



Home Office

Country Policy and Information Note

Namibia: Sexual orientation and gender identity and expression

Version 2.0

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Preface

Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the [Introduction](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into 2 parts: (1) an assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

Assessment

This section analyses the evidence relevant to this note - that is information in the COI section; refugee/human rights laws and policies; and applicable caselaw - by describing this and its inter-relationships, and provides an assessment of, in general, whether one or more of the following applies:

- a person is reasonably likely to face a real risk of persecution or serious harm
- that the general humanitarian situation is so severe that there are substantial grounds for believing that there is a real risk of serious harm because conditions amount to inhuman or degrading treatment as within [paragraphs 339C and 339CA\(iii\) of the Immigration Rules](#) / Article 3 of the [European Convention on Human Rights \(ECHR\)](#)
- that the security situation is such that there are substantial grounds for believing there is a real risk of serious harm because there exists a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict as within [paragraphs 339C and 339CA\(iv\) of the Immigration Rules](#)
- a person is able to obtain protection from the state (or quasi state bodies)
- a person is reasonably able to relocate within a country or territory
- a claim is likely to justify granting asylum, humanitarian protection or other form of leave, and
- if a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under [section 94 of the Nationality, Immigration and Asylum Act 2002](#).

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), [Researching Country Origin Information – Training Manual](#), 2013. Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available. Sources and the information they provide are carefully considered before inclusion. Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate and balanced, which is compared and contrasted where appropriate so that a comprehensive and up-to-date picture is provided of the issues relevant to this note at the time of publication.

The inclusion of a source is not, however, an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a footnote. Full details of all sources cited and consulted in compiling the note are listed alphabetically in the bibliography.

Feedback

Our goal is to provide accurate, reliable and up-to-date COI and clear guidance. We welcome feedback on how to improve our products. If you would like to comment on this note, please email the [Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The [Independent Advisory Group on Country Information](#) (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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Assessment

Updated: 08 November 2021

1. Introduction

1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by the state and/or by non-state actors due to the person's actual or perceived sexual orientation and/or gender identity or expression.

1.2 Points to note

1.2.1 This note provides an assessment of the general situation for gay men, lesbians, bisexuals, trans and intersex (LGBTI) persons, as well as those perceived as such. They are referred to collectively as 'LGBTI persons', although the experiences of each group may differ.

1.2.2 For general guidance on considering claims made by LGBTI persons, decision makers should refer to the Asylum Instructions, [Sexual orientation in asylum claims](#) and [Gender identity issues in the asylum claim](#).

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2. Consideration of issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the instruction on [Assessing Credibility and Refugee Status](#) and the [Asylum Instruction on Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

2.1.4 For guidance on interviewing see the Asylum Instruction, [Conducting asylum interviews](#) and [Sexual identity issues in the asylum claim and Gender identity issues in the asylum claim](#).

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2.2 Exclusion

2.2.1 Decision makers must consider whether there are serious reasons for considering whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.

2.2.2 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection (which has a wider range of exclusions than refugee status).

2.2.3 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

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2.3 Convention reason(s)

- 2.3.1 Actual or imputed membership of a particular social group.
- 2.3.2 LGBTI persons form a particular social group (PSG) in Namibia within the meaning of the Refugee Convention because they share an innate characteristic or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it **and** have a distinct identity in Namibia because the group is perceived as being different by the surrounding society.
- 2.3.3 Although LGBTI persons form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to be addressed is whether the person has a well-founded fear of persecution on account of their membership of such a group.
- 2.3.4 For further guidance on the 5 Refugee Convention grounds see the Asylum Instruction, [Assessing Credibility and Refugee Status](#).

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2.4 Risk

a. State treatment

- 2.4.1 Legislation criminalises same-sex sexual acts between men through the common law offences of sodomy and unnatural sexual offences. There are no laws that criminalise sexual orientation or same-sex relationships, or mention female same-sex sexual acts or relationships (see [Legal context](#)).
- 2.4.2 The maximum penalty for sodomy is in excess of 6 months imprisonment. However, there have been no reported prosecutions under this provision, or under unnatural sexual offences legislation, since Namibian independence in 1990 (see [Legal context](#) and [Arrests and prosecutions](#)).
- 2.4.3 There is no legislation that criminalises the exchange of sexual acts for reward, although the Legal Assistance Centre (LAC), a public interest law centre, noted in 2015 that the criminalisation of sodomy and unnatural sexual offences meant it would be illegal for male and trans sex workers to commit sexual acts with another male. LAC, in information from the Open Society Initiative in 2009, noted this has served as justification for abuse and harassment of male and trans sex workers by the police, but in other sources consulted there is a lack of recent (last 3 years) detailed information on such treatment (see [Legal context](#) and [Arrests and prosecutions](#)).

- 2.4.4 The constitution does not specifically protect LGBTI persons from discrimination, although the government's National Human Rights Action Plan 2015-2019 acknowledged the LGBTI population as a vulnerable group in need of protection from discrimination. There is no provision in law for adoption for same-sex couples, same-sex marriage or civil partnership. However, there are pending cases in the Namibian courts seeking marriage equality. In October 2021, a test case in the High Court determined that the son of a gay couple born via surrogacy in South Africa in 2019, is a Namibian citizen by descent (see [Legal context](#), [Government policies and programmes](#)).
- 2.4.5 The law allows trans and gender diverse persons to change their sex in official documents. Medical barriers, such as limited gender-reassignment services, can make this difficult in practice as evidence of the procedure is required for gender changes in the national civil registration database (see [Legal context](#), [Government policies and programmes](#) and [Healthcare, gender re-assignment and hormone replacement](#)).
- 2.4.6 Some politicians and public figures have opposed legislation that would specifically protect the rights of LGBTI persons. However, the national human rights ombudsman and first lady of Namibia have publicly supported the abolition of the offence of sodomy. The Law Reform and Development Commission (LRDC), a statutory body, has proposed legislative reforms to abolish sodomy and unnatural sexual offences which are supported by the justice minister and are anticipated to be considered by parliament before the end of 2021. The government's position on this is as yet unclear (see [State attitudes and treatment](#)).
- 2.4.7 The government does not limit the activities of LGBTI organisations or their rights of speech, expression, association and assembly of LGBTI people with annual Pride events taking place across different towns without restriction (see [State attitudes and treatment](#) and [LGBTI individuals, communities and groups](#)).
- 2.4.8 There is no information that the state performs conversion therapy on LGBTI persons. There have been some reports of harassment, violence, and ill-treatment of LGBTI persons by the police including in detention. Although the information is often generalised to include the whole LGBTI community whereby the numbers, exact nature, frequency and recency of such treatment is not documented, or of which particular groups (see [State attitudes and treatment](#), [Domestic caselaw / court cases](#) and [Advocacy and activism and Conversion therapy](#)).
- 2.4.9 Ill-treatment of trans persons, perhaps due to their often-greater visibility in society than other LGBTI groups, is more widely reported. For example the alleged unlawful arrest, detention and violence against a trans woman by a police officer in 2017, in which the individual raised a complaint against the police which has gone to trial and is due to be finalised in court in November 2021 (see [State attitudes and treatment](#), [Domestic caselaw / court cases](#) and [Advocacy and activism](#)).
- 2.4.10 The right to health for all citizens is protected in legislation. However, access in some areas for LGBTI persons can be limited by a lack of provision or

being impeded by medical practitioners. For example gender-reassignment surgery is restricted due to a lack of specialists or the provision of hormone replacement therapy, which is not offered through the public health system (see [Healthcare, gender re-assignment and hormone replacement](#)).

- 2.4.11 In general, the available information does not establish that openly LGBTI persons face a risk of persecution or serious harm from the state. Trans persons may be more likely to face harassment or discrimination from the police, than other members of the LGBTI community. Each case must, however, be considered on its facts and the onus is on the person to demonstrate why, in their particular circumstances, they would be at real risk of persecution or serious harm.
- 2.4.12 For further guidance on assessing risk, see the instructions on [Assessing Credibility and Refugee Status](#), [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).
- 2.4.13 For information on the position of women and girls in Namibia generally see the [Country policy and information note: Women fearing gender-based violence](#).

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b. Societal treatment

- 2.4.14 Namibia is generally a tolerant society. However, many Namibians feel the subject of same-sex sexual relationships is taboo. Although sexual and gender diversity are not always discussed openly, there is evidence of a growing tolerance of sexual minorities in and by society, and a wide coverage of LGBTI issues in the media. The 2019 Afrobarometer survey found that 64% of Namibians questioned would like or 'not care' if their neighbour were gay, an increase from 54% in 2017 (see [Public opinion](#), [Religious groups' attitudes, statements and actions](#) and [Prevailing cultural and family attitudes](#)).
- 2.4.15 Namibia is predominately Christian and church views on LGBTI issues are generally conservative and not supportive of liberalising the laws affecting LGBTI persons. However, opposing views, including among the clergy, on repealing sodomy legislation and same-sex marriage are evident in media coverage (see [Public opinion](#), [Religious groups' attitudes, statements and actions](#) and [Prevailing cultural and family attitudes](#)).
- 2.4.16 Some LGBTI persons have faced harassment when trying to access public services, with reports of discrimination, stigma, and hostility from healthcare practitioners, sometimes due to the mistaken belief that being gay in itself is illegal or due to their own moral values (see [Healthcare, gender re-assignment and hormone replacement](#)).
- 2.4.17 Some LGBTI persons may face discrimination in education and employment (see [Education and employment](#)).
- 2.4.18 Trans persons and lesbians may find access to public services more difficult, depending on their socio-economic position, and can be more vulnerable to homelessness and unemployment than other members of the LGBTI population (see [Healthcare, gender re-assignment and hormone replacement](#)).

- 2.4.19 There have been reports of non-state actors subjecting LGBTI persons to harassment and violence including verbal, physical and sexual abuse. There have been reports of ‘correctional rape’ of lesbians, but there is a lack of recent (last 3 years) information and the available evidence is limited on scale and frequency of such treatment. Sources note homophobic incidents may be underreported due to stigma and fear of discrimination. Transphobic hate speech and attacks have occurred, including the widely reported abduction, verbal and physical assault of a trans woman by a former presidential candidate in 2020, which at the time of writing is subject to both criminal and civil proceedings (see [Treatment by the public](#) and [Treatment of trans persons](#)).
- 2.4.20 A number of LGBTI organisations exist, predominately based in Windhoek, and function effectively, providing practical, legal support to and advocate on behalf of the LGBTI community. There are some openly LGBTI-friendly venues in Windhoek, drag nights have taken place during 2021 and annual ‘Pride’ events have occurred without significant incident or violence reported in the capital and other towns (see [LGBTI individuals, communities and groups](#)).
- 2.4.21 In general, the available information does not establish that openly LGBTI persons face a risk of persecution or serious harm from non-state actors. Each case must, however, be considered on its facts and the onus is on the person to demonstrate why, in their particular circumstances, they would be at real risk of persecution or serious harm.
- 2.4.22 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.4.23 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).
- 2.4.24 For information on the position of women and girls in Namibia generally see the [Country policy and information note: Women fearing gender-based violence](#).

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2.5 Protection

- 2.5.1 Where the person has a well-founded fear of persecution from the state they will not, in general, be able to obtain protection from the authorities.
- 2.5.2 Where the person has a well-founded fear of persecution from non-state actors, including ‘rogue’ state actors, decision makers must assess whether the state can provide effective protection.
- 2.5.3 LGBTI persons are not protected by the constitution or in legislation from discrimination, and same-sex sexual acts are illegal, although the law is rarely enforced and there have been no reported prosecutions or convictions (see [Legal context](#) and [Arrests and prosecutions](#)).
- 2.5.4 The government operates a generally effective criminal justice system, including the Namibian Police Force and an independent judiciary, and has oversight mechanisms for citizens to report human rights complaints against

the state through the Ombudsman and through the courts. Significant state human rights abuses have been limited to official corruption, with perpetrators punished or prosecuted. However, state authorities have reportedly been responsible for some arbitrary arrests, detentions, harassment and discrimination towards LGBTI persons with reports of physical and sexual assault from the police (see [Discrimination, harassment, and violence](#), [State protection](#) and [Oversight mechanisms](#)).

- 2.5.5 Sources indicate that the police, in general, do not take complaints of violence against LGBTI persons seriously and action is not taken to investigate and prosecute abuse. LGBTI persons may be reluctant to report crimes due to police ridicule and lack of assistance. However, conversely, there is some evidence of the authorities responding to LGBTI hate crime. For example the widely reported arrest and ongoing prosecution of the perpetrators of a transphobic assault by a public figure in 2021, and provision of protection to the victim (see [State protection](#)).
- 2.5.6 In general, the state appears able but unwilling to offer effective protection and the person will not be able to avail themselves of the protection of the authorities. Decision makers must, however, consider each case on its facts. The onus is on the person to demonstrate why they would not be able to seek and obtain state protection.
- 2.5.7 For further guidance on assessing the availability of state protection, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.5.8 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).
- 2.5.9 For information on the position of women and girls in Namibia generally see the [Country policy and information note: Women fearing gender-based violence](#).

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2.6 Internal relocation

- 2.6.1 Where the person has a well-founded fear of persecution or serious harm from the state, they are unlikely to be able to relocate to escape that risk.
- 2.6.2 Decision makers must give careful consideration to whether internal relocation is reasonable (or not unduly harsh) taking into account the person's individual circumstances.
- 2.6.3 Namibia is a relatively large country, about 3 ½ times the size of the UK, but with a small population estimated to be around 2.6 million. The largest city is Windhoek (with around 446,000 people) and the majority (55%) of people live in rural areas, in the north and northeast parts of the country. The law provides for freedom of internal movement and the government generally respects these rights, which apply equally to all citizens (see [Freedom of movement](#)).
- 2.6.4 Tolerance of LGBTI persons is likely to be greatest in the larger urban areas. There is an LGBTI community and active civil society in the capital, Windhoek, which has hosted a number of LGBTI events, including 'Pride'

processions, and established the first LGBTI health centre. There has also been a 'Pride' event in the coastal city of Swakopmund (see [LGBTI individuals, communities and groups](#))

- 2.6.5 In general, there are parts of the country, such as but not limited to Windhoek, where an openly LGBTI person would not face persecution or serious harm and could reasonably relocate to. However, each case will need to be considered on its facts.
- 2.6.6 Internal relocation will not be an option if it depends on the person concealing their sexual orientation and/or gender identity in the proposed new location for fear of persecution.
- 2.6.7 For further guidance on considering internal relocation and factors to be taken into account see the Asylum Instructions [Assessing Credibility and Refugee Status, Sexual orientation in the asylum claim](#) and [Gender identity issues in the asylum claim](#).
- 2.6.8 For information on the position of women and girls in Namibia generally see the [Country policy and information note: Women fearing gender-based violence](#).

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2.7 Certification

- 2.7.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.7.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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Country information

Section 3 updated: 08 November 2021

3. Legal context

3.1 Constitution

3.1.1 The Namibian Constitution outlines the fundamental rights and freedoms for the Namibian people and was adopted on 9 February 1990¹ but does not make specific mention of sexual orientation or gender identity. Article 10, Equality and Freedom from Discrimination, states:

‘(1) All persons shall be equal before the law.

(2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion creed or social or economic status.’²

3.1.2 The Legal Assistance Centre (LAC), a public interest law centre, through its Gender Research and Advocacy Project, published the report ‘Namibian Law on LGBT Issues’ in 2015 (the LAC report 2015). It opined:

‘Article 10(2) of the Namibian Constitution... constitutes a “closed list” of impermissible grounds of discrimination which does not include sexual orientation or gender identity. (It also excludes some other rather obvious categories such as age or disability.) But this does not mean that sexual minorities are not protected.

‘First, the equality provision in Article 10(1) is absolute. Everyone is equal before Namibian law, including LGBT persons. Secondly, the word “sex” in Article 10(2) can be interpreted to include sexual orientation – as it has been in other countries and under international law. Thirdly, in countries like Botswana, constitutions with a “closed list” of protected grounds have at times been interpreted as constituting examples rather than being exhaustive.’³

3.1.3 In relation to marriage, the LAC report 2015 noted:

‘Article 14 [of the Constitution] does not expressly guarantee anyone’s right to family. Instead, it appears to protect (i) the right of adults to marry; and (ii) the family as a unit.

‘It should be noted that there is no indication in the references to marriage that marriage must be a union between a man and a woman. The Namibian Constitution merely provides that men and women may marry, and that the “spouses” must enter into the union of their own free will.

