



LGBTQI+ Legal Literacy HANDBOOK

A guide to legal services available to
the LGBTQI+ community in Namibia

Gender Research & Advocacy Project
LEGAL ASSISTANCE CENTRE



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ABOUT THIS HANDBOOK



This handbook is intended to serve as a legal guide for the LGBTQI+ community and activists on the protections provided to all Namibians irrespective of their sexual orientation or gender identity. It summarises some of the most important protections that the Namibian Constitution provides for all Namibians. These protections are unisex and do not discriminate against any Namibian, not even based on sexual orientation.

This handbook is dedicated to all LGBTQI+ activists, allies, community volunteers and Namibia's LGBTQI+ community at large.



LAC Vision

Namibia is a human-rights-based democracy founded on equality, justice and dignity.

LAC Mission

We, the Legal Assistance Centre, being a public interest law centre, collectively strive to make the law accessible to those with the least access, through education, law reform, research, litigation, legal advice, representation and lobbying, with the ultimate aim of creating and maintaining a human rights culture in Namibia.



MPower Vision

A Namibia free of public health threats and discrimination

MPower Mission

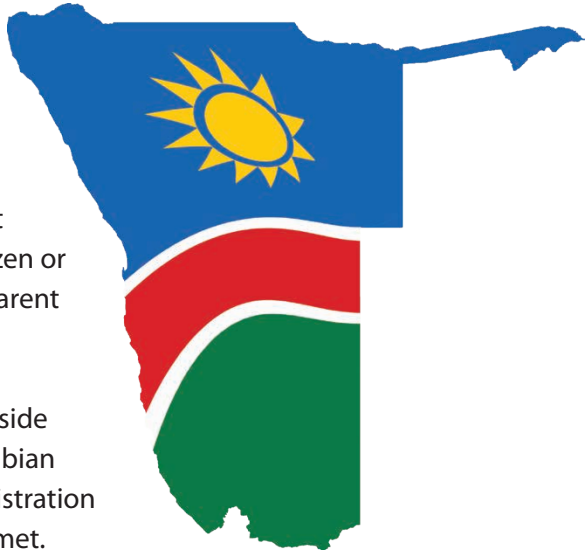
To respond meaningfully to public health threats by empowering sexual and gender-diverse persons, in partnership with stakeholders, through creating awareness and providing education, human rights and psychosocial support.

NAMIBIAN CITIZENSHIP



The following individuals are citizens of Namibia:

1. A person born in Namibia to at least one Namibian citizen or a non-Namibian parent living in Namibia.
2. A person born outside Namibia to a Namibian citizen, if legal registration requirements are met.
3. A person married in good faith to a Namibian citizen and living in Namibia for at least 10 years.
4. A person who has lived in Namibia for at least 10 years and meets the legal citizenship requirements.



THREE BRANCHES OF GOVERNMENT

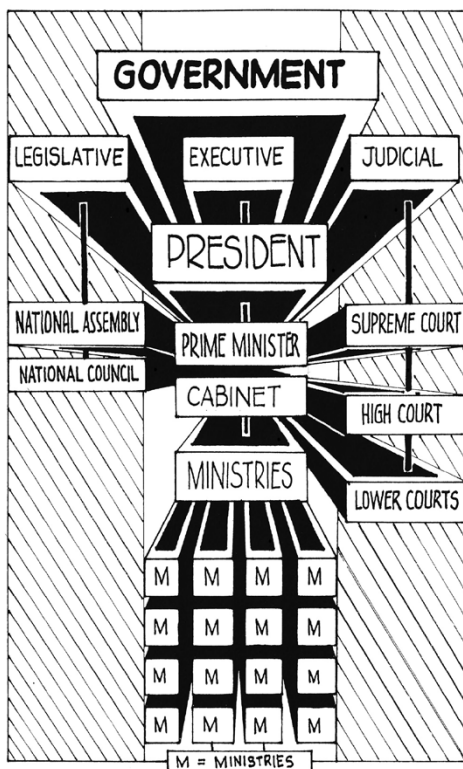


The Government of the Republic of Namibia consists of three branches:

the **Executive**,
which implements laws
(President and Vice-President,
Prime Minister and
Deputy Prime Minister,
and the Cabinet);

the **Legislature**,
which makes laws
(Parliament);

the **Judiciary**,
which enforces laws
(the Courts).



