



**LEGAL
ASSISTANCE
CENTRE**

Windhoek
Namibia
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HOW TO CREATE 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-profit groups. The most common and easiest to create is a Voluntary Association.



A Voluntary Association is simply a group of people forming an organisation around a common purpose. Creating a Voluntary Association is the best idea when your non-profit group 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 some other legal structure. 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 people who meet and form an organisation around a common purpose, such as promoting non-violence or helping children. This is the most basic type of non-profit group and usually the best way to start off. Voluntary Associations are a good way to get experience running an organisation that helps the community.

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. There are four basic requirements:

1. You must have a written constitution which explains the purpose of your group and how it will work.
2. Your group must be membership-based, which means you must have members who are involved in the programmes and activities of the organisation. Your constitution should clearly say that the organisation is membership-based.
3. Your constitution must say that the group is a “legal person”. This makes it possible for the group to do things like hold a bank account in its own name.
4. Your constitution must say what will happen to the assets of the group if it closes down. Most Voluntary Associations say that the assets of the group must go to a group which does similar work in Namibia.

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 is in charge of the day-to-day running of the organisation (often called the Management Committee). 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 must then be approved by 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.

How to maintain a Voluntary Association

It is easy to maintain a Voluntary Association. Most importantly, you should keep your members involved and regularly inform them of the organisation’s activities. Communication is the key to having a successful Voluntary Association. Every few years, you should read over the constitution and update it if there have been changes in the way the group works. Above all, make sure that your organisation is always honest and that you never lie to your members or donors.

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 Management Committee should always be consulted. Any large amounts of money should be kept in a bank or somewhere else that is safe.

None of the members or officers of a Voluntary Association should be paid for their work – it should all be voluntary. It is okay to pay someone back if they spend money on behalf of the organisation (such as having copies of documents made for meetings), but any expenses should be discussed with the Management Committee before they are made. 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.

If you are accepting donations, you should also make sure you are a “limited liability organisation.” “Limited liability” means that the financial responsibility of individual members is limited if there is some problem, such as a debt that the Voluntary Association cannot pay. It is easy to make sure that your members have limited liability, by simply writing this into your Constitution. If you do this, then individual members have financial responsibility to the group 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,” meaning there will be no limit to the financial responsibility of each member. If there was unlimited liability and the group was 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 order the members to sell their personal assets to pay off the organisation’s debts.

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



ALTERNATIVE METHODS OF ORGANISING YOUR NON-PROFIT GROUP

Depending on the functions and structure of your group, you might want to organise as a Trust or a Section 21 (not-for-profit) company instead of a Voluntary Association.

Trusts

A Trust can be formed (1) for the purpose of benefiting a particular person or class of persons, or (2) for the purpose of carrying out some goal, usually something which will help some segment of the community. The objectives and structure of the Trust must be written in a Deed of Trust and registered with the Master of the High Court. A Trust requires that all founders provide some money to the Master as security, to show that they will do a good job in looking after the Trust’s assets, but the Master often makes an exception to this requirement. A Trust must also hold some property, which can be a symbolic amount (even as low as N\$1.00) when the Trust is first established. If you want to form a Trust, you should contact the Master of the High Court in Windhoek to get more information about the requirements for this kind of group.

Non-Profit Company

Some non-profit groups may decide to register as a Non-Profit Company, usually known as Section 21 Company A Section 21 Company 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 or any other cultural or social activity or communal or group interest; (c) it must intend to apply any profits or income solely to the promotion of that main object and not to its members; (d) the members must not get any dividends; (e) the assets of the company must go to a group with similar objectives if it is dissolved. A Section 21 Company must be registered in the same manner as any other company in Namibia and must follow the same rules and regulations that apply to other kinds of companies. If you

want to form a Non-Profit Company, you should contact the Registrar of Companies in Windhoek 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 Namibian Government. However, organisations that (a) engage in certain “public welfare” activities AND (b) intend to request donations from government at national, regional or local level OR to collect money from the general public, must usually register as Welfare Organisations.

