

Submission in the UPR review of Namibia

Legal and Statutory framework:

Namibia maintains a firm stand in upholding the human rights and fundamental freedoms of all citizens over 20 years of independence. Homosexuality per se is not illegal in Namibia, however anal sex between two males has been considered illegal under common law sodomy provisions inherited as part of the Roman-Dutch law by the time of Namibia's independence. The law is silent on consensual sex between two women.

Constitutional provisions guaranteed in chapter 3 clearly state:

Article 8 Respect for Human Dignity

- (1) The dignity of all persons shall be inviolable.
- (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
- (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment

Article 10 Equality and Freedom from Discrimination

- (1) All persons shall be equal before the law.
- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

Article 13 Privacy

- (1) No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.

Several cases of alleged sodomy have been reported and till this date no prosecution has been filed in the Namibian courts due to the controversy around the sodomy law.

Calls to repeal the punitive and discriminatory common law provision against sodomy that is silent on consensual sex between men and also silent on 'anal sex' amongst a man and women' had been advocated for as it is a infringement of rights of persons with different sexual orientation and sexual preference.

A working group on Removal and Elimination of Punitive and Discriminatory Health laws, policies, regulations and travel restriction facilitated through the UNAIDS office in Namibia is currently in progress to review and advocate for law reform and creating an enabling environment for all people.

As stated in a paper presented in 2000 by Dianne Hubbard of the Legal Assistance Centre "WHY THE LAW ON SODOMY SHOULD BE REPEALED" a legal discussion of the common law crime of sodomy. This presentation was done *in honour of Lesbian, Gay, Bisexual and Transgender Awareness Week*.

“The law on sodomy is seldom enforced with respect to consenting adults, but this does not mean that it sits benignly in the law books dying of disuse. It has been recently cited by prison officials in Namibia as a justification for refusing to provide condoms to prisoners to prevent the spread of HIV. The argument is that since consensual sodomy is illegal, providing condoms might make prison officials accessories to crime”.

Namibia’s new Combating of Rape Act covers a wide range of intimate sexual contact in circumstances that involve force or coercion, including oral sex, anal sex and genital stimulation between people of the same sex or different sexes. It protects children below the age of 14 against all such sexual activity, while the Combating of Immoral Practices Act gives additional protection to children up to age 16. So the common law crimes of sodomy and “unnatural sexual offences” are now relevant only to sexual acts between consenting adult men.

Provisions against sexual activity between consenting adults have been found to constitute a clear violation of international human rights law. Namibia is a signatory and a member of international human rights bodies which obligates the state to recognise and protect the diversity of all persons in its country.

Recommendations

We therefore recommend that the Human Rights Council, in its upcoming UPR review of Namibia, urge the Namibian legislature to bring its law into conformity with its international human rights obligations by repealing all punitive and discriminatory laws that criminalise sexual activity between consenting adults of same sex, and ensuring that any such laws are not used to criminalise consensual same-sex activity.

This information is submitted jointly by:

- **Pan Africa ILGA** brings together 41 lesbian, gay, bisexual, trans and intersex groups proceeding from all regions of Africa.
- **ARC International**, an NGO with a full-time presence in Geneva which engages with the UN Human Rights Council and related mechanisms to advance respect for human rights, including on the grounds of sexual orientation and gender identity.
- **ILGA** (International Lesbian, Gay, Bisexual, Trans and Intersex Association), a global association of over 600 lesbian, gay, bisexual, transgender and intersex (“LGBTI”) groups in over 110 countries.