

**The pursuit of
happiness:
Re-claiming our rights on the
road to decriminalisation,
and beyond**

**The Convening Report –
6-9 February 2018**

‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace;

Whereas the said rights include the right of the individual to life, liberty and the pursuit of happiness...’ –

Preamble of the Constitution of the Republic of Namibia

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FOREWORD

“Whereas recognition of the inherent dignity and of the inalienable rights of all members of the human Family is indispensable for freedom, justice and peace...” – Preamble, Constitution of Namibia.

For too long, the LGBT movement has worked in silos and been driven by external factors governing programming parameters and has been limited due to the lack of social and legal protections for LGBT in country. However, the preamble of our constitution cements our inherent rights and fundamental freedoms as Namibians. It is this premise that allowed for the strategic visioning of a movement that is built on shared principles, drive and vision, with a foundation rooted in human rights.

The Diversity Alliance of Namibia (DAN) came into being in 2017. The DAN is a collective of organisations representing sexual and gender minorities in Namibia, drawn from SOGIESC¹, feminist and sex work sectors to create a unified response to advancing human rights and strengthening advocacy. The primary aim of the alliance is movement-building, achieved through setting a common agenda and building the capacities of members within the alliance to contribute meaningfully and effectively to that agenda.

At present (2018), the DAN includes the following organisations, represented by their respective Executive Directors: *Rights not Rescue Trust* (RnRT); *Tulinam*; *Young Feminist Movement of Namibia* (Y-FEM); *Out-Right Namibia* (ORN); *Wings to Transcend Namibia* (WTTN); *Transgender Intersex and Androgynous Movement of Namibia* (TIAMON); *Rights for all Movement* (RAM); *Rural Dialogue Namibia*; *MPower Community Trust*; *Voice of Hope Trust* (VHT). The Alliance has elected Tulinam and RnRT as chair and vice-chair, respectively, and ORN as a secretariat and coordinating mechanism.

The DAN is also an aspiration, the first steps in a vision for a networked human rights community, seeking to include and incorporate other organisations working with and led by sexual and gender minorities across the country, as it matures and expands. The “Road to Recognition” convening is the first endeavor of the DAN to present this vision with other like-minded partners.

Why decriminalisation of same sex conduct as that first step? *The Global Convening on Strategies Towards Decriminalisation of same-sex conduct* that took place in Swakopmund, Namibia in May 2017 provided activists the opportunity to consider factors relating to and approaches for decriminalisation on a global scale with peers from around the world, and – through a subsequent one-day National Stakeholders meeting – the opportunity to reflect on relevance and implications of that agenda for sexual and gender minorities in Namibia.

The DAN recognized that decriminalisation of same-sex conduct could potentially present the young Alliance with an important opportunity to set a human rights agenda in motion and provide a focus around which the DAN might coordinate its ambitions. Additional consultations, however, would be needed to interrogate the issue within the Namibian context, to expand the range of stakeholders and community members actively engaged with the topic, and to test will and consensus.

This report covers the process of the four-day multi-stakeholder interrogative process convened by the DAN, 6-9 February 2018. It is the sincere wish of DAN that this report sparks your interest in becoming involved in the larger movement and walk in solidarity with some of the most marginalized groups in Namibia.

Madelene Isaacks
Tulinam Director
DAN Chairperson

¹ SOGIESC: *sexual orientation, gender identity and expression, and sex characteristics*

A PIVOTAL GATHERING

From 6th to 9th February 2018, the leadership of the LGBTI community in Namibia, together with their key allies and technical partners, gathered in Windhoek to discuss taking steps on the road towards decriminalisation. Convened by the Diversity Alliance of Namibia (DAN), this was a pivotal moment in the history of the LGBTI movement, as it marked one of the first collective steps taken in reclaiming the fundamental freedoms and human rights enshrined in the constitution of Namibia. The event set out to propose a collective vision for a future Namibia where LGBTI people are recognised as equal in society, and under the law. And, specifically, where decriminalisation of consensual, same-sex practices is a substantial, strategic step towards realizing this long-term vision.