A Welfare Organisation is an organisation registered with the Ministry of Health and Social Services and formally recognised as providing public welfare in certain ways. The National Welfare Act 79 of 1965 lists several activities that Welfare Organisations may be engaged in, such as:

- Conducting charitable activities for people or families in need of help
- Providing any goods or social services for people or families in need of help
- Trying to prevent homelessness or distress
- Collecting money for any war fund
- Preventing cruelty or harm to animals.

Not all Voluntary Associations should register as Welfare Organisations. Usually, if your group is just doing community outreach and education about a social problem, you will probably not need to register as a Welfare Organisation. However, if you are providing counselling services or financial support for community members, you might need to register. If you are not sure, it is best to contact the Legal Assistance Centre or the Ministry of Health and Social Services for help.

Advantages and disadvantages of being a Welfare Organisation

If most of your funds are collected from the public, it is very important to show that you are genuinely using the funds for public welfare. Many donors will be happy if you can show them a copy of your constitution, but some donors might want to see evidence of your official registration with the government. Currently, registration as a Welfare Organisation is the most widely used method of showing that all of the organisation’s activities are for the public good. Therefore, your group should register as a Welfare Organisation if you meet the definition of a Welfare Organisation in the National Welfare Act and are asking for funds from the general public or from government.

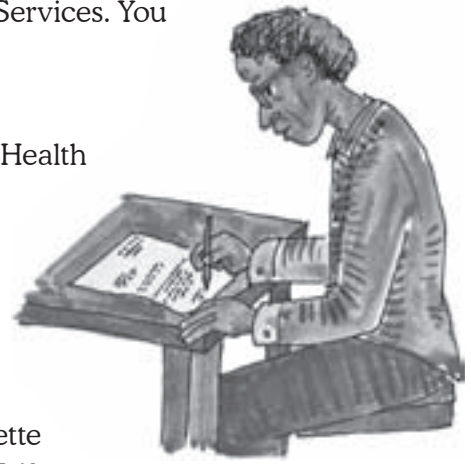
There are some disadvantages to registering as a Welfare Organisation. In order to register, you must fill out additional paperwork. You also have to provide a report to the Ministry of Health every year to maintain your status. Finally, you have to prepare financial statements every year and have them checked by an independent financial auditor. All of these steps take time and perhaps money to complete.

How to register and maintain your status as a Welfare Organisation

The first step in becoming a Welfare Organisation is to make sure you are properly set up as a Voluntary Association. This means that you should have a good written constitution, an established membership, accurate financial accounting practices, and a solid leadership.

Next, you must formally apply to the Ministry of Health and Social Services. You will need to supply three things with your application:

- (1) the organisation's constitution
- (2) a completed application form (available from the Ministry of Health and Social Services)
- (3) the name of a registered audit company and a letter from the audit company stating that they will audit the organisation every year.



Finally, when your application and registration are complete, your organisation must place an advertisement in the Government Gazette and in one local newspaper to announce that it intends to be a Welfare Organisation. Your organisation must pay the costs of the newspaper advertisements. If nobody from the public objects within 21 days, the organisation is finally registered as a welfare organisation.

