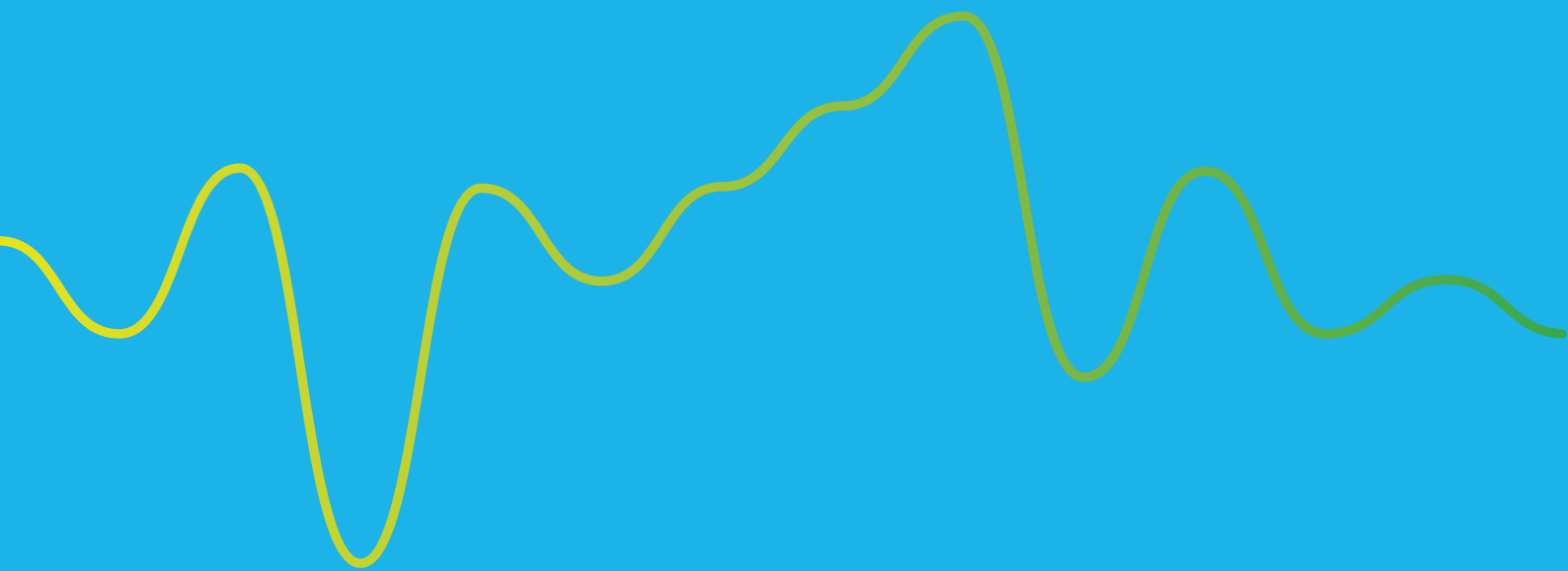


**Inclusive Governance Initiative**

# **Namibia**

## **Baseline Report**



**#WeBelongAfrica**  
Inclusive Governance Initiative





**#WeBelongAfrica brings together multiple initiatives that enable inclusive, just, affirming, safe, productive and fulfilling lives for all people in Africa, irrespective of sexual orientation, gender identity, gender expression or sex characteristics, and irrespective of HIV status or risk.**

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# Acronyms

AIDS	Acquired Immune Deficiency Syndrome
AfriYan	African Youth and Adolescent Network
CCM	Country Coordination Mechanism
CSE	Comprehensive Sexual Education
CSOs	Civil society organisations
CSS	Community systems strengthening
DAN	Diversity Alliance Namibia
ESA	Eastern and Southern Africa
HIV	Human immunodeficiency virus
KPs	Key populations
LAC	Legal Assistance Centre
LGBTIQ	Lesbian, gay, bisexual, transgender, intersex, queer
LRDC	Law Reform and Development Commission
MoGCW	Ministry of Gender and Child Welfare
MoHSS	Ministry of Health and Social Services
MSM	Men who have sex with men
NACA	National AIDS Coordinating Agency
NDWA	Namibia's Diverse Women's Association
NGOs	Non-government organisations
NORAD	Norwegian Agency for Development Cooperation
NSF	National Strategic Framework
PE	Physical Education
PDM	Popular Democratic Movement
PV	Positive Vibes Trust
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SRH	Sexual and reproductive health
SRH-R	Sexual and reproductive health and rights
SWAPO	South West Africa's People
TB	Tuberculosis
TP	Trans People
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	UN Population Fund
UPRs	Universal periodic reviews
GF	Global Fund
UN	United Nations
EU	European Union

# Introduction

The Inclusive Governance Initiative (IGI) is a regional project that aims to support countries to include sexual and gender minorities in national efforts to achieve the Sustainable Development Goals (SDGs) and to promote and protect human rights. The project is led overall by the United Nations Development Programme (UNDP). Positive Vibes is working with UNDP as a technical partner in the initiative and is playing a leading role in the inception of project work in Namibia. The overall goal of the project is to see that state entities in sub-Saharan Africa are increasingly accountable to, and inclusive of, their entire populations, including LGBTI people. If this is achieved, participating countries will see better laws, more responsive public sector services, and social norms that affirm LGBTI rights.

This baseline report provides a high-level analysis of the Namibian context (specifically of key indicators relevant to country level activities) and also a baseline assessment for the monitoring and evaluation needs of the project going forward. The analysis of LGBTI-focused and cross-sectoral legislation, policies and practices as well as sector-specific policies and strategies paints a broader picture of the legal and social environment in respect of human rights and LGBTI inclusion in Namibia. It demonstrates how supportive or hostile norms and attitudes among decision makers present themselves in public spaces. The analysis

considers the capacity and commitments of LGBTI CSOs to work on broader development issues and the extent to which they are working with SDG-focused CSOs (or non-LGBTI organisations). It also looks at the extent to which non-LGBTI CSOs are directing efforts towards improving LGBTI inclusion and representation.

This report highlights gaps and barriers, not only in relation to *the work* being done on LGBTI inclusion but also in information accessibility and availability. Therefore, as much as this report offers findings relevant to the country indicators, it also outlines the research processes, including any bottlenecks and limitations the researcher experienced. The report brings together findings from a desk review and from the 'field' relevant to the country indicators. The results, found in the 'country overview' section, reveal a picture of the Namibian LGBTI landscape and the rights movement as it is today.

This report is primarily based on a desktop review, supplemented by conversations with relevant stakeholders. The findings presented are neither exhaustive nor conclusive, and it is hoped that they will contribute to ongoing discussions and actions that advance LGBTI rights and inclusion in Namibia.

# Country Overview

The environment in Namibia for LGBTI people has improved since the days of the direct and confrontational homophobia that was expressed by Sam Nujoma and other leaders following independence<sup>1</sup>. Although a large proportion of leaders today are undoubtedly homophobic in their attitudes, it is rare to hear these attitudes expressed in public spaces. Instead, attitudes are made obvious by the ways in which decision makers continue to dismiss inclusive policy and law reform recommendations.

Namibian government leaders are willing to engage with narratives around *universal inclusion and basic human rights and dignity for all*, but most will not openly discuss or acknowledge the LGBTI community and their issues. Within some sectors (such as health), there has been significant progress.

The shift in public attitude towards non-normative sexualities and genders observed in more recent years<sup>2</sup> is a result of several factors, including the efforts of LGBTI organisations. This contributes to the readiness of the Namibian environment for more directed efforts towards positive change.

Below is a summary of findings found in the *indicator analysis*. It is divided into sections across the different IGI project *outcomes*. For more information, see discussions in the indicator analysis section.

## OUTCOME 1: To what extent are decision makers responsive to, inclusive of and accountable to sexual and gender minorities (indicators 1-8)

The indicators in this section set out to gather information on the extent to which Namibian decision-makers are responsive to, inclusive of, and accountable to sexual and gender minorities. In order to learn more about the attitudes of Namibian leaders and decision makers, it is necessary to understand the legal and policy environment.

### COUNTRY INDICATOR 1: Punitive laws

Punitive laws, namely the common law crimes of *sodomy* and *unnatural sexual offences* (which are relatively easy

for parliamentarians to repeal) are still intact from the apartheid era. They criminalise sex between consenting adult men. Although not applied, the laws have huge negative impacts; often legitimatising discrimination and contributing to a climate of disapproval and exclusion. Namibia has seen levels of engagement from LGBTI organisations and partners to ‘decriminalise’ laws that criminalise consensual same-sex sex. It is understood by these groups that until common laws criminalising consensual penetrative sex between men are repealed, sexual and gender minorities in Namibia will continue to face stigma, discrimination and risk arrest and imprisonment, violence and abuse.

### COUNTRY INDICATOR 2: Protective laws

The Namibian Constitution contains an anti-discrimination provision and provides that “all persons shall be equal before the law”. It also protects fundamental freedoms of all persons; including “freedom of speech and expression”. It has therefore been argued that the most promising avenue for change is to challenge the constitutionality of the crimes of sodomy and unnatural sexual offences<sup>3</sup>. Article 144 of the Namibia Constitution states that international agreements binding upon Namibia “shall form part of the law of Namibia”. There are regional and global commitments and agreements that Namibia is signatory to that are relevant to LGBTI legal protection.<sup>4</sup>

Understanding the protective measures within the law (but perhaps more importantly, what protections *do not* exist) is not only an important strategy within the advocacy space but is also a measure for understanding the levels of *exclusion* which gender and sexual minorities face. The Combating Domestic Violence Act 4 of 2003 does not recognise same sex relationships and therefore the Protection Orders system made available as a form of police and state protection to applicants facing domestic violence are not available to those in same sex relationships. The Labour Act 11 of 2007 does not include a prohibition on discrimination based on sexual orientation or gender identity (unlike the former Labour Act 6 of 1992)<sup>5</sup>. No legal protection with regards to access to employment, healthcare or housing is provided for with regards to sexual and gender minority communities as a group who face discrimination. There is also no protection

1 Walters, R., and Rajcoomar, U. 2018. Sentinels. Windhoek. Positive Vibes.

2 Afro barometer Round 7, Namibia. 2017.

3 Legal Assistance Centre. 2015. *Namibian Law on LGBTI issues*. p 75.

4 Global commitments include United Nations Charter (1945) / Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). African regional commitments include African Charter on Human and Peoples’ Rights (1986); and African Charter on the Rights and Welfare of the Child (1990).

5 <https://www.lac.org.na/laws/annoSTAT/Labour%20Act%2011%20of%202007.pdf>

with regards to marriage, adoption, or immigration within Namibian law.

### **COUNTRY INDICATOR 3: Official policies/ plans/ technical guidance related to SRHR or UHC**

HIV programming (and therefore the health sector) demonstrates the highest levels of inclusion of sexual and gender minority issues than in any other sector in Namibia. The National Strategic Framework (NSF) on HIV acknowledges that the policy and legal environment to support programming and service delivery (for men who have sex with men (MSM) specifically) is inadequate. It also states how criminalisation and marginalisation have several implications for responsive sector services and advocates for legal review and reform. A great deal of work has also been done on Community Led Monitoring (CLM) through partner initiatives with civil society and government (including processes involved in revising the NSF, and through Global Fund (GF) and US Government projects). CLM is a robust process for keeping decision makers and leaders accountable and to ensure civic participation and voice. The 'key population' language used within the context of HIV programming is limiting however in how it is able to address the myriad of identities, and, therefore specific issues that different vulnerable groups face within LGBTI communities. Limited funding and efforts are absorbed mostly into MSM directed programming, which often excludes other vulnerable LGBTI groups.