The Consultation sought endorsement from those gathered to pursue a decriminalisation agenda, based on sound common understanding of what it means, what action it might entail, and what the consequences might be for those most directly impacted. Days One and Two of the convening unpacked the technical and practical understanding of decriminalisation, enabling stakeholders to increase their overall decriminalisation literacy. Day Three considered the safety and security implications and considerations of taking action in the direction of decriminalisation. Day Four sought endorsement and mandate as well as agreement on first steps for implementation.

This report sets out to tell the story of the gathering through the voices of 42 participants and to document how the group collectively arrived at the set of ideas which will form the foundation for Namibia’s LGBTI agenda for decriminalisation and beyond. While the process was complex and at times uncomfortable, the focus was on our common humanity, which grounded the dialogue in love.

CONVENING STRUCTURE

Argument 1: That the criminalisation of same-sex conduct (specifically, between two men) is contrary to the Namibian Constitution that protects rights and freedoms, including the right to dignity, the protection of liberty, freedom from cruel and degrading treatment, the rights to equality and non-discrimination, and privacy of the home.

Argument 2: That the criminalisation of same-sex conduct (specifically, between two men) is contrary to international law that has been incorporated into Namibian law.

Aims	Outcomes
1. To provide a point of connection for the LGBT constituency and its allies that contributes to strengthening relationship, trust, vision, direction, confidence and solidarity.	1. The LGBT community and its allies have a basic understanding of the law that criminalises same-sex conduct, the arguments for decriminalisation, and potential strategies for and implications of pursuing that goal.
2. To strengthen the role and focus of the Diversity Alliance of Namibia around an agenda and mandate.	2. Participants at the consultative meeting express an informed in-principle agreement to pursue a decriminalisation trajectory in Namibia.
3. To propose a vision for achieving Decriminalisation of same-sex conduct in Namibia, and test interest and will within the constituency.	3. The DAN receives a mandate from those stakeholders represented at the meeting to further develop a Strategy and Action Plan.
4. To look at the LGBTI and Sex worker agenda , beyond decriminalisation.	4. Participants contribute broadly towards the content/elements that should comprise a Strategy and Action Plan , including major progress milestones, guidelines for communication and accountability.
5. To explore all possible scenarios and risks involved in the road to full recognition and discuss possible mitigating strategies .	5. Safety and security risk assessment and plan

BACKGROUND

The Global Convening on Strategies Towards Decriminalisation of Homosexuality, held in Swakopmund, Namibia from 9-11 May 2017, afforded Namibian LGBTI activists an opportunity to consider factors relating to and approaches for decriminalisation through a one-day Stakeholders' Convening, held on 12 May 2017.

The Stakeholders convening was led by Positive Vibes Trust (PV), in collaboration with local partners Out-Right Namibia (ORN), the Diversity Alliance of Namibia (DAN) and Lifeline/ChildLine, and with support from the European Union (EU) and Open Society Foundation (OSF). The Convening brought together thirty-one (31) local activists, government and legal representatives, including some from the global convening, to share their specific country experiences for learning and to assess the readiness of Namibia to start down the path of decriminalisation.

Six 'takeaways' stood out from the presentations and subsequent delegate reflections, that suggest Namibia is not waiting to start; it is already on the journey:

- Human rights violations are currently documented to increase our evidence base;
- HIV/health is an entry point to get on the table with a human rights agenda, and engage with law and policy;
- KP, including LGBT populations groups are, imperfectly, acknowledged in health strategies as being present in society and with a right to services;
- Advocates have been engaging in advocacy for a better enabling environment to access healthcare;
- Advocates have been doing community mobilisation for a long time, through awareness/social events and by addressing family attitudes and perceptions;
- The establishment of DAN, with co-chairs and a coordinating body (network of 10 LGBTI organisations).

The stakeholders also realised that additional consultative processes were needed before final decisions were made with regards to the decriminalisation agenda. Hence, the planning and implementation of the "Road to Recognition" convening, 6-9 February 2018.

SETTING THE FOUNDATION

To set the tone and provide a point of convergence, the meeting opened with powerful footage from the #WeAreOne campaign. Initiated in July 2017, the campaign celebrates the lived experience of LGBT persons in Namibia and challenges 'othering' by emphasising humanity above sexual orientation, gender identity and expression. This core message of humanity, togetherness and ubuntu, provided the foundation for the four-day proceedings.