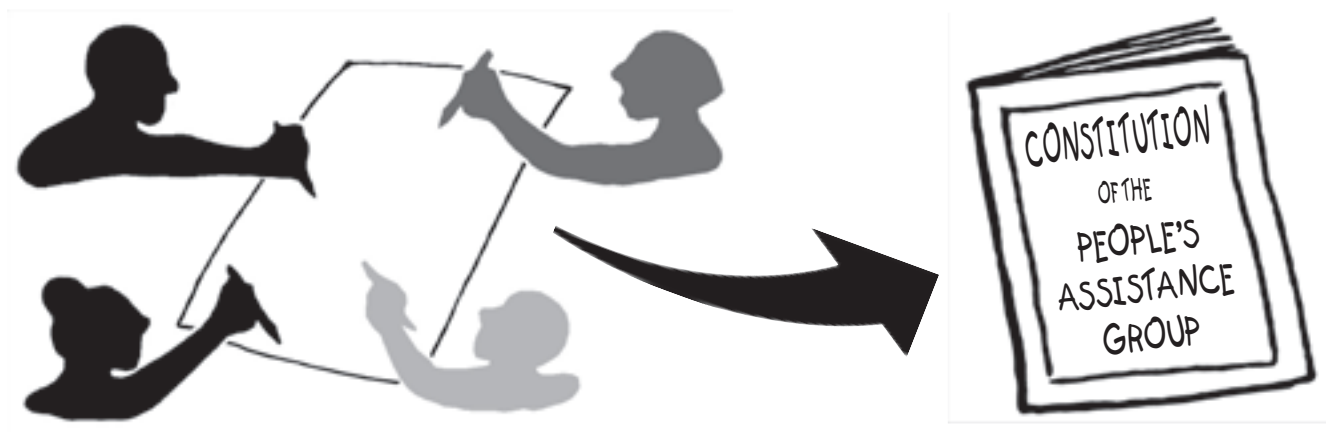
How to draft a constitution

The sample constitution on the following pages is designed to help your organisation draft your own constitution. The information highlighted in grey (Name, Mission and Aims and Objectives) are the most important parts of any constitution and must be made specific to your organisation's own vision and purpose.

To get started on your own constitution, it is best to sit down with the members of your organisation and discuss exactly what you want your organisation to be about. How are you going to organise your group? What do you want to achieve? Who do you want to help? It might be best to focus on the Mission and the Aims and Objectives first, as these are the most important decisions about your constitution that your group will make.

The rest of the sample constitution should be used as a guide. You can change specific provisions to suit your organisation's needs. For instance, if community outreach and education is going to be a big part of your organisation's plan, maybe you can have a "Community Outreach Director" position on the Management Committee.

The most important thing to remember is that your constitution should be understandable to the members of your organisation. It should be written to help organise your group and achieve your goals.



[SAMPLE]

CONSTITUTION

[NAME OF ORGANISATION]

(initially adopted by its members on [DATE])

1. NAME AND FORM OF ORGANISATION

There is hereby established a voluntary association to be known as [NAME] (hereinafter referred to as “the organisation”), which is a legal person with limited liability and an existence separate from its members, and thereby 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 organisation 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 AND OBJECTIVES

The organisation shall have the following aims and objectives: ...

This is the most important part of the constitution, and your members should think carefully about the primary aims and objectives of the organisation. This section will set the overall purpose and direction of your organisation. It will tell members of your organisation and your community what the organisation is all about.

3.1. Aims are general statements about the purpose of your organisation and the changes you hope to achieve as a result of your work. 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?

3.2. Objectives are more specific actions or strategies you want to undertake order to achieve your aims. To determine your organisation’s objectives, 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?

4. MEMBERSHIP

- 4.1. Membership of the organisation is open to all individuals who show an involvement in and a commitment to the activities and ideals of the organisation.
- 4.2. **Full members:** Full members are individuals who would like to take part in the organisation's continuing work. They will be expected to attend the regular meetings of the organisation and to assist with the regular activities of the organisation.
- 4.3. **Associate members:** Associate members are individuals who would like to support the organisation but are unable to make the time commitment to become full members. They are expected to make themselves available to the organisation from time to time, when called upon, so that the organisation may draw upon their skills and expertise. Associate members may also be asked to advise the organisation from time to time on policy matters. Associate members are welcome to attend regular meetings of the organisation and to participate in its activities, but will not be expected to do so on a regular basis.
- 4.4. **Participation:** Both Associate Members and Full Members are eligible to attend all meetings of the organisation, including the Annual General Meeting, and to vote at such meetings.
- 4.5. **Removal:** 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 organisation.
- 4.6. **Non-discrimination:** The Organisation will not discriminate in membership on the basis of race, colour, religion, national origin, ancestry, citizenship, sex, gender, sexual orientation, age or disability.