‘In considering the meaning of “family” in the Namibian Constitution, the *Frank* case... interpreted the wording of Article 14(1) in the Namibian Constitution to mean that “marriage is between men and women – not men and men and women and women”; it stated that homosexual relationships,

¹ Government of Namibia, ‘[The Constitution of the Republic of Namibia webpage](#)’, no date

² Government of Namibia, ‘[Namibian Constitution](#)’, 9 February 1990

³ LAC, ‘[Namibian Law on LGBT Issues](#)’ (p35), 2015

“whether between men and men and women and women, clearly fall outside the scope and intent of Article 14.”⁴

See also [Domestic caselaw / court cases](#)

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3.2 Legislation – same-sex sexual acts

3.2.1 Same-sex sexual acts between males are criminalised through the common law offences of sodomy and unnatural sexual offences^{5 6 7}. Unnatural sexual offences includes mutual masturbation, sexual gratification through friction between the legs of another man, and oral sex between consenting adult males^{8 9}. Sodomy is defined as anal intercourse between men^{10 11 12} and does not include anal sexual relations between heterosexual persons or same-sex sexual acts between women¹³.

3.2.2 Sources noted there were no laws that criminalised a person’s sexual orientation or prohibited same-sex relationships, as long as they did not engage in the prohibited sexual acts (if male)¹⁴, that homosexuality itself was not illegal^{15 16 17} and there were no laws that mentioned female same-sex sexuality¹⁸. The Law Reform and Development Commission’s (LRDC) Report on the Abolishment of the Common Law Offences of Sodomy and Unnatural Sexual Offences, February 2021 noted: ‘The crime of sodomy... Both participating men are criminally liable. [The Criminal Procedure Act, 1977](#) (Act No. 51 of 1977) provides that where a person is charged with the crime of sodomy and the evidence is insufficient to support all the elements of the crime, indecent assault or assault are competent verdicts....’¹⁹

3.2.3 The same LRDC report noted:

‘Sodomy (although not “unnatural sexual offences”) is listed as a Schedule 1 offence [under the Criminal Procedure Act, 1977 (Act No. 51 of 1977)], along with serious offences such as treason, murder, rape, assault where a dangerous injury is inflicted, robbery, theft, fraud and forgery. Where a person is reasonably suspected of committing a Schedule 1 offence, a police officer or a private citizen can: a) arrest the person without a warrant; and b) use deadly force against such a suspect in the process of effecting an arrest.

⁴ LAC, [‘Namibian Law on LGBT Issues’](#) (page 38), 2015

⁵ The Other Foundation, [‘Canaries in the Coalmines’](#) (page 10), June 2017

⁶ Human Dignity Trust, [‘Namibia’](#), no date

⁷ Law Reform and Development Commission, [‘Abolishment of Sodomy’](#) (page 6), February 2021

⁸ The Other Foundation, [‘Canaries in the Coalmines’](#) (page 10), June 2017

⁹ Law Reform and Development Commission, [‘Abolishment of Sodomy’](#) (page 6), February 2021

¹⁰ USSD, [‘USSD report 2020’](#) (section 6), 21 March 2021

¹¹ Law Reform and Development Commission, [‘Abolishment of Sodomy’](#) (page 6), February 2021

¹² LAC, [‘Namibian Law on LGBT Issues’](#) (page 6), 2015

¹³ USSD, [‘USSD report 2020’](#) (section 6), 21 March 2021

¹⁴ Law Reform and Development Commission, [‘Abolishment of Sodomy’](#) (page 2), February 2021

¹⁵ Law Reform and Development Commission, [‘Abolishment of Sodomy’](#) (page 2), February 2021

¹⁶ The Other Foundation, [‘Canaries in the Coalmines’](#) (page 10), June 2017

¹⁷ GRN, [‘Addendum for the UPR’](#) (paragraph 16), 14 September 2021

¹⁸ The Other Foundation, [‘Canaries in the Coalmines’](#) (page 10), June 2017

¹⁹ Law Reform and Development Commission, [‘Abolishment of Sodomy’](#) (page 6), February 2021

The Act also provides for the taking of finger-prints, palm-prints or foot-prints of anyone who is served with a summons for a Schedule 1 crime.’²⁰

3.2.4 The Criminal Procedure Act, 1977 (Act No. 51 of 1977) refers to the penalties for Schedule 1 offences, of which Sodomy is one. It states: ‘Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment wherefor may be a period of imprisonment exceeding six months without the option of a fine.’ The penalties equally apply to ‘Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.’²¹

3.2.5 Unnatural sexual offences is not listed as a Schedule 1 offence²² and the penalty upon conviction for the offence could not be found in the sources consulted (see [Bibliography](#)).

For information on discourse surrounding the repeal of sodomy legislation, see [Statements made by government figures and public officials](#)

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3.3 Legislation - gender reassignment

3.3.1 In relation to gender reassignment, the Births, Marriages and Deaths Registration Act 81 of 1963, section 7B states:

‘Alteration of sex description of person in his birth register -

‘The Secretary may on the recommendation of the Secretary for Health alter, in the birth register of any person who has undergone a change of sex, the description of the sex of such person and may for this purpose call for such medical reports and institute such investigations as he may deem necessary.’²³

3.3.2 The Other Foundation, an African trust with a focus on sexual orientation and gender identity, in their 2017 report ‘Canaries in the Coalmines – LGBTI Namibia Country Report’ (The Other Foundation report 2017) noted:

‘While the Constitution is silent on the human rights of transgender people, the apartheid South African law on sex reassignment surgery and document change is still in place...while Act 81, Sex Reassignment Policy from 1963 permits gender reassignment surgery, very few trans people are able to access this provision ...

‘Similarly, while it is possible for trans people to change their identity documents, bureaucratic obstructionism makes this impossible for most. Complete transition should, in theory, allow a trans person to officially change gender, as the Secretary of State can change a person’s gender if the necessary medical documents are available. There is no law related to crossdressing. However, the old Prohibition of Disguises Act 16 of 1969,

²⁰ Law Reform and Development Commission, ‘[Abolishment of Sodomy](#)’ (page 10), February 2021

²¹ Government of Namibia, ‘[The Criminal Procedure Act, 1977 \(Act No. 51 of 1977\)](#)’, Schedule 1

²² Law Reform and Development Commission, ‘[Abolishment of Sodomy](#)’ (page 10), February 2021

²³ Government of Namibia, ‘[Births, Marriages and Deaths ...](#)’, section 7B (page 8), 21 June 1965

inherited from apartheid South Africa, was adopted to prohibit crossdressing.²⁴

3.3.3 The International Lesbian, Gay, Bisexual, Trans and Intersex (ILGA) World report, 'Trans Legal Mapping Report, Recognition Before the Law 2019', published September 2020 noted 'Namibia currently ...has specific provisions in their laws that allow transgender and gender diverse people to change their gender marker or sex descriptor in their official documents. However, these have been critiqued for being inaccessible to many transgender and gender diverse people. In Namibia, stringent bio-medical pre-requisites such as surgical intervention act as a barrier to who can legally change their gender.'²⁵

3.3.4 The same ILGA report noted:

'The Act does not define "change of sex". Applications in terms of s.7B are done on a case-by-case basis— as long as a person can provide medical reports of their "change of sex". Once the application is granted, a trans person can apply for a new identity document and passport. ...

'A transgender person who has not had a "change of sex" could use s.12(1)(a) of the Identification Act 2 of 1996. It states that "if an identity document does not reflect correctly the particulars of the person to whom it was issued, or contains a photograph which is no longer a recognizable image of that person", the person shall hand over the identity document to the Minister. Section 12(3) states that the Minister shall cancel it and replace it with an improved identity document. However, the majority of trans people who have made applications to update their photographs have not been successful.'²⁶

3.3.5 LAC, in information provided to The Namibian, a Namibian newspaper, in September 2019 noted '...it's possible to have one's sex changed in the birth register, and this is done in practice, however there is nothing else specifically related to transgender laws.'²⁷

See also [Healthcare, gender re-assignment and hormone replacement](#)

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3.4 Other legislation

3.4.1 The LAC report 2015 noted:

'The Combating of Immoral Practices Act is aimed primarily at prostitution, but it contains several broader criminal offences: making proposals to any other person for "immoral purposes" in a public place; being in public view in an indecent dress or manner; or committing any "immoral act" with another person in public. There is no evidence that these offences are being applied any differently to heterosexual and homosexual situations...

'Namibian law does not criminalise the exchange of sexual acts for reward, but a number of the activities surrounding sex work are criminalised by the

²⁴ The Other Foundation, '[Canaries in the Coalmines](#)' (page 8), June 2017

²⁵ ILGA, '[Trans Legal Mapping Report 2019](#)' (page 17), September 2020

²⁶ ILGA, '[Trans Legal Mapping Report 2019](#)' (page 17), September 2020

²⁷ The Namibian, '[Being Trans-Diverse](#)', 6 June 2019

Combating of Immoral Practices Act. The provisions of the Act aimed at sex workers are gender-neutral, with the sex of the sex worker and the client being legally irrelevant. However, the criminalisation of sodomy and “unnatural sexual offences” means that the sexual acts committed by a male client with a male sex worker are often illegal in themselves...’²⁸

- 3.4.2 The USSD report 2020 (repeating its assessment from 2018²⁹ and 2019³⁰), and the UN Office of the High Commissioner for Human Rights (UN OHCHR)’s Summary of Stakeholders’ submissions on Namibia’, 18 February 2021, stated that the law did not prohibit discrimination based on sexual orientation or gender identity^{31 32}.
- 3.4.3 The same UN OHCHR report, in information provided by civil society organisations (CSOs): ‘JS6 [33] stated...The amendment bills to...Combating of Rape Act, 2000 (Act No.8 of 2000), Maintenance Act, 2003 (No. 9 of 2003) and the Criminal Procedure Act, 1997 (Act No. 51 of 1977) which sought to provide greater protection to women and girls did not explicitly recognize same-sex relationships or lesbian, gay, bisexual and transgender persons.’³⁴
- 3.4.4 In relation to the Combating of Domestic Violence Act 2003, sources noted the lack of recognition of LGBT persons and same-sex relationships^{35 36}, and the absence of explicit protections for LBT women and girls³⁷ including in providing assistance to victims of domestic violence in same-sex relationships, which was not covered under the Act³⁸.
- 3.4.5 The Joint Stakeholder Submission³⁹ for the UPR of Namibia 38th Session April – May 2021, noted ‘...Operating a brothel, living off the proceeds of sex work, and solicitation are further criminalised in the Combating of Immoral Practices Act. The rights to marriage and family are also limited: marriage and adoption rights have not been extended to LGBT+ persons.’⁴⁰
- 3.4.6 The Legal Assistance Centre (LAC) in the report ‘7 Reasons to Protect Same-Sex Couples Under the Combating of Domestic Violence Act’, 2020 noted the laws in existence which did not differentiate between opposite and same-sex couples:

‘One precedent is the Combating of Rape Act 8 of 2000, which uses gender-neutral language that covers sexual violence between persons of the same sex. Another example is section 158A(3)(c) of the Criminal Procedure Act 51 of 1977. Its definition of vulnerable witness includes a person “against whom any offence involving violence has been committed by a close family

²⁸ LAC, [‘Namibian Law on LGBT Issues’](#) (p77), 2015

²⁹ USSD, [‘USSD report 2018’](#), (section 6), 13 March 2019

³⁰ USSD, [‘USSD report 2019’](#) (section 6), 11 March 2020

³¹ USSD, [‘USSD report 2020’](#) (section 6), 21 March 2021

³² UN OHCHR, [‘Stakeholders Submissions’](#), (para 8), 18 February 2021

³³ UN OHCHR, [‘Stakeholders Submissions’](#), (page 8), 18 February 2021

³⁴ UN OHCHR, [‘Stakeholders Submissions’](#), (para 9), 18 February 2021

³⁵ UN OHCHR, [‘Stakeholders Submissions’](#), (para 9), 18 February 2021

³⁶ PV et al, [‘Joint Stakeholder Submission’](#) (para 6), April – May 2021

³⁷ Namibia Diverse Women’s Association et al, [‘Report to CEDAW’](#) (page 2), March 2021

³⁸ LAC, [‘7 Reasons to Protect Same-Sex Couples...’](#), (para 7), 2020

³⁹ See [Bibliography](#) for full list of contributors

⁴⁰ PV et al, [‘Joint Stakeholder Submission’](#) (para 6), April – May 2021

member or a spouse or a partner in any permanent relationship”. This wording would include people of the same sex who are partners in a permanent relationship. Therefore, amending the Combating of Domestic Violence Act to protect persons in same-sex relationships against violence would not be a new step in Namibian legislation.’⁴¹

- 3.4.7 The Namibia Diverse Women’s Association (NDWA) provided its ‘Joint Submission by Civil Society Organizations⁴² to the Committee on the Elimination of Discrimination against Women (CEDAW) for the 80th Pre-Sessional Working Group’, March 2021. The report noted the absence of specific prohibition of discrimination on the basis of sexual orientation and gender identity in the Namibian Labour Act 11 of 2007 and the 2019 draft Bill on the Prohibition of Discrimination, Harassment and Hate Speech. Instead, the bills provided protection against discrimination generally⁴³.

See also [Domestic caselaw / court cases](#)

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3.5 Domestic caselaw / court cases

- 3.5.1 Same-sex marriage is not provided for in law^{44 45 46}. Freedom House and the EU report on Human Rights and Democracy in the World (including Namibia), both covering events in 2020, noted legal challenges in the Namibian courts from people in same-sex partnerships seeking residency or recognition of their marriages^{47 48}. The EU report noted pending cases concerning same-sex marriage rights were ‘undermining the rights of LGBTI persons.’⁴⁹

- 3.5.2 The Namibian in ‘Landmark test for stance against gay marriage’, 21 May 2021, noted the legal challenges of 2 couples against the government’s refusal to recognise same-sex marriages concluded outside Namibia. The cases were heard at Windhoek High Court on 20 May 2021 and judgement was reserved until January 2022. The article explained:

‘In the one case before the court, Namibian citizen Johann Potgieter and his South African husband, Daniel Digashu, are suing the government to have their marriage, concluded in South Africa in 2015, recognised in Namibia.

‘They are also asking the court to declare that Digashu is Potgieter’s spouse as envisaged in the Immigration Control Act – a status which would have the effect that he would not need to apply for a work or residence permit to be allowed to live with his husband and their adopted son in Namibia.

‘In the second case, a German citizen, Anita Seiler-Lilles, who married her Namibian spouse, who is also a woman, in Germany in 2017, is asking the

⁴¹ LAC, ‘[7 Reasons to Protect Same-Sex Couples](#)..’, (para 7), 2020

⁴² See [Bibliography](#) for full list of contributors

⁴³ Namibia Diverse Women’s Association et al, ‘[Report to CEDAW](#)’ (page 2), March 2021

⁴⁴ The Namibian, ‘[Outright calls for scrapping of sodomy law](#)’, 19 May 2020

⁴⁵ PV et al, ‘[Joint Stakeholder Submission](#)’ (para 6), April – May 2021

⁴⁶ LAC, ‘[Namibian Law on LGBT Issues](#)’ (p.129), 2015

⁴⁷ EU, ‘[Human Rights and Democracy in the World: 2020](#)’ (page 137), 21 June 2021

⁴⁸ Freedom House, ‘[Freedom in the World 2021: Namibia](#)’ (section G3), 03 March 2021

⁴⁹ EU, ‘[Human Rights and Democracy in the World: 2020](#)’ (page 137), 21 June 2021

court to declare that her marriage is recognised in Namibia and that she is the spouse of her Namibian partner.⁵⁰

3.5.3 Africanews, media that covers sub-African and international news, in the article 'Gay parents' twins finally allowed to enter Namibia', 19 May 2021, noted:

'After a legal battle, Namibia has issued travel documents to twin infant daughters of a gay couple who were born in South Africa to a surrogate mother.... in March [2021] in Durban to ...parents Phillip Lühl, 38-year-old Namibian, and Guillermo Delgado, a 36-year-old Mexican. It comes after a Namibian court first rejected the couple's request and demanded genetic proof that Lühl was the father [sic]. But a new minister appointed in April studied the court documents and "authorised the issuance of emergency travel certificates applied for", the AFP news agency reports...The two were married in South Africa in December 2014, but the Namibian Interior Ministry does not recognise their union.'⁵¹

3.5.4 Reuters reported on 13 October 2021 that:

'A Namibian court ruled on Wednesday [13 October 2021] that the son of a gay couple, born via surrogacy in South Africa in 2019, is a Namibian citizen by descent, in a decision hailed as "big win" for same-sex couples. In a test case for Namibia, High Court Judge Thomas Masuku ruled that a paternity test is not needed to prove that Yona Luhl-Delgado is the son of Namibian Phillip Luhl and his Mexican husband, Guillermo Delgado. "This is a big win for same sex couples and especially a big win for Namibian children born outside Namibia by way of surrogacy," the couple's lawyer, Uno Katjipuka-Sibolile, told reporters following the judgement. Yona and his twin sisters, who are also battling to obtain Namibian citizenship in a separate case, were all born via surrogacy in South Africa.