"Why must marginalized and key populations always have to fight for recognition? Are they not human beings born free and equal in dignity & rights?"

These were the words of Namibia's Ombudsman, Advocate John Walters, long-time ally of Namibia's LGBTI movement, who gave the official opening. Considering the sodomy law and other laws based on same-sex behavior were obsolete, the Ombudsman was of the opinion that that these laws have no place in a democratic, secular society. Quoting a SADC Parliamentary Forum member from Malawi: "SADC member states should spend less time trying to find out what goes on in bedrooms". The Ombudsman also questioned the hyper-sexualization of sexual and gender minorities by others. These sentiments were shared by EU ambassador to Namibia, her excellency, Jana Hyboskova, who questioned: "Why do we immediately think about bedrooms when we hear the words lesbian, gay or

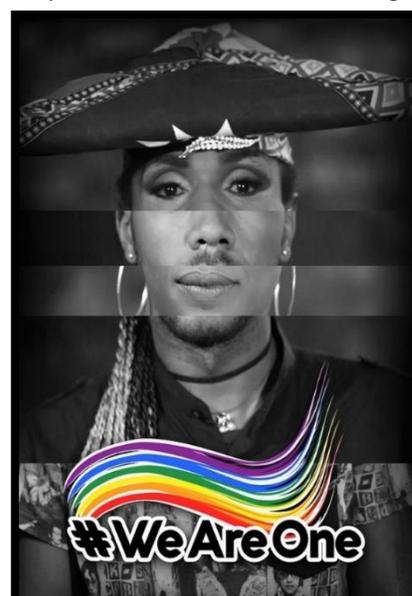


Figure 1: #WeAreOne campaign poster

bi-sexual?”. Ms. Hyboskova suggested a second mind-switch towards inclusivity within diversity. *“We need to recognize that we are different but equal”*.

The Ombudsman was of the opinion that, given the prevailing political environment and societal norms and attitudes, the placement of a moratorium on the prosecution of sodomy by the attorney general, might provide the best interim solution. This was contested by her Excellency, Jana Hyboskova, EU ambassador to Namibia, in her address: *“You need to persuade me that moratorium is the right way to go. In other countries and in my experience, this has slowed down the process”*. Rather, she advocated for the speeding up of efforts towards the decriminalisation of the sodomy law.

Furthermore, she stressed the importance of accountability and proactive responses at national level as key ingredients in establishing trust within societies. *“Happiness comes from trust in institutions”*: This was a conclusion drawn from the global happiness index, where countries such as Sweden, Denmark and New Zealand identified such trust as an important factor of happiness. She called for a mind-switch - for Namibians to look to a future where we are able to *“trust [y]our country like [y]our family”*, that our institutions will *“protect and not punish you”*. She further urged LGBTI leaders to take on a broader human rights stance, to *“join forces”* and *“become partners in our advocacy”*.

Ms. Yvonne Dausab, Chairperson of the Law Reform and Development Commission, urged the activists present to revisit the rhetoric employed in redressing homo- and transphobic discourse: *“When you look at the word ‘recognition’ and what is written underneath, it makes me feel like the LGBTI community is invisible”*. She advised that we redefine our narrative and *“reclaim”* our fundamental human rights and constitutional freedoms, which are guaranteed for all Namibians. Ms. Dausab’s words struck a chord with the gathering and became a thread for the discourse.

“You have human rights because you are human”

- Yvonne Dausab, Law Reform and Development commission chairperson

Some opportunities identified during the opening statements:

- Substantive involvement in the planned Ombudsman’s Conference on abortion, rights of sex workers and LGBTI people.
- The European Instrument for Democracy and Human Rights (EIDHR for 2018/19), which will focus on social and economic rights, GBV & teenage pregnancy and cultural rights of minorities. The EU will also be convening their annual dialogue with government partners in June/July of this year; her excellency Ms. Hyboskova requested contributions from civil society towards this event and undertook to raise the outcomes of this gathering.
- Participation in the activities of the LRDC e.g. serving on the Commission’s working committees in order to influence bills and contribute to the work on obsolete laws.

