

LGBT RIGHTS in Namibia Protection

Lesbian, gay, bisexual and transgender people all over the world – including in Namibia – suffer from violence.

The **United Nations Human Rights Council** has passed two resolutions expressing concern about acts of violence, abuse and discrimination committed all over the world against individuals due to their sexual orientation and gender identity. The **African Commission on Human and Peoples' Rights** also recently passed a resolution condemning violence and other human rights violations against persons on the basis of their sexual orientation or gender identity, calling on all states in Africa to take action against this problem.

Most Namibian laws aimed at combating violence are gender-neutral and apply equally to all persons, regardless of sexual orientation or gender identity.

LGBT =
lesbian,
gay,
bisexual,
transgender

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 LGBT 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** which orders the abuser to stop the violence. It might order the abuser to leave the home which you share, or to have no contact with you at all.

For more information about what to do if you are a victim of domestic violence, see the LAC pamphlet on the Combating of Domestic Violence Act (available at www.lac.org.na).



An individual in a violent same-sex relationship could use 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 which 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. You will need a lawyer to bring a civil action, which can make the process expensive.

Rape

Rape is “the intentional commission of a sexual act under coercive circumstances”. The Combating of Rape Act is gender-neutral and covers a wide range of sexual acts – including oral sex, anal sex and genital stimulation. This means that it protects men, women, girls and boys from all kinds of sexual abuse. The Combating of Immoral Practices Act provides additional protection for boys and girls under the age of 16 where there is sexual contact with someone more than three years older.

For more information about what to do if you are a victim of rape, see the LAC pamphlet on the Combating of Rape Act (available at www.lac.org.na).



Indecent assault

Indecent assault is when a person touches another person in an inappropriate way without consent – such as touching the genitals or other private parts of another person's body, or attempting to touch someone in this way, even through clothes. This crime covers forced sexual contact which is not rape. For example, it is not rape for a woman to touch another woman's breasts against her will, or for a man to force his tongue into another man's mouth. But these forms of forced sexual contact are indecent assault.

Assault

Assault is unlawfully and intentionally applying force to another person, or making another person afraid that they are in danger of being assaulted. You do not have to wait until the threatened violence actually takes place before laying a charge of assault.

Bullying

As in the case of domestic violence, violent bullying can be addressed through **criminal charges, peace orders, High Court interdicts or civil actions for damages**. If bullying occurs in the school setting, special codes of conduct apply.

The **General Rules of Conduct for Learners** say that all learners must respect the dignity, person and property of others, and that learners must not behave in a disgraceful, improper or indecent manner. The **Code of Conduct for the Teaching Service** says that teachers must not engage in romantic or sexual relations with learners, or sexually harass learners. It says that teachers must not humiliate or abuse learners physically, emotionally or psychologically, and that they must not do anything that will undermine the confidence and respect of any learner. Learners and teachers who violate these rules can be disciplined.

For more information, see the LAC comic titled **Promoting Safer Schools Through the School Codes of Conduct** (available at www.lac.org.na).



Being a victim of violence is difficult but you do have options.

You are right. I will not be a victim, I will be a survivor!



Hate speech

Hate speech is any form of communication that exposes a person or a group of people to hatred because of a particular attribute – such as race, religion, disability, ethnicity, gender, sex, sexual orientation or marital status.

The Constitution of Namibia protects freedom of speech and expression, but the Constitution also protects the rights to dignity, non-discrimination and privacy. These rights must be balanced.

Namibia has a law which forbids hate speech on the basis of race, but there is no law that specifically covers hate speech on the basis of sexual orientation or gender identity.

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 LGBT status.

You can also bring a court case claiming compensation for damages to your dignity, your reputation or your privacy because of hate speech.



Recommendations on police protection of LGBT individuals

Around the world, recommendations on protecting LGBT individuals from harm emphasise the need to sensitise law enforcement personnel. Police are expected to respond sensitively, conduct thorough investigations and prosecute wrongdoers.

Complaints about the Namibian Police

If you think that Nampol has not responded appropriately to your problem, speak to the Station Commander. If this does not produce satisfactory results, contact the Nampol Internal Investigations Directorate.

Nampol Internal Investigations Directorate
Attention: The Commanding Officer

- **BY HAND**
3rd Floor, National Police Headquarters,
corner Julius Nyerere Street and Jan Jonker Road,
Windhoek
- **OR BY POST**
Private Bag 12024, Ausspannplatz, Windhoek
- **OR BY TELEPHONE**
061-2093266 (direct line) or
061-2093111 (main switchboard)
- **OR BY FAX**
061-2093358



This pamphlet was prepared by the **Gender Research and Advocacy Project** of the Legal Assistance Centre in 2014.

Original production and printing funded by the **Government of the United States of America**.



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