



**LEGAL
ASSISTANCE
CENTRE**

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HOW TO SET UP A NON-PROFIT GROUP

INTRODUCTION

There are many types of groups that work for the benefit of the community in Namibia. These groups are often known as non-governmental organisations (NGOs), non-profit organisations or civil society organisations. The easiest way to set up a non-profit group is to create a voluntary association, which is often a good approach for a non-profit group that is just starting out.



Note that some people confuse voluntary organisations and welfare organisations. Registration as a welfare organisation is relevant only for some groups, and this is not possible unless the group has already been set up as a voluntary association, a trust, or a non-profit (“section 21”) company. A welfare organisation is NOT a legal structure for a non-profit group. This is explained in more detail below.

FORMING A VOLUNTARY ASSOCIATION

A voluntary association is a group of three or more people who agree to work together around a common purpose, such as promoting non-violence or helping children. This is the simplest form for a non-profit group.

How to create a voluntary association

Voluntary associations are easy to create. There are only a few rules, and you do not have to register your organisation with any Ministry or government body unless some additional permission is required from government because of the nature of your activities – such as where a church group wants to operate a child care centre or where a sports club wants to sell liquor at its events.

You must have a constitution which explains the purpose of your group and how it will work. Voluntary associations are membership-based, which means you must have members who are involved in the programmes and activities of the organisation. Your constitution should explain who can be a member of the group.

It is useful to make sure that the constitution gives your voluntary association an independent legal identity separate from its members. To make your group an independent “legal person”, the constitution must have these three elements:

1. The constitution must say that **the voluntary association has “perpetual succession”**, which simply means that it will continue to exist even if the membership changes. The constitution should also say what will happen to the assets of the voluntary association if it closes down. Most voluntary associations say that the assets of the group must go to a group that does similar work in Namibia.
2. The constitution must state that **the voluntary association can hold money and property in its own name**, separate from its members.
3. **No members of the voluntary association have any rights to its assets by virtue of their membership.**

If your voluntary association is an independent “legal person”, it is also a good idea to say in your constitution that the members of the group have “limited liability”. “Limited liability” means that the financial responsibility of the individual members is limited if there is some problem, such as a debt that the voluntary association cannot pay. In this case, individual members have financial responsibility for the group’s debts only if they do something wrong or dishonest.

If you do not create limited liability for your members in the constitution, then you risk having “unlimited liability” – which means that there will be no limit to the financial responsibility of each member. If there is “unlimited liability” and the group is in debt for more than the value of all its property, then the individual members would have to reach into their own pockets to pay off the debt. A court could even order the members to sell their personal assets to pay off the organisation’s debts.

The first step in creating a voluntary association is to find members and hold a founding meeting. At this meeting, you should discuss what your group will do and how it will work. Next, you should draft a constitution. The constitution will outline what the organisation is about (its purpose), how people become members, how the organisation will raise money, how often meetings will be held, and who will be in charge of the day-to-day running of the organisation. The constitution should also say how the members of the organisation can make changes to the constitution later on. A good constitution will include a clear explanation of how the group will be run. It will also include rules about managing funds responsibly. Good rules about finances will help prevent corruption and give donors confidence that their donations will be used for the intended purposes.

The constitution should then be approved at a second meeting of the founding members (the people who want to start the group). These people should all sign the constitution to show that they accept it, and the date of the meeting should be written on the constitution.

You should check your constitution every few years and update it if you want to make changes to the way the group works.

Receiving and spending donations

If you are receiving funds or donations, it is very important to be accountable to your donors. You should maintain good records of how donations are being spent and prepare a financial statement at the end of every year for your members and donors. Two or more people should always be involved in collecting and spending the organisation's money, and the people who are responsible for the day-to-day management of the group should always be consulted about financial issues. Any large amounts of money should be deposited in a bank account in the name of the voluntary association.

I will volunteer to be the Chairperson even though I will not get paid for it. Our organisation is working for a good cause.



None of the members of a voluntary association should be paid for their work – their involvement should all be voluntary. It is okay to refund someone if they spend money on behalf of the organisation (such as having copies of documents made for meetings), but any expenditures should be discussed with the people who are managing the group.