'Judge Masuku ordered the ministry of home affairs and immigration to pay the couple's costs and issue national documents to Yona within 30 days.'⁵²

3.5.5 The Namibia Equal Rights Movement, responding to the verdict in the Lühl v MHAISS case, in two consecutive tweets from 21 October 2021 stated:

- 'Equality, is on the horizon. For the first time the High Court has recognized sexual orientation as a protected class under Article 10 [Equality & Freedom From Discrimination]. Together, we fought for an #EqualNamibia'.⁵³
- 'Thank you Judge Masuku, for standing on the right side of history and of the Constitution. #BornFree

"Article 10 deals with the right to equality and not to be discriminated against. In this case, I cannot help but note that the insidious attitude of discrimination appears to rear its ugly head in this matter. It must be chopped off, even ruthlessly, because it does not resonate with the vision of the Founding Mothers and Fathers of this Nation who conceived

⁵⁰ The Namibian, '[Landmark test for stance against gay marriage](#)', 21 May 2021

⁵¹ Africanews, '[Gay parents' twins finally allowed to enter Namibia](#)', 19 May 2021

⁵² Reuters, '[Gay couple hail 'big win' in battle over children's Namibian citizenship](#)', 13 October 2021

⁵³ Equal Right Namibia Movement (@EqualNamibia), '[Equality, is on the horizon...v](#)' 21 October 2021

Namibia as amongst others, to be a secular State, founded on the rule of law and justice is for all. I may add that ‘for all’ applies to all the people in Namibia regardless of... gender, sexual orientation.” [said] Judge Thomas Masuku, *Lühl v MHAISS Windhoek High Court* October 19, 2021’.⁵⁴

- 3.5.6 The Windhoek Express and New Era Live, Windhoek-based newspapers noted the civil court case of a trans Namibian female, Mercedez von Cloete, who sued the state for transphobic violence she suffered by police in 2017. The victim claimed N\$200,000 [approximately £9,943.69⁵⁵] and the state has proposed a payment of N\$10,000^{56 57} [approximately £497.37⁵⁸]. The trial hearing concluded on 16 May 2021 and the date scheduled for verdict is 15 November 2021⁵⁹.
- 3.5.7 African Arguments, described as an editorially-independent pan-African platform for news, investigation and opinion, in its article by Chirs de Beer-Procter, ‘Where we belong: Inside the reckoning for queer rights in Namibia’, 5 August 2021 noted ‘In 2021 alone, there have been at least ten cases brought to the country’s courts by same-sex couples seeking marriage equality, trans activists and victims of homophobic violence, and queer families fighting for their rights to live together... Pascale du Toit-Henke...and her South African wife Jennifer du Toit-Henke...are suing the Namibian government for their constitutional right to live and work in Namibia, Pascale’s homeland’.⁶⁰
- 3.5.8 African Arguments also noted details of the Seiler / Seiler-Lilles, Potgieter / Digashu, and Mercedes Von Cloete cases referred to in the news sources cited above. It stated the latter two cases were both awaiting judgements as at 5 August 2021⁶¹. For more information on the treatment that formed the basis of the legal challenge in the Mercedes Von Cloete case, see [Discrimination, harassment and violence](#)

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Section 4 updated: 01 September 2021

4. State attitudes and treatment

4.1 Human rights context

- 4.1.1 The EU report ‘Human Rights and Democracy in the World: 2020 Country Updates’, published 21 June 2021 noted: ‘In general, Namibia has a good track record on human rights and democracy and this continued in 2020... Despite these positive overall observations, issues related to women’s rights, the rights of the child and the rights of LGBTI persons need to be urgently addressed, as the challenges in these areas intensified during the COVID-19 pandemic...’⁶²

⁵⁴ Equal Right Namibia Movement (@EqualNamibia), ‘[Thank You Judge...](#)’, 21 October 2021

⁵⁵ [XE Currency Converter](#), 19 October 2021

⁵⁶ New Era, ‘[State suggests N\\$10 000 payment to transgender woman](#)’, 17 May 2021

⁵⁷ Windhoek Express, ‘[Trial over police attack on trans Namibian begins](#)’, 10 May 2021

⁵⁸ [XE Currency Converter](#), 19 October 2021

⁵⁹ New Era, ‘[State suggests N\\$10 000 payment to transgender woman](#)’, 17 May 2021

⁶⁰ African Arguments, ‘[Where we belong](#)’..., 5 August 2021

⁶¹ African Arguments, ‘[Where we belong](#)’..., 5 August 2021

⁶² EU, ‘[Human Rights and Democracy in the World: 2020](#)’ (page 137), 21 June 2021

- 4.1.2 The US State Department's (USSD) human rights report covering events in 2020 noted 'Significant human rights issues were limited to acts of official corruption.'⁶³ The report also stated: 'The law provides for access to a court for lawsuits seeking damages for or cessation of human rights violations. The constitution provides for administrative procedures and judicial remedies to redress wrongs...'⁶⁴

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4.2 Statements made by government figures and public officials

- 4.2.1 The Equality and Justice Alliance, and organisation that supports coalitions of civil society organisations to reform unjust laws, in 'Comparative legal review of harassment and sexual exploitation laws across the Commonwealth', published in 2020 noted 'The attitude of the government has generally moved away from outright condemnation of lesbian, gay, bisexual or transgender (LGBT) people to more of a "don't ask, don't tell" approach.'⁶⁵ The USSD report 2020, repeated its assessment from 2018⁶⁶ and 2019⁶⁷, that 'Some politicians opposed any legislation that would specifically protect the rights of LGBTI persons.'⁶⁸

- 4.2.2 The Namibian newspaper in its article published on 3 October 2019 noted despite:

'A DECISION by the Ministry of Home Affairs and Immigration to grant a permanent residence permit to a South African woman who is in a same-sex marriage with a Namibian citizen has not changed the government's stance that it does not recognise marriages between people of the same gender, home affairs minister Frans Kapofi said yesterday. "We don't recognise same-sex marriage here," Kapofi said in a telephonic interview with The Namibian. "We don't have it in our statutes. Same-sex marriage is not lawful in Namibia. Until such time as the law provides otherwise, the statute remains," he stated.'⁶⁹

- 4.2.3 In its 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21' to the UN Human Rights Council (HRC), as part of the UPR, dated 11 February 2021, the Government of the Republic of Namibia (GRN) noted that it '...continues to explore effective mechanisms to clarify its position on LGBTQ rights despite existing normative and religious barriers. In the meantime, the Government continues to implement the general right to non-discrimination in the promotion and protection of human rights for all persons in Namibia.'⁷⁰

- 4.2.4 The GRN's 'Addendum' to the Report of the Working Group on the UPR, Forty-eighth session 13 September - 1 October 2021 dated 14 September 2021 stated:

⁶³ USSD, '[2020 Country Reports on Human Rights Practices...](#)' (Executive summary), 30 March 2021

⁶⁴ USSD, '[2020 Country Reports on Human Rights Practices: Namibia](#)' (section 5), 30 March 2021

⁶⁵ Equality and Justice Alliance, '[Comparative legal review](#)' (page 14), 2020

⁶⁶ USSD, '[USSD report 2018](#)', (section 6), 13 March 2019

⁶⁷ USSD, '[USSD report 2019](#)' (section 6), 11 March 2020

⁶⁸ USSD, '[USSD report 2020](#)' (section 6), 21 March 2021

⁶⁹ The Namibian, '[Govt sticks to stance on same-sex marriage](#)', 3 October 2019

⁷⁰ UN General Assembly, HRC, '[National report...](#)' (paragraph 117(f)), 11 February 2021

'The Namibian Government does not persecute members of the Lesbians, Gays, Bisexual, Transgender and Intersexed (LGBTI) community and homosexuality is not illegal in Namibia. The Government continues to explore effective mechanisms to clarify its position on LGBTQ rights despite existing normative and religious barriers. In the meantime, the Government continues to implement the general right to non-discrimination in the promotion and protection of human rights for all persons in Namibia, as provided for under Article 10 of the Namibian Constitution....'⁷¹

4.2.5 UN OHCHR's, Report of the Working Group on the UPR dated 29 June 2021, in information provided by the GRN stated: 'The Constitution protected against all forms of discrimination. Members of vulnerable groups, including LGBTIQ persons and commercial sex workers, had unfettered access to public health-care facilities and the Government would continue to raise officials' awareness of the prohibition of discrimination and of cultural biases against members of these groups.'⁷²

4.2.6 The Namibian, the USSD and the LGBT NGO Erasing 76 Crimes all noted the government's ombudsman, John Walters, had called for the abolition of the common law offence of sodomy since at least 2016^{73 74 75 76}. In May 2020, The Namibian newspaper stated:

'Ombudsman John Walters said Namibia has made no progress in terms of fighting homophobia nor amending laws to give justice to the rainbow community, which is subjected to harassment. He said ... his office will look at proposing a bill on prohibiting discrimination, harassment and hate speech against the bill. Walters... said Namibia's Constitution does not have provisions to allow the criminal law to act on behalf of the LGBTQ+ community or to defend them. "A consistent policy of not bringing prosecution of sodomy ... is not substitute for decriminalisation of sodomy..." he said.'⁷⁷

4.2.7 UN OHCHR's, 'Summary of Stakeholders' submissions on Namibia', 18 February 2021 noted: 'JS6 [⁷⁸] stated that the Ombudsman's Office had been the voice of the lesbian, gay, bisexual and transgender community. It stated that the Ombudsman's bill to strengthen the institutional framework and independence and to broaden the mandate of the Office had been under discussion.'⁷⁹

4.2.8 The Namibian Sun, a Namibian newspaper, in June 2019, and the LRDC in February 2021 noted the contents of a speech delivered by the First Lady of

⁷¹ GRN, '[Addendum for the UPR](#)' (para 16), 14 September 2021

⁷² UN OHCHR, '[Report of the Working Group on UPR](#)' (para 59), 29 June 2021

⁷³ The Namibian, '[Let gays be- Walters](#)', 23 August 2016

⁷⁴ USSD, '[USSD report 2017](#)', section 6), April 2018

⁷⁵ USSD, '[USSD report 2020](#)' (section 6), 21 March 2021

⁷⁶ Erasing 76 Crimes, '[Namibia justice minister...](#)' 26 May 2021

⁷⁷ The Namibian, '[Outright calls for scrapping of sodomy law](#)', 19 May 2020

⁷⁸ Namibia Diverse Women's Association, Khaibasen Trust of Namibia, Transgender Intersex Androgynous Movement of Namibia, Healing Wound Associations, Equal Rights For All Movement, Mental Medical Counselling Network, Trans Masculine Namibia, Namibia Sex Workers Alliance, and Young Girls and Women (Namibia)

⁷⁹ UN OHCHR, '[Stakeholders Submissions](#)', (para 7), 18 February 2021

Namibia, Monica Geingos, on 12 June 2019^{80 81}. The LRDC stated '[Geingos]... has pointed out that no convictions have been recorded under this [sodomy] law since Independence [21 March 1990], and that it would not be feasible to prosecute anyone for consensual sodomy without violating the Constitutional protections for personal privacy.'⁸²

4.2.9 Monica Geingos, responding to the publication of the LRDC's February 2021 report⁸³, in 2 consecutive tweets from 23 May 2021 stated:

- 'The language is important. We saw how the headlines prompted mind-boggling homophobia and misplaced calls for referendum as many conflated the repeal of a sodomy law with enactment of same sex marriage. We can have both discussions but they are legally different.'⁸⁴
- 'We must elevate the quality of our national discourse. How we engage each other and the quality of media reporting needs improvement. The insults, oppressive language, sensationalisation and blatant homophobia was difficult to watch.'⁸⁵

4.2.10 In response to the same LRDC report, the Namibian article 'Namibia divided on homosexuality', 24 May 2021, noted

'For the past few days, social media has been a tool to air support towards homosexuality while others have used it to oppose it. Political commentator Ndumba Kamwanyah, over the weekend, came out in support of same-sex marriage on Facebook... Last week, Swapo Party Youth League (SPYL) [SWAPO are the ruling party] secretary general Efraim Nekongo said SPYL is sickened by recent discussions of homosexuality by government and possibly parliament... SPYL said homosexuality is "satanic and demonic". First lady Monica Geingos in a social media post on Friday said, "Scrap all obsolete laws and stop being homophobic." Geingos' reaction came a day after Nekongo's remarks.

'Namibia's youngest member of parliament Patience Masua also tweeted, "Both those issues can co-exist. They are not mutually exclusive. We can fight for and advance human rights while at the same time formulating and implementing measures to build our economy. That is effective and dynamic governance." Masua was responding to the former editor of the ruling Swapo newspaper, Namibia Today, Asser Ntinda. Ntinda had tweeted that government is busy rushing to legalise homosexuality instead of formulating measures to grow the economy so that it absorbs thousands of helpless unemployed youth.'⁸⁶

4.2.11 The Windhoek Observer, a weekly newspaper in 'Namibia in push to legalise homosexuality', 18 May 2021 noted:

'The Namibian Government is forging ahead with plans to terminate a law that has made the practice of homosexuality in the country illegal. The

⁸⁰ The Namibian Sun, '[Sodomy law's days numbered – Geingos](#)', 14 June 2019

⁸¹ Law Reform and Development Commission, '[Abolishment of Sodomy](#)' (page 66), February 2021

⁸² Law Reform and Development Commission, '[Abolishment of Sodomy](#)' (page 66), February 2021

⁸³ Law Reform and Development Commission, '[Abolishment of Sodomy](#)' (page 6), February 2021

⁸⁴ Geingos, Monica (@KalondoMonica), '[The language is important...](#)', 23 May 2021

⁸⁵ Geingos, Monica (@KalondoMonica), '[We must elevate...](#)', 23 May 2021

⁸⁶ The Namibian, '[Namibia divided on homosexuality](#)', 24 May 2021

development could see the particular law being overturned before the end of the year. Justice Minister, Yvonne Dausab, confirmed to Windhoek Observer that she has committed to submit draft regulations to Cabinet in two weeks at the deliberative meeting... “I think give or take we may see this go to the NA [National Assembly] before the year ends,” the minister said.’⁸⁷

- 4.2.12 The Namibian, on 27 May 2021, reported comments by Justice Minister, Yvonne Dausab who stated that:

“This common law offence only makes it a crime if two males by agreement engage in sexual activity. This crime of sodomy cannot be enforced without violating the right to privacy of those that are accused of the crime. This leads to further stigmatisation of gay men,” she stressed...

