



Home Office

Country Policy and Information Note

Namibia: Sexual orientation and gender identity and expression

Version 1.0

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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 basis of claim](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and 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 – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment on whether, **in general**:

- A person is reasonably likely to face a real risk of persecution or serious harm
- 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
- Claims are 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 \(COI\)](#), dated 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, and is from generally reliable sources. 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, and
- whether the COI is consistent with and/or corroborated by other sources.

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

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

Feedback

Our goal is to continuously improve our material. Therefore, 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: November 2018

1. Introduction

1.1 Basis of claim

- 1.1.1 Fear of persecution or serious harm by the state and/or non-state actors because of 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 analysis on the general situation of gay men, lesbians, bisexuals, trans and intersex persons, as well as those perceived as such. They are referred hereafter collectively as 'LGBTI persons', though the experiences of each group may differ.
- 1.2.2 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](#).

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2. Consideration of issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#). Decision makers must also refer to the Asylum Instructions on [Sexual Identity Issues in the Asylum Claim](#) and [Gender identity and expression, including intersex issues in asylum claims](#).
- 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](#)).

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2.2 Particular social group

- 2.2.1 LGBTI persons in Namibia form a particular social group (PSG) 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 their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.
- 2.2.2 Although LGBTI persons in Namibia form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to be addressed is whether the particular person will face a real risk of persecution on account of their membership of such a group.

- 2.2.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.3 Exclusion

- 2.3.1 Decision makers must consider whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts.
- 2.3.2 For further guidance on the exclusion clauses and restricted leave, see the [Asylum Instruction on Exclusion: Article 1F of the Refugee Convention](#) and the [Asylum Instruction on Restricted Leave](#).

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2.4 Assessment of risk

a. General points

- 2.4.1 Decision makers must establish whether or not an LGBTI person, if returned to their country of origin, will live freely and openly as such. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. Even if LGBTI persons who lived openly would not generally be at risk, decision makers must consider whether there are reasons why the particular person would be at risk.
- 2.4.2 If it is found that the person will in fact conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why.
- 2.4.3 If this will simply be in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution, then they may not have a well-founded fear of persecution.
- 2.4.4 But if a material reason why the person will resort to concealment is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well-founded.
- 2.4.5 Decision makers should also consider if there are individual- or country-specific factors that could put the person at risk even if they choose to live discreetly because of social or religious pressures and/or whether the steps taken by them would be sufficient to avoid the risk of persecution. Some will not be able to avoid being known or perceived to be LGBTI whilst others will take some steps to conceal but would still be at risk.
- 2.4.6 For further guidance, see the Asylum Instructions on [Sexual Identity Issues in the Asylum Claim](#) and [Gender identity and expression, including intersex issues in asylum claims](#).

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b. State treatment

- 2.4.7 Same-sex sexual relations between men are criminalised, though being gay itself is not illegal. Same-sex relationships between women are not criminalised. The constitution does not prohibit discrimination on the basis of sexual orientation and gender identity or expression. There is no provision in law for same sex marriage or civil partnership. Among sources consulted, no information could be found on the penalties for sodomy or sexual acts

between consenting men, however, the Criminal Procedure Act groups sodomy together with a list of other crimes for which police are authorised to make an arrest without a warrant or to use deadly force in the course of the arrest. Sources indicate there have only been a handful of arrests for sodomy but there have been no reported prosecutions for sodomy since Namibian independence in 1990 and that the ban is not enforced in practice (see [Legal context](#) and [State treatment](#)).

- 2.4.8 Some politicians have opposed legislation that would specifically protect the rights of LGBTI persons. However, the national human rights ombudsman has publicly declared his support for the legalisation of same-sex marriage and the abolition of the offence of sodomy. There is evidence that the government tolerates the rights of speech, expression, association and assembly of LGBTI people. LGBTI groups exist and are able to organise events such as 'Pride' across different towns, with no evidence of restriction (see [Government attitudes](#) and [LGBTI organisations / civil society](#)).
- 2.4.9 The US State Department noted in its 2017 report that in general the government does not commit egregious human rights violations, maintained effective control over the security forces and took steps to punish officials who committed abuses. There have been some reports of harassment, violence and ill-treatment of LGBTI persons by the police, including during detention, but the numbers, exact nature and frequency of such treatment is not documented (see [Police / authorities](#), [Arrest / prosecution of same-sex acts](#), [Police responses to reports of violence](#) and [Avenues for redress](#).)
- 2.4.10 The available information does not establish that there is a general risk of persecution or serious harm to LGBTI persons from the authorities. 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 from state actors on the basis of their sexual orientation or gender identity or expression.

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c. Societal treatment

- 2.4.11 Societal norms mean that sexuality is not always discussed openly and many Namibians feel the subject of same-sex sexual relationships is taboo. However, there is evidence of a growing tolerance of sexual minorities in and by society, with a 2016 study finding that 55% of Namibians would accept a gay neighbour. Tolerance may vary geographically and between different groups of people (see [Public opinion](#) and [Societal norms](#)).
- 2.4.12 There have been reports of non-state actors subjecting LGBTI persons to harassment and violence including verbal, physical and sexual abuse. One 2016 study indicated 52% of men who have sex with men (MSM) have experienced a human rights abuse (the study defined a human rights abuse as a person, because of their sexuality, having been denied housing or healthcare, been blackmailed, beaten by the police, or raped). There have been reports of 'curative rape' of lesbians, but the available evidence is limited on scale and frequency of such treatment (see [Violence and discrimination](#)).

- 2.4.13 Some LGBTI persons have faced harassment when trying to access public services, and have been denied access to healthcare services due to stigma and discrimination from healthcare professionals. Some LGBTI persons have faced discrimination in education and employment (see [Access to services](#)).
- 2.4.14 There are active LGBTI civil society in operation. LGBTI events such as 'Pride' have taken place without significant incident or violence reported (see [LGBTI organisations / civil society](#).)
- 2.4.15 The available information does not suggest that the treatment is sufficiently serious by its nature and/or repetition such that there is a general risk to LGBTI persons in Namibia from societal 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 from non-state actors on the basis of their sexual orientation or gender identity.
- 2.4.16 For further guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.4.17 Decision makers must also refer to the Asylum Instructions on [Sexual Identity Issues in the Asylum Claim](#) and [Gender identity and expression, including intersex issues in asylum claims](#).

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2.5 Protection

- 2.5.1 Where the person's fear is of persecution or serious harm at the hands of the state, they will not be able to obtain protection.
- 2.5.2 If the person is at risk of persecution or serious harm from a non-state actor 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 ([see Legal context](#)).
- 2.5.4 State authorities have been responsible for arbitrary arrests, detentions, harassment and discrimination towards LGBTI persons with reports of physical and sexual assault from the police. Information indicates the police, in general do not take complaints of violence against LGBTI persons seriously and action is not taken to investigate and prosecute abuse. Additionally, LGBTI persons may be dissuaded from reporting crimes due to police ridicule and lack of assistance (See [State treatment](#)).
- 2.5.5 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.
- 2.5.6 For further guidance on assessing the availability of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#). Decision makers must also refer to the Asylum Instructions on [Sexual Identity Issues in the Asylum Claim](#) and [Gender identity and expression, including intersex issues in asylum claims](#).

2.6 Internal relocation

- 2.6.1 Where the threat is from the state, internal relocation will not be reasonable.
- 2.6.2 Where the threat is from a non-state actor, decision makers should consider each case on its individual circumstances to ascertain if the threat is local and could be removed by internal relocation.
- 2.6.3 The law provides for freedom of internal movement and the government generally respected these rights.
- 2.6.4 Tolerance of LGBTI persons is likely to be greater in the larger urban areas. Sources indicate that there is an LGBTI community and active civil society in the capital, Windhoek, which has hosted a number of LGBTI events and established the first LGBTI health centre. There has also been a 'Pride' event in the coastal city of Swakopmund (see [LGBTI organisations / civil society](#) and [Freedom of movement](#)).
- 2.6.1 Where LGBTI persons do encounter local hostility, they may be able to avoid this by moving elsewhere, either in the same city or to another part of the country. The person might choose to relocate to where there is relatively greater tolerance, such as Windhoek, but only if the risk is not present there and if it would not be unduly harsh to expect them to do so. However, each case must however be considered on its facts. The onus is on the person to demonstrate why, in their particular circumstances, it would be unreasonable for them to relocate to another area in Namibia (see [Freedom of movement](#)).
- 2.6.2 Internal relocation will not be reasonable if it depends on the person concealing their sexual orientation and / or gender identity in the proposed new location for fear of persecution.
- 2.6.3 For further guidance on internal relocation and the factors to be considered, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#). Decision makers must also refer to the Asylum Instructions on [Sexual Identity Issues in the Asylum Claim](#) and [Gender identity and expression, including intersex issues in asylum claims](#).

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 \(clearly unfounded claims\)](#).