CONTACT DETAILS OF IMPORTANT LGBTQI+ ORGANISATIONS

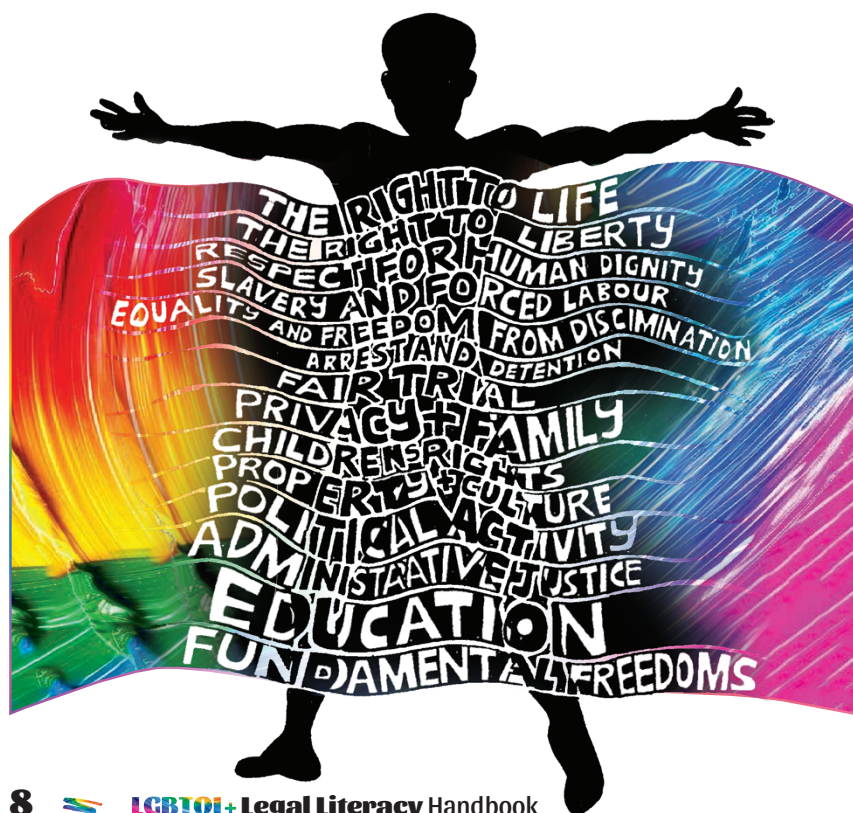
ORGANISATION	TELEPHONE / EMAIL
Childline/Lifeline	116 (toll-free) / 061-226889
Harmony for All Movement	081-7595655
Intra Health	061-303793 info@intrahealthnamibia.org
Khaibasen Namibia	081-3572637
Legal Assistance Centre (LAC)	061-223356
Lifeline GBV Helpline	106 (toll free)
MPower Community Trust Namibia	081-6700686
Namibia Diverse Women's Association (NDWA)	081-2528259
Namibia Equal Rights Movement	081-7173938
Ombudsman	061-2073111
Out-Right Namibia (ORN)	061-237329
Positive Vibes	061-245556
Rights for All Movement (RAM)	rfam2030@gmail.com
Rights Not Rescue Trust	081-2068240 rightsnotrescue.na@gmail.com
Sister Namibia	081-3559354
Transgender, Intersex and Androgynous Movement of Namibia (TIAMON)	081-3999114
Voices for Choices and Rights Coalition	liberalizeabortionnamibia@gmail.com
Wings to Transcend Namibia	wingstotranscendnamibia@gmail.com
Women's Leadership Centre	info@wlc-namibia.org
Young Feminists Movement Namibia Trust (Y-Fem)	hello@yfemnamibia.com



FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS



Fundamental human rights and freedoms are crucial in a democratic society. In Namibia, these rights must be upheld by all individuals and government entities. Here we look at a few of the fundamental human rights and freedoms enshrined in the Namibian Constitution.



THE RIGHT TO LIFE (Article 6)

All people have the right to life.

The death sentence is outlawed in Namibia.

THE RIGHT TO LIBERTY (Article 7)

Liberty is the right to be free. No one can take away another person's liberty unless this is done according to the law.

RESPECT FOR HUMAN DIGNITY (Article 8)

This means that all government bodies and courts must treat the people who appear before them with respect. No one can be tortured or punished in any cruel or degrading way.