5. ANNUAL GENERAL MEETING

- 5.1. An Annual General Meeting (AGM) of all members shall be held once in each calendar year to evaluate the activities of the previous year and to set policy and plan activities for the year at hand.
- 5.2. Notice of the AGM shall be directed to all members (both associate and full) at their last-known telephone number, email address or postal address at least two weeks prior to the date of the meeting.
- 5.3. All decisions at the AGM shall be made by a majority (51%) of the members (full and associate) present at the meeting at which the decision is taken, unless otherwise specified.
- 5.4. Additional general meetings may be convened as necessary by the Chairperson of the Management Committee, with notice as provided in 5.2
- 5.5. All meetings shall be chaired by the Chairperson or the Vice Chairperson in the absence of the Chairperson. The Chairperson and Vice Chairperson of the Management Committee shall serve as the Chairperson and Vice Chairperson of the AGM, provided that the members present at the first AGM held before the selection of the Management Committee shall select a person to chair that meeting by majority vote of members present.

- 5.6.** Minutes shall 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.

6. MANAGEMENT COMMITTEE

- 6.1.** The Management Committee shall be responsible for the overall control and management of the organisation.
- 6.2.** At the Annual General Meeting, the members of the organisation shall elect by majority vote five members to serve on the Management Committee until the next AGM. Both full members and associate members are eligible to serve on the Management Committee. Each member present at the AGM will have five votes for purposes of this election.
- 6.3.** The Management Committee shall comprise:
- a) the Chairperson
 - b) the Vice-Chairperson
 - c) the Secretary
 - d) the Treasurer and
 - e) one additional member.
- 6.4** The first Management Committee will be appointed by the founding members of the organisation and will hold office for one year. Thereafter, members of the Management Committee shall be elected annually at the AGM.
- 6.5** Each member of the Management Committee may serve up to three consecutive terms. Thereafter, additional terms of service may be authorised by a majority (51%) vote of all members present at the AGM.
- 6.6** Management Committee members will be deemed to have resigned if they fail to attend three (3) consecutive meetings without a suitable reason.
- 6.7** If any member of the Management Committee resigns or is repeatedly unavailable to carry out his/her responsibilities, the Chairperson may convene a meeting of the full membership of the organisation in order to remove that Management Committee member and to elect a replacement. The Chairperson of the Management Committee, in consultation with the rest of the Management Committee, may alternatively decide to continue to the next AGM without selecting a replacement.
- 6.8** The Management Committee or general membership of the organisation may convene meetings throughout the year as necessary. The time, date, and place of such meetings must be announced to all members of the Management Committee at least one week prior to the meeting.

7. GENERAL POWERS AND DUTIES OF THE MANAGEMENT COMMITTEE

- 7.1.** The Management Committee shall manage the organisation and work to achieve the aims and objectives of the organisation. The Management Committee will have the duty to translate any policy decisions made by the membership into practice.