### **COUNTRY INDICATOR 4: Official policies and plans on sexual education**

Some positive findings were revealed when considering the education sector. The current life skills curriculum directly addresses sexuality and links human rights with sexual orientation. Among other relevant topics it deals with homophobia, biphobia, and transphobia. There is, however, still much to be desired in the implementation of sexual and gender education in Namibia in so far as schools, teachers, principals, and decisions makers need a great deal of support to overcome personal prejudices in order to facilitate the accomplishment of Namibia's more inclusive education policies.

### **COUNTRY INDICATOR 5: Parliamentary speeches/ parliamentarians**

There is a disregard and unwillingness by leaders to not only acknowledge the discrimination that sexual and gender minorities face, but most do not even recognise LGBTI people. This is one of the biggest challenges faced by those advocating for inclusion. It is common to hear

decision makers argue that there is "no issue" because LGBTI people are not persecuted<sup>6</sup>. There are several public comments made by ministers and leaders that speak to 'for all' as a disclaimer on services. *For all* (or rather universal access) does not necessarily translate into equitable services but rather acts as an escape for leaders who do not want to engage in legal reform. Recent comments (2020) made by deputy prime minister on the Comprehensive Sexual Education approach as encouraging "illegal" behaviours, is a good example of how parliamentarians will also use the existence of the sodomy laws to resist progressive policy.

### **COUNTRY INDICATOR 6: Court judgements/ judges**

Arguments made in favour of decriminalisation of consensual sex between men show how the common laws are unconstitutional. This is also the main strategy taken in court cases defending same-sex marriage rights; that is to argue that not recognising same sex marriage is unconstitutional and that those in same sex relationships are not being equally treated. Decision makers in the courts are yet to be convinced. Not one case has concluded with the courts recognition of the same-sex marriage. No other cases have gone through the court systems that have dealt with LGBTI issues in the period reviewed.

### **COUNTRY INDICATOR 7: Official report**

Within government, it is the Office of the Ombudsman that has demonstrated the most openness and willingness to repeal punitive laws and promote the rights of LGBTI rights. The health and education sectors are the other two most 'progressive' state offices that deal with the rights of LGBTI persons directly in policy and programming. The Ministry of Justice, under the Law Reform and Development Commission (LRDC), is considering the repeal of the sodomy offence under the Obsolete Laws Project. Here one senior government official indicated the importance of the LRDC's proposal on decriminalisation being pursued by LGBTI lobby groups. The National Assembly, under the directorate for Committee Services is implementing the SADC SRH-R, HIV and Governance project that specifically addresses sexual and gender minorities (although this project has seen slow implementation).

The researcher was unable to review annual reports from other ministries but did reach out to a government stakeholder who said that it would be "a waste of time" (sourcing other sector reports) and that it is "safe to assume that other ministries do not deal with LGBTI issues" in their official reports. Most significantly, the Ministry of Gender has no policy, report and/or strategic plan that mentions or deals directly with LGBTI issues.



## COUNTRY INDICATOR 8: Political parties / platforms

SWAPO Ruling political party leaders continue to refuse to acknowledge and therefore protect sexual and gender minorities within law and policy. Although few and far between, moments when a politician is heard defending the community or acknowledging how they are discriminated against, or how discrimination causes barriers to services, it is most likely from an opposition party member. Popular Democratic Movement has had members lobby for same sex rights<sup>7</sup>. All opposition party manifestos mention LGBTI communities or rights in some way, yet their policies, strategies or plans in this regard have not been revealed. Many stakeholders believe that engaging with these parties and holding them to account would be a worthwhile exercise. A further in-depth and comprehensive analysis of the political landscape could add value towards identifying the varying positions and arguments that exist within the governmental institution.

## OUTCOMES 2, 3 AND 4: A closer look at the capacity and influence of the sexual and gender minority inclusion movement (indicators 9 – 16)

The indicators under outcome 2 consider the capacity of activists and allies to sensitise and influence relevant decision-makers and to hold authorities to account. The indicators connected to Outcome 3 look at inclusion, participation, representation and influence of LGBTI populations and their allies in relevant policy and decision-making. Outcome 4 of the IGI project aims to see Namibian ideas, evidence and innovations support LGBTI-inclusive governance and related work. Below, the findings on the indicators under these outcomes have been summarised together.

Within Namibian civil society, LGBTI organisations are the most “vibrant and vocal” but unfortunately the movement is somewhat fragmented with leaders struggling to see “eye to eye”<sup>8</sup>.

LGBTI rights work in Namibia intersects with sex worker rights, SRHR, anti-femicide and anti-SGBV work. The more effective links and ally ships over recent years have been around movements and initiatives that deal with issues of gender equality, within civil society at least, and these are

beginning to embrace a more inclusive and intersectional approach, which sees LGBTI inclusion and rights as essential to achieving gender equality.

There are only a few joint initiatives and structures to report on (e.g. that there are no LGBTI-only coalitions) and none were particularly strong. The ones identified are mostly joint initiatives that came together to contribute to specific reports (e.g. report on racial discrimination published by the office of ombudsman<sup>9</sup>, UPR) or law reform projects (e.g. Review submitted to Law Reform and Development Commission on obsolete laws). Interviews with founders and/or members of DAN (Diversity Alliance Namibia) during the critical stakeholder interview processes revealed that this structure is dormant. There is no LGBTI alliance or structure that meets regularly and has its own national strategy and objectives.

A look at how and where LGBTI community representatives are involved in policy development processes revealed that structures associated with HIV programming provide the most representation. The only other structure that has deliberate representation is AfriYan (African Youth and Adolescent Network), which reports to have an LGBTI focal person within each regional steering committee<sup>10</sup>. Ministries and state offices might invite civil society to comment or contribute to policy, and these gatherings might include LGBTI led organisations, but this is more on an ad hoc basis. Within the education and health ministries, it is generally understood that, at directorate level mostly, there is an openness and understanding of the importance of LGBTI-inclusion in policy. This is an entry point and opportunity that can be explored.

There are multiple country-specific knowledge products related to LGBTI inclusion available. These are mostly in the form of research papers or studies produced by NGOs and independent researchers/academics. National research as led by government is limited. There are also innovative and exciting social media platforms that are creating safe spaces for LGBTI led dialogues and are highlighting and normalising LGBTI experiences in the media (see Sister Namibia and Powerpad girls platforms as examples). The indicator measuring *country-specific knowledge products* asks that materials that can be used for training/sensitisation of decision makers be prioritised. During the Critical Stakeholder interview processes, only the LILO curriculum was mentioned (a program facilitated by Positive Vibes) and many shared thoughts that investing in updated and domesticated tools would be worthwhile.

7 Oliveira, Y. 2019. Same sex rights still taboo activists push for broader representation. *The Namibian*. Available from <https://www.namibian.com.na/190216/archive-read/Same-sex-rights-still-taboo-activists-push-for-broader-representation>

8 Stakeholders Interview, leading LGBTI organisation/activist.

9 Office of the Ombudsman. 2017. *A Nation Divided: why do racism and other forms of discrimination still persist after twenty-seven years of Namibian independence*.

10 AfriYan is a volunteer based network, with chapters in most countries in Africa. The Namibian chapter is active, and vocal, with strong leadership.



## Synthesised implications and a way forward

It is important that efforts are made to ensure that stakeholders and decision makers are aware of how punitive laws directly cause discrimination and are therefore a barrier to protection and services for sexual and gender minorities in Namibia. Understanding the protective measures within the law (or more importantly, the lack thereof) is not only an important strategy within the advocacy space but it is also a measure for understanding the levels of exclusion sexual and gender minorities face. Activities that are directed at sensitising decision makers and law makers will be crucial. It will also be strategic to make the most of progressive ‘pockets’ within the systems to advance more inclusive policy (i.e. target ‘soft’ power or ‘middle’ power; e.g. staff in parliament, mayors, teachers, principals, constituency councillors). These include the existing country coordination mechanism (CCM) structures within the HIV programming spaces and the openness that is found within government offices at directorate levels. Many stakeholders reported that the Community Led Monitoring approach will be an effective way of improving community members’ ability to hold duty bearers accountable. Empathy building, and civic and human rights education are needed at all levels (from grassroots community level, to service providers, to parliamentarians).

The fact that LGBTI organisations are very vocal and active within the broader development and human rights space in Namibia, and that they are included and their contributions are generally welcomed by wider civil society, is a strong starting position for strengthening the movement. However, there is a need for a space (and essentially a formal structure) that will allow all LGBT organisations and activists (and their allies) to come together and organise. This will see better sharing of information and resources so that lobbying is informed, united, and focused, and will therefore see better results. It will also allow for more effective work by LGBTI CSOs on broader development issues. That

being said, the fragmentation of the movement needs to be acknowledged and mitigated. It is arguably holding the movement back and work needs to be done within spaces created to “hash out differences”, to “learn to celebrate and understand diversity within the movement” and ultimately to “find common end goals despite differences”<sup>11</sup>. On the other hand, some stakeholders argued that strong leadership is what is needed and that if one or two organisations take the lead (despite disagreements with other LGBTI groups), others will stand behind them when progress is being realised.

Although a united front from within the LGBTI movement/community will make it easier for the formation of a national advocacy strategy, which will in turn make it easier for willing and supportive allies (and champions) to understand and support the needs of the community, it is necessary to note that IGI is not a movement building project. It is seeking to find ways to invite and include more individuals, structures and institutions to engage with the inclusion agenda. Finding ways to strengthen coalitions will be part of this, as will efforts to raise awareness, build empathy, sit comfortably with and encourage disruption, increase education on human rights, develop a more enhanced and nuanced advocacy agenda, and encourage more dialogues on SOGIE to build understanding and tolerance. Namibia has seen little to no investment in this kind of work. One stakeholder stated that after 30 years [since independence] “we still cannot celebrate freedom or democracy for all. I have seen no real change in 30 years. Lawmakers continue to say that these issues are too sensitive to deal with and continue to dismiss us. There is still no one in leadership voicing our needs. Thirty years is no child’s play.”

# Indicator Analysis

## OUTCOME 1: African decision-makers are responsive to, inclusive of, and accountable to sexual and gender minorities

### Country Indicator 1: Punitive Laws

#### Brief Description

Punitive laws do exist in Namibia. The common law crime of *sodomy* covers only anal intercourse between men. The common law crime of *unnatural sexual offences* covers a range of activities between men, including mutual masturbation, masturbation of one man by another, and sexual gratification through friction between the legs of another man, and oral sex between men. The Criminal Procedures Act 2004 lists sodomy under statutory offences.

The Combating of Immoral Practices Act is aimed primarily at prostitution, but it contains several criminal offences which could be applied more broadly. These crimes appear to apply equally to males and females in any combination. However, there is a danger in an environment which is intolerant of homosexuality that concepts like “indecent”, “immoral practices” and “immoral acts” could be selectively applied to LGBT individuals<sup>12</sup>.

#### Sources of Data

##### Government Laws

Namibia Criminal Procedure Act 2004, Section 299 groups’ sodomy together with other “Schedule 1” crimes (including treason, murder, rape and assault) <https://www.lac.org.na/laws/2004/3358.pdf>

The Combating of Immoral Practices Act 1980 [https://www.lac.org.na/laws/annoSWA/CRIMINAL%20LAW%20AND%20PROCEDURE%20\(1980\)%20-%20Combating%20of%20Immoral%20Practices%20Act%2021%20of%201980%20\(annotated\).pdf](https://www.lac.org.na/laws/annoSWA/CRIMINAL%20LAW%20AND%20PROCEDURE%20(1980)%20-%20Combating%20of%20Immoral%20Practices%20Act%2021%20of%201980%20(annotated).pdf)

Unnatural sexual offences [https://homepage.univie.ac.at/elisabeth.holzleithner/suedafr\\_sodlaws\\_dec.html](https://homepage.univie.ac.at/elisabeth.holzleithner/suedafr_sodlaws_dec.html)

Legal Assistance Centre. 2015. *Namibian Law on LGBTI issues*. [https://www.lac.org.na/projects/grap/Pdf/LGBT\\_mono.pdf](https://www.lac.org.na/projects/grap/Pdf/LGBT_mono.pdf)

CSO submission on the repeal of sodomy law to LRDC 2020 – not available online

#### Specific Data

Criminalisation of sex between men

#### Contextual Analysis

The existence of the laws, although rarely applied in practice, serve as “an unspoken background threat which contributes to a climate of disapproval and discrimination”<sup>13</sup>. Namibia has seen high levels of engagement from LGBTI organisations and partners around decriminalising consensual sex between men. It is understood that until the common laws on sodomy and unnatural sexual acts are repealed, sexual and gender minorities in Namibia risk arrest and imprisonment, violence and abuse, in addition to discrimination experienced across all areas of life in Namibia<sup>14</sup>.