Country information

Section 3 updated: 13 November 2018

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), through the Gender Research and Advocacy Project published the report ‘Namibian Law on LGBT Issues’ in 2015 (the LAC report 2015). It noted:

‘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 The US State Department (USSD) 2017 Human Rights Practices Report, published April 2018 (USSD report 2017) noted: ‘The prohibition against sexual discrimination in the constitution does not prohibit discrimination based on sexual orientation.’⁴

- 3.1.4 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

¹ Government of Namibia, The Constitution of the Republic of Namibia webpage, undated, [url](#)

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

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

⁴ USSD, Human Rights report 2017, April 2018 (page 14) [url](#)

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, “whether between men and men and women and women and women, clearly fall outside the scope and intent of Article 14.”’⁵

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3.2 Common law / legislation

- 3.2.1 The report by The Other Foundation, *Canaries in the Coalmines – LGBTI Namibia Country Report* (The Other Foundation report 2017), published in June 2017, noted:

‘Male same-sex acts are illegal under common law in Namibia and no legal mention is made of female same-sex sexuality. The sodomy law has been in existence since 1927 and was subsequently strengthened in 1980 by the Combating of Immoral Practices Act. Sodomy and certain sexual acts (such as mutual masturbation and oral sex) between consenting adult males are criminal offences, though homosexuality itself is not illegal.’⁶

- 3.2.2 The LAC report 2015 noted ‘The Criminal Procedure Act groups sodomy together with a list of other crimes for which police are authorised to make an arrest without a warrant or to use of deadly force in the course of the arrest. In terms of the Immigration Control Act ... a permanent resident of Namibia who is convicted of sodomy may lose permanent residence status.’⁷
- 3.2.3 Among sources consulted (see [Bibliography](#) for full list), no information could be found about the penalties for sodomy or for committing sexual acts between consenting males ([see Arrest / prosecution of same-sex acts](#)).
- 3.2.4 In relation to marriage, the LAC report 2015 noted ‘[t]here are two basic types of marriage in Namibia – civil marriage and customary marriage. It is not possible for gay and lesbian couples to marry under civil or customary law in Namibia.’⁸
- 3.2.5 The Other Foundation report 2017 noted ‘Same-sex marriage is not permissible and the courts have yet to adjudicate on whether this exclusion is Constitutional’.⁹
- 3.2.6 In relation to employment rights for LGBTI persons, the International Lesbian, Gay, Bisexual, Trans And Intersex Association (ILGA) report for 2016, referencing UN Committee consideration of rights in Namibia, noted: ‘A Shadow Report by SALC [Southern Africa Litigation Centre] and other groups pointed out that: “The 1992 Labour Act included both sexual

⁵ LAC, *Namibian Law on LGBT Issues* (p.38), 2015, [url](#)

⁶ The Other Foundation, *LGBTI Namibia Country Report*, June 2017 (page 10), [url](#)

⁷ LAC, *Namibian Law on LGBT Issues* (p.68), 2015, [url](#)

⁸ LAC, *Namibian Law on LGBT Issues* (p.129), 2015, [url](#)

⁹ The Other Foundation, *LGBTI Namibia Country Report*, June 2017 (page 10), [url](#)

orientation and disability as a ground for non-discrimination, but sexual orientation was removed from the 2007 Labour Act”.¹⁰ (See [Employment](#))

3.2.7 The UN International Covenant on Civil and Political Rights Human Rights Committee (UNHRC) Concluding observations on the second report of Namibia from April 2016 noted the absence of protection for same-sex partners in the Combating of Domestic Violence Act (Act No. 4 of 2003)¹¹.

3.2.8 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.’¹²

See [Gender reassignment](#)

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Section 4 updated: 13 November 2018

4. State treatment

4.1 Government attitudes

4.1.1 The LAC report 2015 stated: ‘In Namibia, government has been reasonably tolerant of the rights of speech, expression, association and assembly of LGBT persons – at least at the official level.’¹³

4.1.2 The same report noted: ‘Some countries have attempted to prevent speech which “promotes” homosexuality or LGBT rights. This has not taken place in Namibia, and probably could not, as such restrictions would be incompatible with the Namibian Constitution and with international conventions to which Namibia is a party.’¹⁴ (See [Restrictions on civil society groups](#))

4.1.3 The International Lesbian, Gay, Bisexual, Trans And Intersex Association (ILGA) report for 2016, referencing UN Committee consideration of rights in Namibia, noted:

‘At its 2nd UPR session in January 2016 the Namibian government rejected five recommendations for decriminalization and accepted two to do with strengthening of institutional capacities to address violence, and the adoption of measures to combat violence. A Shadow Report by SALC [Southern Africa Litigation Centre] and other groups pointed out that: “Namibia has also not yet extended the grounds for non-discrimination in the Constitution. They remain quite restricted and do not include grounds such as sexual orientation or disability [..]”.

¹⁰ ILGA, State-sponsored homophobia (pages 95), May 2017, [url](#)

¹¹ UNHRC, Concluding observations on Namibia, 22 April 2016 (para 9), 22 April 2016, [url](#)

¹² Births, Marriages and Deaths Registration Act 81 of 1963, section 7B (page 8), 21 June 1965 [url](#)

¹³ LAC, Namibian Law on LGBT Issues (p.41), 2015, [url](#)

¹⁴ LAC, Namibian Law on LGBT Issues (p.106), 2015, [url](#)

‘The [Namibian government’s] delegation stated that, “LGBT persons were not victimized or persecuted for practicing their preferred sexual orientation. Article 13 of the Constitution protects the right to privacy. No person is requested to disclose his or her preferred sexual orientation in any official Government form or document and no person can be refused access to public or private services based on their preference. The laws do not make provision for marriage between same sex adults.”

‘In April 2016 in its Concluding Observations on Namibia, the Human Rights Committee that oversees the ICCPR made substantial recommendations regarding non-discrimination policy and law in key areas, awareness-raising, police ill treatment, and refoulement of refugees regarding SOGI. In its Concluding Observations on Namibia in April 2016, the Committee on Economic, Social and Cultural Rights (CESCR) recommends the Constitutional provision against discrimination be extended to enumerate sexual orientation (GI is not named), as well as HIV status. Comprehensive anti-discrimination legislation is also called for, as is the call for decriminalisation of sexual relations between consenting individuals of the same sex. In November 2016, the Committee Against Torture spoke (para. 30) of severe issues regarding detention, harassment, police brutality, sexual violence, stigmatisation, violence, access to justice, and criminalisation.’¹⁵

- 4.1.4 The UNHRC, concluding observations on the second report of Namibia from April 2016, noted:

‘While noting the measures taken to eliminate discrimination, the Committee is concerned that protection against discrimination is insufficient. It is particularly concerned about:

‘...Discrimination on the basis of sexual orientation not being explicitly prohibited, exclusion of sexual orientation as a prohibited ground for discrimination from the Labour Act (Act No.11 of 2007), the maintenance of the common law crime of sodomy, the exclusion of same-sex partnerships from the Combating of Domestic Violence Act (Act No. 4 of 2003);’¹⁶

- 4.1.5 The US State Department 2017 Human Rights Practices Report (USSD report 2017) noted:

‘Some politicians opposed any legislation that would specifically protect the rights of LGBTI persons. In August 2016 the ombudsman publicly declared his support for the legalization of same-sex marriage and the abolition of the common law offense of sodomy. There was some evidence of attitudes in government relaxing in recent years. For example, in July [2017] authorities permitted LGBTI groups to hold a parade that made its way down the main avenue in downtown Windhoek on a Saturday morning.’¹⁷ (See [Public opinion](#) and [LGBTI events](#)).

- 4.1.6 The Other Foundation report 2017 noted, in its summary: ‘The legislative environment is not conducive to living openly as an LGBTI person, but this too, is being challenged on several fronts. At state level, the Office of the

¹⁵ ILGA, State-sponsored homophobia (pages 95-96), May 2017, [url](#)

¹⁶ UNHRC, Concluding observations on Namibia, 22 April 2016 (paras 90 and 21), 22 April 2016, [url](#)

¹⁷ USSD, USSD report 2017, April 2018 (page 14) [url](#)

Ombudsman, is pursuing an inclusive human rights agenda that clearly includes the human rights of LGBTI people.¹⁸

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4.2 Police / authorities

- 4.2.1 The USSD report 2017 noted, in relation to the security services generally: 'Civilian authorities maintained effective control over the security forces. There were no reports of egregious human rights abuses. The government took steps to prosecute or administratively punish officials who committed abuses, whether in the security services or elsewhere in the government.'¹⁹

i. Police in general

- 4.2.2 The USSD report 2017 noted:

'The Namibian Police Force (NamPol) has approximately 16,500 uniformed officers and operates under the Ministry of Safety and Security. The Namibian Defense Force, with an estimated 22,000 active duty members, is part of the Ministry of Defense. NamPol is responsible for internal security, while the defense force provides supplemental assistance in response to some natural disasters.