- 7.2.** Decisions of the Management Committee shall be by majority vote of members present at any meeting where there is a quorum. A quorum will be half the members plus one (1).
- 7.3.** Subject to the terms of this Constitution and any directions contained in resolutions passed by the members in general meetings, the Management Committee shall have the necessary powers and authority to manage the organisation and shall exercise its powers as it considers appropriate to achieve the objectives of the organisation.
- 7.4.** The Management Committee shall not be personally liable for any acts and/or omissions, provided only that the said committee shall have acted in good faith.
- 7.5.** The general duties of the Management Committee shall include the following:
- a) to act as a communication channel for and on behalf of its members;
 - b) to ensure that the objectives of this Constitution are being fulfilled and maintained at all times;
 - c) to create programs and activities that serve to fulfil the aims and objectives of the organisation;
 - d) to control the organisation's finances and to guarantee the performance of contracts or obligations of the organisation.
- 7.6 Chairperson:** The Chairperson shall be responsible for the following:
- a) convening of meetings on a regular basis and whenever required to do so by members;
 - b) chairing and providing overall direction to all the meetings of the organisation and of the Management Committee;
 - c) compiling of an annual report for the Annual General Meeting;
 - d) any other function necessary for the success of the organisation.
- 7.7 Secretary:** The Secretary shall be responsible for the following:
- a) issuing notices concerning all meetings of the members to be forwarded to the members at least 1 week prior to the meeting;
 - b) recording minutes of all meetings of the members of the organisation and of the Management Committee;
 - c) conducting all correspondence on behalf of the organisation;
 - d) ensuring the safekeeping of all relevant documents of the organisation.
- 7.8 Treasurer:** The Treasurer shall be responsible for the following
- a) maintaining a record of all income received and expenditure incurred by the organisation;
 - b) opening and control of the organisation bank account;
 - c) issuing receipts for money received by the organisation;
 - d) ensuring that the Organisation's funds are utilised in accordance with the organisation budget;
 - e) submitting financial reports to the Management Committee and the general membership as needed, but at least once per year;
 - f) safeguarding and management of all the assets of the organisation;
 - g) ensuring that no funds are made available to members as personal loans;
 - h) overseeing the financial auditing of the accounts of the organisation;
 - i) preparation of the annual budget of the organisation; and
 - j) presentation of an annual financial report and a budget for the following year at the AGM.

- 7.9** All other responsibilities of the Management Committee may be delegated by the Committee to any Management Committee member.
- 7.10** Members of the Management Committee shall not receive remuneration for their service as Management Committee members.

8. POWERS OF THE ORGANISATION

- 8.1.** The organisation shall have the power to do the following things in furtherance of its aims and objectives:
- a) to apply for and receive funds, donations and gifts of money or property of any description;
 - b) to provide, furnish and fit out offices and other premises as necessary, and to manage and maintain such premises;
 - c) to purchase, lease or otherwise acquire or hold movable or immovable property and to sell, sublease or otherwise dispose of such property;
 - d) to enter into any contract of insurance in respect of any matter in which the organisation has an insurable interest;
 - e) to purchase, subscribe to or otherwise acquire books, publications and other resource material;
 - f) to open and operate a bank account in the name of the organisation;
 - g) to apply the funds of the organisation in any reasonable manner in furtherance of the aims and objectives of the organisation; and
 - h) to do any other lawful things that will further the aims and objectives of the organisation.
- 8.2.** These powers may be carried out on behalf of the organisation by the Chairperson or another member of the Management Committee, with the prior approval of the entire Management Committee.

9. FINANCES AND NON-PROFIT CHARACTER

- 9.1.** The organisation shall be organised as a non-profit organisation. The income and the property of the organisation shall be applied solely towards the promotion of the mission of the organisation as set forth in this Constitution and shall not be used for the personal benefit of any of the members of the organisation.
- 9.2.** No portion of the income or property of the organisation shall be paid or distributed directly or indirectly to any person (otherwise than for services rendered to the organisation by persons other than members or in the ordinary course of undertaking any public benefit activity) or to any member of the organisation or Management Committee except as contemplated in Section 9.6.
- 9.3.** The organisation shall open a bank account in the name of the organisation at a registered commercial bank in Namibia.
- 9.4.** Funds may be received on behalf of the organisation by any member of the organisation with signing powers on the organisation's bank account. All funds received shall be deposited in the organisation's bank account.

- 9.5.** Cheques issued by the organisation shall be signed by the Chairperson of the Management Committee and countersigned by one other member of the Management Committee.
- 9.6.** All services performed for the organisation shall be purely voluntary. Members, including members serving on the Management Committee, shall not receive any remuneration for services performed, except that they may be reimbursed for reasonable expenditures made on behalf of the organisation with the prior approval of the Chairperson of the Management Committee.