#### Data gaps & limitations

No gaps or limitations. Punitive laws in Namibia exist and legal practitioners have provided clear and straight forward documentation and analysis of these laws (see LAC report on Namibian Law and LGBTI issues and the CSO submission to the LRDC obsolete laws project).

#### Synthesised implications

Efforts should be made to ensure that stakeholders and decision makers are aware of and informed on how these laws cause barriers to protection and services for sexual and gender minorities in Namibia. Specifically, law makers and parliamentarians need to understand the extent to which these laws, although they are not applied in practice, cause discrimination and exclusion.

The view that homosexuality is *illegal* gives both homophobic decision makers (see discussion on parliamentarian attitudes and example of recent debates around CSE) and policy makers a legal argument as to why more inclusive policies cannot be pursued. The same decision makers, however, will use the fact that the laws are obsolete to argue that they are not causing

<sup>12</sup> Legal Assistance Centre. 2015. *Namibian Law on LGBTI issues*.

<sup>13</sup> Legal Assistance Centre. 2015. *Namibian Law on LGBTI issues*. p 68.

<sup>14</sup> Advocates for Human Rights. 2016.

harm. Research<sup>15</sup> has been done to collect anecdotal evidence of how sexual and gender minorities in Namibia experience service delivery. This research reveals that service is often judgemental or even abusive, and often shows no empathy or understanding to the specific needs of the community.

In-country programming can support research gathering projects (there is a lack of national data on SGBV in Namibia in general and therefore a desperate need for LGBTI specific data) as well as sensitisation programmes for service providers, most urgently health workers and law enforcers. Efforts to ensure that advocates and champions (the critical stakeholder interviews will provide details on who) are equipped with evidence and that alliances are united in their understandings and strategies on how best to approach decriminalisation would see better results. Additionally, it is important in working for legislative reform, to enable meaningful ways to engage directly with legislative decision makers.

## Country Indicator 2: Protective Laws

### Brief Description

This indicator asked questions around what protective laws do exist. Understanding the protective measures within the law (but perhaps more importantly, what protection *do not* exist) is not only an important strategy within the advocacy space but it also is a measure for understanding the levels of exclusion gender and sexual minorities face.

The Namibian Constitution contains an anti-discrimination provision but with no explicit mention of sexual orientation or gender identity as protected classes. Article 10 provides that “all persons shall be equal before the law” and “no persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.” Article 2 protects fundamental freedoms of all persons; including “freedom of speech and expression”, “freedom of thought, conscience and belief”, and “freedom of association”<sup>16</sup>. Article 13<sup>17</sup> provides for the protection of privacy. The Combating of Rape Act 8 of 2000 and the Combating of Immoral Practices Act 21 of 1980 give equal protection to males and females against coercive sexual contact and without reference to the sex of the perpetrator.

### Sources of Data

The Namibia Constitution

<https://www.lac.org.na/laws/annoSTAT/Namibian%20Constitution.pdf>

### Government Laws

The Combating of Rape Act of 2000  
[https://laws.parliament.na/cms\\_documents/combating-of-rape-c1098ca886.pdf](https://laws.parliament.na/cms_documents/combating-of-rape-c1098ca886.pdf)

The Combating Domestic Violence Act 2003  
[https://laws.parliament.na/cms\\_documents/combating-of-domestic-violence-6e934d7f0a.pdf](https://laws.parliament.na/cms_documents/combating-of-domestic-violence-6e934d7f0a.pdf)

The Labour Act of 2007  
[https://laws.parliament.na/cms\\_documents/labour-3475e7c71a.pdf](https://laws.parliament.na/cms_documents/labour-3475e7c71a.pdf)

2016 UPR Review  
<https://www.ombudsman.org.na/wp-content/uploads/2016/10/Report-of-the-Working-Group-on-the-UPR.pdf>

### Specific Data

Inclusion of protections within the law:

The inclusion of sexual orientation and gender identity as a ground for non discrimination in Article 10 of the Constitution and within the Labour Act of 2007.

The Combating of Domestic Violence Act - expand definition [and protections] of domestic relationships to include same sex couples

### Contextual Analysis

The only protections currently are within the Constitution. It has therefore been argued that the most promising avenue for change is to challenge the constitutionality of the crimes of sodomy and unnatural sexual offences<sup>18</sup> although decision makers are yet to be convinced. The protection offered by the privacy article within the Constitution has at times been used against those seeking equality for sexual and gender minorities. In a response to international queries around the existence of punitive laws during Namibia’s 2016 UPR review process, the Namibian delegation stated that that LGBTI “are not victimised or persecuted for practising their preferred sexual orientation” and that “Article 13 of the Constitution protected the right to privacy. No person was requested to disclose his or her preferred sexual orientation in any official government form or document and no person could be refused access to public or private services on the basis of their sexual preference”<sup>19</sup>.

15 R. Stephenson, M. Hasta, C. Finnerana and Craig R. Sineath. (2014) Intimate partner, familial and community violence among men who have sex with men in Namibia; L.C. Avery K., K Clemons., and JD Matthews (2017) social work students’ attitudes towards gay men and Lesbians in Namibia: results from an exploratory study. South African Journal of Higher Education <http://dx.doi.org/10.20853/31-4-882>. Volume 31 | Number 4 | 2017 | pages 286-306.

16 The Constitution of the Republic of Namibia Act 1 of 1990.

17 The Constitution of the Republic of Namibia Act 13 of 1990.

18 Legal Assistance Centre. 2015. *Namibian Law on LGBTI issues*. p 68.

19 United Nations, General Assembly, *Report of the Working Group on the Universal Periodic Review, A/HRC/32/4* (15 April 2016), available at <https://www.right-docs.org/download/42600/>

The Combating Domestic Violence Act does not recognise same sex relationships and therefore the *Protection Orders* system made available as a form of police and state protection to applicants facing domestic violence are not available to those in same sex relationships.

The Labour Act does not include a prohibition on discrimination based on sexual orientation or gender identity (unlike the former Labour Act 6 of 1992)<sup>20</sup>. No legal protection with regards to access to employment, healthcare or housing is provided for sexual and gender minority communities as a group who face discrimination. There is also no protection with regards to marriage, adoption, or immigration within Namibian law.

One key opportunity is to amend the Domestic Violence Act 4 of 2003 to include its applicability for same-sex couples. Current efforts to amend the Act have met with some resistance in that LGBTI inclusion is perceived to open the door for other rights claims. Advocates championing the amendment have expressed the need for technical support to develop substantive legal arguments – including case law from other jurisdictions. Such technical assistance should include making the legal and social case for LGBTI inclusion in and through law reform. There are a number of allies amongst the decision makers involved in the Act's amendment, however there is also discomfort with voicing their support publicly, due to the fear of associated stigma<sup>21</sup>.

### **Data Gaps & Limitations**

The guiding question for data gathering against this indicator asked do protective laws exist? If so, what are they? Article 10 and 13 of the Constitution offer the only means of protection within Namibian Law. It may have been equally helpful to this enquiry if the guiding question had been; what protective laws do not exist? To this end, the researcher has considered what the most urgent protection omissions are.

### **Synthesised Implications**

Although there are many laws that can be improved, there are a few areas of law reform that LGBTI groups continue to lobby for. These are 1) the expanded definition [and protections] of domestic relationships to include same sex couples within laws against domestic violence, 2) inclusion of sexual orientation and gender identity as a grounds for non-discrimination in Article 10 of the Constitution and 3) within the Labour Act of 2007.

IGI programming should support this work that has started and help LGBTI groups (and most importantly joint initiatives) to crystallise agreed upon legal reform objectives. Currently this does not exist. Much like the suggestions made under indicator 1, work that sets out to

see law reform needs to be coupled with lawmaker and policymaker sensitisation programming. Creating and supporting spaces that allow NGO and CSO feedback, commentary and engagement with policies and laws, will also be strategic.

## **Country Indicator 3: Official Policies/Plans/ Technical Guidance Related to SRHR**

### **Brief Description**

The only official policy related to SRHR that the researcher could identify was the National Strategic Framework on HIV. There are no national clinical guidelines for differentiated SRH for sexual and gender minorities. There is also no provision for their development.

### **Sources of Data**

The revised NSF 2020 – 2022

<https://hivpreventioncoalition.unaids.org/country-action/namibia-hiv-aids-national-strategic-framework/>

NGO Report: Francesca, A. 2020. *Contextual Analysis: Sexual and reproductive health and rights for sexual and gender minorities and sex workers in East and Southern Africa*. Windhoek. Positive Vibes.

### **Specific Data**

Inclusion of LGBTI people as a vulnerable group in the National HIV and AIDS plan.

### **Contextual Analysis**

The revised NSF 2020 – 2022 provides overall strategic direction for the national response to HIV and Aids, describing priority results, key programmes, and strategies. As part of the Combination Prevention approach, which sits within the NSF, population-based target interventions include MSM and transgender people as higher risk or more vulnerable to infection. The NSF identifies other key populations (migrant and mobile populations, IDUs, inmates) and vulnerable groups (people with disability, orphans and vulnerable children) but includes MSM and female sex workers (FSW) as groups that should be prioritised through programming.

This NSF acknowledges that there is an inadequate policy and legal environment to support programming and service delivery for MSMs. It also states how criminalisation and marginalisation have several implications for responsive sector services (specifically HIV prevention and care) and advocates for legal review and reform<sup>22</sup>. This is the only official government document that acknowledges this. The NSF also include strategies to address discrimination, stigma and

20 <https://www.lac.org.na/laws/annoSTAT/Labour%20Act%2011%20of%202007.pdf>

21 Stakeholder Interview, senior government official.

22 Ministry of Health and Social Services. 2017.



social exclusion against MSM and FSW which include sensitisation training and capacity building for health workers, and for teachers (especially life skills and school-based counsellors). Other targeted interventions include the development of educational communication materials for MSM<sup>23</sup>. Strategies listed in the NSF to address human rights violations and social justice issues faced by gender and sexual minorities include the establishment of safe spaces (i.e. shelters) for victims of abuse, capacity building of the MSM community on human rights advocacy, and documentation of human rights violations for evidence based mitigating interventions. In the context of supporting community-based service provision, the NSF speaks to community engagement, capacity building and systems strengthening, but not in the context of process of monitoring to ensure quality and accountability of health services<sup>24</sup>.

In May 2021, there will be public consultation on the UPR and this presents an opportunity to counter the notion that adherence to human rights should be dealt with as a matter of public opinion. There are challenges in bringing LGBT issues to the table due to their 'sensitive' nature. Often LGBT rights and inclusion require that specific terms and their meanings are clearly communicated, such as 'protection, inclusion and human rights'. This could provide a means to counter the narrow views held by some decision makers and constituencies on questions of inclusion.<sup>25</sup>

### Data Gaps & Limitations

Official reports, from coordination committees and technical working groups formed to implement the NSF were not available for review. Many stakeholders identified these structures as critical entry points.

