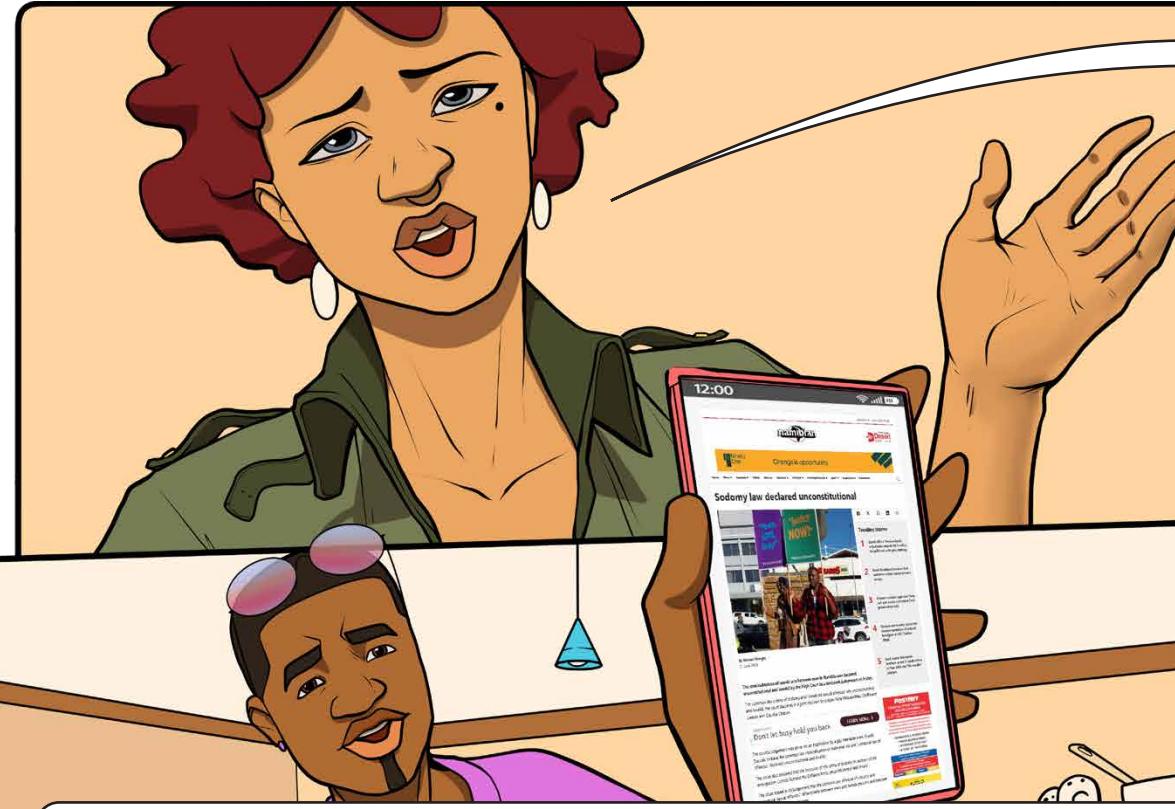


LGBTQI+ RIGHTS IN NAMIBIA

Navigating the current legal landscape as a same-sex couple





But what about our laws? Isn't it illegal to be gay in Namibia? Or to get married here as a gay person? Some people and cultures are against same-sex relationships. I know that my husband's family would say that being gay goes against their culture. My husband and I wouldn't know what to do if one of our boys was gay. Are you not concerned about your safety?

Historically, Namibian laws criminalised sodomy and consensual intercourse between men. However, in June 2024, the Namibian High Court ruled that these common law offences were unconstitutional and invalid. We are all Namibians. Being gay does not make me a lesser citizen than a person in an opposite-sex relationship. We are all equal before the law and my safety must be equally protected.



The High Court ruled on 21 June 2024 that the common law offences that criminalised consensual same-sex acts between men were in conflict with the Namibian Constitution, because they violated Article 10 which prohibits discrimination on the basis of sex, and also violated the constitutional rights to liberty, dignity and privacy (Articles 7, 8 and 13).



Unfortunately, the Court's decision was appealed right away. So now we have to wait for the Supreme Court to decide the fate of the law.

Wow. I really hope the Supreme Court agrees with the High Court! I don't know much about laws or courts or judgements, but I can imagine that no law must contradict the Constitution as the highest law of the country.