10. DISSOLUTION

- 10.1** The organisation 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 directed to all members (both associate and full) at their last-known telephone number, email address or postal address at least two weeks prior to the date of the meeting.
- 10.2** In the event of dissolution, all assets of the organisation remaining after the payment of all outstanding debts and liabilities shall be donated to a Namibian organisation with aims and objectives similar to those of the organisation. The organisation which is to receive such assets shall be selected by a majority vote of all members present at the meeting at which dissolution occurs.

11. CONSTITUTIONAL AMENDMENTS

The Constitution of the organisation may be amended only by a two-thirds majority of those present at a meeting open to all members (both associate and full), or by agreement of two-thirds of all those members who respond (both full and associate) 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

WHO TO CONTACT FOR HELP IN STARTING A NON-PROFIT GROUP

Creating a non-profit organisation can be very challenging, but there are many people you can contact for help, such as the following:

Namibian Non-Governmental Organisations Forum (NANGOF)

✉ P.O. Box 70433, Khomasdal, Namibia

☎ 061-222860

📠 061-222864

✉ E-mail: nangof@iway.na ▪ Website: www.nangof.iway.na

Social Welfare Services

Ministry of Health and Social Services

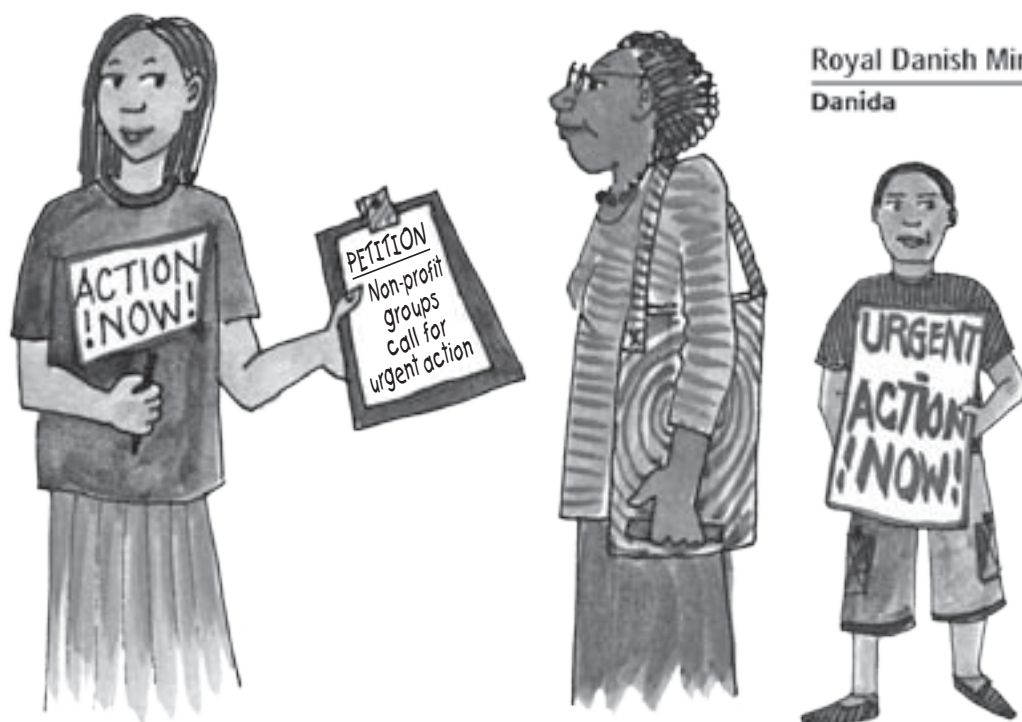
🏠 Harvey Street, Windhoek North

✉ Private Bag 13198, Windhoek, Namibia

☎ 061-2032602

📠 061-272286

✉ E-mail: bkatjuongua@mhss.gov.na ▪ Website: www.mhss.gov.na



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on the LAC website.