‘Dausab urged Namibians to discuss the issue of homosexuality “but not lace it with emotions and religious impositions”. “The kind of language we use to discuss the issue must show love, care and understanding for our fellow Namibians. It must be non-judgemental and we must not think about the nature of the relationship as sexual,” Dausab said.’⁸⁸

- 4.2.13 The GRN’s ‘Addendum’ to the Report of the Working Group on the UPR, Forty-eighth session 13 September–1 October 2021 dated 14 September 2021 noted:

‘On 17 May 2021, the Law Reform and Development Commission presented a [report](#) to the Minister of Justice on abolishment of the common law offences of sodomy and unnatural sexual offences. The report includes a draft repeal legislation for the consideration and further action of the Minister of Justice. The Minister of Justice will table the report on the abolishment of sodomy and unnatural sexual offences in Parliament for discussion and consideration to kickstart progressive reform of the common law and legislative provisions to better promote the rights of LGBTQ persons. Currently, it must be noted that Namibia does not have laws that criminalise homosexuality.’⁸⁹

See also [Legislation – same-sex sexual acts](#)

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4.3 Government policies and programmes

- 4.3.1 The LRDC’s February 2021 report noted ‘Namibia’s National Human Rights Action Plan 2015-2019, which was approved by Parliament in late 2014, identifies the Lesbian Gay Bisexual Transgender and Intersex population (LGBTIs) as a “vulnerable group” and points to the need to protect members of vulnerable groups against discrimination. It identifies the continued criminalisation of sodomy as one of several key concerns in this regard.’⁹⁰

- 4.3.2 The same LRDC report noted:

‘The criminalisation of sodomy has in some cases been used as a basis to make certain detrimental policy decisions. One example is where members

⁸⁷ Windhoek Observer, ‘[Namibia in push to legalise homosexuality](#)’, 18 May 2021

⁸⁸ The Namibian, ‘[We cannot police people’s sex lives – Dausab](#)’, 27 May 2021

⁸⁹ GRN, ‘[Addendum for the UPR](#)’ (para 17), 14 September 2021

⁹⁰ Law Reform and Development Commission, ‘[Abolishment of Sodomy](#)’ (page 2), February 2021

of the Namibian Correctional Services have declined to provide inmates with condoms in order to prevent the spread of HIV/AIDS. The reasoning proffered is that correctional services officials do not want to be complicit with the crime of sodomy taking place in correctional facilities, combined with the fact that many inmates fear the stigmatisation that can come from getting condoms in prison, which might lead some to conclude that they engage in homosexual relationships.⁹¹

4.3.3 The NDWA Joint Submission to CEDAW, March 2021 noted:

‘... it [is] extremely hard to obtain statistical data regarding SGBV on LBT persons. National Sexual and Gender Based Violence (SGBV) statistics in the country are often framed as an issue solely affecting the heterosexual (cisgender) communities whilst members of the LBT community are left out in both legislative and service reform processes. The National Gender Policy and its Plan of Action (2010-2020) aims to guide actions towards the integration and mainstreaming of gender in the broader development framework. Despite the Office of the Ombudsman holding several consultations on reviewing and updating progress, the execution of this plan by public agencies has proven not to benefit the LBT community, as no direct programming was done to ensure those communities are reached.’⁹²

4.3.4 The UN OHCHR Summary of Stakeholders’ submissions report dated 18 February 2021, in the joint submission from regional and international CSOs (JS2 which includes ‘Positive Vibes Trust, Women’s Leadership Centre, Young Feminists Movement Namibia, Coalition of African Lesbians, AIDS and Rights Alliance for Southern Africa and, Sexual Rights Initiative, Geneva (Switzerland) (Joint Submission 2)’⁹³) stated ‘...the National Plan of Action on Gender-Based Violence, 2019-2023, that had been adopted in 2019, had no budget for implementation. This Plan had exclusively focused on cisgender, heterosexual women, to the exclusion of lesbian, bisexual and queer women, as well as sex workers. The Plan had been based on discriminatory social norms and gender stereotypes that perpetuated discrimination against women.’⁹⁴

4.3.5 The Namibian in ‘Health ministry says LGBTQ community is catered for’, 1 September 2021 stated: ‘The deputy executive director [for the Ministry of Health and Social Services] explained that the directorate of primary health care services has a dedicated programme for reproductive health services looking into sexual and reproductive health services and programmes. The Directorate of Special Programmes also provides sexually transmitted infection, HIV-AIDS programmes as well as preventive programmes targeting key populations.’⁹⁵

See also [Statements made by government figures and public officials](#) and [Healthcare, gender re-assignment and hormone replacement](#)

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⁹¹ Law Reform and Development Commission, ‘[Abolishment of Sodomy](#)’ (page 11), February 2021

⁹² Namibia Diverse Women’s Association et al, ‘[Report to CEDAW](#)’ (page 2), March 2021

⁹³ UN OHCHR, ‘[Stakeholders Submissions](#)’, (page 8), 18 February 2021

⁹⁴ UN OHCHR, ‘[Stakeholders Submissions](#)’, (para 10), 18 February 2021

⁹⁵ The Namibian, ‘[Health ministry says LGBTQ community is catered for](#)’, 1 September 2021

4.4 Arrests and prosecutions

4.4.1 LAC’s 2015 report and The Other Foundation’s 2017 report noted the law on sodomy and unnatural sexual acts was seldom applied^{96 97}.

4.4.2 The USSD (repeating its assessment from previous years^{98 99 100}) and Freedom House, in reports covering events of 2020, noted that although the sodomy law criminalised same-sex sexual relations, it was not enforced^{101 102}. Freedom House stated ‘...there have been no recent convictions’.¹⁰³

4.4.3 The LRDC’s February 2021 report provided a table based on statistics from Nampol (the Namibian police force) as at January 2020. The source noted that the juvenile category included all persons under age 18, while the age of consent is effectively 16:

SODOMY CASES REPORTED TO NAMPOL 2003-2019						
YEAR	CASES		PERPETRATORS		VICTIMS	
	Reported	Arrests	Adult male	Juvenile male	Adult male	Juvenile male
2003	6	6	4	-	4	2
2004	13	10	11	-	8	3
2005	8	6	6	-	6	2
2006	4	-	-	-	2	2
2007	4	3	4	-	-	1
2008	4	3	3	-	2	2
2009	5	3	3	-	4	1
2010	9	4	3	2	7	2
2011	9	6	6	-	3	6
2012	3	7	7	-	1	2
2013	6	2	2	-	3	3
2014	2	1	1	-	1	1
2015	10	4	2	-	8	2
2016	13	4	4	-	6	7
2017	5	3	3	-	3	2
2018	5	-	-	-	2	3
2019	9	2	-	2	5	4
TOTALS	115	64	59	4	65	45
	115 reported cases		ages of 63 perpetrators known		ages of 110 victims known	

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4.4.4 The source explained that:

‘... despite its continued existence, the common law crime of sodomy is seldom enforced in practice. These figures indicate an average of fewer than seven cases per year – and not all of these involve consensual sodomy. The Office of the Prosecutor - General has explained that most of the cases recorded by the police which are forwarded for prosecution involve non-consensual anal penetration perpetrated by an adult on a minor, which is

⁹⁶ LAC, ‘[Namibian Law on LGBT Issues](#)’ (4.2.2), 2015

⁹⁷ The Other Foundation, ‘[Canaries in the Coalmines](#)’ (page 7), June 2017

⁹⁸ USSD, ‘[USSD report 2017](#)’ (section 6), April 2018

⁹⁹ USSD, ‘[USSD report 2018](#)’ (section 6), 13 March 2019

¹⁰⁰ USSD, ‘[USSD report 2019](#)’ (section 6), 11 March 2020

¹⁰¹ USSD, ‘[USSD report 2020](#)’ (section 6), 21 March 2021

¹⁰² Freedom House, ‘[Freedom in the World 2021: Namibia](#)’ (section F4), 03 March 2021

¹⁰³ Freedom House, ‘[Freedom in the World 2021: Namibia](#)’ (section G3), 03 March 2021

¹⁰⁴ Law Reform and Development Commission, ‘[Abolishment of Sodomy](#)’ (page 8), February 2021

erroneously recorded as sodomy by the police but is correctly dealt with by the Office of the Prosecutor General as rape in terms of the Combating of Rape Act, 2000 (Act No. 8 of 2000). There is seldom a prosecution for consensual sodomy because the act usually takes place within the privacy of homes, with no innocent victim who is willing to report the crime and testify against the other party.

‘This explains why there are no reported cases involving the prosecution of criminal charges of sodomy or unnatural sexual offences since Namibian independence.

‘In fact, the low number of arrests means that the law is particularly invidious; it is not being used with sufficient frequency to accomplish any social objective, but it is enforced often enough to create realistic fear of possible arrest on the part of the gay community. Furthermore, even though these laws are seldom enforced, their very existence violates the fundamental rights of the individuals who could be affected, as well as creating and reinforcing a culture of homophobia and intolerance against LGBTI people.’¹⁰⁵

4.4.5 The LAC report 2015 noted:

‘The Combating of Immoral Practices Act is aimed primarily at prostitution, but it contains several criminal offences which could be applied more broadly. It is a crime where a person –

- “entices, solicits or importunes or makes any proposals to any other person for immoral purposes” in any public street or other public place;
- “wilfully and openly exhibits himself in an indecent dress or manner at any door or window within view of any public street or place or in any place to which the public have access” (a crime which overlaps with public indecency);
- commits any “immoral act” with another person in public.

‘These crimes appear to apply equally to males and females in any combination. However, there is a danger in an environment which is intolerant of homosexuality that concepts like “indecency”, “immoral purposes” and “immoral acts” could be selectively applied to LGBT individuals. Fortunately, we have not to date encountered any evidence of biased enforcement of these provisions in practice, nor any cases which applied these offences in relation to homosexual activity between consenting adults.’¹⁰⁶

4.4.6 The ILGA 2019 report noted ‘...[the GRN] use[s] public order, public indecency and vagrancy offences to target transgender and gender diverse people.’¹⁰⁷ In sources consulted (see [Bibliography](#)) no more specific or detailed information on the use of these laws could be found.

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¹⁰⁵ Law Reform and Development Commission, ‘[Abolishment of Sodomy](#)’ (page 9), February 2021

¹⁰⁶ LAC, ‘[Namibian Law on LGBT Issues](#)’ (p77), 2015

¹⁰⁷ ILGA, ‘[Trans Legal Mapping Report 2019](#)’ (page 15), September 2020

4.5 Discrimination, harassment, and violence

- 4.5.1 In sources consulted (see [Bibliography](#)) there was a lack of detailed, specific or recent (in the last 3 years) information on adverse state treatment, such as harassment, violence or arbitrary arrests incurred by lesbian, gay, bisexual and intersex people. Information either focussed on the general treatment of the whole LGBTI community or focused on the experiences of trans persons with few examples, definitions of what constituted violence or discrimination, and data on the number and frequency of incidents.
- 4.5.2 Older sources provided information in 2016 and 2017 that noted LGBTI people had experienced arbitrary arrest¹⁰⁸, police harassment, violence and rape^{109 110}, ill-treatment in detention, including sexual assault of trans persons¹¹¹ and blackmailing of prisoners¹¹².
- 4.5.3 However, more recently published sources also often referred to earlier information. For example ILGA in 2019 stated ‘Dutch common law’s criminalisation of sodomy, and legislation criminalising ‘immoral practices’, sex-work and loitering... have been used to subject transgender and gender non-conforming people to harassment and arbitrary search.’¹¹³ which was information published by the Southern Africa Litigation Centre in 2016¹¹⁴ and the Open Society Institute in 2009¹¹⁵.
- 4.5.4 The LAC report 2015¹¹⁶ also referred to the 2009 Open Society Institute report’s information¹¹⁷ that “Laws in ... Namibia that prohibit homosexual acts affect gay and trans sex workers and provide the police with additional rationale to abuse, harass, and arrest them.”¹¹⁸
- 4.5.5 The UN OHCHR 26 February 2021 report stated: ‘The Human Rights Committee expressed concern about reported cases of violence and harassment against lesbian, gay, bisexual and transgender persons by the police^[119]. The Committee against Torture stated that Namibia should take all necessary measures to protect lesbian, gay, bisexual, transgender and intersex persons from threats and violence.^[120]¹²¹. This report cited information from UN OCHCR in 2016 and UN CAT published in 2017.
- 4.5.6 The Bertelsmann Stiftung's Transformation Index (BTI), which provides a measure of the development status and governance of political and economic transformation of a range of developing countries, in the 2020 Country Report – Namibia, covering the period 2017 to January 2019 noted ‘While constitutional and legal provisions seek to eliminate discrimination to

¹⁰⁸ Advocates for Human Rights, ‘[Namibia’s Compliance with UNCAT](#)’, (page 3) Nov 2016–Dec 2016

¹⁰⁹ UN OHCHR, ‘[Concluding observations on Namibia](#)’, (paras 90 and 21) 22 April 2016

¹¹⁰ The Other Foundation, ‘[Canaries in the Coalmines](#)’, (page 25) June 2017

¹¹¹ UN CAT, ‘[Concluding observations on Namibia](#)’ (para 30), 1 February 2017

¹¹² The Other Foundation, ‘[Canaries in the Coalmines](#)’, (page 7) June 2017

¹¹³ ILGA, ‘[Trans Legal Mapping Report 2019](#)’ (page 49), September 2020

¹¹⁴ Southern Africa Litigation Centre, ‘[Laws and Policies ...](#)’ (pages 35-36) 2016

¹¹⁵ Open Society Institute, ‘[Rights not Rescue](#)’, 2009

¹¹⁶ LAC, ‘[Namibian Law on LGBT Issues](#)’ (p77), 2015

¹¹⁷ Open Society Institute, ‘[Rights not Rescue](#)’, 2009

¹¹⁸ Open Society Institute, ‘[Rights not Rescue](#)’, 2009

¹¹⁹ UNOHCHR, ‘[Concluding observations on Namibia](#)’, (paras 90 and 21) 22 April 2016

¹²⁰ UN CAT, ‘[Concluding observations on Namibia](#)’ (para 30), 1 February 2017

¹²¹ UN OHCHR, ‘[Compilation of Namibia](#)’(pages 4-5), 26 February 2021

a large extent, LGBTI communities still face discrimination and at times a harsh treatment by the police.’ The source did not elaborate on the type of discrimination or treatment encountered by the police, or whether this applied to LGBTI victims when reporting crimes or those LGBTI persons arrested, detained or prosecuted for offences (or both)¹²².

4.5.7 The Freedom House report 2021, in its section on political rights and electoral opportunities noted ‘LGBT+ people face discrimination that hampers their ability to openly advocate for their interests.’¹²³ The source did not elaborate on the type of discrimination encountered.

4.5.8 The Human Dignity Trust, in ‘Injustice Exposed the Criminalization of Transgender People and its Impacts’, dated 17 May 2019 in information provided to Human Dignity Trust in interviews with Namibian trans women in 2018 (the number of people interviewed was not specified by the source) noted:

‘The Combating of Immoral Practices Act 1980 prohibits the vague offence of committing an immoral act...[a] trans woman observed that, under the Combating of Immoral Practices Act: “We experience daily discrimination and the Act does not enable laws, policies and frameworks, that protects [sic] our lives, promote our rights, health, safety and security needs and hold perpetrators accountable. Our right of freedom is limited as well as freedom of speech and expression, it fuels gross violations of our rights ... contributes to correctional rape, coercion to have sexual encounters with men who we don’t choose to have sex with...The Act demoralizes our dignity, pride, sameness that we share as Namibians”’.¹²⁴

4.5.9 In the Submission to the UPR 15 October 2020, Maat for Peace, Development, and Human Rights (MPDHR) an Egyptian civil society organisation, noted ‘There are numerous cases of harassment, torture and ill treatment of members of the LGBTI community by state and non-state actors’¹²⁵. MPDHR provided the example of the widely reported attack on a trans woman by Frans Migub / Goagoseb, a non-state actor (see [State protection and Treatment of trans persons](#)) but no examples of abuses by the state were provided.

4.5.10 The Windhoek Express in the report ‘Trial over police attack on trans Namibian begins’, 10 May 2021 noted

‘... Cloete [the victim] says she was accosted by plainclothes police officers at around 02:30 inside the fast food outlet. She was bundled into a police van, handcuffed and assaulted by an officer only identified as “Officer Kavari” in the van on the way to the police station. She claims during the attack the officer repeatedly assaulted her physically and verbally by labelling her with derogatory terms based on her gender identity... After Cloete was driven to a nearby police station, camera footage shows she was again attacked outside the police station... The safety and security ministry deny any wrongdoing. They claim the officers were simply carrying out their

¹²² BTI, ‘[2020 Country Report – Namibia](#)’ (Welfare Regime), 29 April 2020

¹²³ Freedom House, ‘[Freedom in the World 2021: Namibia](#)’ (section B4), 03 March 2021

¹²⁴ Human Dignity Trust, ‘[Injustice Exposed](#) ...’ (Case study 8), 17 May 2019

¹²⁵ Maat for Peace, Development and Human Rights, ‘[Submission to the UPR](#)’, 15 October 2020

duty... They claim she appeared intoxicated and threatened to spray them with pepper spray. They claim she continued to be unruly in the van...'¹²⁶

- 4.5.11 New Era Live, a Namibian newspaper, reported on the same case in its article of the 17 May 2021, with much of the same information surrounding the circumstances of the arrest and detention included. In addition, the report noted:

'The State has proposed a payment of N\$10 000 to a transgender woman who is suing the minister of safety and security after she was allegedly unlawfully arrested and assaulted by a police officer in July 2017...