If your group decides to hire staff members, you must be careful to follow all the relevant laws about employment – including labour laws, tax laws and social security regulations.

OTHER WAYS TO SET UP YOUR NON-PROFIT GROUP

Depending on the size and functions of your group, you might want to set it up as a trust or a non-profit (“section 21”) company instead of a voluntary association.

Trusts

A trust is a legal arrangement where someone (the founder) gives control over assets to another person (the trustee) for the benefit of someone else (the beneficiary). A non-profit trust can be formed to assist a group of persons, or to advance some goal that will help some segment of the community. The aims of the trust must be written in a Deed of Trust, which must be registered with the Master of the High Court.

A trust requires a founder who provides some money to be the initial trust property. This can be a symbolic amount (even as low as N\$1) – although a somewhat higher amount may be required to open a bank account. There must be one or more trustees who make sure that the assets of the trust are spent to advance its aims. The trustees can be asked to deposit some money with the Master as security, to show that they intend to do a good job in looking after the trust's assets – but the Master often makes an exception to this requirement in the case of non-profit trusts.

If you want to form a trust, you should contact the Master of the High Court to get more information about the requirements for this kind of group.

Non-profit companies

Some non-profit groups may decide to set themselves up as a non-profit company. This is often called a section 21 company because this is the section of the law on companies that covers non-profit companies.

A non-profit company must have at least seven members, and it must meet the following criteria: (a) It must be formed for a lawful purpose. (b) Its main object must be the promotion of religion, arts, sciences, education, charity, recreation or some other cultural or social activity or group interest. (c) It must apply all of its profits or income to its object. (d) The members must not get any dividends. (e) It must follow all of the rules in the law on companies.

A non-profit company must be registered with the “Registrar of Business and Industrial Property” (formerly called the “Registrar of Companies”) at the Business and Intellectual Property Authority (BIPA). The details of how a non-profit company will operate are contained in a Memorandum of Association and Articles of Association written on forms that you can get from BIPA. There are annual audit and reporting requirements that apply to non-profit companies. If you want to form such a company, you should contact the Registrar to get more information about the requirements for this kind of group.

REGISTRATION AS A WELFARE ORGANISATION

Voluntary associations do not have to register with the government. However, any voluntary association, trust or non-profit company that –

- (a) engages in certain “public welfare” activities AND
- (b) intends to request donations from government at national, regional or local level OR to collect money from the general public

must register as a welfare organisation with the Ministry of Health and Social Services. The activities that are covered are social work, charity, preventing social distress and poverty, giving legal assistance and advice, collecting contributions for a war fund, preventing cruelty to animals and promoting animal welfare and collecting funds for any of these purposes. If the registration is approved, the organisation will be given a certificate that can be used to show potential contributors that the organisation is acting in good faith. You can get more information about the requirements for registering as a welfare organisation from the National Welfare Board in the Ministry of Health and Social Services.

HOW TO DRAFT A CONSTITUTION FOR A VOLUNTARY ORGANISATION

The sample constitution on the following pages is designed to help you draft a constitution for a voluntary organisation. The name, mission and aims are the key starting points for any voluntary association. They must be specific to your group’s own vision and purpose.

To get started on your own constitution, it is best to sit down with the members of your group and discuss how your voluntary association will work. What do you want to achieve? Who do you want to help? How are you going to organise your group?

The sample constitution should be used only as a general guide. Each organisation should adapt the sample to suit its own needs. The most important thing to remember is that your constitution should be clear to all the members of your organisation. Every member of your voluntary association should understand how the group will work.

The sample constitution is a simple one designed for a community group. It is intended as a starting point to help your group think about some of the key issues involved in setting up a voluntary association.



[SAMPLE]

CONSTITUTION

[NAME OF VOLUNTARY ASSOCIATION]

(initially adopted by its members on [DATE])

1. NAME AND FORM OF GROUP

This constitution establishes a voluntary association to be known as [NAME], with an existence separate from its members. The [NAME] is a body corporate with perpetual succession which may own property, enter into contracts, and sue and be sued in its own name.