A FOCUS OF THE DAN

“We are here today for such historical deliberations... we are making history and creating moments in the LGBTI story.... a turning point. Let’s grab this opportunity by both its balls and be the change we want to see in Namibia”

- Madelene Isaacks, DAN chair

Madelene Isaacks, DAN chairperson and Tulinam director, defined the compelling purpose of the gathering as *“finding common cause - something which can pull us all together and propel us forward”*, urging us to focus on movement building by identifying what unites us rather than our differences. Outlining the history of the DAN, as an endeavor by sexual and gender minority-focused organisations to collectively advance the redress of laws which criminalize and affect LGBT persons in the country, Ms. Isaacks described the developments which had led to this moment – the Swakopmund Convening, the

key meetings in March and June 2017 to outline strategy, as well as the individual accomplishments of the movement thus far.

Deyonce Naris, transactivist and director of Trans, Intersex, Androgynous Movement of Namibia (TIAMON), during her address, called for collective activism, and provided an overview on the rationale of the convening: to recognize the diversity of all human beings; share the vision of DAN; consensus building on priority areas; and to collectively decide on the most effective strategies to redress the impact of discriminatory laws and practices, with a particular emphasis on the impact on the realization of social and economic rights for sexual and gender minorities.

“How can I get a job; how can I sustain myself? In the back of your head you have the feeling it’s illegal to be who you are.”

“Is it to scrap the laws or have a moratorium?” Do we take it to court? Do we have a safety net? I am appealing to all of you to help us with the struggle”.

In sharing what brought delegates to the convening: their ambitions, contributions, drive and purpose, the overwhelming thread was our common humanity. Below follow some delegate responses:

“We are here because we love people”

“I was inspired by a young man who introduced himself as a young man from Khorixas and a Namibian. I am gay or heterosexual was not part of the introduction”.

“It’s so easy to talk about organisations. But it is about individuals”.

“My sexuality does not define who I am. I am a passionate, caring, loving, understandable person”

“Bonding over the necessity to have a hair dryer. The daily issues connect us and make us human”.

“People start in a particular place but they have a dream which takes them to bigger places. This week is about figuring out how to keep the dream alive. Not only lofty. Also mundane in the ordinary life we are living”.

“I bring experiences, challenges and pain”.

“Our Government contradicts itself. Provides condoms and if you do the act, they can lock you up”.

THE LEGAL LANDSCAPE – EXPERT PERSPECTIVES

National perspectives – Legal Assistance Centre’s perspective

“The Legal Assistance Centre stands against discrimination and would be prepared to assist with a Constitutional challenge to the laws of sodomy and unnatural sexual offences” – Dianne Hubbard, Legal Assistance Centre

In order to make informed and strategic choices, it was important for the gathering to understand the main legal arguments, experiences and opportunities from the local, regional and global perspectives.

The Namibian legal landscape was presented by Dianne Hubbard of the LAC, a key ally and legal knowledge broker for the LGBTI community.

Issues for Consideration

- ❖ Homosexuality itself is not illegal. The common law crime of sodomy now only applies to consensual anal intercourse between males. Other aspects have fallen away.
- ❖ Non-consensual acts and sexual acts with children are well covered in other gender-neutral laws.
- ❖ Although records are poor, there are occasional arrests for consensual sex between males, so the law has not fallen completely into disuse.
- ❖ Sodomy (though not unnatural sexual offenses) is a Schedule 1 crime in the Criminal Procedure Act, alongside crimes such as murder, treason and rape – which authorises police to make arrests without a warrant and to use deadly force. These provisions are highly disproportionate and could be challenged as unconstitutional.
- ❖ The law on sodomy is used as a justification for refusing to provide condoms in prison.
- ❖ What remains of the law on sodomy could be struck out, without the need to write a new law. However, evidence such as statements made in the Universal Periodic Reviews of 2011 and 2016, suggests that any law reform through Parliament is ‘unlikely’.

Options

Appealing to the **Attorney General to approach the Supreme Court** for an opinion on the constitutionality of the laws on sodomy and unnatural sexual offences (as was done for corporal punishment by government bodies in 1990). However, there is only one chance for success as there is no higher court to appeal to. (NB: This choice appears less favourable after the Cabinet reshuffle, which replaced the Attorney General.)

