

Mister Speaker,

Honourable Members of the National Assembly,

I wish to inform the National Assembly, about an issue of pertinence to the legal fraternity, that is, the actions of the Law Society of Namibia, which in my view, are in contravention with the Legal Practitioners Act, 1995 (Act No. 15 of 1995) or will be in contravention with the Legal Practitioners Act, 199~~6~~<sup>5</sup>. In addition, the actions of the Law Society of Namibia will have a significant impact on the participation of the Head of State in the decision-making authority of the SADC, the Summit.

Furthermore, on a less important note, the obligatory membership to the Law Society of Namibia of admitted legal practitioners employed by Government as Government legal representatives.

But before I highlight the crux of my submission to this House, it is necessary to provide you with the relevant background of my submission.

#### **(a) The Law Society of Namibia**

The Law Society of Namibia is a creature of the statute, created in terms of section 40 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995). The objects of the Law Society of Namibia are set out in section 41 of the Legal Practitioners Act, 1995. The Law Society is, amongst other organisations, an institutional member of the SADC Lawyers Association.

The SADC Lawyers Association is not affiliated to SADC, neither is it an organisation formed under the SADC Treaty.

At its 15<sup>th</sup> Annual General Meeting, the SADC-LA passed a resolution to “challenge the suspension of the SADC Tribunal before their respective national courts”. The SADC-LA reaffirmed this resolution during its 16<sup>th</sup> Annual General Meeting calling on its members (all law societies and bar associations) to “undertake litigation at the national level challenging the decision making process by SADC Heads of State and Government, and the subsequent decision to make the SADC Tribunal an interstate court”.

The Law Society envisages introducing a motion at its Annual General Meeting to be held tomorrow, 13 November 2015, whereby it is calling on all its members to consider the following:

**“Motion 2: Rule of Law: SADC Tribunal Litigation**

Motivation for motion in favour of the SADC Tribunal Litigation:

**Motion 2 A:**

- (i) The Law Society of Namibia is instructed to institute legal action against the Namibian Government for the decision taken by the Namibian Head of State and/or Government and/or SADC Heads of State in favour of limiting the jurisdiction of the SADC Tribunal thereby nullifying the joint decision taken.
- (ii) Each member of the Law Society of Namibia will contribute annually an amount of N\$ 1, 000.00 (One Thousand Namibia Dollars) towards the legal costs of such litigation.

Failing which, and alternatively, the following motion is proposed:

**Motion 2 B:**

- (i) The Law Society of Namibia is instructed to institute legal action against the Namibian Government for the decision taken by the Namibian Head of State and/or Government and /or SADC Heads of State in favour of limiting the jurisdiction of the SADC Tribunal thereby nullifying the joint decision taken.
- (ii) Each member of the Law Society of Namibia will contribute an amount equal to the amount agreed upon by the AGM.”

It is therefore based on the introduction of Motion 2, as postulated above, that I introduce this submission to this House.

All admitted legal practitioners in Namibia must be members of the Law Society in terms of section 43 of the Legal Practitioners Act, 1995 this includes all admitted legal practitioners employed by Government as legal representatives of Government.

It should be clearly understood, that by virtue of this submission, I do not wish to restrict Government Lawyers’ freedom of association, freedom of speech or freedom to practice their profession as enshrined in Article 21 of the Namibian Constitution.

Indeed, the Law Society of Namibia has all authority in terms of the Legal Practitioners Act, 199<sup>5</sup>~~6~~ to bring a motion of this nature for deliberation and further decision by the Annual General Meeting.

However, once the motion is passed by the Annual General Meeting, the Law Society of Namibia is envisaging to institute legal proceedings against the Namibian Government for the decision taken by the Namibian Head of State and or

Government and or SADC Heads of State to limit the jurisdiction of the SADC Tribunal.

The redefined jurisdiction of the SADC Tribunal or the suspension of the SADC Tribunal was the decision of SADC, not Heads of State individually, not the Namibian Government, but the Summit of the SADC, therefore it is a SADC decision. SADC created it. SADC gaveth, SADC taketh.

Interesting questions come to mind? Shouldn't the Law Society and other members of the SADC-LA sue SADC? In which court? I am not so sure that the Namibian Courts have jurisdiction to hear matters pertaining to SADC's substantive functions.

Honourable Members,

I thought that the object of the Legal Practitioners Act, 199<sup>5</sup>, should be concerned with the legal profession and enhancement of the legal profession in Namibia. Is the Law Society of Namibia acting within the scope of its enabling statute to even place a motion of this nature for deliberation?

Furthermore, the Law Society of Namibia is subjecting, with this Motion, a significant part of its membership to unethical behaviour, and clear conflict of interest. The Government lawyers that are members of the Law Society of Namibia will be guilty of unethical behaviour and conflict of interest if they participate in a motion against their own client. How can a legal practitioner in the office of the Attorney-General and its component structures such as the Government Attorneys participate in a deliberation where impending legal action against its own client is discussed?



How can a legal advisor from the office of the Attorney-General participate in this sort of motion while it advises the President and Government?

Honourable Members of the House,

We are, obligated, in terms of Article 63(2)(c) of the Namibian Constitution, as the National Assembly, to take such steps as it considers expedient to uphold and defend the Namibian Constitution and the laws of Namibia. Let us deliberate on the non-compliance of Law Society of Namibia with the Legal Practitioners Act, 199<sup>5</sup>~~6~~ and call upon them to desist with this unlawful action.

### **(b) Decisions of the Head of State**

Furthermore, in terms of Article 63(2)(h) of the Namibian Constitution, the National Assembly has the power to debate and to advise the President in regard to “any matters which by the Namibian Constitution the President is authorised to deal with”.

Honourable Members of the House,

The decision to suspend the operations of the SADC Tribunal or even to limit the jurisdiction of the SADC Tribunal was made by the Summit of the SADC, of which our Head of State, the President by virtue of Article 27(1) of the Namibian Constitution read together with Article 10 of the Treaty of SADC, is a member.

The Law Society has no authority to institute legal proceedings to reverse the participation in a decision of the SADC of the Head of State, that is, if the motion as

proposed to the Annual General Meeting is supported by the members of the AGM and passes as it is.

This falls squarely within our jurisdiction under Article 32(9) of the Namibian Constitution.

Article 32(9) of the Namibian Constitution reads as follows:

“Subject to the provisions of the Namibian Constitution and save where the Namibian Constitution otherwise provides, any action taken by the President pursuant to any power vested in the President by the terms of Article 32 shall be capable of being reviewed, reversed or corrected on such terms as are deemed expedient and proper should there be a resolution proposed by at least one-third of all the members of the National Assembly and passed by a two-thirds majority of all members of the National Assembly disapproving any such action and resolving to review, reverse or correct it.”

In light of the aforesaid, I deemed it proper to bring it to the attention of the House. If time had permitted, a Motion would have been appropriate, however, as it is, with this statement, I urge all lawyers of Government and in Government who are members of the Law Society of Namibia to reject the motion.

The redefinition of the terms of reference of the SADC Tribunal was a unanimous decision of the Summit of Heads of State and Government. The Namibian judiciary provides sufficient redress to citizens and those who place their matters before it. We are not in need of a Privy Council type of arrangement.

The creation of the Tribunal was a political decision. The redefinition of its terms of reference was a political decision. Pressure groups can exercise their rights, however, the political set up we have ensures a separation of powers.

This is a political decision resorting in the executive and legislature, and we have taken it. Period.

**Thank you.**

**Per Mr Sakeus E. T. Shanghala, MP**

**Attorney-General**

**In the National Assembly**