'NamPol reported it had decentralized policing activities to make regional commands responsible for executing directives of the inspector general of police. Civilian authorities maintained effective control over NamPol, and the government had effective mechanisms to investigate and punish abuse and corruption. In contrast to prior years, there were no reports of impunity involving the security forces.'²⁰

ii. Treatment of LGBTI people

- 4.2.3 The UN International Covenant on Civil and Political Rights Human Rights Committee (UNHRC) Concluding observations on the second report of Namibia from April 2016 noted: '... The Committee is concerned at reports of torture and ill-treatment in police cells and detention facilities [generally, not specifically of LGBTI persons], of the use of excessive force against suspects and at: (a) Reported cases of violence and harassment against lesbian, gay, bisexual and transgender persons by members of the police.'²¹

- 4.2.4 The Other Foundation report 2017, referencing a number of sources noted:

'The significant experiences and needs of LGBTI people relate to the prevalence of physical and sexual violence, including general violence, police violence, rape and rape by police [...].

'Harassment and brutality at the hands of the police is a reality and police create methods to humiliate trans people, including forcing them to strip in public.

'Martin, a trans woman sex worker in Windhoek, Namibia, shared her recollections of finding a friend, Carolyn, another trans sex worker, badly

¹⁸ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 3), [url](#),

¹⁹ USSD, USSD report 2017, April 2018 (Executive Summary) [url](#)

²⁰ USSD, USSD report 2017, April 2018 (page 3) [url](#)

²¹ UNHRC, Concluding observations on Namibia, 22 April 2016 (paras 90 and 21) [url](#)

beaten by the police. “They had ripped her clothes off,” she said. “It aggravates them more that you are a man so they give you a heavier beating.”²²

- 4.2.5 The UN Committee Against Torture (UN CAT) in its concluding observations on Namibia of February 2017 noted:

‘The Committee is concerned at reports that lesbian, gay, bisexual, transgender and intersex persons are subject to ill-treatment in detention, and that transgender women have been placed together with male detainees, exposing them to a high risk of sexual assault [...]. The Committee is further concerned by reports of abuse of gay men by law enforcement personnel and by the stigmatization they suffer, especially taking into consideration the current criminalization of sexual acts between consenting adult men.’²³

- 4.2.6 The UN CAT’s observations were based, amongst others, on submissions by Advocates for Human Rights, MPower Community Trust, Namibian Gays and Lesbian Movement TULINAM and Wings to Transcend Namibia. The submission opined in its executive summary:

‘... Namibia fails to uphold its treaty obligations under the Convention Against Torture in laws and practices related to its treatment of lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals. LGBTI Namibians continue to experience targeted discrimination and violence, both at the hands of State and non-State actors. The State party has not taken sufficient action to prevent, investigate and protect these individuals from torture and cruel, inhuman, or degrading treatment and punishment.

‘...Police officers routinely violate the human rights of LGBT individuals by arbitrarily arresting them or subjecting them to physical violence. Criminalization of homosexual conduct enables these violations. Namibia should repeal the law criminalizing homosexual conduct. Police training and accountability measures are also recommended.’²⁴

- 4.2.7 The same submissions further noted:

‘... The problems with Namibia’s detention system are compounded for LGBTI individuals, who suffer additional human rights violations while in detention. Transgender women are often placed in male jail cells, putting them at high risk of sexual assault. Understaffing of medical personnel means medical services are inadequate. Appropriate foods are not always available or provided, causing harm to individuals with HIV and AIDS. The State party has continued to deny access to condoms in prisons for fear of promoting “immoral practices” like sodomy.’²⁵

- 4.2.8 The Other Foundation report 2017 noted, in relation to treatment in prisons: ‘The effects of the sodomy law are apparent in the refusal of prison officials to distribute condoms and reported blackmailing of prisoners.’²⁶

²² The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 25), [url](#)

²³ UN CAT, Concluding observations on Namibia (para 30), 1 February 2017, [url](#)

²⁴ Advocates for Human Rights, Namibia’s Compliance with UNCAT, Nov 2016–Dec 2016 (p3), [url](#)

²⁵ Advocates for Human Rights, Namibia’s Compliance with UNCAT, Nov 2016–Dec 2016 (p3), [url](#)

²⁶ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 7), [url](#)

- 4.2.9 In relation to the situation for sex workers, the October 2016 report ‘Torture of Sex Workers in Namibia’ written jointly by Voice of Hope Trust, Rights not Rescue Trust and the Walter Leitner International Human Rights Clinic in the Leitner Center for International Law and Justice, for the 59th Session of UN Committee against Torture, noted:

‘The criminalization of sex work in Namibia has resulted in the torture and cruel, inhuman, and degrading treatment of sex workers, both female and male, including lesbian, gay, bisexual, and transgender (“LGBT”) sex workers. Law enforcement in Namibia engage in acts of physical and sexual abuse of sex workers which amount to torture. Law enforcement and public health workers in Namibia also engage in discriminatory abuse of sex workers that amounts to cruel, inhuman, and degrading treatment [...]’²⁷

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4.3 Arrest / prosecution of same-sex acts

- 4.3.1 The LAC report 2015 noted:

‘The laws prohibiting sodomy and other unnatural sexual acts between men are seldom enforced in respect of acts between consenting adults. Statistics from the Namibian Police appear to disclose only 4 to 5 arrests for sodomy over the ten-year period from 2003 to 2012.

‘There is a legal doctrine whereby a crime can be “abrogated by disuse” – meaning that it loses its force if it is not applied in practice over a long period. However, it would probably be impossible to argue that the crimes of sodomy and unnatural sexual offences have been abrogated by disuse in Namibia since there are still occasional arrests for these crimes, and since government officials, Parliamentarians and members of the community still speak of the crimes as being in existence.

‘The laws prohibiting sodomy and other unnatural sexual acts between males are rarely if ever enforced in cases where there are consenting adults.’²⁸

- 4.3.2 In relation to charges brought, and prosecutions for sodomy the LAC report 2015 noted:

‘There are no reported court cases involving prosecutions for consensual sodomy or unnatural sexual offences between adult males since Namibian independence. However, it is clear that the crime is still occasionally applied in practice. For example, in 2005 the Legal Assistance Centre took on the case of two men who were arrested after being discovered committing a sexual act in a toilet in a private bar. They were charged with the crime of sodomy, in addition to other charges, and the Legal Assistance Centre intended to challenge the constitutionality of this crime on their behalf. However, before the case moved forward, the prosecutor withdrew the sodomy charges against the men.’²⁹

²⁷ Voice of Hope Trust, Torture of Sex Workers, October 2016 (page 3), [url](#)

²⁸ LAC, Namibian Law on LGBT Issues (4.2.2), 2015, [url](#)

²⁹ LAC, Namibian Law on LGBT Issues (4.2.2), 2015, [url](#)

- 4.3.3 John Walters, the Ombudsman of Namibia, noted in 2016 the absence of prosecutions for same-sex sexual relationships between men, stating he believed there have been no prosecutions under the sodomy law over the last 20 years ³⁰.
- 4.3.4 The International Lesbian and Gay Association (ILGA) report on state homophobia covering 2016 stated:
- ‘Sodomy remains a crime in Namibia according to the Roman-Dutch common law. There is no codified sodomy provision in Namibia, although despite the fact that the provision has been triggered...extremely rarely its ‘chill factor’ has effect. Section 299 of the 2004 Criminal Procedure Act groups sodomy together with a list of other crimes for which police are authorised to make an arrest without a warrant or to use of deadly force in the course of that arrest.
- ‘The calls for legal congruence with the country’s 1990 Constitutional principles (Articles 8, 10 and 13 – dignity, equality and non-discrimination, and privacy) have been repeatedly echoed, as has consistency with its international law obligations.’³¹
- 4.3.5 The Other Foundation report 2017 noted, in relation to the laws on sodomy certain sexual acts (such as mutual masturbation and oral sex) between consenting adult males that ‘Although these laws are seldom applied, they continue to have a detrimental impact on LGBTI people.’³²
- 4.3.6 The USSD report 2017 noted: ‘Although Roman-Dutch common law inherited at independence criminalizes sodomy, the ban was not enforced. The law defines sodomy as intentional anal sexual relations between men. This definition excludes anal sexual relations between heterosexual couples and sexual relations between lesbians.’ ³³
- 4.3.7 The USSD reports for 2015³⁴ and 2016³⁵ do not mention prosecutions or arrests of LGBT persons.
- 4.3.8 The LAC report 2015 discussed the effects of other legislation on the LGBT community. It noted that the offences such as public indecency and offences under the Combating of Immoral Practices Act applied equally to heterosexual and LGBT people. It noted that, any crimes based on the protection of “morality” could be misused against the LGBT community, however no cases of this kind could be found³⁶.