But I must say, you look so happy Sam! I was confused and worried at first, but it really seems like you are in love with John. Will it be possible for you to get married and start a family if the Supreme Court confirms the High Court ruling?

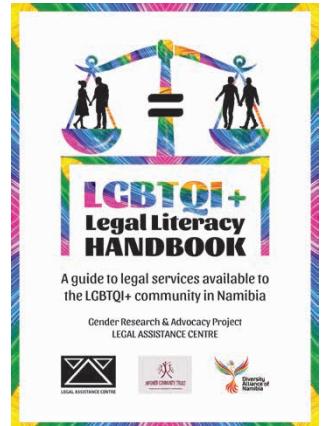
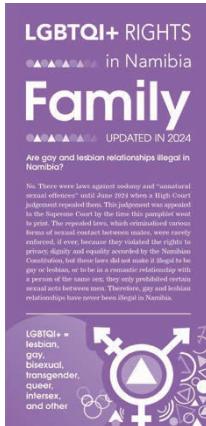
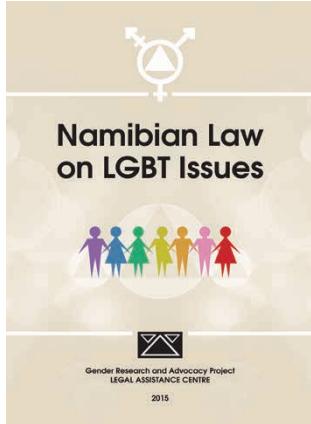
Maybe some day. But whichever way the Supreme Court rules in this case, it won't impact Namibian law on marriage.

Civil marriage in Namibia is currently restricted to heterosexual couples only.

In 2023, the Namibian Supreme Court ruled in a case involving a Namibian national and a non-Namibian national married outside of Namibia that their marriage must be recognised in Namibia for immigration purposes only. This case did not mean that gay couples could get married in Namibia, although many people confused the issues.

In 2024, a new law was passed, called the Marriage Act 14 of 2024. This law further restricts legal recognition for same-sex couples by defining marriage as "*a legal union entered into voluntarily between two persons of the opposite sex ...*" in every context. This conflicts with the Supreme Court ruling that same-sex marriages conducted outside of Namibia must be recognised for immigration purposes and may lead to further court cases clarifying the way forward on that issue.

OTHER LAC PUBLICATIONS ON LGBTQI+ RIGHTS IN NAMIBIA – PDFs available at www.lac.org.na



"Men and women of full age, without any limitation 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."

– Constitution of the Republic of Namibia, Article 14

It is important to understand, however, that Article 14(1) of our Constitution states that “men and women” have the right to marry. There have been questions from legal scholars about whether this means that marriage is valid only between a man and a woman, or whether it means that both men and women have the right to marry, irrespective of whom they chose to marry. I have hope that one day I might be able to get married in Namibia if the new Marriage Act is successfully challenged in court.

Activists around our country have been calling for equal treatment and equal rights for LGBTQI+ people, but there is still a long way to go in terms of the law and cultural norms that might make people view gay people as different or less deserving of human rights.



Later that night at John and Sam's house ...

I had a conversation with my old friend Regina today about our relationship and it got me thinking. Even though we can't get married, there must be some way to formalise our relationship, right?