Although the researcher was unable to review any national policy focused on reproductive health it can be assumed that LGBTI specific needs are not addressed within any other national policy or framework (besides the NSF). The researcher was unable to find recent National SRHR or reproductive health policies (a policy from 2008 was found online).

### Synthesised Implications

HIV programming and therefore the health sector sees the highest level of inclusion of sexual and gender minority issues. However, the 'key population' language can be limited in how it addresses the myriad of identities, and most importantly, the specific issues that different vulnerable groups face within the LGBTI community.

Although transgender persons are recognised within the NSF, they are not identified as a *prioritised* group and therefore funding and efforts are absorbed mostly by MSM directed programming.

It has been reported that stakeholders and government officials working within the health sector, and specifically within HIV programming, are generally more sympathetic towards the issues faced by sexual and gender minorities and have better understandings (and therefore put forward better policy) on how tackling discrimination is key to improving service delivery and encouraging help seeking behaviours. The difference in progress is arguably the existence of official government policy that acknowledges the existence of sexual and gender minorities. Although government rarely (if at all) directs own funding or programming towards key populations, they are very supportive of partners who do.

As mentioned above (see section on protective laws) many see the CCMs associated with the NSF as an important entry point and that there are opportunities to work with already sensitised service providers and government officials within the health sector.

## Country Indicator 4: Official Policies/Plans on Sexual Education

### Brief Description

The School Health Policy is a broad and holistic education policy. Under this umbrella policy sits the *Safe Schools Framework* which is an anti-violence program that includes measures to protect LGBTI students<sup>26</sup>. *PE for Life* is a program that deals with issues of communication, tolerance and human rights more broadly through physical education<sup>27</sup>. The current life skills curriculum, which is informed by the School Health Policy and by the Comprehensive Sexual Education (CSE) approach,<sup>28</sup> directly addresses sexual orientation<sup>29</sup>. It links human rights with sexual orientation and addresses homophobia and transphobia. The curriculum includes correct references to different sexual orientations, human rights on sexual orientation, how to affirm different sexual orientations, and how to support people with different sexual orientations with activities that differentiate between sexual orientation and sexual behaviours.

### Sources of Data

Ministry of Education, Arts and Culture. 2019. Physical Education for Life. [http://www.moe.gov.na/news\\_article.php](http://www.moe.gov.na/news_article.php), last accessed on 11 December 2020.

23 Ministry of Health and Social Services. 2017.

24 Ministry of Health and Social Sciences. 2017; Francesca. 2020.

25 Stakeholder Interview, senior government official.

26 Ministry of Education Arts and Culture. 2008.

27 Ministry of Education, Arts and Culture. 2019.

28 Namibia is a signatory to the ESA commitment <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/HIV-AIDS/pdf/ESACommitmentFINALAffirmedon7thDecember.pdf>

29 Ministry of Education, Arts and Culture. 2020.

Ministry of Education Arts and Culture. 2008. *National School Health Policy*. Available at [https://www.moe.gov.na/health\\_portal\\_view.php?id=16](https://www.moe.gov.na/health_portal_view.php?id=16)

Ministry of Education, Arts and Culture. 2020. *Life Skills Syllabus grade 10-11*. Available at [www.nied.edu.na/assets/documents/02Syllabuses/05SeniorSecondary/LifeSkills/NSSCO\\_Life\\_Skills\\_Syllabus.pdf](http://www.nied.edu.na/assets/documents/02Syllabuses/05SeniorSecondary/LifeSkills/NSSCO_Life_Skills_Syllabus.pdf).

### Specific Data

Inclusion of LGBTI students as a vulnerable group in School Policy (specifically in School Health Policy and The Inclusive Education Policy)

<https://www.moe.gov.na/files/downloads/MoE%20Sector%20Policy%20on%20Inclusive%20Education.pdf>

### Contextual Analysis

There is, however, still much to be desired in the implementation of sexual and gender education in Namibia in so far as schools and teachers need a great deal of support to overcome personal prejudices in order to facilitate the accomplishment of Namibia's more inclusive education policies<sup>30</sup>. Those same personal prejudices are often held by parents and policy decision makers and therefore policies and programming in schools on sexual education often receive a great deal of push back. Implementors report that bi-directional sensitisation processes to get the buy-in of decision makers, school leaders and school communities, should always be implemented when possible<sup>31</sup>. It has also been reported<sup>32</sup> that the life skills programme itself, the only curriculum that directly deals with sexual education, has its challenges. Most significantly, the life skills teacher position is not a promotional position and therefore sees a high turn-over rate. There are limited resources for sensitisation training and for training teachers with the necessary skills to use the material and this rarely happens. Despite these challenges there are decision makers within government who argue in support of the continuation of the CSE program. The argument that "there is nothing in the programme that we don't want our children to know" has been emphasised. However, the misconception that SOGIE education could lead to children 'becoming gay' needs to be addressed.<sup>33</sup>

Many working within the sector and movement believe that education and engaging Namibian youth and learners is a crucial part of seeing more tolerance and inclusion of sexual and gender minorities communities and groups. The Ministry of Education has proven itself to be a stakeholder that is open and willing to deal with discrimination and sexual and gender minority

related issues within the school and education systems. Recently, (November 2020) parliamentarians spoke out against the CSE approach (see discussion below on parliamentary speeches for details) recommending that the Namibian education systems should abandon it. There was a strong response from civil society. Ultimately, it was representatives from the MoE who defended the CSE approach successfully<sup>34</sup>. A Cabinet action letter<sup>35</sup> revealed a few things about this process; some members of Cabinet were concerned about the East and Southern Africa commitment (2021 – 2030)<sup>36</sup> and instructed the MoE to facilitate consultative processes to ensure that the "ESA commitment is customised to the Namibian context i.e., alignment to religious, cultural, traditional, moral values and norms".

### Data Gaps & Limitations

Interviews with government officials working in the education policy space revealed the policies relevant to LGBTI inclusion. Further, interviewees revealed that what they have to offer is very limited and that because sexual and gender minorities are not officially recognised by the government it is necessary for policy makers, who want to address the needs of the community at schools, to "sneak it in".

### Synthesised Implications

Progressive sexual education is crucial but within the Namibian government school system there is much to be desired. That being said, the little that is currently in the curricula already receives much push back.

If it is to be strengthened and expanded, there is a great deal of work to be done in sensitising the school community. A study done by the MoE found that buy in from school leaders and principals is essential if a programme is to see any success. This review found that the most important groups for training would be Cabinet, school principals, and life skills teachers. Tackling misconceptions and distrust of sexual education, and being very sensitive to religion, culture and tradition, will also be necessary. It is also recommended that sensitisation is grounded in a human rights framework.

## Country Indicator 5: Parliamentary Speeches/Parliamentarians

### Brief Description

This discussion is mostly on how parliamentary attitudes towards LGBTI rights and issues are reported in Namibian newspapers, as the researcher was unable to

30 Brown A.

31 Stakeholder Interview, government official.

32 Stakeholder Interview with government official.

33 Stakeholder Meeting, Senior Government official.

34 Stakeholder Meeting, Government official.

35 Cabinet Action Letter: Demystifying or clarifying of the concept of CSE in Namibia Education Sector, 9 November 2020.

36 ESA Commitment; <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/HIV-AIDS/pdf/ESACCommitmentFINALAffirmedon7thDecember.pdf>

find evidence on how LGBTI issues are spoken about in Parliament via parliament publications.

In November 2020, at a time when parliamentarians were threatening to pull away from the ESA commitment and abandon the CSE approach within the life skills curriculum, the Deputy Prime Minister proclaimed she wants an education guideline that “steers away from engaging in elements that may be considered illegal.”<sup>37</sup> Here, it is assumed, she was referring to homosexuality and abortion.

In May 2020, The Speaker of the National Assembly, Peter Katjavivi, at the official launch of the second phase of the Sexual Reproductive Health Rights HIV and AIDS Governance project (2019 to 2022) stated that the project enabled “parliamentarians to hold government to account on key SRHR issues... as well as policies for the protection of key populations”. Katjavivi went on to state that the second phase is anchored in five key thematic areas that include comprehensive sexuality education and non-discrimination and protection of key populations.<sup>38</sup>

Popular Democratic Party of Namibia parliamentarian, Elma Dienda, said in an interview with *The Namibian* newspaper (July 2019) on the topic of condom distribution in prisons, “it is a matter of choice who you want to have sex with. If women want to sleep with each other, let it be their choice. If men want to sleep with each other, it is their choice. Things are happening around us, and we do not stand up for our own rights”.<sup>39</sup>

In an interview with a Namibian newspaper (October 2019) speaking to a case on same-sex marriage that was being heard in the High Court at the time, the Minister of Home Affairs SWAPO member Frans Kapofi, was reported to say “same-sex marriage is not lawful in Namibia. Until such time as the law provides otherwise, the statute remains”<sup>40</sup>.

## Sources of Data

### Namibian Newspapers

Oliveira, Y. 2019. Same sex rights still taboo activists push for broader representation. *The Namibian*. Available from <https://www.namibian.com.na/190216/archive-read/Same-sex-rights-still-taboo--activists-push-for-broader-representation>

Editor. 2020. Ndaitwah’s suppression of CSE is contradictory. *Windhoek Observer*. Available at <https://www.observer24.com.na/ndaitwahs-suppression-of-cse-is-contradictory>.

News-National. 2019. Education urges Namibians to welcome Sexual Education. *The Namibian*. p3. <https://www.namibian.com.na/188598/archive-read/Education-urges-Namibians-to-welcome-sexual-education>

News National. 2019. Govt sticks to stance on same-sex marriage. *The Namibian*. p1. <https://www.namibian.com.na/83872/read/Govt-sticks-to-stance-on--same-sex-marriage>

## Specific Data

Parliamentarians publicly acknowledging LGBTI people as a vulnerable group with issues that need addressing.

## Contextual Analysis

Parliamentarians, and especially those representing the leading party, have not demonstrated a willingness to be accountable to sexual and gender minorities. The only examples the researcher was able to find of leading party parliamentarians being responsive to and inclusive of sexual and gender minorities, is within the context of HIV and sexual health, but here the community is referred to as a “key population”.

Although there was a period not too long ago when direct hate speech was commonly heard from parliamentarians, it appears that the more recent trend is for parliamentarians to avoid the topic as much as they can. Further, whenever questions or debates arise among parliamentarians over inclusion there seems to be three main approaches that leading party parliamentarians take: 1) they argue that according to the law, homosexuality is not legal, and until it is, they cannot engage on the topic, 2) that because no-one is being prosecuted there are no issues<sup>41</sup> and 3) they state that Namibian services will not turn anyone away (i.e. they are non-discriminatory and universal).

Although few and far between, when a parliamentarian is heard defending the community or acknowledging how they are discriminated against, or how discrimination causes barriers to services, it is most likely from an opposition party member. See more details under discussion on *Political Parties and Platforms*.

## Data Gaps & Limitations

Lack of access to speeches made in parliament made it difficult to do an in-depth analysis of parliamentary views on LGBTI matters. The findings still reveal publicly held attitudes by some parliamentarians, and this is backed up by opinions shared through the stakeholder interviews.

37 Windhoek Observer. 2020. <https://www.observer24.com.na/ndaitwahs-suppression-of-cse-is-contradictory>.

38 All Africa. 2020. Available from <https://allafrica.com/stories/202005080723.html> ; Last accessed [11 December,2020].

39 Oliveira, Y. 2019. <https://www.namibian.com.na/190216/archive-read/Same-sex-rights-still-taboo--activists-push-for-broader-representation>

40 The Namibian. 2019.

41 United Nations, Human rights office of high commissioner, 2016 March 09, Human Rights Committee reviews the report of Namibia. Available at <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17192&LangID=E>; last accessed on [11 December,2020].