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³⁰ Mambaonline.com, Namibia’s ombudsman calls for same-sex marriage, 23 August 2016, [url](#)

³¹ ILGA, State-sponsored homophobia (pages 95), May 2017, [url](#)

³² The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 7), [url](#)

³³ USSD, USSD report 2017, April 2018 (page 14) [url](#)

³⁴ USSD, USSD report 2015, April 2016, [url](#)

³⁵ USSD, USSD report 2016, March 2017, [url](#)

³⁶ LAC, Namibian Law on LGBT Issues (p.76-77), 2015, [url](#)

4.4 Police responses to reports of violence

- 4.4.1 The USSD reports 2017³⁷, 2016³⁸, 2015³⁹ do not mention police responses to violence against LGBTI persons however, the USSD report for events in 2014 noted:

‘OutRight Namibia, an organization that advocates for LGBT rights, continued to report that police generally did not take complaints of violence against LGBT persons seriously. It claimed police often ridiculed LGBT persons when they reported cases of abuse, and this secondary victimization often dissuaded victims from reporting. The organization reported that beginning in 2011, however, the Office of the Ombudsman and the Ministry of Health and Social Services strengthened their relations with the LGBT community and included that community in the National Strategic Framework for HIV/AIDS 2010-16 as a group requiring outreach.’⁴⁰

- 4.4.2 New Era, a state-owned newspaper, reported in 2014 in the article Gay Killer Remains in Custody that:

‘Windhoek– Jonas Angula, 35, the man who allegedly savagely battered a suspected gay man to death in Gobabis last month remains in custody.

‘His matter will continue on December 5 this year, Angula was informed when he returned to the Gobabis Magistrate’s Court yesterday. Angula, who was arrested for the alleged murder last month of a man he accused of being gay, has been in custody after he was denied bail in the Gobabis Magistrate’s Court during his first court appearance last month.’⁴¹

Amongst sources consulted (see [Bibliography](#)), the outcome of this case could not be found.

- 4.4.3 The Torture of Sex Workers report for the 59th Session of UN Committee against Torture, October 2016 noted: ‘[...] Namibia fails to prevent and adequately investigate and prosecute the torture of sex workers by private actors.’⁴²

- 4.4.4 A 2016 OutRight Action International report, A Survey of Laws Impacting the Human Rights of Lesbian, Gay, Bisexual and Transgender Persons in Selected Southern African Countries, noted:

‘...the prevailing view amongst LGBT persons within Namibia is that the police generally do not take complaints of violence against the LGBT community seriously. There are signs, however, that the exercise of freedoms of expression and assembly by the LGBT community may slowly be gaining greater acceptance and engendering greater tolerance from both the government and society at large.’⁴³

³⁷ USSD, USSD report 2017, April 2018 (page 14) [url](#)

³⁸ USSD, USSD report 2016, March 2017, [url](#)

³⁹ USSD, USSD report 2015, April 2016, [url](#)

⁴⁰ USSD, USSD report 2014, March 2015, [url](#)

⁴¹ New Era, Gay Killer Remains in Custody, 24 October 2014, [url](#)

⁴² Voice of Hope Trust, Torture of Sex Workers , October 2016 (page 3), [url](#)

⁴³ OutRight Action International, A Survey of Laws, 16 March 2016, [url](#)

- 4.4.5 The UN Committee Against Torture (UN CAT) in its concluding observations on Namibia of February 2017 noted: ‘The Committee is also concerned at reports of the failure to investigate, prosecute and punish violence, harassment and ill-treatment, rape and murder of lesbian, gay, bisexual, transgender and intersex persons.’⁴⁴
- 4.4.6 The UN CAT’s observations, based on submissions by Advocates for Human Rights, MPower Community Trust, Namibian Gays and Lesbian Movement TULINAM and Wings to Transcend Namibia, noted: ‘In January 2016, a man was charged with a double murder of two lesbian women in the Windhoek region.’⁴⁵
- 4.4.7 The same report noted in its executive summary: ‘[...] The State party fails to prevent violence and ill-treatment against LGBTI persons committed by non-State actors. LGBTI persons who do go to the police report experiencing additional violations, including being ridiculed, treated in a degrading and insensitive manner, and asked inappropriate questions. Survivors have little faith in the criminal justice system.’⁴⁶
- 4.4.8 The Other Foundation report 2017 noted, ‘[...] there is often a refusal on the part of police to prosecute violence against LGBTI people [based on a report by Sister Namibia, Building the Feminist Movement in Namibia, Annual Report: January to December 2009, 2010, “Namibia: Treatment of sexual minorities by society and government authorities; recourse and protection available to sexual minorities who have been subject to ill treatment.”]’⁴⁷

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4.5 Avenues for redress

4.5.1 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.’⁴⁸

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⁴⁴ UN CAT, Concluding observations on Namibia (para 30), 1 February 2017, [url](#)

⁴⁵ Advocates for Human Rights, Namibia’s Compliance with UNCAT, Nov 2016–Dec 2016 (p7), [url](#)

⁴⁶ Advocates for Human Rights, Namibia’s Compliance with UNCAT, Nov 2016–Dec 2016 (p3), [url](#)

⁴⁷ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 25), [url](#)

⁴⁸ LAC, Namibian Law on LGBT Issues (p.44), 2015, [url](#)

5. Societal treatment

5.1 Societal norms

- 5.1.1 The research article by Zahn R, Grosso A, Scheibe A, Bekker L-G, Ketende S, Dausab F, et al entitled 'Human Rights Violations among Men Who Have Sex with Men [MSM] in Southern Africa: Comparisons between Legal Contexts', published in January 2016 noted, in respect of identification and disclosure of sexual identity:

'More identified as heterosexual in Malawi and Namibia [than South Africa and Botswana], and these differences were statistically significant ($p < 0.01$). A higher proportion, 68.5%, in Cape Town had disclosed their sexual orientation to a family member, compared to 60.3% in Gaborone, 44.5% in Windhoek [Namibia], and 17.0% in Blantyre and Lilongwe [Malawi] ($p < 0.01$). The pattern was similar for having disclosed sexual orientation to a health careworker.'⁴⁹

- 5.1.2 News24, a South African online news publication, published the article, Kicking at Namibia's closet doors, on 8 July 2018. The series on LGBTI life in Africa was made through a partnership with The Other Foundation and explored the experiences of members of the trans, lesbian and gay community in Namibia. The article stated:

'It's not a secret that there are queer people in Namibia, it's just that a conservative, patriarchal society prefers it to remain a private matter. Now, a new generation is growing tired of the silence, reports Kevin Perestrelo from Windhoek.

'We live by stories; they shape our world. And words are powerful things, especially when they're naming things. I had no idea what it meant to be a moffie until I heard the word used to mock other kids – the ones who didn't quite fit in; the boys who didn't measure up to society's idea of what masculinity should look and act like

'Growing up in middle-class Namibia, we generally don't talk about it at home, even once you're an adult. Your sexuality is not acknowledged – it's supposed to be your secret.

'Even with the mockery, Namibia, for the most part, is quite a conflict-avoidant society, civilised and passive when it comes to dealing with the lesbian, gay, bisexual, transgender and intersex (LGBTI) community. It's a slowed-down and peaceful place, even in the heart of the capital Windhoek, where I have lived for 15 years.

'The government also barely mentions us, despite protests and petitions. And there's plenty to protest, because we may be legal on paper, but, in the Roman Dutch common law we borrowed from our neighbours South Africa and didn't update even after independence in 1990, same-sex marriage is not legal and sexual acts between men are a crime.

⁴⁹ Zahn R, Grosso A, Scheibe A, Bekker L-G, Ketende S, Dausab F, et al, (p5), 14 Jan 2016, [url](#)

‘Even though no one has been prosecuted under this sodomy law, there is also no protection. Discrimination based on sexual orientation and gender identity is not banned in Namibia, so homophobes can call us “moffies”, and they do.

‘That civilised and passive attitude doesn’t always prevail, as one of my friends found out a few weeks ago when he was beaten up in a gay-friendly local establishment in a homophobic attack. The establishment did nothing to try to protect him, which earned it an online petition, but little else.

‘The police won’t help, either. In fact, they reportedly refused to pursue the above case and are often the cause of violence against the LGBTI community. The biggest problem is the silence that breeds the ignorance that breeds the violence.

‘But a new generation is tired of it and is no longer willing to be erased.’⁵⁰ (See also [State treatment](#)).

