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STATEMENT ISSUED BY THE SOCIETY OF ADVOCATES OF NAMIBIA ('THE SOCIETY') CONCERNING THE ISG RISK SERVICES / SURVEY WAREHOUSE REPORT TITLED 'TRUST IN THE JUDICIARY AND PERCEIVED STRENGTH OF THE RULE OF LAW' (THE ISG / SURVEY WAREHOUSE REPORT), THE SUBSEQUENT NEWSPAPER ARTICLE IN THE NAMIBIAN SUN NEWSPAPER ON 07 NOVEMBER 2022 ('THE ARTICLE') AND THE RESPONSE BY THE OFFICE OF THE JUDICIARY ON 15 NOVEMBER 2022 ('THE RESPONSE')

The ISG / Survey Warehouse report

The ISG / Survey Warehouse report addresses a number of important issues. Unfortunately, one issue – the perceptions on alleged corruption in the Judiciary - has taken centre stage. This focus arose from a recent article in the Namibian Sun. This undue focus overshadowed the ultimate conclusions from the ISG / Survey Warehouse report that generally, those legal practitioners who participated in the survey, trust the Namibian Judiciary and that the trust in the competence of the Judiciary is strong.

The ISG / Survey Warehouse report identified several areas which may be of concern. However, it must be borne in mind that the ISG / Survey Warehouse report records and analyses the perceptions of the survey participants (not the entire legal fraternity) based on specific questions which did not allow for an in-depth investigation of the basis upon which the perception is held. Whilst a survey of this nature is a useful tool, it must be accepted that perceptions do not always equate to the truth and may be formed without any knowledge as to the true facts. The Society is committed to engaging with its members, the Judiciary, and other stakeholders in the administration of justice, to understand and, where appropriate, address the matters reflected in the report.

The Namibian Sun newspaper article

Two issues of concern arise from this article. Before discussing these issues, we acknowledge the important rights and responsibilities of the free press to report on any and every matter of public interest, as long as the media does so fairly and as accurately as is reasonably possible. The subjects of the article are certainly matters of significant public interest and of particular interest to the Society. Just as with the matters reflected in the ISG / Survey Warehouse report, the Society will genuinely engage with its members, the Judiciary, and other stakeholders in the administration of justice, to understand and address the matters reflected in the article. However, the Society does not believe that the reporting was fair.

The first concern lies with the article's reports of 'harrowing tales' of 22 lawyers who do not wish to be identified. Some of the more sensational allegations are of judges accepting of bribes. The judges, and those who bribed them, are not identified. The article does not present any facts to allow any investigation or appropriate response to these far-reaching, very serious and very harmful allegations. The right to fairly and reasonably criticise a judge or the Judiciary avails any person. However, such criticism must be accurate and fair, especially bearing in mind that the Judiciary ordinarily cannot enter into public controversy or reply to criticism. The mentioned criticism, in the respects highlighted above, was not underpinned by facts and, in the Society's view, was not fair or reasonable. In this sense, the Society believes the article infringed the dignity of the Judiciary.

Secondly, the article relayed certain content of the ISG / Survey Warehouse report. However, the article did not address the context and limitations of the ISG / Survey Warehouse report, or the numerous positive results documented in it, including that the survey participants generally trust the Judiciary and its competence. In this sense, the Society believes the article was not as balanced as it ought to have been on such an important issue.

The response from the Office of the Judiciary

One of the key concerns raised by the Judiciary in its response to the ISG / Survey Warehouse report and the subsequent reporting related mainly to the framing of this question in the ISG / Survey Warehouse report: '*In your opinion, over the past year, has the level of corruption [in the country] or [in the judiciary] increased, decreased or stayed the same?*'. The Judiciary's main concern with this question appears to be that the question presupposes that legal practitioners believed there was corruption within the Judiciary before the survey was conducted and proceeded from that premise without first determining whether that premise is correct. The Society agrees with the Judiciary's concern.

From the ISG / Survey Warehouse report it is clear that the baseline for the question was the results of a survey amongst members of the public. Although the source of the baseline is explained in the report, the Society believes the accuracy of this baseline, derived from a survey of the public,

should have been specifically explored amongst members of the legal professions with an explicit question. The concern is compounded by the fact that the word 'corruption' is open to multiple interpretations. With these clarifications, participants could have supplied more accurate responses to the ultimate question, which could have informed a more accurate analysis.

The Society raised this concern with the authors of the report. This is their answer:

"In the report, Figure 8, (p. 17), we ask the respondents to reflect on *How many judges do you think are involved in corruption or haven't heard enough about them to say?* To which 23% of respondents answered "none"; 21% "some"; 2% "most"; and the majority, 55% answered, "I have not heard enough about them to say". From Figure 8 it is clear: most legal practitioners do not know how many judges are involved in corruption. This was a baseline question. Furthermore, our findings in Figure 18 of the report are overwhelmingly positive, i.e., showing that most legal practitioners do not support the notion that judges take bribes.

All these questions about corruption are standard – and, uncontroversial questions used in corruption studies globally, including in Africa.

It was not a study of the "state of the judiciary", i.e., a substantial undertaking about the factual performance of the institution based on irrefutable statistics and measurement. Instead, we were interested in learning how those who work in the system view the system. It is thus a study of perception, not hard, cold facts. This is an important distinction which was unfortunately lost in the debate. Perceptions, although not necessarily based on the truth, assist in understanding how citizens relate to and transact with their institutions and for those institutions to understand those perceptions and to find ways to address them."

No report of a corrupt practice involving a Judge of the High or Supreme Courts has been made to the Society by any of its members. Had such report been made, the Society would have swiftly brought this to the attention of the head of the Court in question and taken the necessary steps.

The response from the Office of the Judiciary welcomed constructive criticism and reaffirmed the Office of the Judiciary's commitment to the delivery of excellence in the provision of its services. The response further indicated that the Office of the Judiciary takes note of some of the survey participants' answers 'to more neutrally framed questions and will be engaging in further outreach to relevant stakeholders to improve service delivery within its constraints and is receptive to constructive criticism in that process'. Very recently the High Court did just that by arranging a two-week workshop where various stakeholders could engage with judges and with each other on various matters affecting the administration of justice. The engagement allowed for open, constructive and frank discussions. Indeed, the Society welcomes and encourages such positive engagement.

However, the Society believes the response from the Office of the Judiciary was overly critical of the ISG / Survey Warehouse report's authors. The kind of survey undertaken by ISG and Survey Warehouse is necessary in any democratic society. Whilst the Society recognises the limitations of the survey and the report and the concern with the question on the perception of corruption, which, in turn, triggered the article in the Namibian Sun, the Office of the Judiciary always stands in a position of authority and is indeed so perceived by the public at large. Necessary democratic debate should never be stifled by an overly critical response.

The way forward

One of the Society's important objects is the protection of the Namibian Constitution, the fundamental rights and freedoms enshrined therein and the principles of democracy, the rule of law and justice for all. The Judiciary plays a cardinal role in ensuring that the Namibian Constitution is upheld (including that the rights guaranteed and protected by Article 12 are given proper effect to), and in ensuring that our democracy is protected, that the rule of law is upheld and to hold accountable the organs of State. The Society has confidence in the Judiciary.

Consistent with the Constitution of the Society of Advocates, the Society has in the past, and will continue in the future to support the Judiciary's efforts at ensuring the proper and efficient administration of justice in Namibia, as required by the Namibian Constitution.

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