## Synthesised Implications

It is understood by activists and others that disregard for, and unwillingness to not only acknowledge the discrimination that sexual and gender minorities face but also to not *recognise* LGBTI people, is one of the biggest challenges<sup>42</sup>. There is, however, an understanding that there is more openness, willingness and capacity to improve the situation for sexual and gender minorities in Namibia amongst government officials at the directorate level (especially within the education and health sectors). The recent example of how the directorate level within the MoE was able to convince the Cabinet not to abandon the ESA commitment and the CSE approach is a good example of how crucial they are in sensitising parliament. If any more progressive change will be realised in the next four years it is recommended that IGI finds ways to work closely with cabinet members and parliamentarians to improve their attitudes (through sensitisation and education programs) and that this is done through and closely with the ministry's directorate level where possible. Working closely with, and providing information to, parliament staff who work to support the standing parliamentary committees (e.g Committee on Gender, Family and Information) has also been identified as a key opportunity.

## Country Indicator 6: Court Judgments/Judges

*How have LGBTI rights been dealt with in and through the courts to date?*

### Brief Description

A handful of same-sex marriage cases have been heard in Namibian courts over the past five years. Three cases (in Potgieter and Digashu 2017, Jacobs and Grobler 2018, and Vorster couple 2019) were filed by couples attempting to get their South African marriages recognised by the state in order for the non-Namibian-born partner to be granted permanent residence or citizenship. A fourth case was filed by a couple trying to get their German marriage recognised (Seiler-Lilies 2018). Not one case (so far) has ended in state recognition of the marriage.

The *Frank case* (2001)<sup>43</sup> was a landmark case in this regard. Many believe that it was a moment in case law history that made homosexuality illegal. This is not correct. The part of the case that is legally binding states that the existence of a lesbian relationship between a Namibian and a non-Namibian has no bearing on an application for permanent residence for non-Namibians. What this case did do however is strengthen the legal argument that interprets Article 14 that "marriage is between men and women". The *Frank case* stated that homosexual relationships "clearly fall outside the scope and intent

of Article 14" (which reads: Men and women of full age, without any limitations due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family...). Those defending same-sex marriage in Namibia argue that other substantive articles grant rights and freedoms to everyone (this includes the Namibian constitution and EU convention for the protection of human rights and fundamental freedoms) and that no one should be subjected to discrimination or certain types of prohibited treatment.

### Sources of Data

Namibian Newspapers

<https://www.namibian.com.na/193786/archive-read/Govt-sticks-to-stance-on--same-sex-marriage>

Court Judgement Reports

*Chairperson of the Immigration Selection Board v Frank and Another* 2001 NR 107 (SC) <https://namiblii.org/na/judgment/supreme-court/2001/1>

*Vorster v Government of the Republic of Namibia* (HC-MD-CIV-MOT-REV-2019/00312). [https://ejustice.jud.na/High%20Court/Judgments/Civil/Vorster%20v%20Government%20of%20the%20%20Republic%20of%20Namibia%20\(HC-MD-CIV-MOT-GEN-2019-00307\)%20\[2019\]%20NAHCMD%20334%20\(6%20%20September%202019\).docx](https://ejustice.jud.na/High%20Court/Judgments/Civil/Vorster%20v%20Government%20of%20the%20%20Republic%20of%20Namibia%20(HC-MD-CIV-MOT-GEN-2019-00307)%20[2019]%20NAHCMD%20334%20(6%20%20September%202019).docx)

### Specific Data

LGBTI issues dealt with in court so that LGBTI rights and dignity are respected according to the Constitution.

### Contextual Analysis

In the *Vorster case* it was argued that not recognising same-sex marriage is discriminatory and that those in same-sex relationships are not being equally treated as required by the Constitution and that the discrimination goes against their "constitutionally enshrined dignity and robs them of the respect and worth as human beings, which is otherwise afforded to people in heterosexual relationships"<sup>44</sup>. There is yet to be a ruling that agrees with this argument. In the most recent ruling, *Vorster v Government of the Republic of Namibia*, the Supreme Court found that as far as the Namibian Constitution is concerned, the marriage which in terms of Article 4(3) qualify a spouse of a citizen for citizenship, is clearly a marriage between a man and woman, that is a heterosexual marriage, not a homosexual marriage or relationship. Although homosexual relationships must have been known to the representatives of the Namibian

42 Stakeholder Interview, participants from government office.

43 Chairperson of the Immigration Selection Board v Frank and another 2001 NR 107 (SC). <https://namiblii.org/na/judgment/supreme-court/2001/1>

44 Vorster v Government of the Republic of Namibia. (HC-MD-CIV-MOT-REV-2019/00312). [https://ejustice.jud.na/High%20Court/Judgments/Civil/Vorster%20v%20Government%20of%20the%20%20Republic%20of%20Namibia%20\(HC-MD-CIV-MOT-GEN-2019-00307\)%20\[2019\]%20NAHCMD%20334%20\(6%20%20September%202019\).docx](https://ejustice.jud.na/High%20Court/Judgments/Civil/Vorster%20v%20Government%20of%20the%20%20Republic%20of%20Namibia%20(HC-MD-CIV-MOT-GEN-2019-00307)%20[2019]%20NAHCMD%20334%20(6%20%20September%202019).docx)

nation and their legal representatives when they agreed on the terms of the Namibian Constitution, no provision was made for the recognition of such a relationship as equivalent to marriage or at all.<sup>45</sup>

Currently, the Ministry of Home Affairs is working on a Marriage Bill and this presents an opportunity to influence the interpretation of Article 14 and a reading of it as *not* explicitly excluding the recognition of same-sex couples. Also, judicial activism is a key area for further development, including in respect of defining family and relationship. The highly conservative nature of the Namibian Courts impedes the move towards making decisions based purely on human rights principals rather than on projected generalised perceptions of Namibian public opinion.<sup>46</sup>

### **Data Gaps & Limitations**

These same-sex marriage cases dealing with questions around citizenship or permanent residency are the only cases that have dealt with LGBTI rights in the Namibian courts over the last five years. The researcher had to rely mostly on newspaper articles to understand the cases. An email was sent to the lawyer currently defending one of the cases for more information but no response was received before this report was submitted. An interview with a lawyer or judge would be a productive exercise to better understand the ways in which the courts deal with LGBTI issues.

### **Synthesised Implications**

There have been no other sexual and gender minority specific issues dealt with in the courts besides cases that deal with marriage and domicile (as far as the researcher was able to find). Many believe that the most promising avenue for change is by arguing for the unconstitutionality of discrimination. This approach however, in this context, has thus far proved unfruitful. This suggests that perhaps sensitisation work and programming aimed at judges might be an avenue worth exploring for the IGI project. It also suggests that the Constitution is not being effective enough in realising “equality for all”, and this presents the opportunity for, as one stakeholder suggested, making the Constitution more transformative. IGI program and activity development can consider processes designed to consider this failing of the Constitution; to form concise arguments and collect evidence to support law reform (i.e., inclusion of sexual orientation and gender identity as a grounds for non-discrimination in Article 10).

## **Country indicator 7: Official Reports**

*How has LGBTI inclusion been dealt with in official reports (from organs of state)?*

### **Brief Description**

The short answer to the guiding question under this indicator is; inclusion has not been dealt with in any significant way within official reports.

Only one official report (that the researcher was able to review), the 2019 Annual Report for the Office of Ombudsman, includes one brief reference, “The Office of the Ombudsman has been central in the advancement of the human rights of LGBTI Namibians. The Ombudsman consistently consults LGBTI partners and groups to elicit opinions and inputs when commenting on legislation and reporting to international human rights mechanisms”.

### **Sources of Data**

Office of the Ombudsman. Annual Report 2019. Available at <https://www.ombudsman.org.na/ombudsman-reports/annual-reports/annula-report-2019/>

### **Specific Data**

LGBTI issues dealt with in official Office of the Ombudsman.

LGBTI issues dealt with in official reports from the Ministry of Education.

LGBTI issues dealt with in official reports from the Ministry of Gender Equality, Poverty Eradication and Social Welfare.

### **Contextual Analysis**

The fact that the only report found to deal with LGBTI issues came out of the office of the Ombudsman is a significant finding. The office of the Ombudsman is the only state office that has officially recognised the LGBTI community (outside of the HIV/key populations discourse) and has explicitly pursued inclusion projects.

### **Data Gaps & Limitations**

Accessing MoH reports will be especially relevant to look at how issues associated with key populations – MSM and transgender people -are dealt with. The researcher was only able to access one official state organ report (the 2019 annual report is not published online).

The researcher did however reach out to a government stakeholder who said that it would be “a waste of time” (sourcing other sector reports) and that it is “safe to assume that the government does not deal with LGBTI issues” (in their official reports). Most significantly the Ministry of Gender has no policy or strategic plan that mentions or deals with LGBTI issues.

45 Ibid.

46 Stakeholder Meeting, Senior Government official.

## Synthesised Implications

The lack of data means that how government deals with LGBTI issues “officially” (e.g. what language they use, what issues they consider important, what misconceptions or understandings are held) could not be analysed and might also speak directly to the government’s refusal to acknowledge and deal with these issues. The usefulness of this finding for IGI programming is that it gives some understanding of how far we still need to go. Government offices first need to recognise the issues before they can be dealt with.

## Country Indicator 8: Political Parties/Platforms

*What is the position of the main political parties on LGBTI rights and issues?*

### Brief Description

Namibia is a one-party dominant state with the South West Africa People’s Organisation (SWAPO) party in power. SWAPO has no published official position or focus on the LGBTI community within its party manifesto.

The Popular Democratic Movement (PDM) (the main opposition party holding 16 seats in the National Assembly) has had members who lobby for same sex rights. It has been reported<sup>47</sup> that parliamentarian, Elma Dienda, has said that sodomy laws create barriers in solving social issues.

The All-Peoples Party manifesto is the only one that mentions LGBTI community and states that “The APP’s position is to champion the cause for gender equality, the rights of people with disabilities and the LGBTIQ community and supporting the LGBTIQ community to realise their constitutional and human rights.”<sup>48</sup>

### Sources of Data

SWAPO manifesto  
[https://www.kas.de/c/document\\_library/get\\_file?uuid=e9a6b462-08ee-cc3f-6630-7ebf77a78651&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=e9a6b462-08ee-cc3f-6630-7ebf77a78651&groupId=252038)

PDM Manifesto  
[https://www.kas.de/c/document\\_library/get\\_file?uuid=1a1ed94a-9451-87f7-a398-3dab236da342&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=1a1ed94a-9451-87f7-a398-3dab236da342&groupId=252038)

All Peoples party Manifesto  
[https://www.kas.de/c/document\\_library/get\\_file?uuid=fab9dc1a-9e64-8c9d-b332-325eca29e170&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=fab9dc1a-9e64-8c9d-b332-325eca29e170&groupId=252038)

Party Manifesto analysis by Institute for Public Policy Research. 2020. Perspectives on parliament. [https://ippr.org/na/wpcontent/uploads/2020/02/POP13\\_ElectionsGender\\_WEB.pdf](https://ippr.org/na/wpcontent/uploads/2020/02/POP13_ElectionsGender_WEB.pdf)

SWAPO Youth blog article  
 Ntinda, A. 2020. Dr Hage Geingob unimpressed by gay activist. Swapo Party. [http://www.swapoparty.org/zoom\\_in\\_176.html](http://www.swapoparty.org/zoom_in_176.html).

### Specific Data

Leading party and main opposition party manifestos acknowledge LGBTI people as a vulnerable group that need support to realise their constitutional and human rights.

### Contextual Analysis

SWAPO leaders continue to refuse to acknowledge and therefore protect sexual and gender minorities within the law and with policy. Although there is no official position published, SWAPOs *unofficial* position is arguably clear. At a press conference, on the day before SWAPO president was sworn into office (2015) he was asked how he might protect the rights of the LGBTI community. Dr Hage Geingob replied by saying that there are more important issues to address listing poverty, unemployment and housing. He went on to say that “gays” are not oppressed or suppressed and that these “gay issues” brought up are “not a problem” and asked the activist/journalist “why do you create a problem where there is no problem?”<sup>49</sup>.