'According to lawyer Ndiriraro Kauari, the only credible evidence provided by Jospser Cloete, known as Mercedes Von Cloete, is a single kick by a police officer, which the State cannot justify. Thus, the only justifiable amount in such circumstances would be a settlement of N\$10 000. ... Despite Cloete's arrest that night, she was never charged or detained. Judge Schimming-Chase is scheduled to give a ruling in the matter on 15 November [2021].'¹²⁷

- 4.5.12 In information provided by Cloete to African Arguments, published 5 August 2021, Cloete said:

“A few years ago, I had a very traumatic experience with the Namibian Police, where I was unlawfully detained and brutally assaulted, repeatedly. This was not the first time that something like this had happened to me, but I promised myself that I could not allow it to persist. And so, for the last four and a half years I've been trying to get justice and hold the police accountable... harassment and police brutality... has remained unaddressed for far too long... Personally, the emotional, psychological and physiological (dis)stress cannot be quantified. I'm still healing and just hoping that in November when the final judgement is made, that justice will prevail.”¹²⁸

See also [Domestic caselaw / court cases](#)

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4.6 Conversion therapy

- 4.6.1 In sources consulted (see [Bibliography](#)) there was no detailed information on the use of conversion therapy by the state.
- 4.6.2 Outright International published the report 'Harmful Treatment - The Global Reach of So-Called Conversion Therapy', 2019. On the section on the survey methodology, the report noted the survey was non-randomised and out of the 1,977 invitations, 556 responses were received worldwide and 489 were included in the sample size from 80 countries. The source stated that those 489 respondents all answered that they believed conversion therapy was taking place in their country (those that didn't were already discounted)¹²⁹. This included the 5 Namibians listed in the Appendix as survey respondents¹³⁰. It was not possible to determine from the report any more detail, including on perceived prevalence or whether the perpetrators were

¹²⁶ Windhoek Express, '[Trial over police attack on trans Namibian begins](#)', 10 May 2021

¹²⁷ New Era Live, '[State suggests N\\$10 000 payment to transgender woman](#)', 17 May 2021

¹²⁸ African Arguments, '[Where we belong...](#)', 5 August 2021

¹²⁹ Outright International, '[Harmful Treatment](#)' (pages 35-36), 2019

¹³⁰ Outright International, '[Harmful Treatment](#)' (Appendix 1), 2019

believed to be state or non-state actors, as the results were not desegregated for Sub-Saharan Africa.

- 4.6.3 For further information on the methodology and limitations of the survey, see the full [Harmful Treatment](#) report.

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4.7 Restrictions against LGBTI organisations

- 4.7.1 The United States Agency for International Development (USAID) published the '2019 Civil Society Organization Sustainability Index for Sub-Saharan Africa', covering developments in 2019. The Index 'addresses continuity, advances, and setbacks in seven key components or "dimensions" of the sustainability of civil society sectors: legal environment, organizational capacity, financial viability, advocacy, service provision, sectoral infrastructure, and public image.'¹³¹ Namibia was ranked 4.3 in 2019 with 1 being 'sustainability enhanced' and 7.0 being 'sustainability impeded'.¹³²

- 4.7.2 The same USAID report explained:

'Overall, the sustainability of Namibia's civil society was unchanged in 2019. A greater number of public protests focused on issues such as corruption and gender-based violence (GBV) contributed to an improved advocacy score. Service provision was slightly stronger as organizations explored new ways to broaden their reach. The sector's public image improved slightly with better media coverage and reduced anti-civil-society rhetoric from the government. CSOs' legal environment, organizational capacity, financial viability, and sectoral infrastructure did not change. There is no recent data available on the size of the civil society sector in Namibia. The best estimate comes from a database developed by CIVIC +264, which lists 225 active organizations countrywide.'

- 4.7.3 The BTI 2020 Country Report noted:

'While civil society organizations in Namibia are rather vulnerable, mainly due to a lack of funding and few qualified staff with long-term perspectives, they remain an important asset in daily life and public discourse. Only a small number of them has a broad impact, while many smaller groups operate in a limited way. The relative freedom of speech and high degree of civil liberties enable individuals and groups in civil society to operate in a way that allows them to punch above their weight. They also benefit from a vibrant local independent media industry, which offers them prominent coverage.'¹³³

- 4.7.4 The USSD report 2020, provided information on governmental attitude regarding international and non-governmental investigation of alleged human rights abuses and noted:

'Several domestic and international human rights groups operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and

¹³¹ USAID, '[CSO Sustainability Index for Sub-Saharan Africa](#)' (Introduction), December 2020

¹³² USAID, '[CSO Sustainability Index for Sub-Saharan Africa](#)' (page 174), December 2020

¹³³ BTI, [2020 Country Report – Namibia](#) (Governance), 29 April 2020

responsive to their views and were tolerant of NGO reports provided to the United Nations highlighting issues not raised by the government or pointing out misleading government statements.... local human rights NGOs, and the ACC reported NamPol cooperated and assisted in human rights investigations.’¹³⁴

4.7.5 The USSD report did not specifically identify the NGOs/CSOs it referred to and whether these included LGBTI organisations. However, it is clear from other sources that LGBTI organisations have been able to function (see [LGBTI individuals, communities and groups](#)) and have, for example, provided information to the UN.¹³⁵

4.7.6 In sources consulted (see [Bibliography](#)) no other information could be found on any restrictions faced by LGBTI organisations.

See also [LGBTI individuals, communities and groups](#)

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4.8 State protection

4.8.1 The USSD report 2020 explained that the Namibian Police Force (NAMPOL) maintains internal security, reporting to the Ministry of Safety and Security, and that the ‘Civilian authorities maintained effective control over the security forces [both NAMPOL and the Namibian Defense Force]’. The report further noted that ‘Members of the security forces allegedly committed some abuses. Significant human rights issues were limited to acts of official corruption. The government took steps to prosecute or administratively punish officials who committed abuses, whether in the security services or elsewhere in the government.’¹³⁶

4.8.2 The USSD also observed regarding the operation of the legal system generally, that the government respected judicial independence and impartiality. The report went on to note ‘The constitution and law provide for the right to a fair and public trial, and the government generally respected judicial independence. Nevertheless, long delays in courts hearing cases and the uneven application of constitutional protections in the customary system compromised this right.’¹³⁷

4.8.3 Freedom House in its annual report on events in 2020 similarly observed: ‘By law and in practice, the separation of powers is observed, and judges are not frequently subject to undue influence. The 2015 establishment of the Office of the Judiciary affords the system administrative and financial independence. However, the judiciary lacks adequate resources and is vulnerable to budget cuts.’¹³⁸

4.8.4 ReportOUT, a global sexual orientation, gender identity, expression and sex characteristics (SOGIESC) human rights organisation published a report from a trans person (anonymised) in October 2019 who detailed their sexual assault by a male stranger. The report noted: ‘I ran to the nearby police

¹³⁴ USSD, [USSD report 2020](#) (section 5), 21 March 2021

¹³⁵ UN OHCHR, [Stakeholders Submissions](#), 18 February 2021

¹³⁶ USSD, [USSD report 2020](#) (Executive summary), 30 March 2021

¹³⁷ USSD, [USSD report 2020](#) (section 1e), 30 March 2021

¹³⁸ Freedom House, [‘Freedom in the World 2021’](#) (section F.1), 2021

station... not one of the police officers helped as they all gathered around and started laughing at me, telling me that it makes no sense to even understand my case if I'm not a woman. They stated that the whole story is abnormal and that there is no legal way for them to deal with my case and so I should try elsewhere.'¹³⁹

- 4.8.5 The BTI 2020 Country Report – Namibia, covering the period 2017 to January 2019 noted: '...LGBTI rights are not fully recognized and members of sexual minorities experience discrimination (though not legal prosecution). The protection of fundamental rights is however less rigorous when it comes to police intervention. The police have reportedly shown aggression toward people considered to be gay and abused their authority likewise against suspects being arrested or held in prison...'¹⁴⁰
- 4.8.6 The Namibian, in 'Three suspects arrested for assaulting transgender woman', 30 April 2020 stated 'A former presidential candidate, Frans Migub /Goagoseb, and two other men have been arrested for assaulting a transgender woman at Gobabis... The three men are charged with assault with intent to do grievous bodily harm and are due to remain in custody until a scheduled court appearance on Tuesday. Meanwhile, the 21-year-old complainant who was assaulted remains at a safe location guarded by the police.'¹⁴¹
- 4.8.7 The Namibian Sun noted the 3 defendants in the case were bailed until July 2020 and there was additionally a civil case brought against Frans Migub /Goagoseb by the trans woman¹⁴². No further information could be found on the progress or outcome of the case in the sources consulted (see [Bibliography](#)).
- 4.8.8 The Aids and Rights Alliance for Southern Africa (ARASA), a regional partnership of 115 non-governmental organisations (NGOs) working in 18 countries in southern and east Africa, in 'Civil Society Statement "Condemning Human Rights Violations and Transphobia in Namibia"', 5 May 2020, stated: 'We commend the rapid response from the Ministries of Justice and Gender, the Namibian police and law enforcement agents for ensuring that the perpetrator and accomplices were apprehended. Criminal charges have been opened against the assailants and, despite the lack of safe houses and shelters, especially catering for transwomen, the survivor of this violent act has been relocated to a place of safety and psychosocial support has been provided.'¹⁴³

See also [Treatment by the public](#) and [Treatment of trans persons](#)

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¹³⁹ ReportOUT, '[Being Transgender in Namibia](#)', 18 October 2019

¹⁴⁰ BTI, '[2020 Country Report – Namibia](#)' (Rule of Law), 29 April 2020

¹⁴¹ The Namibian, '[Three suspects arrested for assaulting transgender woman](#)', 30 April 2020

¹⁴² The Namibian Sun, '[Ou Migub' sued for N\\$300k](#)', 13 May 2020

¹⁴³ ARASA, '[Civil Society Statement](#)', 5 May 2020

4.9 Oversight mechanisms

4.9.1 The LAC report 2015 noted:

'The Bill of Rights is binding not only on state organs, but also on private individuals and legal entities – such as a company, an organisation, a newspaper or an individual (including a politician). If any such body or person infringes the constitutional rights of an LGBT person, the victim can seek the enforcement of his or her rights from the courts, as well as damages for the harm suffered...

'A second avenue for enforcing constitutional rights is via a complaint to the Ombudsman. There are no formal requirements, as the process is intended to be informal. Complaints to the Ombudsman can relate to human rights violations by government institutions, parastatals or local authorities, or by private institutions or persons. The dispute will normally be investigated and resolved by conciliation if possible, although many options for action are available, including bringing the matter to the attention of relevant authorities or referring the matter to the courts.'¹⁴⁴

4.9.2 Namibia's Office of the Ombudsmen was established in 1990 and its legal provisions are set out in in Chapter 10 of the [Namibian Constitution](#) and the [Ombudsman Act \(No. 7 of 1990\)](#). In addition to human rights, the mandate covers administrative practices, and the environment. Corruption was removed in 2010 and is now covered by the Anti-Corruption Commission. The Ombudsman is appointed by the President on the recommendation of the Judicial Service Commission and is either a judge or a person legally qualified to practice law¹⁴⁵.

4.9.3 On 6 August 2021 the Institute for Public Policy Research (IPPR), a not-for-profit organisation which conducts research into social, political and economic issues in Namibia, published a blog entitled 'Role and Responsibilities of the Ombudsman' which stated:

'...The Office of the Ombudsman is intended to function as an independent. Broadly speaking, the Ombudsman in Namibia investigates complaints about the violation of fundamental rights and freedoms and about the administration of all organs of government. The Ombudsman can try to obtain a compromise between the parties concerned, bring the matter to the attention of the authorities, refer the matter to the courts, or seek judicial review... Complaints may be submitted to the Office of the Ombudsman by any person, free of charge and without specific form requirements. The Office of the Ombudsman cannot investigate complaints regarding court decisions, however.'¹⁴⁶

4.9.4 The USSD report 2020 stated that 'The Office of the Ombudsman... is an autonomous ombudsman with whom government agencies cooperated. Observers considered him effective in addressing human rights problems.'

¹⁴⁴ LAC, [Namibian Law on LGBT Issues](#) (p.44), 2015

¹⁴⁵ IPPR, '[Role and Responsibilities of the Ombudsman](#)', 6 August 2021

¹⁴⁶ IPPR, '[Role and Responsibilities of the Ombudsman](#)', 6 August 2021

The report also noted that ‘NamPol cooperated and assisted in human rights investigations’¹⁴⁷.

See also [Statements made by government figures and public officials](#)

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Section 5 updated: 20 September 2021

5. Access to public services

5.1 General

- 5.1.1 The USSD report 2020, repeated its assessment from 2018¹⁴⁸ and 2019¹⁴⁹, that: ‘Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons faced harassment when trying to access public services.’¹⁵⁰
- 5.1.2 The Freedom House report 2021 noted that ‘LGBT+ people face ... impeded access to public services.’¹⁵¹
- 5.1.3 The Committee on the Elimination of Discrimination against Women (CEDAW) report ‘List of issues and questions in relation to the sixth periodic report of Namibia’, 10 March 2021, in the section on disadvantaged women asked the government of Namibia to ‘...provide information on specific measures taken to ensure access to education, health care, including sexual and reproductive health care, basic services, housing, food and employment for other disadvantaged groups of women and girls such as ... lesbian, bisexual and transgender women.’¹⁵²
- 5.1.4 The UN OHCHR Stakeholders’ submissions report of 18 February 2021 noted ‘JS6 stated that lesbian, gay, bisexual and transgender persons had not been entitles [sic] to any benefits from their partners’ pensions due to the lack of recognition of sexual orientation and gender identity within social services.’¹⁵³
- 5.1.5 African Arguments, in its 5 August 2021 article, included information provided by Omar van Reenen co-founder of Namibia Equal Rights Movement and a civil rights activist. Omar van Reenen stated: ‘It’s hard to have your existence marginalised, to be told that you don’t belong. It’s hard to be called sick, demonic, satanic. It’s hard that you can’t walk up to a business and say “listen, I’ve got a bright future ahead of me, please hire me” knowing that if they find out who you are, they might ostracise you. It’s hard not to be able to walk io a healthcare centre without fearing discrimination...’¹⁵⁴
- 5.1.6 In the same African Arguments article, in information provided by Deyoncé Cleopatra Chaniqua Naris, a Namibian-born trans woman, blogger and podcast host, executive director of the Transgender, Intersex and

¹⁴⁷ USSD, ‘[USSD report 2020](#)’ (section 5), 21 March 2021

¹⁴⁸ USSD, ‘[USSD report 2018](#)’ (section 6), 13 March 2019

¹⁴⁹ USSD, ‘[USSD report 2019](#)’ (section 6), 11 March 2020

¹⁵⁰ USSD, ‘[USSD report 2020](#)’ (section 6), 21 March 2021

¹⁵¹ Freedom House, [Freedom in the World 2021: Namibia](#) (section G3), 03 March 2021

¹⁵² CEDAW, ‘[Sixth periodic report of Namibia](#)’ (para 18), 10 March 2021

¹⁵³ UN OHCHR, ‘[Stakeholders Submissions](#)’, (para 11), 18 February 2021

¹⁵⁴ African Arguments, ‘[Where we belong...](#)’, 5 August 2021

Androgynous Movement of Namibia (TIAMON) and the chairperson of the Southern African Trans Forum, she noted:

‘As queer people, we actually live relatively comfortable lives depending on where you find yourself on the socio-economic spectrum. I always say to comrades, in comparison to other countries in Africa, I believe as queer Namibians we are a lot better off and we should value that. But we also know that there is systematic exclusion and discrimination for our community here. Some of it is backed by individuals with personal prejudices that work at governmental institutions or who are custodians of our constitution. Therefore, our access to services like healthcare, judicial or just economic justice is generally a problem.’¹⁵⁵

For information on access to justice, see [State protection](#).