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5.2 Public opinion

- 5.2.1 The Ombudsman Namibia, in the 2013 Baseline Study Report on Human Rights in Namibia noted: ‘The presence of sodomy laws on Namibian statute books makes gay men particularly susceptible to discrimination and interference with their privacy [...] The continued presence of sodomy laws also mistakenly creates the impression that the practice or otherwise of homosexuality is illegal in this country and this is wrong [...]’⁵¹
- 5.2.2 The LAC report 2015 noted: ‘There is no consensus about LGBT issues in Namibian society. Vocal disapproval from prominent politicians and Parliamentarians and some community members sits alongside attitudes ranging from tolerance to acceptance in some communities. The Namibian media gives coverage to a spectrum of LGBT issues, often sympathetically.’⁵²
- 5.2.3 In 2016 Afrobarometer, which conducts public opinion surveys in Africa, listed the continent’s most and least homophobic countries noted that ‘the majority of residents [in Namibia (55%)] say they would welcome or would not be bothered having a homosexual neighbour.’⁵³ However, many Namibians consider same-sex sexual activity taboo according to the USSD report 2017⁵⁴.
- 5.2.4 The ILGA report on state homophobia covering 2016 stated: ‘[...] despite the fact that the country has accepted LGBT Ugandan asylum seekers in the last three years, there have been worrying utterances by political and religious representatives in Namibia, according to advocates.’⁵⁵

⁵⁰ News24, Kicking at Namibia’s closet doors, 8 July 2018, [url](#)

⁵¹ Ombudsman Namibia, 2013 Baseline Study Report...Namibia (page 97), 2013 [url](#)

⁵² LAC, Namibian Law on LGBT Issues (p.188), 2015, [url](#)

⁵³ Afrobarometer (via 76 Crimes.com), Africa’s most and least homophobic countries, 9 Mar 2016, [url](#)

⁵⁴ USSD, USSD report 2017, April 2018 (page 14) [url](#)

⁵⁵ ILGA, State-sponsored homophobia (pages 95), May 2017, [url](#)

- 5.2.5 A study published in the South African Journal of Higher Education in 2017, Social Work Students' Attitudes Towards Gay Men and Lesbians in Namibia: Results from an Exploratory Study, noted:

'Results presented are based on a sample of 193 undergraduate social work students in an accredited social work degree programme at a Namibian public university. Results indicate an overall low level of open and accepting attitudes toward gay men and lesbians. Using both bivariate and multivariate analyses, the findings indicate that females, students from Namibia, students who know someone identifying as lesbian, gay, bisexual, or transgender (LGBT) and those who attend religious affiliations less often are more accepting of gay men and lesbians.'⁵⁶

- 5.2.6 The Other Foundation report 2017 noted in its introductory summary:

'Namibia has experienced visible and tangible change on LGBTI human rights issues in recent years with a marked move away from the homophobia expressed by then head of state, Sam Nujoma, following independence. LGBTI people continue to experience severe levels of marginalization and social exclusion but are also clearly poised to make significant advances in the coming few years if a coherent national strategy can be consolidated by existing LGBTI organizations and their allies. Some sectors (such as health) have made significantly more gains than others (such as religion and education), and there has been a sea change of evolving public attitudes towards non-normative sexualities and genders. This broad shifting in social attitudes is due to several factors, including the efforts of LGBTI organizations.'⁵⁷

- 5.2.7 And that:

'Negative public statements from various sectors have impacted societal attitudes towards LGBTI people, but the previously homophobic official position is weakening. The 2013 human rights report commissioned by the Office of the Ombudsman found: "The continued existence of the common-law crime of sodomy is by its very nature and content discriminatory."

'There is increased advocacy for same sex civil unions or civil marriage, including the leader of one of the country's political parties, promising to support LGBTI human rights in Parliament.'⁵⁸

- 5.2.8 The same report noted, in a section on shifting discourse that:

'An increasingly sophisticated language has emerged on SOGI issues. This is largely due to greater exposure to media and online content from outside Namibia; LGBTI activists and leaders traveling abroad and returning with new linguistic frames of reference; the relative silence of the church; and an increasingly confident LGBTI community buoyed by the support of key allies at the national level. While the general cultural environment may be understood in terms of post-colonial, post-independence stagnation, the

⁵⁶ South African Journal of Higher Education, Social Work Students' Attitudes Towards ..., (p 286), 2017 [url](#)

⁵⁷ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 3), [url](#),

⁵⁸ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 7), [url](#)

presence of a vocal LGBTI community on the streets of the capital is having an enlivening effect.

'[...] As independence and the liberation struggle become historical facts, the loosening of related discourse has led to increasing tolerance of LGBTI communities. This is not to deny the backlash against LGBTI people but to highlight the broader historical arc.'⁵⁹

- 5.2.9 Human Rights Watch in the report For LGBT Rights, 2018 Will Be the Year of the Courts noted: 'A Namibian man and his South African partner, who married in South Africa in 2015, are suing for marriage recognition so that the South African man, Daniel Digashu, can live in Namibia with his spouse, Johann Potgieter, and their 8-year-old adopted son.'⁶⁰
- 5.2.10 Among sources consulted, no information could be found about the existence of anti-LGBTI marches or demonstrations (see [Bibliography](#) for full list).

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5.3 Violence and discrimination

- 5.3.1 The Ombudsman Namibia, in the 2013 Baseline Study Report on Human Rights in Namibia noted:
- '[...] a key informant opines that many members of the LGBTI community are being discriminated against if they are open about their sexual preference and gender identity. This is particularly true for the transgender community. Transgender persons face a lot of discrimination but people are often hesitant to challenge the institutions that ill-treat them to avoid further victimization...It is true that the LGBTI community suffers widespread social exclusion and rejection but there is no known documentary evidence that shows the nature, scope and extent of the discrimination.'⁶¹
- 5.3.2 The same report noted: 'Even though the laws on sodomy and unnatural sexual offences are seldom enforced, 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.'⁶²
- 5.3.3 And that: 'A number of cases of human rights violations go unrecorded as lesbian women are subjected to corrective rape, LGBTI people beaten and demeaned, families disowning their children which impacts on their future livelihood and further community homophobia and transphobia.'⁶³
- 5.3.4 The LAC report 2015 noted that OutRight Namibia, an NGO which addresses LGBT rights, reports in 2013 that 'high levels of sexual and other violence targeting people because of their sexual orientation and gender identity are endemic in some areas of our country.'⁶⁴

⁵⁹ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 12), [url](#)

⁶⁰ HRW, For LGBT Rights, 2018 Will Be the Year of the Courts, 24 January 2018, [url](#)

⁶¹ Ombudsman Namibia, 2013 Baseline Study Report...Namibia (page 98), 2013 [url](#)

⁶² Ombudsman Namibia, 2013 Baseline Study Report...Namibia (page 64), 2013 [url](#)

⁶³ Ombudsman Namibia, 2013 Baseline Study Report...Namibia (page 100), 2013 [url](#)

⁶⁴ LAC, Namibian Law on LGBT Issues (p.83), 2015, [url](#)

- 5.3.5 In 2012, according to the same 2015 LAC report: ‘The Director of OutRight Namibia has reported that lesbians 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.”’⁶⁵
- 5.3.6 Submissions by Advocates for Human Rights, MPower Community Trust, Namibian Gays and Lesbian Movement TULINAM and Wings to Transcend Namibia to the UN Committee Against Torture noted: ‘In 2014, a man was beaten to death in Gobabis because he was suspected of being gay, and in 2013 seven men severely beat a transgender woman in an Oshivambo community in the north of Namibia.’⁶⁶
- 5.3.7 The same report stated in relation to corrective rape: ‘Lesbians also report threats of rape from men seeking to “cure” them of their sexual orientation, and police often fail to prosecute or investigate such claims. While the prevalence of “corrective” rape in Namibia is unknown due to underreporting, some cases have been reported, including a September 2014 case in Goreangab’.⁶⁷
- 5.3.8 The USSD reports on human rights for 2015⁶⁸, 2016⁶⁹ and 2017⁷⁰ did not report specific incidents of societal discrimination or violence against LGBT persons. However, the report for 2014 observed:
 ‘Societal discrimination and violence against LGBT persons remained a problem. The Ombudsman’s Office reported that LGBT persons were often subject to ridicule and even physical and verbal abuse when they walked in a different neighborhood from their own. In September [2014] a man sexually assaulted a lesbian in Windhoek because he wanted to “cure” her of her lesbianism. When she sought medical help at a state hospital, the receptionist told her to return later and publicly announced the lesbian had been raped.’⁷¹
- 5.3.9 The research article by Zahn R, Grosso A, Scheibe A, Bekker L-G, Ketende S, Dausab F, et al entitled Human Rights Violations among Men Who Have Sex with Men [MSM] in Southern Africa: Comparisons between Legal Contexts, published in January 2016, examined the relationship between criminalisation of same-sex behaviour and experiences of human rights abuses by MSM including 218 participants in Windhoek, Namibia. The study defined a human rights abuse as a person, because of their sexuality, having been denied housing or healthcare, been blackmailed, beaten by the police, or raped. 52 % of Namibian participants in the study were considered to have ever experienced a human rights abuse⁷².

⁶⁵ LAC, Namibian Law on LGBT Issues (p.83), 2015, [url](#)

⁶⁶ Advocates for Human Rights, Namibia’s Compliance with UNCAT, Nov 2016–Dec 2016 (p7), [url](#)

⁶⁷ Advocates for Human Rights, Namibia’s Compliance with UNCAT, Nov 2016–Dec 2016 (p7), [url](#)

⁶⁸ USSD, USSD report 2015, April 2016, [url](#)

⁶⁹ USSD, USSD report 2016, March 2017, [url](#)

⁷⁰ USSD, USSD report 2017, April 2018 (page 14) [url](#)

⁷¹ USSD, USSD report 2014 (section 6), March 2015, [url](#)

⁷² Zahn R, Grosso A, Scheibe A, Bekker L-G, Ketende S, Dausab F, et al, (p 3, 7), 14 Jan 2016, [url](#)

5.3.10 The same study found that 14% of the MSM Namibians surveyed had been raped, 21% had been blackmailed and 22% had been beaten by the police or government official⁷³.