A critical area of intervention identified by one government stakeholder is political parties, in that they need to formulate positions on LGBTI issues in order for their government representatives to be able to advance LGBTI inclusion. It was also noted that the issue is a polarising one in the political space. Approaching political parties and targeting vocal non-executive members, provides opportunity for parties to engage their own political manifestos, as the basis for inclusive governance. Here, particular messages offer ‘soft’ entry points, for example that the Namibian House requires no allowance for Namibians to be treated as 2<sup>nd</sup> class citizens and that all Namibians deserve their human rights.

It is important to identify and recognise those individual politicians who speak with credibility on inclusion and those who could possibly work against IGI. LGBTI community members and CSOs should ensure their presence within these political manifestos, using the power of their vote to agitate for increased inclusion on the part of political parties, and the ruling party in particular.<sup>50</sup>

47 Oliveira, Y. 2019. Same sex rights still taboo activists push for broader representation. *The Namibian*. Available from <https://www.namibian.com/na/190216/archive-read/Same-sex-rights-still-taboo--activists-push-for-broader-representation>

48 Institute for Public Policy Research. 2020.

49 Ntinda. 2020.

50 Stakeholder Meeting, Senior Government stakeholder.

## Data Gaps & Limitations

There are no 'official' positions published by any party.

## Synthesised Implications

Opposition parties in Namibia are gaining more supporters (see results of 2020 election). Throughout this report the need to work with and sensitise Cabinet members and parliamentarians on LGBTI issues has repeatedly been affirmed but, as one critical stakeholder put it, "working with opposition parties, as allies and champions, could be a promising entry point". Many stakeholders also suggested that it is time that SWAPO is asked to finally clearly state what their official position is.

## OUTCOME 2: Capacity of LGBTI activists and allies to sensitize and influence relevant decision-makers and to hold authorities to account

### Country Indicator 9: Cross-Movement Joint Initiatives to Influence and/or Holding Authorities to Account

*What projects/initiatives/structure exist?*

#### Brief Description

There are a few cross-movement joint initiatives currently active in Namibia. The most relevant is DAN (Diversity Alliance Namibia) network which is an initiative that brings actors together from the LGBTI, feminist and sex worker movements. It is reported by DAN members that it has been dormant for some years. The coalition against SGBV in Namibia is an effective movement but members are mostly individuals. Voices for Choices is a coalition that has banded together to work against abortion laws. The #Shutitalldown movement only emerged in October 2020 and is yet to be formally structured.

#### Sources of Data

The Diversity Alliance Namibia network consists of 10 organisations. These organisations are mostly LGBTI organisations but also include feminist organisations and sex worker organisations.

The Namibia Coalition against SGBV consists of NGOs, activists and members of the "gender non-conforming community" who have united their efforts against GBSV in Namibia

<https://www.facebook.com/CoalitionAgainstGBV>

Voices for Choices, a band of activists and organisations that have come together to work against abortion laws

<https://www.facebook.com/vcrcnamibia/>  
[https://www.change.org/p/honorable-dr-kalumbi-shangula-minister-of-health-and-social-services-legalize-abortion-in-namibia?fbclid=IwAR1BD0dPjg\\_XGdLdH-QyOpPzVzcJHaLNeEOhOP8izDJAtAeKY0Cjl0h5B7w](https://www.change.org/p/honorable-dr-kalumbi-shangula-minister-of-health-and-social-services-legalize-abortion-in-namibia?fbclid=IwAR1BD0dPjg_XGdLdH-QyOpPzVzcJHaLNeEOhOP8izDJAtAeKY0Cjl0h5B7w)

The #Shutitalldown movement is a youth led movement that led youth activists and citizens to protest in the streets and online against SGBV and the government's inaction. The protests happened in October 2020 and received a great deal of attention locally and globally.

#### Specific Data

DAN actively working on LGBTI inclusion advocacy

The Namibia Coalition against SGBV including LGBTI issues in its efforts

#Shutitalldown including LGBTI issues in its efforts to lobby for government action on GBV

#### Contextual Analysis

The strongest existing coalition is *Voices for Choices*, a group that has come together to work against abortion laws. This coalition is lobbying with a petition that holds over 60 000 signatures. Leaders and members of this coalition are from LGBTI community.

DAN is an alliance group that has seen the output of stronger clearer messaging from civil society in lobbying for rights. They partnered with the office of the Ombudsman to include a section on discrimination experience by LGBTI people in a report on racism and discrimination in Namibia<sup>51</sup>.

The Coalitions against SGBV has organised many citizen-led initiatives, including a protest march and petition that was handed over to duty bearers (including the Ministry of Gender, Ministry of Justice, and Ministry of Safety and Security) with recommendations on how to improve protection and response services.

The #Shutitalldown movement saw the Prime Minister respond publicly to petition demands and saw the President invite the leaders to a closed-door meeting (with no press). The main organisers were made up of activist leaders from LGBTI and SRHR organisations but it was mostly led by students and activists who are not working in the development/human rights sector. CSOs and human rights organisations joined by offering support to the movement and its organisers.

All three initiatives discussed here have their shortcomings. Many members of the SGBV Coalition are "inactive"<sup>52</sup> which means that momentum and impact has diminished. The #Shutitdown movement gained a great deal of attention from authorities (all the way up to the

51 Office of the Ombudsman. 2017.

52 According to Coalition Founder.



President) but the demands presented within the petition lacked understanding in gains made and/or of the urgent needs within the SGBV response sector<sup>53</sup>. Strengthening cross movement initiatives in ways that will see better sharing of information and resources, so that lobbying is informed, united, and focused, will see better results. Although #Shutitdown was not a movement demanding inclusion for LGBTI people in Namibia, its organisers and leaders were strongly represented by Namibia's queer community. This speaks to the intolerable levels of unsafety and violence experienced by sexual and gender minorities.

### **Data Gaps & Limitations**

The researcher was unable to find any official documentation on these initiatives. An email was sent to one of the Coalition against SGBV founders for a list of members.

### **Synthesised Implications**

If the IGI project wishes to pursue programming that will see effective cross movement initiatives in Namibia, the researcher recommends expanding and strengthening these existing movements and coalitions.

Interviews, and allowing for processes in early stages of program design and implementation, where DAN members can contribute to, and advise on, what the alliance might need to grow, strengthen and become more effective, will be a crucial part of the program on cross-movement strengthening.

The Coalition against SGBV has been very vocal and present over the years, but it is not funded or affiliated with any one organisation. Therefore, it has no funding and its leaders have no formal support to continue. Much like the group associated with #Shutitdown, these two movements have attracted individual activists; people who have joined the movement in their own capacity, driven by a personal want to see change. Developing activism skills and leadership of these individuals to see more transformative and effective change would be a worthwhile program activity (Y-Fem does 'leadership' work).

### **Country Indicator 10: LGBTI Activists Involved in Processes Related to Broader Rights, Development and Gender Equality Issues**

*Is there involvement by LGBTI activists/organisations in wider rights, development and gender equality? Describe who/where/how so.*

#### **Brief Description**

There are many LGBTI organisations that are active in the broader rights and development space. To list

a few; Out-Right Namibia fundamentally advocates for constitutional rights but it is a popular partner for National HIV programming offering SRH services to key populations and its leaders specifically have been at the forefront of anti-femicide and GBV activism (#Shutitalldown). The Women's Leadership Centre (WLC) is an intersectional feminist organization that focuses work on cultivating indigenous activism as well as facilitating empowerment processes for young lesbians across the country. They do a great deal of work with rural women, specifically San women and also on addressing harmful cultural practices. Positive Vibes Namibia does not label itself as an LGBTI organisation but rather a human rights organisation that focusses on ending 'othering'. For many years, their work has included LGBTI rights and protection but always alongside and with other cross cutting issues and broader rights. Their approach is a systemic approach that considers an individual who may be experiencing discrimination or 'othering' within a system (i.e. considers societal attitudes, legal systems and constraints, intersectionalities, support systems and safe spaces etc). The Young Feminist Movement is an inclusive feminist organization that focuses work on "transformative leadership" and empowerment for women (both cis and trans), with a focus on rural women. Recent work has included contributions to ending child marriage, and education projects on bodily integrity and autonomy. Sister Namibia is a feminist organisation that focuses on communication advocacy (mostly online) and deals with LGBTI+ rights, gender equality, gender-based violence, SRHR and wider rights issues within the feminist agenda. Rights not Rescue, is a sex workers organisation that advocates for LGBTI rights but also in protecting freedom and justice for all. The Namibia Diverse Women's Alliance (NDWA), a women's organization that is specifically friendly to trans and gay and bi women, are a vocal organization involved in broader women and human rights issues. Wings to Transcend and TIAMON (Transgender, Intersex and Androgynous Movement of Namibia) are Namibian transgender rights organizations that advocate for equal rights and services for trans diverse, intersex and androgynous citizens.

#### **Sources of Data**

Out Right Namibia  
<https://outrightnamibia.org.na/>

Women's Leadership Centre  
<https://www.wlc-namibia.org/>

Y-Fem (Young Feminist Movement)  
<https://www.facebook.com/YFemTheYoungFeministsMovementNamibia/>

Positive Vibes  
<https://positivevibes.org/>

53 Example: The #Shutitdown petition asked for specialized GBV courts.

Sister Namibia  
[www.sisternamibia.org](http://www.sisternamibia.org)

Voice of Hope Trust  
<https://www.facebook.com/voiceofhopetrustnam/>

Rights not Rescue  
<https://rightsnotrescue.weebly.com/about.html>

The Namibia Diverse Women's Alliance  
<https://www.facebook.com/NamibiaDiverseWomenAssociationNDWA/>

### Specific Data

Continued programming by listed CSOs working on wider rights, development and gender equality.

Out-Right Namibia - on National HIV programming offering SRH services to key populations as well as staying at the forefront of anti-femicide and GBV activism (#Shutitalldown).

Women's Leadership Centre (WLC) - on cultivating indigenous activism as well as facilitating empowerment processes for young lesbians across the country. Continue work with rural women, specifically San women and also on addressing harmful cultural practices.

The Young Feminist Movement - "transformative leadership" and empowerment for women (both cis and trans), with a focus on rural women and education projects on bodily integrity and autonomy.

Sister Namibia - communication advocacy on LGBTI+ rights, gender equality, gender-based violence, SRHR

Voice of Hope Trust and Rights not Rescue - protecting and serving sex workers.

The Namibia Diverse Women's Alliance (NDWA) - a women's organization that is specifically friendly to trans and gay and bi women, are a vocal organisation involved in broader women and human rights issues.

### Contextual Analysis

Within civil society LGBTI organisations are the "most vibrant and vocal" and they have created strong partnerships with each other and with other civil society organisations<sup>54</sup>. Especially within SRHR, and anti-femicide and anti-SGBV spaces. The intersections with LGBTI rights and sex worker rights are also embraced by both sex worker and LGBTI organisations, and LGBTI organisations are often at the forefront of sex worker rights work, and vice versa. Another area where you will see a great deal of engagement from LGBTI organisations is around

harmful cultural practices and traditional beliefs. WLC, as a lesbian run organisation, is a leader in human rights work around this theme. LGBTI organisations have joined wider rights movements that have tried to address child marriage and the traditional practice of Olufuko.

### Data Gaps & Limitations

The researcher was not able to gather any other examples of platforms and spaces that LGBTI activists are included and involved in.