2. MISSION

The mission of the voluntary association is: ...

You should discuss the overall mission of your organisation with all of your members. You might ask:

- What is our overall purpose for forming this group?
- What is the one big goal we hope to achieve?

3. AIMS

The voluntary association has the following aims: ...

This is the most important part of the constitution. All the members of the voluntary association should think carefully about the primary aims of the group. This section will set the overall purpose and direction of your group. It will tell members of your group and your community what the voluntary association is all about. To determine your organisation's aims, you might ask:

- Why are we forming this group?
- What are the most important things we would like to accomplish?
- What situations or attitudes are we trying to change in our community?
- Which people in our community are we trying to help?

4. STRATEGIES

The key strategies for achieving these aims: ...

Your constitution does not need to go into detail about all of your planned activities, but it can be useful to give some idea of your key strategies – such as providing certain services to the community or to specific groups of persons such as women, children with disabilities or unemployed persons. To figure out your key strategies, you might ask:

- How can we bring about the desired improvements in our community?
- What activities are most important for our organisation to focus on?
- How do we reach the people in our community who need our help?
- How can we best raise awareness about our issues of concern?

5. MEMBERSHIP

- 5.1** Membership of the voluntary association is open to all individuals who show a commitment to its aims and activities. The voluntary association will not discriminate in membership on the basis of race, colour, religion, national origin, ancestry, citizenship, sex, gender, sexual orientation, age or disability. Persons who want to must apply to the Management Committee, who will decide by majority vote if they are eligible for membership.
- 5.2** Members are eligible to attend all meetings of the voluntary association including the Annual General Meeting, and to vote at any general meeting.
- 5.3** Members are expected to attend the meetings of the organisation regularly and to assist with its activities.
- 5.4** The Management Committee may revoke an individual's membership by majority vote if the Committee finds that the member's behaviour or conduct is detrimental to the interest of the voluntary association, after giving the member in question a chance to make representations.
- 5.5** The members of the voluntary association will not be personally liable for any debts or losses of the voluntary association unless they acted dishonestly or in bad faith.

6. ANNUAL GENERAL MEETING

- 6.1** An Annual General Meeting (AGM) of all members must be held once each year to evaluate the activities of the previous year and to decide on plans and policies for the year ahead.
- 6.2** Notice of the AGM must be sent to all members at their last-known telephone number, email address or postal address at least two weeks before the date of the meeting.
- 6.3** All decisions at the AGM will be made by a majority (more than half) of the members present at the meeting, unless otherwise specified in this constitution.

- 6.4 Additional general meetings may be convened as necessary by the Chairperson of the Management Committee with the same notice as for an AGM. If one-third of all the members of the voluntary association request it, the Chairperson of the Management Committee must convene a meeting.
- 6.5 All meetings will be chaired by the Chairperson, or by the Vice Chairperson in the absence of the Chairperson. The Chairperson and the Vice Chairperson of the Management Committee will serve as the Chairperson and Vice Chairperson of the AGM.
- 6.6 Minutes will be taken at each meeting by the Secretary. Minutes of each meeting shall be made available to all members at or before the following meeting, where they should be confirmed and adopted.

7. MANAGEMENT COMMITTEE

- 7.1 The Management Committee is responsible for the overall control and management of the voluntary association.
- 7.2 At the Annual General Meeting (AGM), the members of the voluntary association must elect five members to serve on the Management Committee by majority vote. These five persons will serve until the next AGM. Each member present at the AGM will have five votes for purposes of this election.

The AGM can elect people to specific positions, such as Chairperson and Vice-Chairperson. Alternatively, the AGM can elect the members of the Management Committee and allow them to decide among themselves who will hold what post. You should think about what system you prefer for choosing officers for your group.

- 7.3 The Management Committee will be made up of:
 - a) the Chairperson
 - b) the Vice-Chairperson
 - c) the Secretary
 - d) the Treasurer and
 - e) one additional member.