Private litigant brings a case to the High Court. An organisation cannot bring a case, but multiple litigants can join and there is possibility of appeal to the Supreme Court. However, Namibia’s laws on standing are restrictive, the impact on and potential risk to the individual are significant and the process can be very lengthy.

Some advice

- ❖ Low hanging fruit would be to remove sodomy from Schedule 1 of the Criminal Procedure Act.
- ❖ Base legal arguments on the language in the Constitution – e.g. right to equality, privacy and dignity.
- ❖ Refer to Article 144 of Namibia’s Constitution which provides that customary international law and agreements binding upon Namibia form part of Namibia’s law.
- ❖ Refer to favourable regional and global opinions and agreements, such as the 1999 opinion of the South African Constitutional Court, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social & Cultural Rights and the African Charter on Human and Peoples’ Rights.
- ❖ There may be other incremental cases that would be more strategic. For example, we can ‘test the waters’ with an ‘easier case’, through challenging discrimination in the Combating of Domestic Violence Act, whereby protection orders are not available in cases of same-sex relationships. The climate on combatting domestic violence is conducive. Sympathetic statements could arise which would support a sodomy case in future.
- ❖ There are currently two pending cases involving LGBT persons in country - one is focused on immigration/residency and marriage recognition rights and the other is a civil suit against a restaurateur and the police. We have to consider the course of the two pending cases. Even though they focus on immigration and family rights respectively and do not address sodomy directly, they might prove useful statements to support a future court challenge to the law on sodomy.
- ❖ Challenge the notion of negative ‘public opinion’ as a reason for denying rights and protection. In Namibia public opinion has become synonymous with values, which is inappropriate.
- ❖ Consider a small-scale public opinion survey as a pilot. Public polls/surveys can prove very unhelpful if not done properly and comprehensively, with the right expertise in order to elicit good and accurate results. Fundamentally, the questions you ask are actually the most important thing.
- ❖ When bringing a decrim case, you have to be strategic and consider the strongest and most comprehensive arguments.
- ❖ Judicial training/sensitisation on SOGIE issues may assist with preparing the groundwork for litigation but would be most effective if done by other judges (regional/international).

Regional perspectives –of Southern African Litigation Centre’s perspective

“The Road to decriminalisation is a very long process. The very first part of the journey is community consultation. Decriminalisation is the end result” – Tashwill Esterhuizen, Southern African Litigation Centre

Tashwill Esterhuizen of the Southern African Litigation Centre (SALC) talked through the strategic litigation developments in Southern Africa which can serve to guide and inspire Namibia’s strategies. His presentation can be found at: http://prezi.com/bb8hvaumgzjj/?utm_campaign=share&utm_medium=copy

Regional advances:

- In **Zambia**, a person arrested for same-sex sexual acts was acquitted after the defense successfully refuted medical evidence.
- In **Zambia**, the court held that public debate on the rights of LGBT persons is not prohibited just because same-sex sexual acts are criminalized.
- Success in **Zimbabwe**, where a trans woman won her case to use a female bathroom.
- Litigation in **Botswana** is particularly relevant to and carefully watched by Namibia. LEGABIBO² challenged in Botswana was concerned with the registration of LGBT organisations, which ultimately became a constitutional issue. Freedom of association was upheld with important statements made by the court. These include:



Figure 2: LEGABIBO following successful ruling on registration of LGBT organisations

“As a society, once we recognise that persons who are gay, lesbian, bisexual, transgender or intersex are human beings.... we must accord them the human rights which are guaranteed by the Constitution to all persons, by virtue of their being human, in order to protect their dignity”

“Members of the gay, lesbian and transgender community, although no doubt a small minority, and unacceptable to some on religious or other grounds, form part of the rich diversity of any nation and are fully entitled in Botswana, as in any other progressing state, to be constitutional protection of their dignity.”