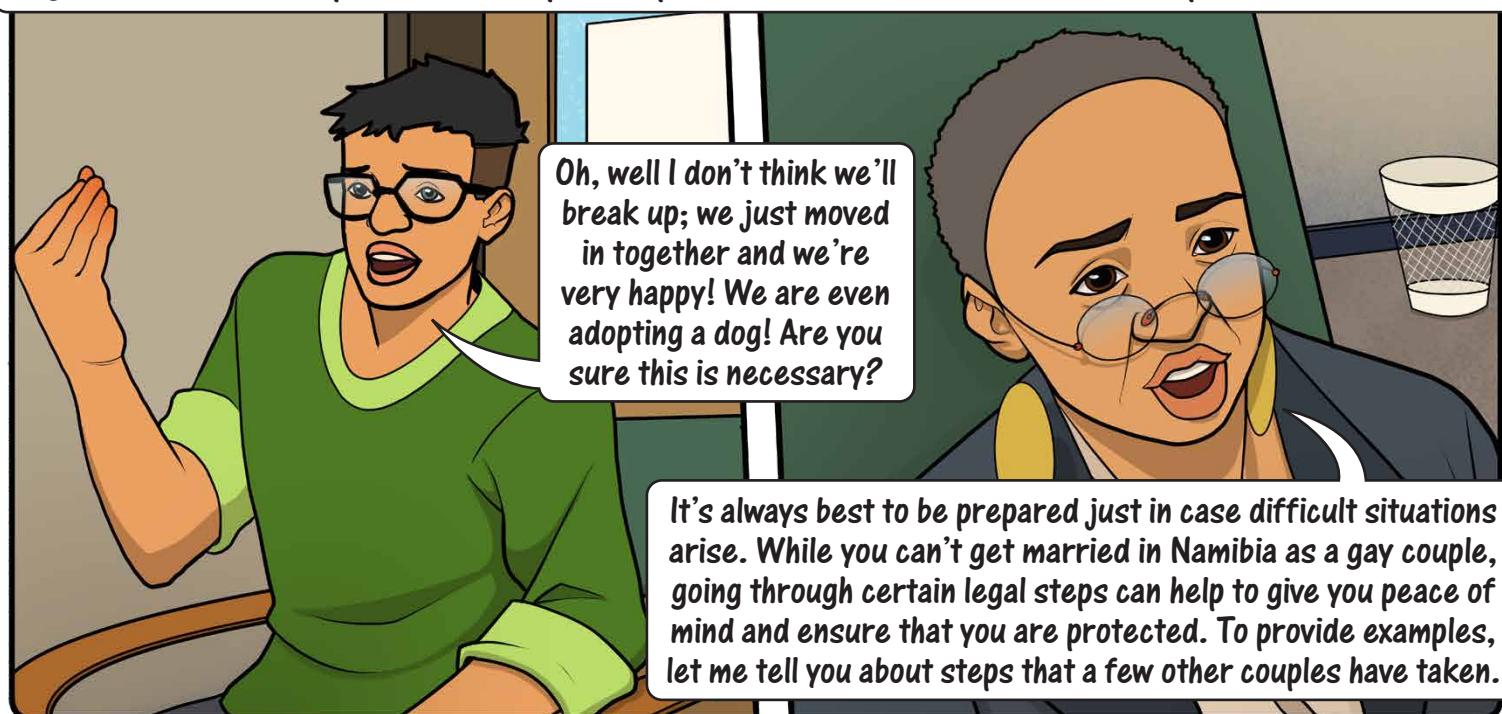


I have heard about some couples creating contracts. Maybe we should talk to a lawyer about what that could mean for us.

The next day in a lawyer's office ...



It is very good that you have come to ask about how you can best legally protect your relationship. Drawing up a contract and a will is a good option for couples in long-term relationships. Although these won't give you the same rights as a married couple, they can help you to protect your assets in case of a break-up or a death or illness.





Maria and Josephine are a lesbian couple who have been together for five years. Thomas is Maria's son from a previous relationship, but his father has not been involved in his life. Josephine helps with raising him and he sees her as his other mother. Maria knows that if something were ever to happen to her, she would want Josephine to be Thomas' legal guardian. So, she included Josephine in her will as Thomas' guardian and custodian in the event of her death.



Johan and Stephen have been in a committed relationship for over 10 years. Throughout their relationship, Johan has made significantly more money than Stephen and has paid for their house and cars. Although they do not anticipate breaking up, the couple created a contract specifying how they would divide the assets they have purchased together in the event of a break-up. This helps both of them to feel more confident about their financial security, no matter what happens in their relationship.



Jessica and Jane are a lesbian couple looking to buy an apartment together. I have advised them to put both of their names on any property documents, so that they both have rights and decision-making power regarding the property.

Wow! While I wish that John and I could get married, a contract seems like a good option in the meantime for us to protect our relationship, property and other assets.

Yes. It is a good option. While it won't give you full protection, it is a way to guarantee some formal recognition.

However, there are still other areas of Namibian law beyond marriage that do not guarantee equal protection for same-sex couples. It is important for you to know about these so that you can decide how best to help yourself using the legal protections available to you. For example, our Domestic Violence Act does not include same-sex couples. Did you know this?