### Synthesised Implications

It is significant to find that groups and individuals are active but also welcomed into non-LGBTI civil society led processes that deal with wider rights. It speaks to how the LGBTI community and individuals are not excluded from the civil society human rights space or isolated in their own human rights defence work. It also speaks to the intersectionality of LGBTI rights work in Namibia. Strengthening the involvement of LGBTI activists and organisations in wider rights, development and gender equality could be done via capacity building and skills building activities. Identifying any skill gaps and needs from LGBTI organisations and individuals would be a worthwhile initial activity.

### Country Indicator 11: Allies from other Movements Involved in LGBTI Inclusion Processes

*Are allies from other movement involved in LGBTI inclusion initiatives/projects? If so, who, where and how?*

#### Brief Description

It was surprising to find a few examples to report on under this indicator. The most significant and recent (February 2020) LGBTI inclusion initiative was the review on the obsolete laws, compiled by an alliance of Namibian Civil Society Organisations' representing Women, Girls, Sex Workers & LGBT Communities<sup>55</sup> and submitted to the Law Reform & Development Commission (LRDC). This initiative saw many allies from other movements involved.

The #Shutitalldown movement supported feminist organisation Sister Namibia to use the movement's platform and to advocate for recognition of LGBTI relationships within the Domestic Violence Act and to lobby for decriminalisation.

A specific opportunities identified by a senior government stakeholder to increase access to services, is to approach both state and private sector pension schemes to lobby

54 Stakeholder Interview with participant from state office

55 The organisations' submission was made by Namibia Diverse Women's Association, Positive Vibes Trust, TuliNam Trust, Out-Right Namibia, Khaibsen Trust, Namibia Psycho-Social Support Network, Wings to Transcend Namibia, Namibia Sex Workers Alliance, Voice of Hope Trust (VHT), Rights Not Rescue Trust (RNRT), Young Feminist Women's Movement, Diversity Alliance of Namibia.

for the extension of benefits to same sex relationships by recognising life partnerships.<sup>56</sup>

### Sources of Data

CSO review on the obsolete laws (not available online)

#Shutitalldown <https://www.facebook.com/SisterNamibia> see post published on 12 October What we Want Now (includes “scraping sodomy law”)

### Specific Data

Allies from other movement involved in LGBTI inclusion initiatives/projects.

### Contextual Analysis

The review submitted on obsolete laws states how, since independence, the political, social, religious and cultural environment has been more enabling for the women’s movement but then states that “the same support has not been extended to the Lesbian, Gay, Bisexual, Transgender and Sex Worker person, as their right to self-determine their destiny within humanity remains challenged because their civil rights and socio-economic development are limited by the homophobic, transphobic and sex work phobia rhetoric”<sup>57</sup>. The women’s movement in Namibia is fast becoming a movement that strongly includes LGBTQ issues. Women’s organisations dedicated to tackling “gender equality” are doing so in ways that understand LGBTQ rights and inclusion to be a central part in achieving that (see work of Sister Namibia, Y-Fem, Power Pad Girls as examples of intersectional feminist organisations at the helm of the women’s movement in Namibia). These organisations strongly advocate for sexual and gender minority inclusion in all the work that they do. Intersectional approaches to gender equality work however do not expand into government spaces. The MGEPEWSW, for example, still does not recognise sexual and gender minorities officially and therefore understands gender equality to be about balancing out power relations between “men and women, boys and girls”<sup>58</sup>. There is no reference or recognition of sexual and gender minorities in the Gender Policy or the National Plan of Action against GBV. Unfortunately, no other movements (or allies) were found to be directly involved in LGBTI inclusion processes.

### Data Gaps & Limitations

The researcher was unable to find more examples where allies have come together to support LGBTI inclusion processes (such as pride marches, sharing campaign materials and joining events and public dialogues).

Namibia’s Diverse Women’s Association (NDWA) has done some work on labour issues specifically<sup>59</sup>.

### Synthesised Implications

Movements, organisations and initiatives that deal with issues of gender equality, within civil society at least, are beginning to embrace a more inclusive and intersectional approach. There has definitely been a surge in intersectional feminism in Namibia<sup>60</sup>. That being said, the LGBTI movement’s strongest allies are those from the sex worker movement. It was noted at a recent conference<sup>61</sup> for LGBTI activists that participants expressed a need to find and officially establish the common ground between the two movements. IGI activities can support processes that will more formally establish alliances between the movements. The researcher recommends exploring ways in which the labour movement could also deal with LGBTI labour related issues and to further investigate potential allies within that movement.

## OUTCOME 3: Inclusion, participation, representation, and influence of diverse Namibian LGBTI populations and their allies in relevant policy and decision making

### Country Indicator 12: Involvement of LGBTI Populations in Policy Development Processes

*Are LGBTI communities involved in policy development? Describe who/where/how so.*

#### Brief Description

The Namibian Coordinating Committee for HIV and AIDS, Tuberculosis and Malaria (NaCCATum) serves as the CCM for oversight on the implementation of all Global Fund grants. The government in collaboration with respective partner organisations have set up steering committees in order to facilitate coordination of agency specific partnership relationships. Key populations are represented on the National AIDS Executive Committee (NAEC), by Right not Rescue. NAECs report to Cabinet. A technical working group on key populations is co-chaired by a CSO and a LGBTIQ+ community member. These committees and working groups are responsible for both development and review of National Policies on HIV programming targeted at key populations. Currently, for example, the key populations technical working group

56 Stakeholder Meeting, Senior Government stakeholder.

57 Review on obsolete laws submitted by civil society to LRDC.

58 Ministry of Gender Equality and Child Welfare. 2010.

59 Stakeholder Interview, no reports available online.

60 Stakeholder Interview, participant from CSO.

61 Regional Conference for LGBTIQ+ activists from SADC States. 9 and 10 December 2020. Avani Hotel. Windhoek. Day 2. Panel Discussion: The rising movement against police abuse.



is in process of domesticating the SADC key population strategy for implementation in Namibia.

The mid-term review of the NSF (2020 – 2022) was heavily influenced by CSO involvement, many of which represent or are represented by gender and sexual minorities.

The National Assembly's SRHR, HIV and AIDS Governance project (2019 to 2022) is a capacity development initiative for members of parliament. Sensitisation work for both community members and parliamentarians is done in partnership with CSOs, including those who focus their programming on key populations, some of which sit on the National Assembly's National working group on SRHR.

Strong partnerships and links between LGBTI+ rights advocate organisations and the Ministry of Education saw that these organisations were part of reviewing and strengthening the MoE's Comprehensive Sexual Education program within the School Health Policy<sup>62</sup>.

### Sources of Data

The mid-term review of the NSF (2020 – 2022) – not available online

SADC key population strategy  
[https://www.sadc.int/files/2715/3060/7629/SADC-regional-strategy-hiv-srhr-key-pops\\_FINAL.pdf](https://www.sadc.int/files/2715/3060/7629/SADC-regional-strategy-hiv-srhr-key-pops_FINAL.pdf)

The National Assembly's SRHR, HIV and AIDS Governance project (2019 to 2022) workshop report – not available online

### Specific Data

The extent to which LGBTI communities involved in policy development.

### Contextual Analysis

Most findings here are relevant to the HIV programming space and speaks to need to learn from and expand the gains made within the health sector into other sectors. There are many lessons learnt.

### Data Gaps & Limitations

All findings reported under this section were acquired through the stakeholder interview processes. Verification is recommended and if possible, should be done by reviewing official reports by NACATUM, NAEC and the technical working group on key populations and through further interviews with LGBTI members of these structures.

### Synthesised Implications

Involvement of LGBTI populations in policy development processes can be found mostly within the HIV

programming and policy context. As a result of MSM being identified as a prioritised key population group it has become mandatory, under the NSF, that organisations working with the group be included in processes.

Representation is otherwise not seen in other sectors and official structures. Ministries and state offices might invite civil society to comment or contribute to policy, and these gatherings might include LGBTI led organisations, but this is more on an ad hoc basis. Seeing LGBTI groups involved in other sectors, and in more formal structures, will see better inclusion, as in the health sector.

## Country Indicator 13: Coordinated Advocacy and Policy Messaging Amongst LGBTI Groups (To Influence Law, Policies or Programming)

*Is there coordinated advocacy and policy work on the part of LGBTI groups? Describe who/where/how.*

### Brief Description

The LGBT movement intersects with the sex worker and feminist movement on many issues. (eg. advocacy and policy work done together on decriminalising strategy, UPR). There has been coordinated advocacy on GBV (eg. #Shutitalldown and reproductive justice protests of 2020). There is also joint work being done on the community led monitoring strategy (mentioned above), and the National Human Rights Action Plan (which needs to be updated and developed for the new period).

Development partners such as OSF, AIDSFONDS, GF, UN, EU, Amplify Change and Scandinavian development partners have been more proactive in human rights development support.

### Sources of Data

Human Rights Action Plan  
[https://www.ombudsman.org.na/sdm\\_downloads/national-human-rights-action-plan-republic-of-namibia-2015-2019/](https://www.ombudsman.org.na/sdm_downloads/national-human-rights-action-plan-republic-of-namibia-2015-2019/)

UPR Review  
<https://www.ombudsman.org.na/wp-content/uploads/2016/10/Report-of-the-Working-Group-on-the-UPR.pdf>

Review on obsolete laws – not available online

### Specific Data

Successful coordinated advocacy and policy work on the part of LGBTI groups policy advocacy is outlined.

### Contextual Analysis

LGBTI groups seem to come together when opportunities arise to influence policy and programming. One can

see that where there is funding available there is more coordinated advocacy and policy work.

### **Data Gaps & Limitations**

No other groups were identified during critical stakeholder interview.

### **Synthesised Implications**

There is a need to support the establishment of mechanisms and structures that will see coordinated advocacy and policy work as part of Namibian LGBTI inclusion. Policy advocacy needs to be outlined.

## **Country Indicator 14: Coordinated Advocacy and Policy Messaging Between LGBTI Groups and other Development Actors (To Influence Law, Policies or Programming)**

*Is there coordinated advocacy and policy work between LGBTI groups and other development actors? Describe who/where/how.*

### **Brief Description**

There have been some recent coordinated efforts by LGBT groups in partnership with other development actors to influence law, policies and programming. Most notably, these processes include: the review on the obsolete laws (sodomy and unnatural sexual offences) compiled by an alliance of Namibian Civil Society Organisations<sup>63</sup> and submitted to the Law Reform & Development Commission; submissions on the Hate Speech Bill<sup>64</sup> made by CSOs (the office of the Ombudsman reported that it will hosting a second consultation process where LGBTI groups will be invited to make comments on the Bill); the Review on NSF (with strong coordination by Human Dignity Trust); and the UPR NGO report submission led by ARASA<sup>65</sup>.

### **Sources of Data**

UPR Review  
<https://www.ombudsman.org.na/wp-content/uploads/2016/10/Report-of-the-Working-Group-on-the-UPR.pdf>

Review on obsolete laws – not available online

### **Specific Data**

Coordinated advocacy and policy work between LGBTI groups and other development actors.

Submissions made on the Hate Bill.

Policy Advocacy outlined.

Development of a coherent national strategy.

### **Contextual Analysis**

Coordinated efforts seem to only occur within specific sectors and spaces (namely, health, education and human rights in general) that deal with a very specific set of issues, namely; SRHR, SGBV, and issues of discrimination and harassment. Nothing was found on LGBTI groups and development actors working together on issues to influence laws and policies outside of these themes.

### **Data Gaps & Limitations**

Most findings reported under this section were acquired through the stakeholder interview process. Verification is recommended and if possible, should be done by reviewing official reports by LRDC, the Office of the Ombudsman, Human Dignity Trust and ARASA, and the outcomes of processes to understand which LGBTI organisations were involved.

### **Synthesised Implications**

Activities that see coordinated advocacy and policy messaging work between LGBTI groups and other development actors (to influence law, policies or programming) will be welcomed within civil society. There are opportunities to strengthen existing links and alliances. The Office of the Ombudsman is a key player who can help facilitate efforts. Within the education and health directorates there is an openness and understanding of the importance of inclusion in policy, and as one stakeholder from a government office said, “from the directorate level, there is a good understanding [of LGBTI inclusion issues] and most are on board [to address inclusion through programming]”.