Some advice:

- ❖ “Build evidence, document violations, engage with government, test the waters”.
- ❖ “Homosexuality is not a crime, though sodomy is. This gives space for activists”
- ❖ Work with relatable issues. “The race example is very powerful in South Africa. Domestic violence is relatable”.
- ❖ “Target soft laws before decriminalisation of sodomy. If you go to courts and decriminalisation is the first thing you do and you fail, that is the end of decriminalisation for at least 10 years.”
- ❖ “Litigation and activism go hand in hand”.
- ❖ “We shouldn’t allow the fact that money is coming from the global north to dissuade us from the changes we want to make.

² LEGABIBO - The Lesbians, Gays & Bisexuals of Botswana is a Botswana human rights advocacy group with the primary objective of seeking legal and social rights for the LGBT community in Botswana. It is the first LGBT focused organization to be registered in Botswana after years of official opposition.

International perspectives – Human Dignity Trust’s perspective

“2018 is likely to be a monumental year on Decrim” -- Victoria Barnes from the Human Dignity Trust

Victoria Barnes from the Human Dignity Trust (HDT) brought persuasive global perspectives from HDT’s experiences around the world.

Opening remarks

Context and the legal situation domestically is critical to understanding what is possible. However, lessons and learning from across the world on decriminalisation litigation is important. Cases on decriminalisation have a regional and global impact and it is important to be aware of this interconnectedness. Courts and judges do not operate in a vacuum - many of them are aware of what is developing outside their national borders - decisions of other courts have persuasive value. In addition, this wealth of experience from across of world can be drawn on and confidence taken from these experiences.

49 countries have decriminalized in the last 30 years and a number of successful legal challenges have brought about change. Decrim Litigation is on-going in numerous countries across the world and several cases are likely to be determined this year (Botswana, Trinidad & Tobago, Kenya, India (appeal) and Belize (appeal)).

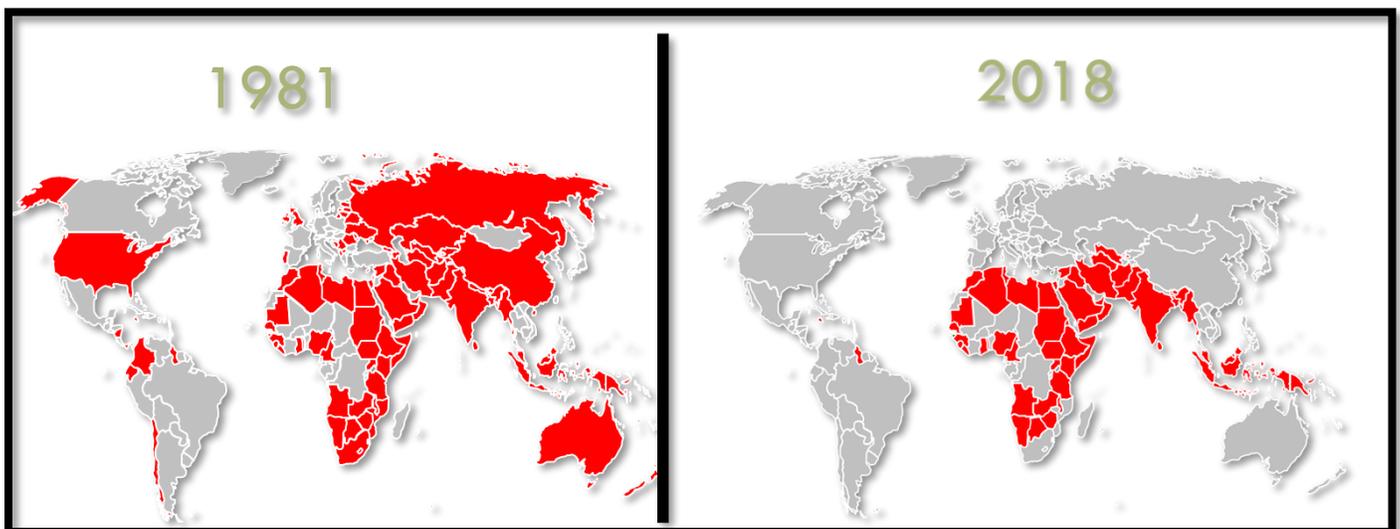


Figure 3: International country-level progress wrt decriminalisation of sodomy

Some international developments

While there have been setbacks, many countries have successfully decriminalised consensual same-sex sexual acts through the use of litigation. What this shows is that strategic litigation has been an invaluable tool in achieving change on the issue of criminalisation. Importantly, even in those places where litigation proved unsuccessful, it has not always been the end of the line (for example, we are now seeing the issue coming before the courts again in Botswana and the Supreme Court relooking at the issue in India). In addition, the process of litigation itself (even if ultimately unsuccessful) can generate and support progress. It can help movement/capacity building and place important issues in the public domain.