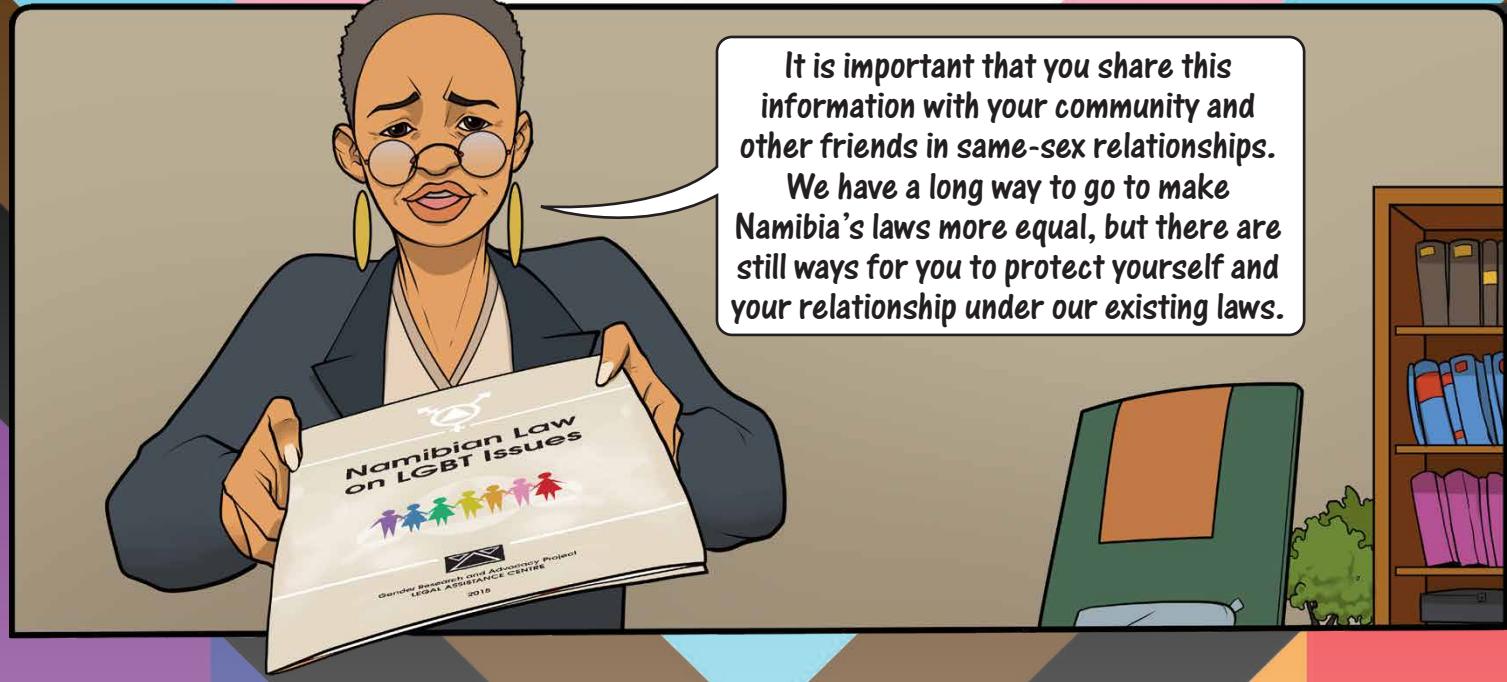
I did know this. Sadly, my cousin was in an abusive relationship with his boyfriend, and he found out that he couldn't apply for a protection order like someone experiencing abuse in a heterosexual relationship can do, because his relationship is not covered by the Domestic Violence Act. This means that same-sex couples don't have the same options as heterosexual couples have if there is abuse in the relationship.

I am very sorry that happened to your cousin. There is no good reason for the Domestic Violence Act to exclude same-sex relationships. But you must understand that there are still options for a person experiencing domestic violence in a same-sex relationship to seek legal protection. Here, take this information sheet.

WHAT TO DO TO PROTECT YOURSELF IN AN ABUSIVE SAME-SEX RELATIONSHIP

If you are experiencing any form of harassment or abuse in a same-sex relationship, you can pursue the following legal options to protect yourself:

- Lay a criminal charge such as assault or trespass.
- Apply to a Magistrate's Court for a peace order.
- Apply to the High Court for an interdict.
- Bring a civil action suit for compensation for damages.



If you have a comment or question about this comic, contact the Legal Assistance Centre:

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Concept: Sophia DeLuca
Illustrations, design and layout: Tafy Tang Arts and Perri Caplan
Project Supervision: Yolande Engelbrecht and Celine Engelbrecht
Funding: This publication was produced with financial support from Positive Vibes.
Printing: John Meinert Printing (Pty) Ltd
Publisher: Gender Research and Advocacy Project, Legal Assistance Centre, 2025

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