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5.2 Education and employment

- 5.2.1 The NDWA Joint Submission to CEDAW, March 2021, in relation to access to education noted ‘The right to education remains fundamental and progress has been made with the newly adopted Namibian curriculum on Comprehensive Sexuality Education (CSE) which includes a section on sexual orientation. However, LBT students continue to suffer discrimination and bullying. Critically, very minimal to no action is taken by the school against bullying on the basis of sexual orientation, gender identity and gender expression.’¹⁵⁶
- 5.2.2 The Namibian, in an interview with the education ministry's spokesperson, Absalom Absalom, noted “‘CSE in Namibia ... was designed and influenced by Namibian culture. Instead of pupils sinning, they ought to think twice,” he observed. Absalom said the programme was designed not to promote homosexuality, or engaging in sexual intercourse. “CSE is meant to safeguard young people by providing them with values and norms necessary to make the right choices and decisions in life,” he stated.’¹⁵⁷
- 5.2.3 The NDWA report, in relation to access to employment, noted ‘The Namibian Labour Act 11 of 2007 Article 5(2) outlines principles of non-discrimination, however it is silent on discrimination on the basis of sexual orientation and gender identity- despite protests from both inside and outside of Parliament. LBT people continue to experience employment denial and harassment from employment institutions. They also experience vast realities of sexual harassment, discrimination on the basis of sexual orientation and gender identity/expression at their places of work.’¹⁵⁸
- 5.2.4 The Namibian in September 2019 noted ‘Securing employment and overcoming stigma at work are very important issues for the trans community. Most employers do not have a protective policy in place to counter discrimination in the workplace on the basis of gender identity and/or sexual orientation... Kandjou [a trans rights activist and communications

¹⁵⁵ African Arguments, [‘Where we belong...’](#), 5 August 2021

¹⁵⁶ Namibia Diverse Women’s Association et al, [‘Report to CEDAW’](#) (page 4), March 2021

¹⁵⁷ The Namibian, [‘Churches frown on sex education’](#), 30 September 2019

¹⁵⁸ Namibia Diverse Women’s Association et al, [‘Report to CEDAW’](#) (page 4), March 2021

director at Wings to Transcend Namibia (WTN)] agrees that securing meaningful employment is a huge issue for the transgender community. “This is due to stigma and discrimination and a lack of interest from Namibian society to try and understand what being transgender is. Transgender persons are thus classified under homosexuality by default.”¹⁵⁹

See also [Prevailing cultural and family attitudes](#) and [Treatment by the public, including family members](#)

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5.3 Healthcare, gender re-assignment and hormone replacement

5.3.1 The Namibian and Mamba online reported the first outreach health centre for the LGBTI community was opened in Windhoek in May 2018¹⁶⁰ by Out-right Namibia to provide HIV testing, counselling and the PrEP (a daily HIV prevention pill¹⁶¹). No information on state-run healthcare facilities exclusively for LGBTI persons could be found in the sources consulted (see [Bibliography](#)).

5.3.2 The NDWA report to CEDAW noted:

‘The National Health Act, 2015 (Act No. 2 of 2015) recognises and affirms the right to health for all citizens. However, stigma and discrimination towards LBT persons is an enormous issue in the country, with LBT individuals facing barriers to accessing healthcare in virtually every part of the country... National health programming and service delivery is not integrating issues of sexual orientation and gender identity by ensuring competent, affirming and intersectional services reach the LBT communities. Finally, while the National HIV/AIDS Strategic Framework advances inclusion of key populations, programming and services remain a challenge.’¹⁶²

5.3.3 The Namibian in ‘Namibia Will Never be Free Without Rights for the LGBTI Community’, 9 April 2021, noted:

‘...homophobia has... slithered into the spheres of healthcare facilities... LGBTI people face discrimination when seeking healthcare services necessary to have access to sexual and reproductive health and rights (SRHR).

‘This creates barriers in health-seeking behaviour especially for People Living With HIV (PLWH) who are also from the LGBTI community. This is detrimental to preventing the spread of HIV and other Sexually Transmitted Infections (STIs) in Namibia. In these cases, the full enjoyment of the highest attainable standard of health (which includes sexual and reproductive health) is threatened.’¹⁶³

5.3.4 The Other Foundation report 2017 noted ‘... the presence of transphobia and bureaucratic obstructionism has resulted in very few trans people having access to sex reassignment surgery or subsequent change of identity

¹⁵⁹ The Namibian, [‘Being Trans-Diverse’](#), 6 September 2019

¹⁶⁰ The Namibian, [‘First intersex health centre opens’](#), 21 May 2018

¹⁶¹ Mamba Online, [‘Namibia’s first LGBT health centre opens in Windhoek’](#), 28 May 2018

¹⁶² Namibia Diverse Women’s Association et al, [‘Report to CEDAW’](#) (pages 4-5), March 2021

¹⁶³ The Namibian, [‘Namibia Will Never be Free Without Rights for the LGBTI Community’](#), 9 April 2021

documents... even though sex reassignment surgery is covered in government medical aid. Some trans people have successfully transitioned in-country.’¹⁶⁴

5.3.5 The Namibian in September 2019 noted:

‘Teddy Kandjou, a trans rights activist and communications director at WTN [Wings to Transcend Namibia], says that while there is provision for transgender persons in Namibian law to change their gender, the practicalities are unavailable. “There is no provision for surgeries or aftercare when the surgeries are done.” Kandjou says that Namibia does not have endocrinologists, which makes it difficult for trans-diverse people to undergo hormone replacement therapy and due to discrimination and stigma, it’s very hard for them to access public services, which can leave them vulnerable.’¹⁶⁵

5.3.6 The Namibian in ‘Health ministry says LGBTQ community is catered for’, 1 September 2021, reported:

“The ministry has comprehensive programmes for all, addressing all areas, irrespective of gender or sexual orientation, or preference. Healthcare facilities where most of these activities take place are equally open to all Namibians and will remain open to all, indiscriminately,” health ministry deputy executive director Petronella Masabane said.

‘Despite the lack of a national comprehensive health plan for the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community, the Ministry of Health and Social Services says the existing frameworks and guidelines suffice irrespective of gender, race or sexual orientation. However, LGBTQ persons have complained that access to health care in Namibia depends on nurses or doctors on duty at any given day.

‘Masabane told The Namibian that the ministry does not have specific programmes or medical resources like hormonal therapy for the LGBTQ community. “At the moment, our public health system does not offer hormonal therapy. The ministry is challenged with a lack of specialists, limiting our ability to offer certain services,” she explained. She further said the ministry has a few specialists that offer cosmetic reconstructive surgery. These specialists mainly perform burns, breast cancer, accidents and other surgeries.

‘The ministry requires physical examination and confirmation for individuals who have gone through sex reassignment surgery (SRS) and provide recommendations to the Ministry of Home Affairs, Immigration, Safety and Security for gender changes in the national civil registration database... gender and women’s rights activist Linda Baumann said, as a lesbian woman, seeking medical care from health professionals in Namibia is difficult.’¹⁶⁶

5.3.7 The UN OHCHR Summary of Stakeholders’ submissions, 18 February 2021, noted:

¹⁶⁴ The Other Foundation, ‘[Canaries in the Coalmines](#)’ (page 18), June 2017

¹⁶⁵ The Namibian, ‘[Being Trans-Diverse](#), 6 September 2019

¹⁶⁶ The Namibian, ‘[Health ministry says LGBTQ community is catered for](#)’, 1 September 2021

'JS6 [¹⁶⁷] stated that lesbian, gay bisexual and transgender persons had faced barriers to accessing health care which included ridicule, prejudice and discrimination, fears that breaches of confidentiality would reveal their sexual orientation in a hostile environment, and the criminalization of consensual sodomy. Transgender persons had faced distinct discrimination and prejudice as the services they had received had not been gender affirming or appropriate to enhance their wellbeing. Health care workers had denied lesbian, gay, bisexual and transgender persons access to health care because of the general assumption that homosexuality was illegal or in violation of their own moral values.

'AU-ACHPR [African Union – African Commission on Human and Peoples' Rights] stated that Namibia should end discrimination and stigmatization limiting health care access for vulnerable groups in particular the lesbian, gay, bisexual and transgender community, commercial sex workers and other vulnerable groups'¹⁶⁸

- 5.3.8 The UN OHCHR Summary of Stakeholders' submissions also noted 'JS3 [¹⁶⁹] stated that customary law had been used to discriminate against transgender people. While transgender persons could apply to change their sex description in the birth register, they barely had access to this service due to their unfavourable socio-economic position and the lack of qualified health practitioners who could provide affirming services.'¹⁷⁰

See also [Treatment by the public](#), [Treatment of trans persons](#), [Healthcare, gender re-assignment and hormone replacement](#) and [LGBTI individuals, communities and groups](#)

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Section 6 updated: 20 September 2021

6. Societal attitudes and treatment

6.1 Public opinion

- 6.1.1 Afrobarometer (a non-partisan, pan-African research institution conducting public attitude surveys), in the report "All in this together": Africans tolerant on ethnic, national, but not sexual differences' published 19 May 2020, using survey data from Namibia in November 2017¹⁷¹ noted: 'In four countries [out of 34], majorities express tolerance toward people of different sexual identity/orientation... Namibia [was one those with] (54%)'.¹⁷²
- 6.1.2 The Afrobarometer May 2020 report explained how this figure from 2017 data was calculated. The 2017 survey used a nationally representative, random, stratified probability sample of 1,200 adult Namibians who were asked 'For each of the following types of people, please tell me whether you would like having people from this group as neighbours, dislike it, or not care: Homosexuals?' The report calculated the tolerance level by adding up

¹⁶⁷ UN OHCHR, '[Stakeholders Submissions](#)', (page 8), 18 February 2021

¹⁶⁸ UN OHCHR, '[Stakeholders Submissions](#)', (para 36-37), 18 February 2021

¹⁶⁹ UN OHCHR, '[Stakeholders Submissions](#)', (page 8), 18 February 2021

¹⁷⁰ UN OHCHR, '[Stakeholders Submissions](#)', (para 12), 18 February 2021

¹⁷¹ Afrobarometer, '[Summary of Results in Namibia](#)', 28 May 2018

¹⁷² Afrobarometer, '[All in this together](#)' (page 3), 19 May 2020

the % who said ‘would strongly like’, ‘would somewhat like’, or ‘would not care’¹⁷³. For further information on its methodology, see [the full report](#).

- 6.1.3 In a different report, the Afrobarometer Namibia 2019 survey, which again interviewed a nationally representative, random, stratified probability sample of 1,200 adult Namibians, and asked respondents the same question:

Q86C. For each of the following types of people, please tell me whether you would like having people from this group as neighbours, dislike it, or not care: Homosexuals?

	Urban	Rural	Male	Female	Total
Strongly dislike	20.4	33.1	27.2	24.6	25.9
Somewhat dislike	9.0	7.1	7.8	8.6	8.2
Would not care	45.8	38.9	43.4	42.1	42.8
Somewhat like	13.1	8.1	10.3	11.5	10.9
Strongly like	9.8	11.8	9.3	12.0	10.7
Don't know	2.0	1.1	1.9	1.2	1.6

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- 6.1.4 CPIT took the 2019 data from the table and applied the same criteria used by Afrobarometer to measure tolerance in the 2017 survey data. The percentage of people surveyed in 2019 who answered ‘would strongly like,’ ‘would somewhat like,’ or ‘would not care’ having a homosexual as a neighbour was 64.4%¹⁷⁵ (an increase from 54% in 2017¹⁷⁶). To note, Afrobarometer explained the term ‘homosexual’ was used in their surveys ‘... because this word is widely understood and can be translated into local languages across Africa. In this report, we interpret responses to apply to the broader LGBTQ category, or persons of non-heterosexual identities or orientations.’¹⁷⁷

- 6.1.5 The Williams Institute, a public policy research institute based at the University of California, Los Angeles (UCLA) School of Law, updated the Global Acceptance Index to measure social acceptance of LGBT persons in 174 countries (including Namibia) up to 2017, and published their report in 2019. Acceptance was defined as ‘the extent to which LGBT people are seen in ways that are positive and inclusive, both with respect to an individual’s opinions about LGBT people and with regards to an individual’s position on LGBT policy.’ Surveys used included AfroBarometer 2014-2018. Namibia was ranked 56 / 174 countries globally (with the country ranked 1st exhibiting the most acceptance) in the period 2014-2017, an increase from 71st place 2009-2013. Namibia was ranked second in Africa, behind only South Africa. The UK was ranked 11th in both 2009-2013 and 2014-2017. 75% of countries surveyed experienced an increase in acceptance since 1981¹⁷⁸. For more information and detail on the source’s methodology see the full [Social Acceptance of LGBT People in 174 Countries, 1981 to 2017 report](#).

¹⁷³ Afrobarometer, ‘[All in this together](#)’ (page 12), 19 May 2020

¹⁷⁴ Afrobarometer, ‘[Summary of Results in Namibia](#)’, 10 November 2020

¹⁷⁵ Afrobarometer, ‘[Summary of Results in Namibia](#)’, 10 November 2020

¹⁷⁶ Afrobarometer, ‘[All in this together](#)’ (page 3), 19 May 2020

¹⁷⁷ Afrobarometer, ‘[All in this together](#)’ (page 3), 19 May 2020

¹⁷⁸ The Williams Institute, ‘[Social Acceptance of LGBT People... to 2017](#)’, October 2019

See also [LGBTI individuals, communities and groups](#) and [Statements made by government figures and public officials](#)

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6.2 Prevailing cultural and family attitudes

- 6.2.1 The LRDC report, February 2021, observed ‘... the criminalisation of sodomy law inevitably causes some to believe mistakenly that homosexuality itself is illegal in Namibia...’¹⁷⁹
- 6.2.2 The US Overseas Security Advisory Council (OSAC) Namibia 2021 report, which provides advice for US citizens visiting Namibia, updated in September 2021 noted ‘Discrimination based on LGBTI+ sexual orientation is common, and many Namibians consider all same-sex sexual activity taboo.’¹⁸⁰
- 6.2.3 ReportOUT published a report from a trans person (anonymised) in October 2019 which noted: ‘Namibia has a large number of SOGI identified people on different social media accounts, of which most of them are most likely living in the closet. The visible status of gay, lesbian, bisexual and transgender people who are actually out are in much smaller numbers. However, we are all known under one umbrella term which is “moffie” [an Afrikaans slang word¹⁸¹, an offensive derogatory term ¹⁸²] in the Afrikaan[s] language, which links us all as one as a SOGI community.’¹⁸³
- 6.2.4 Christa Suretha Engelbrecht’s thesis submitted in fulfilment of a masters degree in social anthropology at Stellenbosch University ‘An ethnographic study on OutRight Namibia and their work on advancing gender and sexuality diversity in Namibia’, dated March 2020 interviewed 6 leadership members of OutRight Namibia (ORN) between November 2018 and February 2019. The author noted: ‘In responding to a question on what the challenges are that the organisation faces in relation to the social, cultural and political context, Missy* relates that most people are unwilling to engage in conversation about LGBT issues due to conservative social norms and homophobic remarks made by former president Sam Nujoma. Similarly, Claus* and Rose* reiterated...[that] lack of engagement [*anonymised]...’¹⁸⁴
- 6.2.5 In the same thesis, in a section on arguments that homosexuality is ‘un-African’, Steve* an ORN staff member who was interviewed noted “‘It is a taboo. It is something like where does it come from it never happened like it 50 years ago why is it happening now. Like how can a man and a man sleep together. How can women sleep together... it is not normal. They do not tolerate it because they do not know it and for them it is not natural.’” [*anonymised]¹⁸⁵

¹⁷⁹ Law Reform and Development Commission, ‘[Abolishment of Sodomy](#)’ (page 2), February 2021

¹⁸⁰ OASC, ‘[Namibia 2021 Country Security Report](#)’, 9 September 2021

¹⁸¹ The Guardian, ‘[South Africa needs to find a new way to talk about being gay](#)’, 29 January 2015

¹⁸² Collins, ‘[Moffie](#)’, no date

¹⁸³ ReportOUT, ‘[Being Transgender in Namibia](#)’, 18 October 2019

¹⁸⁴ Engelbrecht, CS, [An ethnographic study](#)... (page 76-77), March 2020

¹⁸⁵ Engelbrecht, CS, [An ethnographic study](#)... (page 83), March 2020

- 6.2.6 The Namibian in the article, 'Churches frown on sex education', 30 September 2019, reported comments from a parent about the comprehensive sex education (CSE) course:

'Veii said [a] concern was how children are being taught to change their genders if they feel like it, adding that the programme will encourage children to become transgender. "They say if you feel like you are trapped in a body that is not you, just go and change the body parts to align how you feel. What kind of rubbish is that?" she fumed. Veii added that implementing CSE in schools goes against Vision 2030, which states that due to Christianity being the most popular religion in Namibia, the fear of God would guide decision-making in the country. "If the Bible teaches that God created male and female, comprehensive sex education says there is transgender, bisexual and all these things that a child at age nine should not be taught about, and that is wrong," she added.'