EQUALITY AND FREEDOM FROM DISCRIMINATION (Article 10)

All individuals are equal under the law and cannot be discriminated against based on sex, race, colour, ethnicity, religion, creed or social and economic status.

ARREST AND DETENTION (Article 11)

No one can be arrested or detained without a valid reason, and proper legal procedures must be followed.

FAIR TRIAL (Article 12)

Everyone charged with a crime has the right to a fair trial by an independent court. No one can influence the court's decisions, and the court will consider only the facts of the case and the law, without regard to race, gender, ethnicity, or political beliefs.

PRIVACY (Article 13)

Everyone has the right to privacy in their home. Police who want to search a home must obtain a warrant or follow proper procedures.

FAMILY (Article 14)

All adult men and women have the right to marry and start a family, regardless of their race, colour, ethnic origin, nationality, religion, creed, or social and economic status.

PROPERTY (Article 16)

All people have the right to own land and other kinds of property in any part of Namibia.

FREEDOM OF SPEECH AND EXPRESSION

This is the right of all people to speak freely, even if they criticise the government or express unpopular views.

FREEDOM TO ASSEMBLE PEACEABLY

People are free to gather together for meetings, as long as they are peaceful and carry no weapons.

FREEDOM OF ASSOCIATION

This is the freedom to join together with other people for any lawful purpose.



FUNCTIONS OF KEY SERVICE PROVIDERS IN RELATION TO CRIME



FUNCTIONS OF THE OMBUDSMAN OF NAMIBIA

People who believe that a government entity or official has violated any of their fundamental rights and freedoms can make a complaint to an independent government official called the Ombudsman. On receiving the complaint, the Ombudsman must investigate and take corrective action if necessary. If the issue remains unresolved, the Ombudsman must submit a report with recommendations to the Speaker of the National Assembly, the Cabinet and the relevant government authority.

FUNCTIONS OF THE NAMIBIAN POLICE (NAMPOL)

- To preserve internal security
- To maintain law and order
- To investigate crime
- To prevent crime
- To protect life and property

FUNCTIONS OF HOSPITALS AND HEALTH FACILITIES

The Patient Charter says that hospitals and health facilities should provide safe and effective health-care services, and should respect the diversity of patients' cultures, beliefs and values.

HOW TO LAY COMPLAINTS



COMPLAINT TO THE OMBUDSMAN

- a) Visit or phone any regional office of the Ombudsman – see contact details on the website: <https://ombudsman.org.na>.
- b) Send an email to office@ombudsman.org.na.
- c) Submit your complaint via the website, using the “Complaint Form” downloadable at <https://ombudsman.org.na/complaint>.
- d) Send a private message via the Facebook page (see the link on the website) and they will contact you.
- e) Send an SMS to 20401 (the charge is 60 cents per SMS).



HOLDING POLICE ACCOUNTABLE



It is a crime for any member of NAMPOL to violate the Police Act, or an order issued in terms of the Police Act. The penalty is a fine of up to N\$2 000 or imprisonment for up to six months, or both.

Any member of the public can submit a complaint to any NAMPOL officer. The officer receiving the complaint must record it and send it to the Inspector-General. (See page 16 for more about the police.)

After the investigation, the officer submits a report to the Inspector-General. If a crime may have occurred, the matter will be referred to the Prosecutor-General. If misconduct is found, disciplinary proceedings will follow.



MEDICAL MALPRACTICE AND HOW TO LAY A COMPLAINT ABOUT A HEALTH PROFESSIONAL



If you have a complaint about a health professional, you should write down what happened in a statement that includes:

- the name of the healthcare practitioner, if possible;
- the institution or medical practice where the incident took place;
- the dates and times of the events, as far as possible; and
- your full contact details and your signature.

It will be helpful if you swear in front of a Commissioner of Oaths that your complaint is true, although this is not a strict requirement.

You should address your complaint to the Registrar of the Health Professions Councils of Namibia (HPCNA).

Email: legal@hpcna.com.na or information@hpcna.com.na

Telephone: (+264) 061-245586

The Registrar may ask you to sign a consent form to allow access to your medical records, in case this is necessary to investigate the complaint.

The Registrar will forward the complaint to the council that governs the medical professional in question.

LEGAL SERVICES AVAILABLE WHEN ACCUSED OF A CRIME



GOVERNMENT LEGAL SUPPORT

The Legal Aid Directorate in the Ministry of Justice provides legal assistance to individuals who cannot afford a private lawyer.