The example suggests a Management Committee of 5 persons. It is a good idea to have a minimum of three persons on the Management Committee (since there must be at least three members in the voluntary association before it can be established). It is not a good idea to have too many members because this might make it difficult to manage the group efficiently. It is useful to have an uneven number of persons on the Management Committee to avoid deadlocks.

- 7.4 The first Management Committee will be appointed by the founding members of the voluntary association and will hold office for one year. After that, the members of the Management Committee will be elected annually at the AGM.

- 7.5** Each member of the Management Committee may serve no more than three terms in a row.
- 7.6** Management Committee members will be understood to have resigned if they fail to attend three consecutive meetings without a good reason.
- 7.7** If any member of the Management Committee resigns or is repeatedly unavailable to carry out his or her responsibilities, the Chairperson may convene a meeting of the full membership of the group in order to consider removing that Management Committee member, after hearing his or her representation. If the meeting decides to remove that member by majority vote, the members present must elect a replacement.

You might want to give the Management Committee the power to appoint temporary additional members in some situations, to make sure that it is possible to have a quorum for making decisions, or to make sure that the committee does not fall below the minimum number you have decided on when there are vacancies.

8. GENERAL POWERS AND DUTIES OF THE MANAGEMENT COMMITTEE

- 8.1** The Management Committee will be responsible for the day-to-day management of the voluntary association, under the general guidance of the membership.
- 8.2** Decisions of the Management Committee will be taken by majority vote of members present at any meeting where there is a quorum. A quorum will be more than half of the members of the Management Committee.
- 8.3** The Management Committee has the authority to manage the voluntary association as it considers appropriate to achieve the aims of the voluntary association, as long as it follows this constitution and any directions in resolutions passed by the membership of the voluntary association in general meetings.
- 8.4** The members of the Management Committee will not be personally liable for any of the debts or losses of the group unless they have acted dishonestly or in bad faith.
- 8.5** The general duties of the Management Committee include the following:
- a) to make sure that the aims of the group are being advanced;
 - b) to organise programs and activities that serve to advance the aims of the group;
 - c) to supervise the organisation's finances and to make sure that all of the income and property of the group is being used to advance its aims
 - d) to make rules for matters relating to the voluntary association, as long as the rules are consistent with this constitution.
- 8.6** Chairperson: The Chairperson will be responsible for the following:
- a) convening meetings on a regular basis and whenever required to do so by members;
 - b) chairing and providing overall direction to all meetings of the membership and the Management Committee;

- c) compiling an annual report on the voluntary association's activities for the Annual General Meeting;
- d) any other function necessary for the success of the organisation.

8.7 Vice Chairperson: The Vice-Chairperson will assist the Chairperson and act as Chairperson when the Chairperson is absent.

8.8 Secretary: The Secretary will be responsible for the following:

- a) issuing notices of meetings of the membership or the Management Committee as directed by the Chairperson;
- b) recording minutes of all meetings of the membership and the Management Committee;
- c) conducting correspondence on behalf of the voluntary association;
- d) safely storing all relevant documents of the voluntary association.

8.9 Treasurer: The Treasurer will be responsible for the following:

- a) keeping a record of all income and expenditures of the voluntary association;
- b) opening a bank account in the name of the voluntary association and making sure that all of its income is deposited in the bank account;
- c) issuing receipts for money received by the voluntary association;
- d) arranging an annual audit of the accounts of the voluntary association;
- e) submitting financial reports to the Management Committee and the membership as needed;
- f) preparing an annual budget for the forthcoming year for approval by the membership at the AGM;
- g) presenting an annual financial report at the AGM;
- h) making sure that the voluntary association's funds are used in accordance with the budget approved by the membership;
- i) safeguarding and managing all the assets of the voluntary association;
- j) making sure that no funds are made available to members as personal loans.

8.10 All other responsibilities of the Management Committee may be delegated by the Management Committee to any Management Committee member.

8.11 Members of the Management Committee will not receive any payment for their service as members of the Management Committee.

