

Criminalisation of Homosexuality

Updated 25 October 2015

 Namibia		
<p>National Law:</p> <p><i>Common Law Offences of:</i>¹</p> <ul style="list-style-type: none"> - Sodomy - Unnatural Sexual Offences 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Unknown 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
<p>The law is applicable only to men.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 2014: The 2014 US Country Report on Namibia suggests that the prohibition on sodomy, inherited from the Dutch-Roman common law, is not enforced in the country.² 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - August 2015: Deputy Finance Minister of Namibia reportedly told staff at an office of the Ministry of Finance that <i>'You are either a man or a woman. Don't come from outside and tell us this is acceptable. They must keep their gay activities in their countries. We will not entertain any of this gayness.'</i>³ - 18 April 2014: The Refugee Commissioner of Namibia released a statement saying that Namibia will not allow gay refugees from Uganda into the country. According to the Commissioner: <i>'[Namibian] refugee law does not have a provision granting refugee status for being gay. And we will never do that.'</i>⁴ - 13 March 2014: In response to a question on whether he thought Namibia would introduce any further anti-gay legislation (as has been seen in Nigeria and Uganda), Namibian PM Hage Geinbob answered in the negative, adding that <i>'In Namibia, we respect human rights.'</i>⁵ - 2014: The newly formed Namibian Economic Freedom Fighters political party criticized homosexuality as a threat to the country, compared it to the Ebola virus, and claimed it must be contained.⁶ - 2013: Former Mr. Gay Namibia and potential parliamentary candidate, Wendelinus Hamutenya, was heavily criticised by both politicians and Namibian gay rights 	

	<p>groups for reportedly threatening to release a list of gay politicians.⁷</p> <ul style="list-style-type: none"> - 17 December 2013: The leader of the Democratic Turnhalle Alliance political party in Namibia spoke out in defence of gay rights in the country. Challenging the proposition that homosexuality is ‘un-African’, McHenry Venaani stated that: <i>‘For many years gays have been part of the society all along. It is scientifically proven all races and cultures have gays’</i>, later adding that it was ‘natural’ to be gay, and that gay people should be protected.⁸ - 4 May 2013: A number of politicians have reportedly spoken out against homosexuality in recent years. Former president of Namibia, Sam Nujoma, has called, at various times, for the ‘rejection and condemnation’ of homosexuality; ordering police to ‘arrest, imprison and deport gays’. Jerry Ekandjo, a cabinet minister, called for the "elimination" of gay people within the country.⁹ - 18 April 2013: The Secretary of the Youth League of the ruling SWAPO party published a message on Twitter in response to news of a gay couple who had married in South Africa and returned to Namibia: <i>‘The so-called first gay marriage in Namibia is an abomination and illegal. It is moral decay at its worst, the police must arrest them.’</i>¹⁰
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 2014: The US Department of State’s Human Rights Report on Namibia reported that during 2014 <i>‘many cases of human rights violations against LGBT persons went unrecorded, including the use of “corrective rape” against lesbians, families disowning LGBT children, and the beating of LGBT persons. A large number of LGBT youth were unemployed, did not go to school, abused drugs and alcohol, and remained vulnerable to discrimination.’</i>¹¹ - September 2014: A man sexually assaulted a lesbian in Windhoek because he wanted to ‘cure’ her of her lesbianism. When she sought medical help at a state hospital, the receptionist reportedly told her to return later and publicly announced that she had been raped.¹² - 8 February 2013: LGBTI group Out-right Namibia has spoken of an increasingly more tolerant Namibian society: <i>‘We must accept that there is increasing tolerance of sexual minorities in Namibia among communities, the media, and in particular by political leaders who have not made homophobic statements in recent years.’</i>¹³ - 2013: Many cases of persecution and discrimination are not reported, although, again, reports suggest that this situation is improving, particularly through strengthened LGBTI relations with the Office of the Ombudsman and the Ministry of Health and Social Services (US Report).¹⁴
	<ul style="list-style-type: none"> - 2011: (UPR) Namibia rejected recommendations to decriminalise consensual same-

Legislative News	<p>sex sexual conduct.¹⁵ The government delegation stated:</p> <p><i>On homosexuality, it was noted that the Constitution outlawed discrimination of any kind. Since independence, no single case of discrimination on the basis of sexual preference or orientation had appeared before the courts. Homosexuals were not prosecuted for practising same-sex activities in private, although this practice was not condoned, and was considered immoral and prohibited in public. Same-sex marriages were not recognized. The Government has no intention of amending current laws.</i>¹⁶</p> <ul style="list-style-type: none"> - 2010: The ILO Committee of Experts expressed regret that Namibia's Labour Act of 2007 did not prohibit discrimination on the ground of sexual orientation, which had been covered under the preceding 1992 Act.¹⁷
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¹ Sodomy remains a crime in Namibia according to the Roman-Dutch common-law, which was derived from South Africa. Common-law is a legal tradition based mainly on precedent court verdicts, while there is no codified sodomy provision in Namibia - see submission in the UPR of Namibia at:

http://lib.ohchr.org/hrBodies/upr/documents/session10/na/Js1_Joints submission-eng.pdf

² Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Namibia*, (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236388>> accessed on 5 September 2015

³ 'ORN accuses Natangwe Ithete of inciting homophobia', *Namibian Sun*, 3 August 2015,

<<http://www.namibiansun.com/local-news/orn-accuses-natangwe-ithete-inciting-homophobia.82020>>

⁴ Becker, J.M., 'Namibia Refuses to Accept Gay Ugandan Refugees', *Bilerico Project*, 18 April 2014,

<<http://www.bilerico.com/2014/04/namibia-refuses-to-accept-gay-ugandan-refugees.php>>

accessed on 19 July 2014

⁵ Harvard School of Public Health, *Namibian prime minister: Inclusivity necessary for peace, development*, 13

March 2014, <<http://www.hsph.harvard.edu/news/features/namibian-prime-minister-inclusivity-necessary-for-peace-development/>> accessed on 19 July 2014

⁶ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Namibia*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236388>>

accessed on 5 September 2015

⁷ 'Former Mr Gay Namibia for MP?', *Mamba Online*, 11 October 2013,

<<http://www.mambaonline.com/2013/10/11/former-mr-gay-namibia-for-mp/>> accessed on 19 July 2014

⁸ Miyanicwe-Nangolo, C., 'Namibian political leader stands up for gay rights', *Gay Star News*, 16 December 2013,

<<http://www.gaystarnews.com/article/namibian-political-leader-stands-gay-rights161213>> accessed

on 19 July 2014

⁹ Lister, G., 'Tough times for LGBTI in Namibia too', *Open Society Initiative for South Africa*, 4 May 2013,

<<http://www.osisa.org/lgbti/blog/tough-times-lgbti-namibia-too>> accessed on 19 July 2014

¹⁰ Ibid 9.

¹¹ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Namibia*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236388>>

accessed on 5 September 2015

¹² Ibid 11.

¹³ ILGA, *Out-Right Namibia (ORN) calls on Mr. Hamutenya and The Villager to respect people's right to privacy and dignity*, 8 February 2013, <<http://ilga.org/ilga/en/article/nWRoAkS176>> accessed 19 July 2014

¹⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, *Reports on Human Rights Practices for 2013: Namibia*, 2013,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220142>>

accessed on 19 July 2014

¹⁵ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 24 March 2011, UN Doc A/HRC/17/14

¹⁶ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 24 March 2011, UN Doc A/HRC/17/14
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¹⁷ International Labour Organisation, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 2010