There are organisations in Namibia that provide legal services ***pro bono*** (a Latin phrase meaning “for the public good”). *Pro bono* services are provided voluntarily and free of charge, to assist people who cannot afford legal representation. The Legal Assistance Centre (LAC) is one such organisation.

WHEN TO ENGAGE A LAWYER

An accused person has the right to legal assistance from the time of arrest and during criminal proceedings. The police must inform the accused of this right upon arrest. Seeking legal counsel immediately upon arrest or when charges are anticipated is advisable.

RIGHTS AND PROTECTIONS WHEN ACCUSED OF A CRIME



RIGHTS WHEN ARRESTED

- The right to remain silent.
- The right to ask arresting officers to identify themselves if they are not wearing a name tag.
- The right to legal representation (including a state-funded lawyer if the arrestee cannot afford a lawyer).
- The right to be informed of the reason for the arrest.
- The right to be brought before a court within 48 hours of the arrest.
- The right to protection from torture, inhuman treatment or unlawful detention. Officers can physically touch or restrain arrestees who do not comply, and can forcibly enter a place to arrest someone, demanding entry and explaining why.

The use of force in an arrest is allowed in certain circumstances, but only as a last resort.

Current laws require that LGBTQI+ persons be housed on the basis of their assigned sex at birth, not their gender identity. They can request a separate holding cell, but whether this request is accommodated will depend on police resources like transportation and available cells.

UNLAWFUL ARREST

If there is any suspicion that you are being unlawfully arrested, record all details of the arrest, including time, location and names of officers involved, and contact legal representation as soon as possible. Some circumstances allow for arrest without a warrant – most commonly when the officer has personal knowledge or a suspicion about a crime. (Reach out to organisations like the LAC or Legal Aid for support.)

EXAMPLES OF POLICE MISCONDUCT

- Sleeping on duty
- Being excessively ill-mannered/disrespectful, or acting in a disgraceful manner
- Negligence or laziness in police duties
- Using unnecessary force against a person in custody
- Engaging in violence or inappropriate behaviour
- Spreading false information
- Undermining impartiality in police duties
- Refusing to perform duties
- Delaying a complaint against another officer
- Sharing official information without permission
- Accepting bribes or rewards in exchange for performing or ignoring police duties
- Being under the influence of alcohol or drugs (without a prescription) on or off duty
- Participating in political matters or associating with political parties, symbols or gestures on or off duty
- Using a police position to promote or harm any political party or influence employment conditions
- Discriminating against any person based on colour, race, nationality or ethnic origin while on duty
- Hiding, altering or destroying documents related to police duties
- Promoting or harming the interests of any business or private agency outside official duties
- Being convicted of a crime.



BAIL

Bail is the temporary release of a person charged with a crime. While there is no automatic right to bail, every accused person can apply for it. According to the Namibian Constitution, an accused is presumed innocent until proven guilty, meaning that they cannot be detained before trial as punishment.

APPEALS

A finding of guilt or innocence, or a sentence, can be appealed to a higher court. The High Court can also review a decision of a lower court in any case where it appears that there may have been some form of corruption or a fundamental legal mistake in the trial.

VULNERABLE WITNESSES

Some witnesses in criminal trials are classified as “vulnerable”, such as children, victims of sexual offences and victims of domestic violence. These individuals may experience significant stress or trauma while testifying. Special arrangements can be made to help them to feel more comfortable in court.

FOLLOW-UP ON A CASE

Individuals can follow up on their case status through the police station where the arrest occurred or by contacting their lawyer for updates on legal proceedings.



OTHER LEGAL PROTECTIONS FOR LGBTQI+ PERSONS



HATE SPEECH

All hate speech is covered by the crimes of ***crimen injuria*** (injury to dignity); **criminal defamation** (injury to reputation); and **incitement to crime** (trying to convince someone to break the law). This means that you can lay a charge with the police if someone uses hate speech against you because of your LGBTQI+ status.



CONSEQUENCES WHEN AN EMPLOYER FAILS TO FOLLOW THE LABOUR ACT

An employer could be asked to –

- 🌈 reinstate an employee who was unfairly dismissed;
- 🌈 pay compensation to the employee; or
- 🌈 take other steps ordered by a labour inspector or the Labour Court.