5.3.11 The Other Foundation report 2017 noted:

‘Violence against LGBTI people is pervasive and there are “high levels of sexual and other violence targeting people because of their sexual orientation and gender identity [which] are endemic in some areas of our country.” (ORN Human Rights Report on LGBTI People in Namibia, 2013).

‘Upwards of 40% of MSM [men who have sex with men] experience human rights abuses including rape and violence, and this violence is reported as one of their main health challenges. Hatred, extreme violence and rejection from family and communities, including lack of financial support, is a significant challenge [...].’⁷⁴

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5.4 Religious attitudes / treatment

5.4.1 The Ombudsman Namibia, in the 2013 Baseline Study Report on Human Rights in Namibia noted:

‘There is [...] a pre-occupation of interpreting the rights of gay and lesbian people within the context of the Bible rather than from a human rights viewpoint which distorts the entire picture. For instance, most members of the LGBTI community are extremely spiritual but have often been weary of the judgmental attitudes of the majority of the Christian community. Homosexuality and the church remain contentious, as some members of the LGBTI community and even members of academia argue against the selective application of the Bible. For instance, the KI [key informant] points out that the word homosexuality is used only four times in the Bible whereas the role and place of women as subservient is much more prominent, yet women who go against these requirements of the Bible are not excluded or seen as committing a sin. What this also means is that lesbian, bisexual and women sleeping with women (WSW) are facing additional discrimination, first as women and then as lesbian bi-sexual or WSW.’⁷⁵

5.4.2 The Other Foundation report 2017 noted:

‘The Council of Churches in Namibia (CCN) has released affirming statements concerning sexual orientation. The religious sector, according to key contributors, remains predominantly hostile to LGBTI people. This discourse continues to be conservative and espouses stereotypical notions of non-normative sexualities and genders which relate to sinfulness and demonic possession. In an interview with Madelene Isaacks (TULINAM), she said: “A pastor will tell you: ‘You are the devil’s spawn.’ It’s not a great picture, but it’s not as if we’re being killed in the street. It’s not Uganda or South Africa.”’⁷⁶

⁷³ Zahn R, Grosso A, Scheibe A, Bekker L-G, Ketende S, Dausab F, et al, (p7), 14 Jan 2016, [url](#)

⁷⁴ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 25), [url](#)

⁷⁵ Ombudsman Namibia, 2013 Baseline Study Report ...Namibia (page 100), 2013 [url](#)

⁷⁶ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 12) [url](#)

- 5.4.3 The same report noted in relation to exhibitions of queer art that: ‘Artistic and cultural vibrancy continues to attract backlash from more conservative quarters such as the church.’⁷⁷

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Section 6 updated: 13 November 2018

6. LGBTI organisations/civil society

6.1 Civil society (NGOs)

- 6.1.1 The Other Foundation report 2017, in the section on the LGBTI movement in Namibia listed the following organisations: OutRight Namibia (ORN), Sister Namibia, Women’s Leadership Centre (WLC), Wings to Transcend Namibia (WTTN), The Young Feminist Movement (Y-Fem), TULINAM, Voice of Hope Trust, Rights Not Rescue Trust, African Men for Sexual Health and Rights (AMShER)⁷⁸.

For more information about these organisations see [The Other Foundation report](#).

- 6.1.2 The GlobalGayz website referred to the additional LGBTI NGOs (civil society) in Namibia, including LGBT Network Namibia and Sister Namibia GlobalGayz - Namibia⁷⁹.

- 6.1.3 The Women’s Leadership Centre (WLC), in the missions, goals and vision part of their website stated: ‘We engage in facilitating the voice and expression of Namibian women and young women, particularly those who are most marginalised, through information-sharing, education and training, research, writing, art, photography, and the publishing of critical feminist texts which we distribute within our society.’⁸⁰

- 6.1.4 The same website noted that the ‘[...] promotion and protection of lesbian women’s human rights forms part of all our projects within the Women’s Leadership Centre, as well as our efforts toward building an inclusive feminist movement in Namibia.’⁸¹

- 6.1.5 Mambaonline in the article ‘Namibia’s first LGBT health centre opens in Windhoek’ published 28 May 2018 noted, in relation to the launch by Outright Namibia:

‘The intention is to also start offering legal assistance to the LGBT community at the centre. This could entail “legal advice, listening to people’s cases and taking on legal representation,” Dausab said.

“We are also stationing our outreach officers in the centre so that every case that comes in they can screen people for intimate partner violence, gender

⁷⁷ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 12), [url](#)

⁷⁸ The Other Foundation, LGBTI Namibia Country Report, June 2017 (pages 17 - 19), [url](#)

⁷⁹ GlobalGayz.com, Namibia, undated [url](#)

⁸⁰ Women’s Leadership Centre, website, undated, [url](#)

⁸¹ Women’s Leadership Centre, website, undated, [url](#)

based violence and human rights violations. They can refer people to where they need to be to get assistance.”

‘Dausab explained that the opening of the centre is part of a larger strategy to push for equality in Namibia, including decriminalising homosexuality. By collating and documenting people’s experiences of discrimination, ORN hopes to use these stories as evidence for lawmakers and other leaders to illustrate the real human impact of LGBT oppression and stigma.

‘Some of these cases may also be taken to the courts to begin to incrementally challenge discriminatory legislation. “This may mean someone who has been refused health service somewhere at a public clinic or a private centre. It could mean intimate partner violence, where the person is unable to report to the police because our domestic violence laws specifically say that same-sex relationships are not domestic relationships.”

‘Dausab added: “This small centre is meant to contribute to the bigger idea of equality for all LGBT in the country.”⁸²

- 6.1.6 The Wings to Transcend Namibia website provided the following information regarding the organisation:

‘Wings to Transcend Namibia is a Namibian Transgender rights Organisation founded in October 2015, advocating and Lobbying for equal rights of transgender citizens. The organisation strives for proper access to services for transgender persons in Namibia and respect for human dignity regardless of gender identity or expression by eradicating transphobia, stigma, discrimination and violence against transgender people in the republic of Namibia.’⁸³

- 6.1.7 Planet Romeo Foundation provided more information on the funding and work of Wings to Transcend Namibia:

‘According to Wings to Transcend Namibia (WTTN), the LGBTI movement in Namibia has its main focus on trainings and workshops. This means the community does not work towards creating visibility, which WTTN considers to be as important.

‘Our funding enables WTTN to organize sports and cultural activities in five cities in five different Namibian regions. With these activities, they will create a safe environment for the community to share experiences and exchange information. Also, WTTN will generate visibility with these activities within the wider community.’⁸⁴

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6.2 LGBTI events

- 6.2.1 Mambaonline, a South African gay news and lifestyle website, reported on LGBT Pride events that took place in Namibia in June 2016:

⁸² Mambaonline, Namibia’s first LGBT health centre opens in Windhoek, 28 May 2018, [url](#)

⁸³ Wings to Transcend Namibia, webpage – About Us, undated, [url](#)

⁸⁴ Planet Romeo Foundation, webpage - Wings to Transcend Namibia, undated, [url](#)

‘The Namibian coastal city of Swakopmund marked its first LGBT Pride last weekend, only the second such event in the country’s history.

‘Around 150 people turned out for the inaugural Swakop Pride, described as “a celebration of the LGBT and queer community,” on Saturday the 4th of June.

‘The event included a festive midday procession through the city’s main street in which enthusiastic participants waved rainbow flags, while others hung out of cars decorated with colourful balloons...’

‘The county’s citizens are said to be among the most tolerant of gay people in Africa. A recent study found that 55% of Namibians would like or would not mind having homosexual neighbours, the fourth highest pro-gay sentiment on the continent.

‘According to Khaxas, the most pressing issues facing LGBT Namibians include repealing the sodomy law and enacting comprehensive anti-discrimination laws on the grounds of sexual orientation and gender identity.

‘Despite some degree of tolerance, she noted that many comments from the public in newspapers and on social media “were hateful” and based on biblical condemnations of homosexuality.

“It just shows that as human rights defenders, government and civil society we have a lot of work ahead of us in terms of community dialogue on the fundamental human rights of all Namibians,” said Khaxas.

‘Namibia’s first LGBT Pride march took place in the Windhoek township of Katutura in December 2013.’⁸⁵

6.2.2 The 2016 OutRight Action International report stated however, that the first gay pride march of the country was held in Keetsmanshoop, a southern Namibian city, in 2009⁸⁶.

6.2.3 The same organisation reported, in the article Windhoek celebrates LGBT Pride after hate attacks, published on 1 August 2017:

‘Organised by Out-Right Namibia, the procession through the city’s main road, Independence Avenue, included around 200 participants, who were escorted by the police.

“We painted Windhoek on a dreary winter morning with colour and the paraders represented the diversity of LGBT communities across age, class, gender and racial lines in Namibia,” said Out-Right Namibia Director Friedel Dausab. “The reception by the public was good. We had some good cheers and many curious onlookers. A minority were unhappy but no attacks or violent incidences were reported.”

