

## RESEARCHED AND COMPILED BY THE REFUGEE DOCUMENTATION CENTRE OF IRELAND ON THE 15 MARCH 2024

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### DISCLAIMER

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### COI QUERY RESPONSE - NAMIBIA – TREATMENT OF HOMOSEXUALS IN NAMIBIA

In March 2024 *Impact News Service* reported that: “Namibia’s lower house of Parliament recently passed a bill that bans same-sex marriages. And in Kenya, a bill before Parliament seeks to ban gay relationships, same-sex unions and LGBTQ activities and campaigns. In all instances, the bills propose harsh prison sentences and hefty fines.”<sup>1</sup>

The *UK Foreign Office* in February 2024 notes that: “Conservative attitudes towards LGBT+ individuals remain, especially in rural regions. Showing affection in public may result in unwanted attention.”<sup>2</sup>

In February 2024 *Institute for Public Policy Research, House of Democracy* mentioned that: “According to LGBTQI+ activists, attacks and incidents of harassment have escalated in the aftermath of the Namibian Supreme Court's ruling on 16 May 2023 that same-sex marriages concluded lawfully outside the country have to be recognised by Namibian authorities, after the Ministry of Home Affairs had refused to recognise two same-sex unions entered into in other countries where same-sex marriages are legal.” [...]”<sup>3</sup>

A report issued by *Amnesty International* in January 2024 states that: “LGBTI persons continue to face discrimination, harassment, and the looming threat of regressive legislation.”<sup>4</sup>

The *Southern Africa Litigation Centre (SALC)* in October 2023 reported that: “In August 2017, Daniel Digashu, a South African citizen and Johann Potgieter, a Namibian citizen, approached the High Court of Namibia after the Ministry of Home Affairs and Immigration denied Digashu, a South African citizen, a work permit based on their same-sex marital status. Similarly, Namibian-born

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<sup>1</sup> Impact News Service (5 March 2024) IAS statement: Upsurge in anti-gay laws across Africa threatens the HIV response

<sup>2</sup> UK Foreign Office (13 February 2024) Namibia travel advice (February 2024)

<sup>3</sup> Institute for Public Policy Research, House of Democracy (5 February 2024) Namibia: The NGO Report To the UN Human Rights Committee, 140th Session (Civil society's responses to the list of issues)

<sup>4</sup> Amnesty International (9 January 2024) We are facing extinction: Escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries [Namibia excerpt]

Anete Seiler and German-born Anita Seiler-Lilles approached the High Court of Namibia after Anita was denied permanent residence based on their marital status.”<sup>5</sup>

The same document notes that: “The High Court, comprised of three judges, dismissed their applications. The High Court held that the Constitution of Namibia prohibited discrimination based on sexual orientation; however, it could not grant the couples' applications because of a 2001 judgement by the Supreme Court of Namibia in *Immigration Selection Board v Frank*, which refused to recognise the rights of same-sex partners under the Immigration Act. The High Court criticised the discrimination that was levelled at the Applicants and the earlier judgement of the Supreme Court; however, it felt bound by the Supreme Court decision.”<sup>6</sup>

“The Supreme Court of Namibia's landmark decision to support the right to dignity for same-sex couples was a significant moment in the ongoing battle for equal rights. The Supreme Court held that denying the recognition of the Digashu and Seiler-Lilles' respective marriages violated the right to human dignity. The court stated that the Constitution of Namibia guarantees the right to dignity to its people and does not exclude based on one's sexual orientation, gender identity and expression. The court added that the fact that this is outlined in Article 8 of the Constitution meant that it is constitutionally binding and relates to the protection of other rights.”<sup>7</sup>

“Namibia still criminalises consensual same-sex sexual activities between people of the same gender in terms of its Roman-Dutch common law, with the Criminal Procedure Act outlining procedures for punishment, although such prosecutions are rare.”<sup>8</sup>

The *US Department of State Country Reports on Human Rights Practices in March 2023* points out that: “Violence against LGBTQI+ Persons: Despite progress in the lesbian, gay, bisexual, transgender, queer, or intersex persons (LGBTQI+) human rights movement, widespread discrimination in access to judicial, health, and social services continued. Assaults on LGBTQI+ persons were underreported due to fear of official discrimination and potential legal consequences.”<sup>9</sup>

This report also mentioned that: “In January an LGBTQI+ rape survivor alleged discrimination by police and health-care providers, citing denied services in his attempt to report an assault and receive appropriate medical attention. In 2021 the High Court ruled in favor of a transgender woman who in 2018 sued the Ministry of Safety and Security for police physical abuse and awarded her 58,742 Namibian dollars (\$3,400). Also in 2021, a transgender comedienne was attacked by a security guard who demanded that she present herself as a male.”<sup>10</sup>

“A study released during the year found that some gender-nonconforming students were bullied or isolated in schools.”<sup>11</sup>

“Restrictions of Freedom of Expression, Association, or Peaceful Assembly: LGBTQI+ persons and organizations enjoyed freedom of expression, association, and were not restricted from holding events, including a week-long Pride festival featuring a parade and a beauty contest.”<sup>12</sup>

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<sup>5</sup> Southern Africa Litigation Centre (SALC) (5 October 2023) Analysing the case of Digashu and Others v Government of the Republic of Namibia, *Seiler-Lilles v Government of the Republic of Namibia*

<sup>6</sup> *ibid*

<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> US Department of State (20 March 2023) 2022 Country Report on Human Rights Practices: Namibia

<sup>10</sup> *ibid*

<sup>11</sup> *ibid*

<sup>12</sup> *ibid*

The *US Overseas Security Advisory Council (OSAC)* in August 2022 states that: “Discrimination based on LGBTI+ sexual orientation is common, and many Namibians consider all same-sex sexual activity taboo. The law does not protect the LGBTI+ community from discrimination. Although same-sex sexual activity between men is illegal in Namibia, authorities have never charged anyone with breaking the law. Same-sex sexual activity between women is not illegal. LGBTI+ groups have conducted annual pride parades recognized by the government as constitutionally protected peaceful assembly.”<sup>13</sup>

This document also notes that: “LGBTI+ persons face harassment when trying to access public services. There have been isolated reports of transgender persons being harassed or assaulted.”<sup>14</sup>

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