## **Country Indicator 15: Official Policies/ Strategies Per Sector (Poverty, Gender Equality, Health, Justice, Education)**

*What policies exist in different sectors that have relevance to LGBTI inclusion (by sector, where possible)?*

### **Brief Description**

The researcher was not able to find one official policy or plan (besides those related to HIV and key populations) that directly speak to LGBTI people. There are however policies and strategies that speak to *universal rights for all* Namibians. The Ministry of Gender’s National Plan against GBV includes strategies that hope to see first-responders

63 The organisations’ submission was made by Namibia Diverse Women’s Association, Positive Vibes Trust, TuliNam Trust, Out-Right Namibia, Khaibsen Trust, Namibia Psycho-Social Support Network, Wings to Transcend Namibia, Namibia Sex Workers Alliance, Voice of Hope Trust (VHT), Rights Not Rescue Trust (RNRT), Young Feminist Women’s Movement, Diversity Alliance of Namibia.

64 Stakeholder Interview.

65 Stakeholder Interview.

(service providers) as “empathetic (non-judgmental, caring) and inclusive (non-discriminatory, leaving no-one behind)<sup>66</sup>. Ensuring equitable access to health services is a primary goal of the Ministry of Health. This is reflected in the Patient Charter, which promises “equity of access to public health and social care services” (2017) and in National Health Policy Framework which pledges that “health and social welfare services will be affordable, and the principle of equity and fairness will underpin the commitment expressed in this policy framework; special attention will be given to the needs of vulnerable groups”. The Ministry of Education has many plans and policies that reiterate that every Namibian child has a right to education but not one mentions LGBTI learners or their specific needs and challenges.

### Sources of Data

National Health Policy and Framework  
[http://www.africanchildforum.org/clar/policy%20per%20country/2018%20Update/Namibia/namibia\\_healthpolicyframework\\_2010-2020\\_2010\\_en.pdf](http://www.africanchildforum.org/clar/policy%20per%20country/2018%20Update/Namibia/namibia_healthpolicyframework_2010-2020_2010_en.pdf)

National Gender Policy  
[http://www.africanchildforum.org/clar/policy%20per%20country/namibia/namibia\\_gender\\_2010-2020\\_en.pdf](http://www.africanchildforum.org/clar/policy%20per%20country/namibia/namibia_gender_2010-2020_en.pdf)

The National Strategic Framework for HIV  
<https://hivpreventioncoalition.unaids.org/country-action/namibia-hiv-aids-national-strategic-framework/>

National Plan of Action against GBV (2019 – 2023) – not available online

### Specific Data

National policies include LGBTI people as a vulnerable group with strategies to address issues.

All three policies listed (National Health Policy, Gender Policy and National School Health policy) are up for review (as they ended in 2020) and there may be opportunities for policy advocacy work.

### Contextual Analysis

The fact that only one official government policy/strategy (the NSF) directly recognises sexual and gender minority issues and considers inclusion strategies, is revealing of the extent to which sexual and gender minorities are excluded in Namibia. If documents, like the National Plan of Action against GBV, do not explicitly deal with LGBTI specific needs, then it is not possible to fully protect these communities.

### Data Gaps & Limitations

The researcher was unable to review every policy and plan across all sectors and recommends that IGI engage partners in ways that might identify relevant policies and plans to be considered.

### Synthesised Implications

A stakeholder from a government office described how the blanket refusal from high level decision makers to include LGBTI issues in policies means that they are unable to develop targeted programs and that they have to try “build it into other programmes”. An example of this is how tolerance and respect for human rights more broadly is built into education programmes such as *PE for Life* and health service provider training programs. Many stakeholders spoke about a need to focus awareness building and education interventions on basic human rights and there seemed to be a commonly shared belief amongst those interviewed that Namibians, the public at large and decision makers who are not open to recognising and including LGBTI people are often more open when issues are presented within a human rights framework. More research can be done to demonstrate the harms and human rights violations the non-appearances of LGBTI issues and needs in national policy are causing. IGI programming and activities can support advocates in developing clear inclusion policy reform needs.

## OUTCOME 4: Use of African ideas, evidence and innovations that support LGBTI-inclusive governance and related work.

### Country Indicator 16: Country-Specific Knowledge Products Related to LGBTI Inclusion

*What country specific knowledge resources exist that would be most useful for IGI work in the country to promote LGBTI inclusion?*

#### Brief Description

The Legal Assistance Centre (LAC) has created many useful knowledge products over the years. Two in particular are often cited in work on LGBTI rights: *Namibian Law on LGBTI issues* (2015) and *Unravelling Taboos* (2007). The LAC also have pamphlets available on LGBTI rights and health; family; protection, and labour (available in English, Oshiwambo and Damara>Nama available at <http://www.lac.org.na/index.php/projects/gender-research-advocacy-grap/lgbti/>

Positive Vibes has developed an approach to Community Led Monitoring, and has done a great deal of useful work in this regard. Positive Vibes published a report *Somewhere Over the Rainbow* (2020) that provides a situational analysis of sexual and gender minority adolescents and young people in Namibia. The only tool kit/training/sensitisation programme mentioned by stakeholders was LILO, as implemented by Positive Vibes in Namibia. More information is available at <https://positivevibes.org/what-we-do/lilo/>.

Women's Leadership Centre has produced many publications over the years, including advocacy booklets to inform leaders of the LGBTI rights movement and a photobook, *Our Lives in our Hands*, which tells stories and shares experiences of sexual and gender diverse women. More information is available at <https://www.wlc-namibia.org/publications>

Sister Namibia has been producing a magazine for 30 years, often telling the stories of LGBTI people and providing information and support needed for movement building. Their current online work is particularly unique, representing LGBTI pride and power (see Sister Namibia on Instagram and Facebook) and the content is contributing to movement building.

In terms of academic research, extensive research has been done by Professor A. Brown in the education sector dealing with inclusion of LGBT youth, and by Ashley Currier on LGBTI experiences and issues in Namibia that is regularly cited.

The IBBSS reports (2014) provide useful insights on key populations within the HIV programming context.

### **Sources of Data**

The Legal Assistance Centre (LAC)  
<http://www.lac.org.na/index.php/projects/gender-research-advocacy-grap/lgbti/>

Positive Vibes  
<https://positivevibes.org/resources/>  
<https://positivevibes.org/what-we-do/lilo/>

Women's Leadership Centre  
<https://www.wlc-namibia.org/publications>

Sister Namibia  
[https://www.instagram.com/sister\\_namibia/?hl=en](https://www.instagram.com/sister_namibia/?hl=en)  
<https://www.facebook.com/SisterNamibia/>

Professor A. Brown (2017; 2017; 2016)  
<https://doi.org/10.1080/14725843.2017.1319751>  
<https://upjournals.co.za/index.php/GQ/index>  
<https://journals.co.za/content/journal/10520/EJC-5f1178e6>

Ashley Currier (2010, 2011, 2012, 2015)  
<https://www.jstor.org/stable/10.1086/661715?seq=1>  
<https://www.jstor.org/stable/20676848?seq=1>  
[https://www.researchgate.net/publication/289711745\\_Out\\_in\\_Africa\\_LGBT\\_organizing\\_in\\_Namibia\\_and\\_South\\_Africa](https://www.researchgate.net/publication/289711745_Out_in_Africa_LGBT_organizing_in_Namibia_and_South_Africa)  
<https://www.tandfonline.com/doi/labs/10.1080/03057070.2015.1108549?scroll=top&needAccess=true&journalCode=cjss20>

The IBBSS reports (2017)  
<http://ucglobalprograms.org/sites/default/files/namibia-ibbss-fsw-2017.pdf>  
<http://ucglobalprograms.org/sites/default/files/namibia-ibbss-msm-2017.pdf>

Powerpad Girls Namibia  
<https://www.instagram.com/powerpadgirls/>

### **Specific Data**

Country specific knowledge resources used and developed.

### **Contextual Analysis**

National research led by government is limited, but there are several resources available produced by NGOs and independent researchers/academics. There are also innovative and exciting social media platforms that are creating safe spaces for LGBTI led dialogue and are highlighting and normalising LGBTI experiences in media (see Sister Namibia and Powerpad girls)

### **Data Gaps & Limitations**

What is listed here provides a variety of resources. The indicator framework asks that materials be used for training/sensitisation of decision makers. During the Critical Stakeholder interview processes, only the LILO curriculum was mentioned (a program facilitated by Positive Vibes) and many shared thoughts that investing in updated and domesticated tools would be worthwhile.

### **Synthesised Implications**

Having an updated resources inventory is useful to plan activities. It also clearly shows where the gaps are, for example, the need for more empirical data that is government led on SGBV, discrimination and other rights violations committed against LGBTI people.



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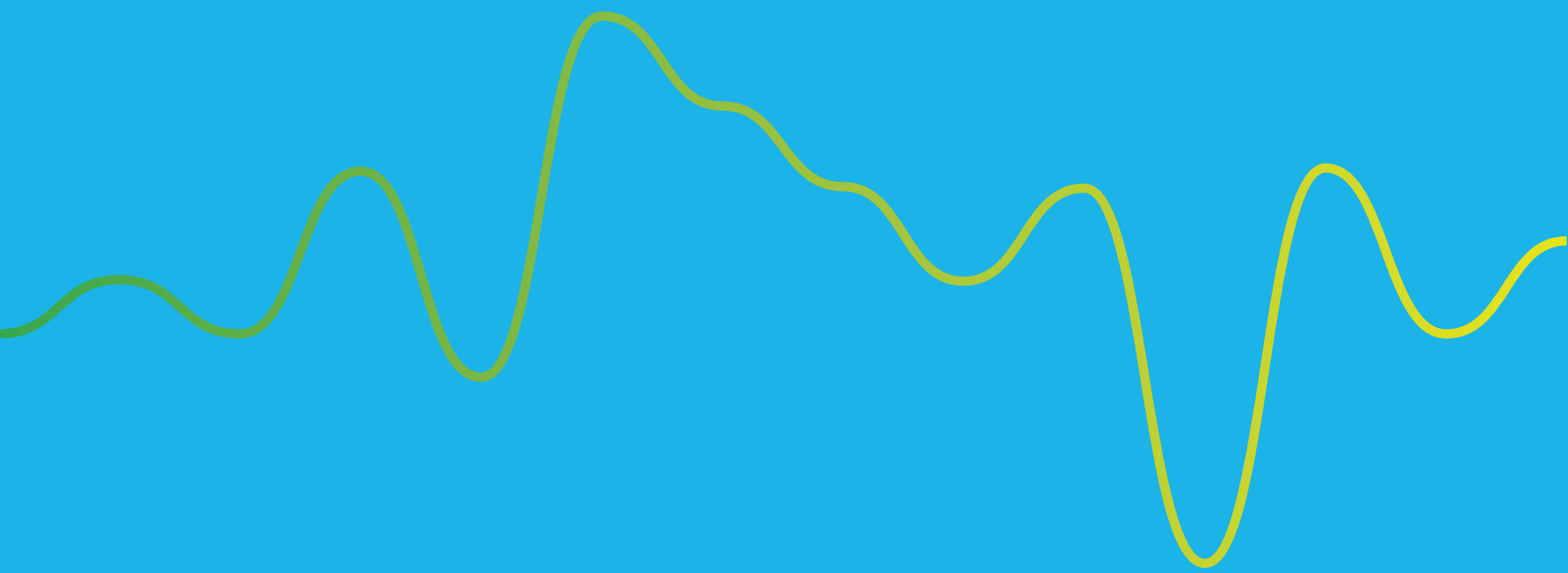
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