DOMESTIC VIOLENCE

The protections in the Combating of Domestic Violence Act do not apply to people in same-sex relationships, but the remedies in the Act do apply to LBGTQI+ individuals who are threatened or abused by a family member. If you are experiencing domestic violence from a family member, you can apply to a magistrate's court for a protection order that orders the abuser to stop the violence. It might order the abuser to leave the home that you share or to have no contact with you at all.

A person in a violent same-sex relationship could use any of the following options:

1. Lay a criminal charge such as assault or trespass.
2. Obtain a peace order. To do this, you make a complaint under oath to a magistrate that someone is hurting or threatening you. After hearing both sides of the story, the magistrate can issue a peace order which is valid for up to six months. This order can require the abuser to deposit a sum of money with the court which will be lost if the order is not obeyed.
3. Obtain an interdict from the High Court. This is a court order that prevents the abuser from doing something, such as having more contact with you. You will need a lawyer to get an interdict, which can make the process expensive.
4. Bring a civil action for compensation for damages resulting from the violence, such as medical costs, loss of wages, or pain and suffering. A lawyer is needed for this option too, which can make it expensive.



HOW TO FORMALISE A SAME-SEX RELATIONSHIP

In Namibia, only people of opposite sexes can marry under either civil or customary law. If you are in a same-sex relationship and would like to formalise it, the best way is to make a written contract and a written will. Written contracts can create a mutual duty of support between the partners and help to ensure that property is divided fairly if the relationship breaks up.

Your contract could include:

- an agreement for a mutual duty of support;
- details regarding who owns what property; and
- how the property should be divided if the relationship breaks up.

Partners who live together without being married do not have any inheritance rights if one partner dies – unless there is a will.



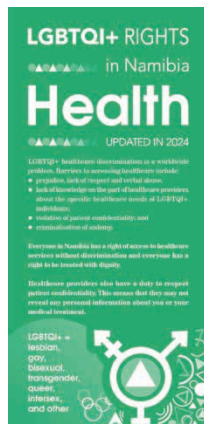
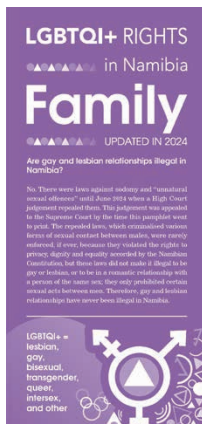
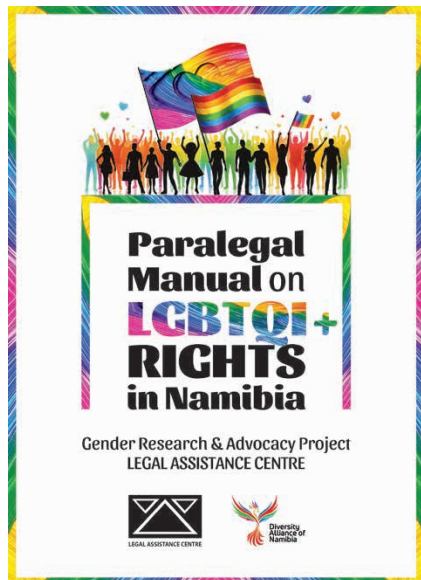
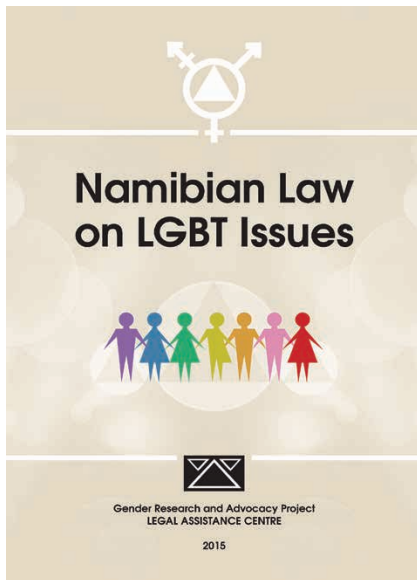
A written contract and a written will cannot make a relationship have all the rights and duties of a marriage, but they can give some protection to the economically weaker partner.

Another way to protect your rights is to make sure that any house you buy has both partners' names on the deed. Then both partners will have equal rights to the property, and any transaction involving the property will need both signatures.



FOR MORE INFORMATION

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on the LAC website: www.lac.org.na





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