9. POWERS OF THE ORGANISATION

9.1 The voluntary association will have the power to do the following things in furtherance of its aims:

- a) to open and operate a bank account in the name of the voluntary association;
- b) to apply for and receive funds, donations and gifts of money or property of any description;
- c) to apply the funds of the voluntary association in any reasonable manner to advance the aims of the voluntary association and to invest any funds not immediately needed for the benefit of the voluntary association;
- d) to buy, lease or otherwise acquire property for the voluntary association, and to sell, sublease, mortgage or otherwise deal with the property of the voluntary association;

- e) to provide, furnish and fit out offices and other premises as necessary, and to manage and maintain the premises;
- f) to enter into any contracts of insurance for the voluntary association's property;
- g) to bring or defend lawsuits relating to the voluntary association;
- h) to employ, pay, discipline and dismiss staff or consultants; *[optional]*
- i) to do any other lawful things that will further the aims of the voluntary association.

9.2 These powers may be carried out on behalf of the voluntary association by the Chairperson or another member of the Management Committee, with the prior approval of the entire Management Committee.

10. FINANCES AND NON-PROFIT CHARACTER

10.1 The income and the property of the voluntary association will be applied solely towards its aims as set out in this constitution. No assets of the voluntary association will be used for the personal benefit of any members of the voluntary association or the Management Committee.

10.2 No portion of the income or property of the voluntary association will be paid or distributed directly or indirectly to any member of the voluntary association or the Management Committee.

10.3 The voluntary association will open a bank account in its own name at a registered commercial bank in Namibia.

10.4 Funds may be received on behalf of the voluntary association by any member of the voluntary association with signing powers on the voluntary association's bank account. All funds received shall be deposited in the voluntary association's bank account.

10.5 Every expenditure made on behalf of the voluntary association must be approved by at least two members of the Management Committee.

10.6 All services performed for the voluntary association will be purely voluntary. Members, including members serving on the Management Committee, will not receive any payment for their services, but they may be reimbursed for reasonable expenditures made on behalf of the voluntary association with the prior approval of the Chairperson of the Management Committee.

11. DISSOLUTION

11.1 The voluntary association may be dissolved by the decision of a majority of members present at a meeting convened for this purpose, provided that notice of this meeting has been sent to all members at their last-known telephone number, email address or postal address at least two weeks prior to the date of the meeting.

11.2 In the event of dissolution, all assets of the voluntary association remaining after the payment of all outstanding debts and liabilities will be donated to a Namibian organisation with aims similar to those of the voluntary association. The organisation that is to receive the assets will be selected by a majority vote of all members present at the meeting that decides on dissolution.

11. AMENDMENTS TO THE CONSTITUTION

Any member may propose an amendment to the constitution. The constitution may be amended only by the decision of two-thirds of the members present at a meeting open to all members, or by agreement of two-thirds of all the members who respond after circulation of written notice of proposed amendments to each member's last known email or postal address.

SIGNED:

_____	_____	_____
Signature	Printed Name	Date
_____	_____	_____
Signature	Printed Name	Date
_____	_____	_____
Signature	Printed Name	Date
_____	_____	_____
Signature	Printed Name	Date
_____	_____	_____
Signature	Printed Name	Date
_____	_____	_____
Signature	Printed Name	Date



WHERE TO GET HELP TO SET UP A NON-PROFIT GROUP

Creating a non-profit organisation can be challenging. You can contact the following groups for help and advice:

Legal Assistance Centre (LAC)

The LAC is a public interest law firm that aims to make the law accessible to those with the least access, with the ultimate aim of creating and maintaining a human rights culture in Namibia.

 Street Address: 4 Marien Ngouabi Street, Windhoek

 Postal Address: P.O. Box 604, Windhoek, Namibia

 Phone: 061-223356

 Email: info@lac.org.na

 Website: www.lac.org.na

Civic +264

Civic + 264 shares information about civil society organisations in Namibia. It has published a detailed manual about setting up civil society organisations.

 Street Address: House of Democracy, 70-72 Frans Indongo Street, Windhoek West

 Postal Address: P.O. Box 6566, Windhoek, Namibia

 Email: info@civic264.org.na

 Website: www.civic264.org.na



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