the actions which harmed the environment.

Many other countries – such as South Africa, Kenya, Canada and India – have broader approaches to standing. For example, many countries provide for “representative standing” where individuals can bring court cases on behalf of other individuals or groups whose rights have been violated, in instances where some barrier (such as poverty or marginalisation) prevents those persons from acting on their own.

Many countries provide for “organisational standing” where organisations are allowed to bring court cases on behalf of their members, or “public interest standing” where any member of the public can approach the court on a matter of widespread public interest.

Many countries also allow “class actions”, where large numbers of individuals with common issues are allowed to consolidate their claims in a single court case brought by representatives of the group.

The Namibian courts have suggested that there is a need for a more expansive approach to standing in respect of constitutional issues in particular. Our courts have also noted the importance of ensuring that citizens are not prevented from approaching the courts to get clarity on their legal rights.

With this in mind, the Law Reform and Development Commission and the Legal Assistance Centre have worked together to develop a proposal for legislation which would expand the rules on standing, by giving individuals and organisations more avenues for approaching the courts. This proposal is currently being circulated for public input.

The law reform under discussion could increase access to the courts, whilst at the same time trying to ensure that Namibia’s judicial system is not overwhelmed by a flood of litigation. Well-considered law reform on standing would promote the rule of law by making it possible for more people to utilise the Constitution and the other laws of Namibia in practice.

ProBono is a monthly column by the Legal Assistance Centre designed to inform the public about Namibian law on various topics. You can request information on a specific legal topic by sending an SMS to 081-600-0098. Note that we will not be able to give advice on specific cases in this column, only general legal information.