‘Originally planned to take place later in the year, the march and We Are One advocacy week was moved forward after a well-known transgender

⁸⁵ Mambaonline.com, Namibia’s Swakopmund celebrates its first Pride march, 7 June 2016, [url](#)

⁸⁶ OutRight Action International, A Survey of Laws, 16 March 2016, [url](#)

member of the LGBT community was attacked at a restaurant and fast food store in the space of a week.’⁸⁷

6.2.4 Positive Vibes, an organisation advocating human rights, change and development covering Namibia noted:

‘Out-Right Namibia, with LifeLine/ChildLine and PV, celebrated the rich tapestry of Namibia’s LGBT+ communities through a week-long advocacy campaign, #weareone in July 2017.

‘[...] LifeLine/ChildLine hosted a workshop for LGBT+ youth, ‘This is Me’, which focused on personal growth. 7 LGBT+ youth members were engaged on a journey of self-discovery and building resilience. A panel discussion led by Robin Tyson, Namibian media guru and lecturer, addressed the impact of homophobic and transphobic rhetoric on the LGBT+ community.

‘A fundraiser at the Warehouse Theatre [...] was the first drag show held in Windhoek and all proceeds went to ORN towards the establishment of a safe house for vulnerable members of the community.

‘A peaceful parade brought LGBT+ community members and allies together to march down Independence Avenue calling for better legal protection. The community was dressed in colorful attire and carried a huge Rainbow Pride flag, chanting ‘We Are One’. Marchers came to halt and spent a moment in silence paying homage to members of the community who lost their lives or were brutally assaulted due to their sexual orientation.

‘[...] This campaign sparked a lot of conversation in country, with major media houses reporting on the activities conducted.’⁸⁸

6.2.5 The USSD report 2017 noted, in relation to the LGBTI parade in Windhoek in July 2017 ‘Other than some isolated shouting of insults and head shaking from passing motorists, no harassment or violence took place.’⁸⁹

6.2.6 The Namibia Economist, in the article ‘First Lesbian Festival in Windhoek’, published 9 Jan 2018 noted:

‘The Women’s Leadership Centre (WLC) hosted the first local Lesbian Festival in Windhoek late last year at the Warehouse Theatre.

‘More than sixty young lesbians from eight regions came together for a week [...]. Liz Frank, Programme Manager at WLC said for many it was their first workshop and for most their public performance. “They took up the challenge and overcame their fears of standing up as young lesbians in public spaces to speak their truth and demand recognition and rights as equal citizens of their country,” she said.

“In our workshops we see the healing power of friendship and creative expression and young lesbians can feel free to find themselves, share their stories, gain self respect, pride and the courage to be open about who they are and who they love despite the negative response they get from many in their families and communities,” she said.

⁸⁷ Mambaonline.com, Windhoek celebrates LGBT Pride after hate attacks, 1 August 2017, [url](#)

⁸⁸ Positive Vibes, Stories of Change Celebrating Our Differences, undated, [url](#)

⁸⁹ USSD, USSD report 2017, April 2018 (page 14) [url](#)

‘She explained that through creating a lesbian cultural festival in the public arena in Namibia they have created new social, cultural and political space for celebrating the richness and diversity of lesbian experience form across the country. “We have taken up the ideal expressed by our current state president of building an inclusive Namibian house in which no one feels excluded,” added Frank

‘The festival was the culmination of a two year outreach project run by the WLC to young lesbians and their communities in four regions of the country. The WLC now plans to support the local activities of the young leaders that have emerged through this programme.’⁹⁰

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6.3 Restrictions on civil society groups

6.3.1 The LAC report 2015 noted:

‘NGOs formed and staffed by Namibians have advocated for LGBT rights since even before Independence – including Sister Namibia (established in 1989), The Rainbow Project (established in 1997 and now defunct), the Women’s Leadership Centre (established in 2004) and OutRight Namibia (established in 2010) – and none have been obstructed in their work by government officials, although the relationship between these groups and government has not always been completely cordial. So there is official disapproval and sometimes shocking rhetoric by political figures, but no official repression of the LGBT community as a group.’⁹¹

6.3.2 The USSD report 2017 noted, in respect of civil society and NGOs generally:

‘A number of 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 responsive to their views. The Ombudsman’s Office, local human rights NGOs, and the ACC reported NamPol cooperated and assisted in corruption and human rights investigations.

‘ [...] There is an autonomous ombudsman with whom government agencies cooperated. Observers considered him effective in addressing some corruption and human rights problems.’⁹²

6.3.3 Among sources consulted, no specific information could be found that restrictions have been placed upon civil society groups or organisations (see [Bibliography](#) for full list). See [LGBTI organisations / civil society](#) and [LGBTI events](#) for information on groups operating in Namibia.

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⁹⁰ The Namibia Economist, First Lesbian Festival in Windhoek, 9 Jan 2018, [url](#)

⁹¹ LAC, Namibian Law on LGBT Issues (p.188), 2015, [url](#)

⁹² USSD, USSD report 2017 (section 5), 18 April 2018, [url](#)

7. Access to services

7.1 General

- 7.1.1 The USSD report 2017 noted: 'Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons faced harassment when trying to access public services.'⁹³

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7.2 Healthcare

- 7.2.1 The National Strategic Framework for HIV and AIDS Response in Namibia 2010/11 – 2015/16, published in 2010 noted the: 'Lack of evidence based and empirical data on certain vulnerable groups such as MSM [men who have sex with men], sex workers, and prisoners that limit the ability to provide appropriate services.'⁹⁴
- 7.2.2 The Ombudsman Namibia, in the '2013 Baseline Study Report on Human Rights in Namibia' noted 'LGBTIs and sex workers are more often than not, denied access to health care services due to stigma and discrimination from health care professionals.'⁹⁵
- 7.2.3 The LAC report 2015 stated: 'In Namibia, there have been reports of verbal abuse by medical professionals, as well as unclear and insensitive health information [...]. The exclusion of the LGBT community from health care services also means that their concerns continue to be poorly reflected in national health plans and policies.'⁹⁶
- 7.2.4 The same report noted, in relation to HIV: 'Lack of relevant information and discrimination in access to health care can increase the vulnerability of LGBT individuals to HIV transmission or compromise their treatment. HIV is spread primarily through heterosexual conduct, but LGBT individuals may be unfairly assumed to be HIV-positive or unreasonably blamed for spreading HIV. [...] in recent years, there has been increased attention to HIV outreach in respect of men who have sex with men, and a few signs that the importance of sensitivity to LGBT issues in HIV prevention efforts is beginning to be recognised in Namibia.'⁹⁷
- 7.2.5 Positive Vibes, an organisation advocating human rights, change and development covering Namibia noted:
- '[I]n 2017, the Namibian team undertook a mixed methods study, 'Together Tomorrow', funded by the Human Sciences Research Council exploring the HIV prevention needs of male-male couples in South Africa and Namibia.
- 'Nearly 600 participants (589 partnered gay, bisexual and other men who have sex with men (MSM)) contributed to help better understand the stressors faced by these couples, relational dynamics, HIV prevention and

⁹³ USSD, USSD report 2017 (section 6), 18 April 2018, [url](#)

⁹⁴ Republic of Namibia, National Strategic Framework for HIV and AIDS Response ..., 2010, [url](#)

⁹⁵ Ombudsman Namibia, 2013 Baseline Study Report ... Namibia (page 170), 2013 [url](#)

⁹⁶ LAC, Namibian Law on LGBT Issues (p.148), 2015, [url](#)

⁹⁷ LAC, Namibian Law on LGBT Issues (p.148), 2015, [url](#)

treatment needs, and potential areas of systems and programmatic strengthening.

'Health service engagement: Respondents largely viewed public health services as catering primarily to heterosexuals, with limited access to tailored services for MSM. They felt this caused increased levels of homophobia and ridicule in these spaces, and elected to not disclose their sexual orientation. Many preferred to use health services offered by private institutions and civil society. The main factors leading to low service uptake were fear of knowing one's status or losing one's relationship (if tested positive) and the reactions of insensitive/prejudiced healthcare workers. In general, HIV prevention and transmission knowledge levels were quite high, with the exception of pre-exposure prophylaxis (PrEP) where only 33% of respondents had heard of it and only 2% were using it.'⁹⁸

7.2.6 Mambaonline in the article 'Namibia's first LGBT health centre opens in Windhoek' published 28 May 2018 noted:

'For the first time, Namibia's LGBT community will have access to a dedicated health and services centre.

'The Outreach Health drop-in-centre was launched by Out-Right Namibia (ORN) in Windhoek on 17 May, the international Day Against Homophobia, Transphobia and Biphobia.

"It is a first," ORN Director Friedel Dausab told Mambaonline. "It is for all LGBT, and we are also trying to open it to include other sexual and gender minorities, just to really give people a safe space where they can come for health services, including mental health and sexual and reproductive health services."