¹⁸⁶

- 6.2.7 The Namibian in 'Revisit Discrimination on Sexuality', 28 June 2019, noted 'A case in the High Court this week in which two women are demanding that the authorities recognise their marriage conducted in South Africa, has highlighted the continued discrimination of people in the minority for no clear and reasonable purposes. On social media, traditional media and perhaps in their homes, people have come out in support of the ministry of home affairs to deny the recognition of marriage and residency rights to the same-sex couple of Namibian-born lawyer Anita Grobler and her South African spouse, Susan Jacobs.'
- ¹⁸⁷
- 6.2.8 The BTI 2020 Country Report noted 'Homophobic and xenophobic sentiments do... find expression in the public sphere.' However the source did not elaborate on the circumstances of such expression¹⁸⁸.
- 6.2.9 African Arguments, in its 5 August 2021 article, included information provided by Omar van Reenen co-founder of Namibia Equal Rights Movement and a civil rights activist. Omar van Reenen stated: '...it does take a mental toll because you don't only have to stand up and fight against an oppressive regime, there's a lot of internalised homophobia in our communities.'
- ¹⁸⁹

See also [Religious groups' attitudes, statements and actions](#), [LGBTI individuals, communities and groups](#) and [Domestic caselaw / court cases](#)

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6.3 Religious groups' attitudes, statements and actions

- 6.3.1 Namibia is a secular state however sources estimate the country is between 80¹⁹⁰ to 97% Christian¹⁹¹, primarily (approximately 50%) Lutheran¹⁹².

¹⁸⁶ The Namibian, '[Churches frown on sex education](#)', 30 September 2019

¹⁸⁷ The Namibian, '[Revisit Discrimination on Sexuality](#)', 28 June 2019

¹⁸⁸ BTI, '[2020 Country Report – Namibia](#)' (Rule of Law), 29 April 2020

¹⁸⁹ African Arguments, '[Where we belong...](#)', 5 August 2021

¹⁹⁰ CIA, '[World Factbook – Namibia](#)' (People and Society), 11 August 2021

¹⁹¹ PEW Research Center, '[Namibia](#)', no date

¹⁹² USSD, '[2020 Report on International Religious Freedom: Namibia](#)' (section I), 12 May 2021

Muslims, Baha'is, Jews, Buddhists, atheists, and other non-Christians constitute the remaining (approximately 3%) of the population¹⁹³.

- 6.3.2 Confidante, a weekly Namibian tabloid newspaper, reported comments by Reverend Jonathan Hevita of the Inner City Lutheran Congregation in Windhoek on Facebook on 7 August 2019. The post stated Reverend Hevita said '... it's high time that the Namibian government considers legalising homosexuality in Namibia... Hevita also said that local churches should open their doors to welcome the lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) community. He said the church is like a hospital that is supposed to welcome everyone, regardless of their sexual orientation.'¹⁹⁴
- 6.3.3 The Association of Church Leaders in Africa (ACLA, responded to Hevita's comments in a The Namibian article and stated: 'It is indeed shocking that a man of God should be making such a call, knowing very well what the Bible's stance is on the act of homosexuality... We appreciate that the reverend went back to the newspaper to clear the name of his church that the views were his own, but he did not withdraw the statement... It is an insult to our founding president, who during his tenure condemned homosexuality in the strongest terms, and it is also an insult to the nation.'¹⁹⁵
- 6.3.4 The BTI 2020 Country Report noted: 'The established African Christian churches (not those popular among the white minority communities)... Their influence remains strong. In matters such as abortion and gay rights, they have an influence, limiting any tendencies to liberalize and reduce discriminatory sentiments. The head of state and many in the cabinet remain strongly guided by religious faith and prayers usually open political meetings.'¹⁹⁶
- 6.3.5 The Namibian, in the article 'Churches frown on sex education', 30 September 2019, noted
- 'The Council of Churches in Namibia and some parents have called for the removal of the comprehensive sexuality education from the school curriculum due to what they term immorality... Beukes [the council's acting general secretary] clarified that the church and affected parents are not against children being taught sexual education, but just prefer for it to be done in a moral way that does not "encourage sin". From the age of nine, they indoctrinate children with the issues of gender ideology, and tell them that it is up to them to choose when they want to have sex, which is what you will see when you go through the curriculum,'"¹⁹⁷
- 6.3.6 The Freedom House report 2021 noted 'Same-sex marriages are not recognized, and many churches have indicated their unwillingness to recognize or perform them.'¹⁹⁸

¹⁹³ USSD, '[2020 Report on International Religious Freedom: Namibia](#)' (section I), 12 May 2021

¹⁹⁴ Confidante, Facebook, '[Legalise homosexuality](#)', 7 August 2019

¹⁹⁵ The Namibian, '[Government Should not Legalise Homosexuality](#)', 30 August 2019

¹⁹⁶ BTI, '[2020 Country Report – Namibia](#)' (Political Transformation), 29 April 2020

¹⁹⁷ The Namibian, '[Churches frown on sex education](#)', 30 September 2019

¹⁹⁸ Freedom House, '[Freedom in the World 2021: Namibia](#)' (section G3), 03 March 2021

- 6.3.7 Land of the Queers, a blog that collected LGBTI stories, in an interview with Omar van Reenen from Namibia Equal Rights Movement (a coalition of more than 18 civil and non-profit organisations and youth activists) noted:

‘Although many Namibians would be in support of the LGBTQ+ community Omar admits that there are also antagonists. Most of them would be Christian fundamentalists... According to Omar the churches... are failing now by taking up colonial oppressed sentiments against the LGBTQ+ community and using it to inflame hate, rallying their basis into hate against a marginalized group. The fundamentalists should not use bible phrases out of their context but read better.’¹⁹⁹

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6.4 Treatment by the public - general

- 6.4.1 A number of sources provided information on societal treatment of the LGBTI community collectively, sometimes without providing detail on the discrimination harassment or violence referred. Information often focused on the experiences of trans persons, not other groups. Where possible, CPIT has sought to separate the information for each group – L, G, B, T and I - but there remains generalisation and overlap between other sections of this note (see [Treatment of trans persons](#)).

- 6.4.2 The LAC report 2015 noted:

‘Homosexuality itself is not illegal in Namibia, but sodomy and certain other sexual acts between consenting adult males are criminal offences. Even though these crimes are seldom applied in practice, their existence has a negative impact on the LGBT community.’

‘These laws perpetuate stigma and discrimination, create an environment of fear, encourage secrecy which undermines public health initiatives and damage the dignity of LGBT individuals.’²⁰⁰

- 6.4.3 The Equality and Justice Alliance 2020 report noted ‘Discrimination and harassment on the basis of sexual orientation or gender identity continues to be a problem in Namibia, although there has been some improvement since the early post-independence years.’ However, the source does not clearly identify the source(s) of the discrimination and harassment, which might be both state and non-state actors²⁰¹.

- 6.4.4 The Freedom House report 2021 noted, without specifying if committed by the state or non-state, that ‘LGBT+ people face harassment, discrimination, [and] attacks....’²⁰²

- 6.4.5 The UN OCHCR Summary of Stakeholders’ submissions noted: ‘JS2 stated... The criminalization of sodomy has had a significant and persistent negative impact on the lives of those who identify as Lesbian, Gay, Bisexual or Transgender persons and contributed to the on-going stigmatisation of the LGBT community. The Combating of Immoral Practices Act, 1980 (Act No.

¹⁹⁹ Land of the Queers, ‘[Omar \(Namibia Equal Rights Movement\)](#)’, 17 September 2021

²⁰⁰ LAC, Namibian Law on LGBT Issues (p.64), 2015, url

²⁰¹ Equality and Justice Alliance, [Comparative legal review](#) (page 14), 2020

²⁰² Freedom House, [Freedom in the World 2021: Namibia](#) (section G3), 03 March 2021

21 of 1980), also had a negative impact on the lives of Lesbian, Gay, Bisexual or Transgender persons.’²⁰³

- 6.4.6 The Namibia Diverse Women’s Association-Joint Submission by Civil Society Organizations²⁰⁴ to CEDAW for the 80th Pre-Sessional Working Group, March 2021, noted:

‘Violence against the LBT community often goes unreported and unpunished. Cases are at times misreported as “rape” whilst the nature of the violence experienced is directly related to “homophobic rape” because of the person’s sexual orientation and gender identity. Moreover, violence against LBT persons continues to be reinforced by a patriarchal culture that views masculinity as dominant and femininity as subservient. Such violence is often misguided and mis-characterised as violence motivated by stigma and prejudice against the victim’s sexual orientation, rather than prejudice against their gender identity and gender expression.’²⁰⁵

- 6.4.7 The Namibian in ‘Namibia Will Never be Free Without Rights for the LGBTI Community’, an opinion piece by Beauty Boois ‘a psychological counsellor, author, artist and activist’ published 9 April 2021, noted:

‘Two cases were recently reported involving physical violence against a transgender woman and a gay man in Namibia – one by members of the public and the other by a security guard... The case involving denying citizenship to twins Paula and Maya Delgado Lühl, who were born through surrogacy to their fathers, Phillip Lühl and his husband Guillermo Delgado, by the Namibian Ministry of Home Affairs, Immigration, Safety and Security, represents a gross violation of family and children's rights, as well as state-sanctioned discrimination. There are countless similar incidents, many of which go unreported because of the discrimination people from the LGBTI community fear facing, as well as the unsafe and homophobic environment that has been created and continues in Namibia.’²⁰⁶

- 6.4.8 In sources consulted (see [Bibliography](#)) there was limited detailed gender based (last 3 years) information on ‘corrective’ rape. The ILGA Submission to the UN Special Rapporteur ‘Rape and other forms of sexual violence against lesbian and bisexual women and non-binary, trans and intersex persons’, 20 May 2020²⁰⁷ (one of their most recent publications) cited older information from the Human Dignity Trust in 2016 that ‘A leading activist in Namibia reported that “[l]esbians in Namibia often face threats of rape from men seeking to ‘cure’ them,” adding: “if lesbians try to go to the police, they say ‘you asked for it’ and dockets go missing”’.²⁰⁸

- 6.4.9 The Human Dignity Trust in ‘Injustice Exposed the Criminalization of Transgender People and its Impacts’ in information provided to Human Dignity Trust in interviews with Namibian trans women in 2018 noted: ‘Our right of freedom is limited as well as freedom of speech and expression, it fuels gross violations of our rights... contributes to correctional rape,

²⁰³ UN OHCHR, ‘[Stakeholders Submissions](#)’, (para 11), 18 February 2021

²⁰⁴ See [Bibliography](#) for full list of contributors

²⁰⁵ Namibia Diverse Women’s Association et al, ‘[Report to CEDAW](#)’, March 2021

²⁰⁶ The Namibian, ‘[Namibia Will Never be Free Without Rights for the LGBTI Community](#)’, 9 April 2021

²⁰⁷ ILGA, Rape and other forms of sexual violence, 20 May 2020 (available on request)

²⁰⁸ Human Dignity Trust ‘[Breaking the Silence...](#)’ (p 25), 2016

coercion to have sexual encounters with men who we don't choose to have sex with...The Act demoralizes our dignity, pride, sameness that we share as Namibians”²⁰⁹.

- 6.4.10 Older sources noted examples in 2013 of lesbians subjected to corrective rape²¹⁰ and a case in Windhoek in 2014,^{211 212}. The Advocates for Human Rights, in ‘Namibia’s Compliance with UNCAT’, Nov 2016–Dec 2016, noted the prevalence of ‘corrective’ rape in Namibia was unknown due to underreporting²¹³.

See also [Access to public services](#) and [State protection](#)

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6.5 Treatment of trans persons

- 6.5.1 The USSD report 2020 repeated its assessment of 2018²¹⁴ and 2019²¹⁵ that: ‘There were isolated reports of transgender persons being harassed or assaulted’ although it does not specify if these were by state or non-state actors²¹⁶.

- 6.5.2 ReportOUT, published a report from a trans person (anonymised) in October 2019, which noted:

‘The most vulnerable groups with the worst living conditions are those who are identified as lesbian, transgender women and transgender men... people encounter daily discrimination, threats to freedom, often live as homeless and have high levels of unemployment. The majority of the [Sexual orientation, gender identity] SOGI community here find it difficult to freely enjoy the same freedoms that are equal to that of the general citizens living in Namibia... My own living conditions as transgender women continues to be unsafe as I continue to suffer life threats, discrimination and persecution as I live homeless, still sleeping in street.’²¹⁷

- 6.5.3 The Namibian in the article ‘Being Trans-Diverse’, 6 September 2019, in an interview with Namibian Miss Trans Ambassador Penelope DeLapoirto, noted ‘Her own transition was not an easy process. Delapoirto came out as trans in 2016. At the time, she was filled with fear and trepidation. “As we all know, there is a lot of discrimination and stigma in this country, therefore it has never been easy for me to come out.”... DeLapoirto's family are supportive and proud, particularly of her winning the title of Miss Trans Ambassador, something that is rare in the trans-diverse community.’²¹⁸

- 6.5.4 ARASA, in their 5 May 2020 statement, in a response to the attack reported in the media²¹⁹ on a trans woman stated:

²⁰⁹ Human Dignity Trust, ‘[Injustice Exposed ...](#)’ (Case study 8), 17 May 2019

²¹⁰ Ombudsman Namibia, ‘[2013 Baseline Study Report...Namibia](#)’ (page 100), 2013 [url](#)

²¹¹ USSD, ‘[USSD report 2014](#)’ (section 6), March 2015

²¹² Advocates for Human Rights, ‘[Namibia’s Compliance with UNCAT](#)’ (page 7), Nov 2016–Dec 2016

²¹³ Advocates for Human Rights, ‘[Namibia’s Compliance with UNCAT](#)’ (page 7), Nov 2016–Dec 2016

²¹⁴ USSD, ‘[USSD report 2018](#)’, (section 6), 13 March 2019

²¹⁵ USSD, ‘[USSD report 2019](#)’ (section 6), 11 March 2020

²¹⁶ USSD, ‘[USSD report 2020](#)’ (section 6), 21 March 2021

²¹⁷ ReportOUT, ‘[Being Transgender in Namibia](#)’, 18 October 2019

²¹⁸ The Namibian, ‘[Being Trans-Diverse](#)’, 6 September 2019

²¹⁹ Mamba, ‘[Tied-up trans woman whipped by community leader on video](#)’, 30 April 2020

'We... hereby condemn the gross dehumanization, unlawful detention and torture of a transwoman on a farm near Gobabis several weeks ago, which was filmed and circulated widely on social media. We also note with grave concern, the ensuing homo and transphobic commentary and attacks in our communities following the circulation of the video clip...

'This act of torture highlights the gross abuse of power, and its imbalance, where someone entrusted with authority used it to subjugate a member of an already marginalized group... As a country we have been progressive in policy and law, however, the widespread hate speech, transphobic attacks, "legitimation" and sensationalism of the tortuous act, by the community and online responses, removes the human dignity of the survivor and violates so many of the rights that we all expect for the advancement and betterment of our country. The fact that Chief Goagoseb felt it fitting to threaten the survivor with police intervention during the assault speaks to prevailing othering of LGBT persons, erroneously justified by punitive, discriminatory colonial penal code and laws against LGBTIQ+ people - the misapplication of the law and legal parameters to justify torture.

6.5.5 'While the attack has been against one person, the video has fuelled an ever-ready onslaught of trans- and homophobic hate speech, directed to the transgender community.'²²⁰

6.5.6 In an African Arguments article of 5 August 2021, Deyoncé Cleopatra Chaniqua Naris, a Namibian-born trans woman, blogger and podcast host, executive director of the Transgender, Intersex and Androgynous Movement of Namibia (TIAMON) and the chairperson of the Southern African Trans Forum, stated:

'...as a transwoman and activist in Namibia, my face is constantly out there. I find myself constantly navigating my own safety. Once your face is blasted all over, you never really feel safe because the level of transphobia and the abuse that you encounter which increases just a little. Its emotionally daunting living like this. It's overwhelming to constantly prepare myself to leave the house because for the verbal abuse that I face, for the amount of taxis that will drive past me because I'm a transgender woman. They think it's taboo or that it's illegal for me to be me, they leave me by the roadside. It is hard but you manage to find ways to exist.'²²¹

6.5.7 For more information on the attack on a trans woman by Frans Migub / Goagoseb, reported by media in April 2020 (see [State protection](#) and [Treatment of trans persons](#))

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²²⁰ ARASA, '[Civil Society Statement](#)', 5 May 2020

²²¹ African Arguments, '[Where we belong...](#)', 5 August 2021

7. LGBTI individuals, communities and groups

7.1 Organisations

7.1.1 Out-right Namibia (ORN), described itself as the leading LGBTI human rights organisation in Namibia²²². On its Twitter profile (which it joined March 2013) it stated it is an organisation ‘...fully committed to getting LGBTI community members in Namibia and abroad their fully entitled Human Rights’²²³.

