

LGBT RIGHTS

in Namibia

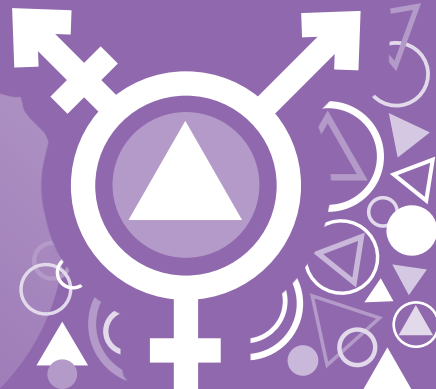
Family

Are gay and lesbian relationships illegal in Namibia?

No. There are laws against sodomy and “unnatural sexual offences” which criminalise a range of sexual contact between males. These laws are seldom if ever enforced, and they probably violate the rights to privacy, dignity and equality in the Namibian Constitution. But these laws do not make it illegal to be gay or lesbian, or to be in a romantic relationship with a person of the same sex. They prohibit only certain sexual acts between men.

A report on human rights published by the Office of the Ombudsman recommends that the law prohibiting sodomy between consenting adults should be repealed.

LGBT =
lesbian,
gay,
bisexual,
transgender



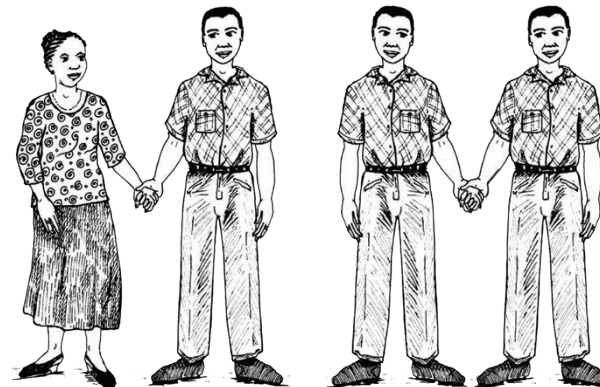
Can gay or lesbian couples get married in Namibia?

No, only people of opposite sexes can marry. In Namibia you can be married under civil or customary law.

- A **civil marriage** is when you are married by a magistrate or a religious leader who is a marriage officer. Civil marriages can take place only between persons of the opposite sex.
- A **customary marriage** is when you are married according to the customs of your community. The LAC is not aware of any customary laws in Namibia that allow for customary marriages between people of the same sex.

Is it constitutional to allow marriage only between people of opposite sexes?

No one knows the answer to this question yet. No Namibian court has decided whether the constitutional right to equality requires the law to provide for same-sex marriage. This will depend on how the courts interpret the part of the Namibian Constitution that says “men and women ... have the right to marry and to found a family”.



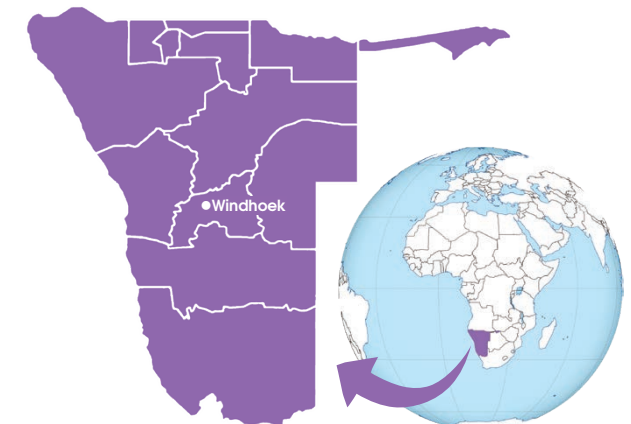
Couples who cannot or do not marry can protect their rights with written contracts and wills.

Would a foreign same-sex marriage be recognised in Namibia?

Probably not. The general rule is that a valid marriage concluded in another country will be recognised as a marriage in Namibia. But there are two important exceptions.

- One exception says that **people who normally live in Namibia cannot marry in another country to escape some essential requirement of Namibian law and then have the marriage recognised upon their return.**
- The other exception says that **a country can refuse to recognise a foreign marriage if that marriage is against the country’s public policy.** This principle was used in apartheid times to prevent recognition of foreign marriages between people of different races and foreign polygamous marriages. These historical examples show how ideas about “public policy” can change over time.

The Ministry of Home Affairs, Immigration, Safety and Security is in the process of developing a new law on marriage. This new law may say that foreign marriages will be recognised in Namibia only where they take place between persons of opposite sexes.



Marriage versus cohabitation

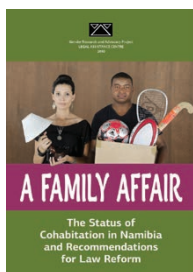
When people get married, the law automatically applies certain rules to their relationship. They have a mutual duty to support each other financially. There are rules about how their property will be shared if the relationship ends because of death or divorce. And a husband or a wife has a right to inherit, even if the deceased did not make a will.

But **there are no automatic protections in Namibian law for people who live together in a romantic relationship without being married.** This is true for couples of the same or opposite sex.

There has been some discussion of possible law reform on this issue, but it is not clear if future law reforms would apply to same-sex couples as well as opposite-sex couples.

The best way to protect any relationship outside marriage is to make a written agreement about each partner's rights and duties, together with a written will saying what your partner will inherit when you die.

For more information about law reform on cohabitation, see the Legal Assistance Centre (LAC) publication titled *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform* (available on the LAC website: www.lac.org.na).



Can a same-sex couple adopt a child in Namibia?

No. The law allows couples to adopt children jointly only if they are married. A person who is unmarried, divorced or widowed can adopt a child as an individual. This means that it might be possible for one of the partners in a same-sex relationship to adopt a child on his or her own. But this could create problems if the relationship breaks down later on, because the other partner would not have any legal rights over the child.

Can a same-sex couple living in Namibia go to another country to adopt a child and then return to Namibia?

It is unlikely that such an adoption would be allowed. Inter-country adoption is a cooperative process. If the adoptive parents and the adoptive child live in different countries, the authorities in both countries will normally be involved in approving the adoption.

Assisted reproductive techniques

The law provides protections for married couples who use assisted reproductive techniques to have a child. But it does not provide any protections for cohabiting couples of the same or opposite sex who use assisted reproductive techniques to have a child.

Surrogacy

There is no law in Namibia on surrogacy, which is when a woman agrees to bear a child for someone else. This means there are no protections for married couples or cohabiting couples of the same or opposite sex who want to use a surrogate.

How to formalise a same-sex relationship

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 make sure that property is divided fairly if the relationship breaks up. This kind of contract is binding only on the two people who sign it – it does not affect people outside the relationship. Your contract could include:

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

Unlike husbands and wives, people who live together without being married do not have any inheritance rights if one partner dies – unless there is a will. Making a written will is the best way to make sure that your partner gets a share of your property when you die.

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 partner who is economically weaker.

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.



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