'The services on offer will include HIV testing and counselling as well as the provision of PrEP (a daily HIV prevention pill) and HIV treatment, right at the point of diagnosis. "This is something that is really needed in the community," Dausab noted, "where people need safe services."⁹⁹

7.2.7 The AllAfrica report Namibia: Scarce Donor Money Hits LGBTI Projects, published in June 2018 noted:

'Windhoek — Out-Right Namibia (ORN), a community-based non-governmental organisation (NGO) that advocates the rights of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, is feeling the pinch of a reduction in donor funding.

'[...] With the funds ORN previously received from the Global Fund, the organisation had packaged services and programmes for men who have sex with men (MSM), and the LGBTI community, explained Dausab. Most programmes have become redundant.

'[...] Before ORN, there was no focus on men who have sex with men, Dausab added.

⁹⁸ Positive Vibes, Stories of Change Strengthening Our Evidence Base, undated, [url](#)

⁹⁹ Mambaonline, Namibia's first LGBT health centre opens in Windhoek, 28 May 2018, [url](#)

"We were at a stage where the government was saying we don't have them. Now we have recognition in the national strategic framework that men who have sex with men exist and they are at risk of contracting HIV, that transgender women exist and they are at risk and that we need to give them services. We worked out service packages that we are implementing," he said.¹⁰⁰

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7.3 Gender reassignment

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. Nevertheless, 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 documents. Therefore, while Act 81, Sex Reassignment Policy from 1963 permits gender reassignment surgery, very few trans people are able to access this provision even though sex reassignment surgery is covered in government medical aid. Some trans people have successfully transitioned in-country.

'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, inherited from apartheid South Africa, was adopted to prohibit crossdressing.'¹⁰¹

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7.4 Reproductive and adoptive rights

7.4.1 The LAC report 2015 noted:

'Same-sex couples cannot adopt children jointly in Namibia. In practice, some social workers have facilitated adoptions for same-sex couples by allowing one partner to adopt as a single (or divorced or widowed) adoptive parent. However, this approach leaves the other partner without any legal parental rights.'

'Furthermore, Namibia is not obliged to recognise adoptions which are contrary to Namibia's public policy. But public policy considerations might be over-ridden by Namibia's duty to make all decisions concerning children on the basis of the best interests of the child.'¹⁰²

7.4.2 The Other Foundation report 2017 stated 'In terms of artificial reproductive techniques, legislation on ovum and sperm donation is only considered in

¹⁰⁰ AllAfrica, Namibia: Scarce Donor Money Hits LGBTI Projects, 19 June 2018, [url](#)

¹⁰¹ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 8), [url](#)

¹⁰² LAC, Namibian Law on LGBT Issues (p.143), 2015, [url](#)

the context of married couples. As a result, for LGBTI people the ovum or sperm donor remains the legal parent of the child, and surrogacy is not currently legislated for.’¹⁰³

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7.5 Education

- 7.5.1 The Ombudsman Namibia, in the 2013 Baseline Study Report on Human Rights in Namibia noted that ‘When families find out about their children’s sexual orientation/gender identity their families reject them, withdraw school fees, and chase them out from their homes [...] a large number of the LGBTI community’s youth are unemployed, do not go to school, abuse alcohol and drugs and remain vulnerable to discrimination as a result.’¹⁰⁴
- 7.5.2 The same report stated: ‘LGBTI children, as noted earlier, face a high level of homophobia and transphobia at the hands of their teachers and fellow learners. This form of bullying leads to LGBTI people in schools to drop out by the end of their educational careers and this at times leads to suicides.’¹⁰⁵

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7.6 Employment

- 7.6.1 The LAC report 2015 noted:
- ‘General discrimination against LGBT persons in society is linked to discrimination and harassment in the workplace, worldwide and in Namibia. The problems are often related to gender stereotyping, with discrimination, harassment and exclusion from the labour market occurring whenever there is non-conformity with preconceptions of how women and men are expected to look and behave. Many LGBT employees conceal their sexual orientation or their true gender identity at work, which can be very stressful. Workplace discrimination is particularly severe for transgender persons.
- ‘While there have been no studies of LGBT discrimination in Namibian workplaces, anecdotal evidence suggests that LGBT workers in Namibia experience the same problems as those elsewhere.’¹⁰⁶
- 7.6.2 The USSD report 2017 noted:
- ‘The labor law prohibits discrimination in employment and occupation based on race, sex, religion, political opinion, national origin or citizenship, pregnancy, family responsibility, disability, age, language, social status, and HIV-positive status, and the government in general effectively enforced the law. The law requires equal pay for equal work. The law does not specifically address employment discrimination based on sexual or gender orientation.’¹⁰⁷
- 7.6.3 The Other Foundation report 2017 noted: ‘LGBTI people report difficulty in both accessing and maintaining employment, particularly for trans people,

¹⁰³ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 10), [url](#)

¹⁰⁴ Ombudsman Namibia, 2013 Baseline Study Report...Namibia (page 100), 2013 [url](#)

¹⁰⁵ Ombudsman Namibia, 2013 Baseline Study Report...Namibia (page 101), 2013 [url](#)

¹⁰⁶ LAC, Namibian Law on LGBT Issues (p.111), 2015, [url](#)

¹⁰⁷ USSD, USSD report 2017, April 2018 (page 18) [url](#)

which means they may resort to sex work for survival. The first post-independence Labour Law (1992) included the prohibition of discrimination on the grounds of sexual orientation, replaced by the Labour Act 11 (2007) which prohibits discrimination based on sex, but not sexual orientation.¹⁰⁸

- 7.6.4 The same report noted: '[...] under the Employees' Compensation Act 30 of 1941, both opposite and same sex employees can claim compensation in the case of accidental death of a partner during employment, but only if dependence on the deceased can be proven, and only in the absence of a spouse and children of the deceased. The opposite-sex cohabiting partner of the deceased would take priority over a same-sex partner.'¹⁰⁹

See [Common law / legislation](#)

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Section 8 updated: 13 November 2018

8. Freedom of movement

8.1 Demography

- 8.1.1 The Central Intelligence Agency (CIA) World Factbook estimated the population of Namibia to be 2,484,780 (2017) with the capital, Windhoek having a population of approximately 404,000 (2018)¹¹⁰.

Among sources consulted, no information could be found on the number of LGBTI persons living in Namibia or in Windhoek (see [Bibliography](#) for full list).

- 8.1.2 The CIA World Factbook noted:

'The majority of Namibians are rural dwellers (about 55%) and live in the better-watered north and northeast parts of the country. Migration, historically male-dominated, generally flows from northern communal areas – non-agricultural lands [...] – to agricultural, mining, and manufacturing centers in the center and south. After independence from South Africa, restrictions on internal movement eased, and rural-urban migration increased, bolstering urban growth.'¹¹¹

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8.2 Legal rights and practice

- 8.2.1 Freedom House, in the report Freedom in the World 2016 Namibia, noted: 'The government respects constitutionally guaranteed rights to freedom of movement, foreign travel, emigration, and repatriation.'¹¹²

- 8.2.2 The USSD report 2017 noted:

'The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these

¹⁰⁸ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 10), [url](#)

¹⁰⁹ The Other Foundation, LGBTI Namibia Country Report, June 2017 (page 10), [url](#)

¹¹⁰ CIA, World Factbook (People and Society), updated 7 August 2018, [url](#)

¹¹¹ CIA, World Factbook (People and Society), updated 7 August 2018, [url](#)

¹¹² Freedom House, Freedom in the World 2016 Namibia (section G), 24 December 2016, [url](#)

rights. The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern.¹¹³

The [Government of Namibia website](#) provides information on the infrastructure of Namibia including access to airports, harbours and rail services¹¹⁴.

- 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](#) for full list).

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¹¹³ USSD, USSD report 2017, April 2018 (page 7) [url](#)

¹¹⁴ Government of Namibia, webpage - infrastructure, undated, [url](#)

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 ToRs, 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
 - Constitution
 - Legislation
 - Criminal/Penal Code
- State attitudes and treatment
 - Arrests and detention
 - Arrest of LGBT persons and prosecutions for other offences
 - Prosecution of same-sex acts
 - Police violence
 - Police responses to reports of anti-LGBT violence
 - Public statements by government officials
 - Ombudsman/Complaints mechanism(s)
- Societal attitudes and treatment
 - Societal norms
 - Public opinion
 - Violence and discrimination
 - Anti-LGBT protests
 - Pro-LGBT marches/gay pride
 - Gay 'scene' or 'community'
 - Family treatment
 - Religious attitudes/treatment
 - Media attitudes
- Access to services
 - Healthcare
 - Accommodation
 - Employment
 - Education
- LGBT groups, civil society and human rights NGOs

- Government recognition of LGBT NGOs
 - Restrictions on civil society groups
- Freedom of movement
 - Demography
 - Legal rights
 - In-country movement

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Version control

Clearance

Below is information on when this note was cleared:

- version **1.0**
- valid from **19 November 2018**

Changes from last version of this note

First version of this note.

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