7.1.2 ORN listed its services on its website:

- Health Clinic in Windhoek West accessible to all community members of the LGBT+ spectrum for all round basic health needs
- Legal Clinic in Windhoek West provides pro-bono legal services to community members that experience any form of violence from private and state agencies
- Support groups in the 4 regions with counselling coordinators for families and friends who may need psychological support. Safe Houses aim to provide shelter to the community in the future
- Bereavement, trauma and individual counselling, relationship therapy, family therapy²²⁴.

7.1.3 The Women’s Leadership Centre, a feminist organisation based in Windhoek, described its Lesbian Empowerment Programme which ‘... uses creative forms of expression ...to build resilience and resistance to stigma and discrimination... Working together to create public performances builds the courage, pride, sisterhood and solidarity of the participants... This programme contributes to the implementation of the National Human Rights Action Plan [2015-2019]... This plan includes public education and awareness raising on the rights of LGBTI people in Namibia’.²²⁵

7.1.4 Namibia Equal Rights Movement was established in 2021 as ‘a coalition of individuals and 18 organizations committed to realizing the constitutional promise of equality, to its fullest extent, for LGBTQ+ people’ and is based in Windhoek²²⁶. For full details of the organisations in the coalition see the [CIVIC +264](#) website.

7.1.5 Wings To Transcend Namibia (WTN) ‘is a Namibian Transgender Organization Advocating and lobbying for the Equal Rights of Transgender citizens. The Organisations Strives for proper Access to Health care, Legal Gender recognition, Psycho-social support, Safe spaces and Well-being of every Transgender person, Reducing and Eradicating Transphobia ,Stigma, Discrimination and Violence against Transgender Community In the republic Of Namibia’²²⁷.

²²² Out-Right Namibia, ‘[Out-Right Namibia](#)’, no date

²²³ Out-Right Namibia (@OutRightNamibia), [introduction](#), no date [Joined Twitter March 2013]

²²⁴ Out-Right Namibia, ‘[Our services](#)’, no date

²²⁵ WLC, ‘[Lesbian Empowerment Programme](#)’, no date

²²⁶ CIVIC+264, ‘[Namibia Equal Rights Movement](#)’, no date

²²⁷ WTN, ‘[About](#)’, no date

7.1.6 Other organisations referred to by sources included:

- [Namibia Diverse Women's Association](#)
- Transgender, Intersex and Androgynous Movement of Namibia (TIAMON) ([Facebook](#))

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7.2 Events, meeting places, and 'Pride'

7.2.1 The USSD report 2020 repeated its assessment for 2018²²⁸ and 2019²²⁹ that 'LGBTI groups conducted annual pride parades recognized by the government as constitutionally protected peaceful assembly.'²³⁰

7.2.2 The BTI 2020 Country Report noted '...the LGBTI community made visible inroads into improving civil society by holding the first gay parades in Windhoek and Swakopmund since late 2017, without being intimidated or persecuted.'²³¹

7.2.3 OutRight Namibia posted a video on 11 December 2019 of the Namibia Pride event and described it as '... powerful. It was impactful. It was emotional. But most importantly, it was LGBTQI+'²³².

7.2.4 The Namibian noted in May 2021:

'Just three official shows in and... Drag Night is already one of Windhoek's hottest tickets attracting... celebrated local stars... Peering into my imaginary crystal ball, I see longevity and legislation... I see work and community because where else in Namibia can you watch the dejected faces of the queer community and allies turn to leave because there isn't a single seat left to show up for queer artistry, talent, livelihood and well-being? Where else is watching a show so much more than watching a show?'²³³

7.2.5 The event held at Café Prestige, Downtown Windhoek, was advertised on Twitter with the last update, at the time of writing, being 3 September 2021²³⁴.

7.2.6 The Namibian, on 24 August 2021, reported the launch of Nthengwe's memoir 'The Chronicles of A Non-Binary Black Lesbian Namibian – In Love' and noted: 'In a country where the queer community is not always offered a safe space, Café Prestige was a haven at the launch on Friday. People from all backgrounds, ethnicities, orientations and gender expressions came together in harmony to celebrate Nthengwe's milestone.'²³⁵

7.2.7 Land of the Queers, a blog that collected stories from LGBTI people, in an interview with Omar van Reenen from Namibia Equal Rights Movement (a coalition of more than 18 civil and non-profit organisations and youth

²²⁸ USSD, '[USSD report 2018](#)', (section 6), 13 March 2019

²²⁹ USSD, '[USSD report 2019](#)' (section 6), 11 March 2020

²³⁰ USSD, '[USSD report 2020](#)' (section 6), 21 March 2021

²³¹ BTI, '[2020 Country Report – Namibia](#)' (Governance), 29 April 2020

²³² Out-Right Namibia (@OutRightNamibia), '[It was powerful...](#)', 11 December 2019

²³³ The Namibian, '[Drag Night Has Arrived](#)', 14 May 2021

²³⁴ Café Prestige @cafeprestigena, '[Drag Night: Disco Divas is TONIGHT](#)', 3 September 2021

²³⁵ The Namibian, '[Nthengwe launches memoir](#)', 24 August 2021

activists) noted 'Café Prestige, The Brewer's Market and Chicago's as the most queer-friendly places in Namibia.'²³⁶

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7.3 Advocacy and activism

7.3.1 The Namibian article 'Namibia divided on homosexuality noted', 24 May 2021, noted

'Namibia Equal Rights Movement last week slammed SPYL [Swapo Party Youth League] for its homo-transphobic stance, as it has countlessly voiced its position on social-political issues aimed at advancing the rights especially of minorities across the country. "LGBT+ rights are civil rights issues of our time, and it's a matter of our time, and is a matter of urgency and a bread and butter issue that disproportionately affects the youth of Namibia," the movement said.

'The movement further said if SPYL is calling on all Swapo party members to prioritise issues that only pertain to their manifesto, then this also means they invite, once again, state-sanctioned homophobic attitudes, inciting hate, violence and marginalisation of the LGBTQ+ community.'²³⁷

7.3.2 The Namibian, in the article 'LGBTQ+ organisation shares with community', 15 July 2021, noted:

'Rural Dialogue Namibia (RDN) recently reached out to the lesbian, gay, bisexual and trans-diverse and queer (LGBTQ+) community and residents of Donkerhoek informal settlement at Khorixas [southern Kunene Region]. The organisation donated food and clothing to the community. RDN spokesperson La-D !Aebes says the charity drive was initiated after realising how the rural LGBTQ+ community struggles. "We are excluded from mainstream charity drives and government initiatives targetting vulnerable communities. We are vulnerable too," she says. !Aebes says it's difficult for her community to find employment, which exacerbates their poor living conditions. The RDN was established in 2016 at Khorixas as a platform for the rural LGBTQ+ community and traditional leaders to engage on human rights issues.'²³⁸

7.3.3 ORN in an interview with the Namibian in May 2020, Ndiilo Nthengwe, the organisation's spokesperson, stated:

'Outright Namibia's main goal is to decolonise the Constitution so that it recognises the full humanity of the LGBTQ+ and other minority communities. "It has been three decades since our independence, and yet our government still upholds a colonial sodomy law that criminalises consensual sex between two male partners while equal marriage is still not recognised," she said. "ORN's stance remains consistent through our advocacy agenda to redress colonial laws that infringe on the humanity and dignity of sexual, gender and sex minorities in the country. "We remain steadfast in fighting for

²³⁶ Land of the Queers, '[Omar \(Namibia Equal Rights Movement\)](#)', 17 September 2021

²³⁷ The Namibian, '[Namibia divided on homosexuality](#)', 24 May 2021

²³⁸ The Namibian, '[LGBTQ+ organisation shares with community](#)', 15 July 2021

equal rights, and continue to address the homo-trans-bi-phobic attitudes that harshly affect the lives of the community,”...²³⁹

- 7.3.4 The International Service for Human Rights (ISHR), an independent, non-governmental organisation dedicated to promoting and protecting human rights, in its 2 February 2021 news report noted: ‘ISHR and Namibia Diverse Women’s Association – a Namibian NGO focused on defending the human rights of LBT persons – have convened online workshops to identify strategies to strengthen the protection of LGBTI and gender diverse persons in the country... “For the first time, a coalition of 10 national organisations working on issues of sexual orientation, gender identity and expression, and sex characteristics have come together to engage in UN advocacy.”²⁴⁰
- 7.3.5 African Arguments, in its 5 August 2021 article, noted ‘This year [2021], a growing rumble of LGBTQ rights activism in Namibia has escalated into an impressive array of legal action’²⁴¹
- 7.3.6 The same African Arguments article included information provided by Omar van Reenen co-founder of Namibia Equal Rights Movement and a civil rights activist. Omar van Reenen stated: ‘Like racial justice was the civil rights issue of my parent’s generation, LGBTQ rights is the civil rights issue of our time. And it’s disheartening to see that the government doesn’t take this issue seriously.’²⁴²
- 7.3.7 The same African Arguments article, in information provided by Mercedes von Cloete a media personality and human rights advocate who has sued the Ministry of Safety and Security for transphobic violence, stated: ‘I now consider myself an advocate for change, for all the trans and gender diverse people who don’t have the agency or support to ensure their rights are upheld. Or who are denied certain fundamental services, rights, protections and freedoms because of who they are. For those who experience continual harassment and police brutality, something which has remained unaddressed for far too long.’²⁴³
- 7.3.8 In the same African Arguments article, Ndiilokelwa Nthengwe, an intersectional gender justice activist involved in advocacy and communications for several organisations including Equal Namibia, stated ‘I’m trying to document and narrate what a nonbinary lesbian experience in Namibia could be... This work documenting and archiving the struggle, like we in these social movements are doing by live-tweeting from the court rooms and doing Instagram live and radio interviews, is so important. We must do it for ourselves, we need to centre the voices of marginalised groups.’²⁴⁴

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²³⁹ The Namibian, ‘[Outright calls for scrapping of sodomy law](#)’, 19 May 2020

²⁴⁰ ISHR, ‘[Namibia Coalition seeks enhanced protection of LGBTI persons](#)’, 2 February 2021

²⁴¹ African Arguments, ‘[Where we belong...](#)’, 5 August 2021

²⁴² African Arguments, ‘[Where we belong...](#)’, 5 August 2021

²⁴³ African Arguments, ‘[Where we belong...](#)’, 5 August 2021

²⁴⁴ African Arguments, ‘[Where we belong...](#)’, 5 August 2021

8. Freedom of movement

8.1 Geography and demography

- 8.1.1 The US Central Intelligence Agency (CIA) World Factbook estimated the population of Namibia to be over 2.6 million (July 2021 estimate) with 446,000 estimated to live in the capital Windhoek. The source noted 'The majority of Namibians are rural dwellers (about 55%) and live in the better-watered north and northeast parts of the country.'²⁴⁵
- 8.1.2 The World Population Review 2021 stated Windhoek was the only city with a population exceeding 100,000²⁴⁶. World Atlas provided estimates (based on April 2017 data from other sources) of populations for the next most populated cities of Rundu, in the north (58,172 - 63,430) and Walvis Bay on the west-central coast (52,058)²⁴⁷
- 8.1.3 Among sources consulted, no information could be found on the number of LGBTI persons living in Windhoek or in Namibia generally (see [Bibliography](#) for full list).

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8.2 General provision

- 8.2.1 The Organisation for Economic Co-operation and Development's (OECD) gender index 2019 profile for Namibia stated: 'The Constitution provides all Namibians with the right to move freely within the country, to live in any part of the country, and to leave and return to the country (The Constitution, Article 21).'²⁴⁸ Freedom House and the USSD noted this constitutional right was generally respected in practice²⁴⁹ ²⁵⁰. The SIGI 2019 report noted 'All Namibians have the same ability to apply for identity cards and passports...'²⁵¹ (Namibian Ministry of Home Affairs, 2015).
- 8.2.2 The Law Reform and Development Commission's February 2021 report noted '...in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993) sodomy is listed as a Schedule 1 offence. The implications of this are that ... a permanent resident can also lose his status and become a prohibited immigrant if convicted of sodomy in some circumstances.'²⁵²
- 8.2.3 CPIT was not able to obtain information relevant to considering the freedom of movement of LGBTI persons in particular, in the sources consulted (see [Bibliography](#)).

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²⁴⁵ CIA, '[World Factbook – Namibia](#)' (People and Society), 29 June 2021

²⁴⁶ World Population Review, '[Namibia Population 2021](#)', 2021

²⁴⁷ World Atlas, '[Biggest Cities In Namibia](#)', 2017

²⁴⁸ OECD, '[SIGI 2019, Namibia](#)' (section 4b), 2019

²⁴⁹ Freedom House, '[Freedom in the World 2020](#)' (section G.1), 2020

²⁵⁰ USSD, '[2020 Country Report on Human Rights Practices](#)', Namibia (section 2.d), 30 March 2021

²⁵¹ OECD, '[SIGI 2019, Namibia](#)', 2019

²⁵² Law Reform and Development Commission, '[Abolishment of Sodomy](#)' (page 11), February 2021

Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToR, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- **Legal context** - considering laws that protect and/or discriminate (enforcement of the law is covered in the State attitudes and treatment section) - constitution, criminal, penal and civil codes, Sharia and caselaw - applicable to
 - general anti-discrimination provisions (and inclusion or absence of reference to LGBTI persons)
 - (being) a LGBTI person
 - same-sex sexual behaviour
 - same-sex couples, including civil union and marriage
 - gender reassignment/transition, and recognition of gender identity of trans persons
 - LGBTI organisations
 - relevant significant court cases and caselaw

(Where there is absence of law, this must be note)

- State attitudes and treatment
 - statements made by government figures and public officials
 - government policies/programmes that assist or discriminate against LGBTI persons
 - how the law is applied (including discriminatory application non-LGBTI specific laws). Numbers:
 - arrests and detentions
 - prosecutions
 - convictions and acquittals
 - restrictions/enforcement of law against LGBTI organisations
 - other state treatment, such as
 - harassment
 - blackmail
 - bribery
 - corrective therapy
 - access to public services, incl. education, healthcare, employment and justice

- state protection
 - description of security forces and their capabilities, including any specific units with remit to protect LGBTI persons
 - response and assistance provided, including arrests and prosecutions of persecutors, witness protection, assistance in relocation
 - oversight mechanisms and organisations, complaints process, investigations, outcomes and penalties
- geographic, socio-economic or other factors affecting variation in attitudes/treatment
- Societal attitudes and treatment
 - public opinion/views/surveys, including anti-LGBTI movements and public demonstrations
 - prevailing cultural and family attitudes to male/female relationships, family and non-conforming behaviour
 - religious group attitudes, statements and actions
 - media representation, language and discourse
 - treatment by the public, including family members
 - shunning and stigma
 - harassment and violence, including mob attacks and gender-specific forms such as corrective rape
 - accessing accommodation, education, employment and healthcare
 - geographic, socio-economic or other factors affecting variation in attitudes/treatment
- LGBTI individuals, communities and groups
 - size and location of LGBTI population
 - presence, projection and location of openly LGBTI persons and communities into public life
 - numbers, aims and location of openly LGBTI communities
 - services, meeting places and events, e.g. bars, restaurants and Gay Pride
 - operation, activities and restrictions of LGBTI civil society and other supportive groups or associations, including websites
 - geographic, socio-economic or other factors affecting behaviour of individuals and groups.
- Freedom of movement
 - legal freedoms/restrictions, including documentation
 - safety of movement
 - vulnerabilities of different groups

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Version control

Clearance

Below is information on when this note was cleared:

- version **2.0**
- valid from **15 November 2021**

Official – sensitive: Start of section

The information on this page has been removed as it is restricted for internal Home Office use.

Official – sensitive: End of section

Changes from last version of this note

Updated country information and assessment.

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