“You can be unsuccessful in litigation, but in the process, much can be achieved” – Victoria Barnes, Human Dignity Trust

With issues in the public domain, there are opportunities for advocacy and public communication. Cases can take a long time, but “the momentum you can generate in that time can effect a significant amount of progress.”

Below follows an overview of litigation progress:

Successful challenges	Setbacks	Ongoing cases
United Kingdom (N. Ireland) Ireland Australia (Tasmania) South Africa Ecuador Nepal Fiji United States Cyprus Turkish Republic of N. Cyprus - * Case filed before the ECHR. Offending provisions repealed Belize (under appeal)	India Singapore Zimbabwe Botswana	India (curative review and new challenge) Jamaica Belize Malawi Kenya Trinidad & Tobago Botswana

Kenya example

An example of an **incremental approach** to decriminalisation through litigation. Founded in 2012, NGLHRC (National Gay and Lesbian Human Rights Commission – an Kenyan LGBTIQ organisation) began its work by conducting a nine-month study to understand the needs and priorities of the LGBTIQ community. Their study found that current punitive criminal laws in Kenya against expressions of same sex intimacy were a major barrier to equality. In effect, these laws convey to Kenyan society that LGBTIQ persons "are criminals," and should be treated "as you would a criminal." This has allowed for ongoing and unfettered discrimination of the community.

NGLHRC's mission is **to promote and protect the equality and inclusion of LGBTIQ individuals and communities in Kenya and advance their meaningful participation in society**. As part of that mission, one of NGLHRC's key objectives is to achieve policy and legal reforms towards equality and full inclusion of sexual and gender minorities through strategic litigation.

Building on Kenya's 2010 Constitution, NGLHRC has engaged in incremental litigation to make the case that the new Kenyan constitution (2010) protects all citizens in Kenya regardless of their sexual orientation and gender identity.

- The first case:
 - 2013 – The first case involved challenging the refusal to register NGLHRC as a non-governmental organisation, which had been denied by the NGO Board of Kenya. In April 2015, a three-judge bench of the Constitutional Division of the High Court in Nairobi unanimously ruled that sexual orientation is a protected ground of discrimination in the constitution of Kenya and ordered that NGLHRC be registered. The court further found that the LGBTIQ community are persons guaranteed of equal constitutional protection like every other Kenyan. The Board has since appealed this ruling and the appeal will be heard this year.
 - Sept 2015 – NGLHRC supported a challenge to the use of forced anal and HIV testing as a means to prove that offences of same sex sexual relations had been committed. This was not a case that was planned but it is a very important one given the prevalence of this sort of practice across the criminalizing world. It was a reaction to the treatment of two individuals – an example of how a litigation strategy must be flexible as you are unable to engine and control developments around you. The High Court of Mombasa upheld the legality of these procedures in June 2016, in an extremely conservative and wholly erroneous judgment. NGLHRC is supporting the appeal of this decision, which was heard in February of this year. This case has just succeeded on appeal, March 22, 2018. See <https://www.iol.co.za/news/africa/anal-homosexuality-tests-illegal-kenyan-court-finds-13984226> and

<https://www.timeslive.co.za/news/africa/2018-03-23-rare-win-for-gay-rights-as-kenya-court-rules-forced-anal-tests-illegal/>

- April 2016 – Building on the success of the registration case (and the important judicial findings in that case – see below), Eric Gitari (Executive Director of NGLHRC – presently on sabbatical) launched a challenge against sections 162 (a) and (c), 163 and 165 of the Penal Code of Kenya which outlaw 'carnal knowledge against the order of nature and indecent acts between males whether in public or private'. A parallel petition was filed by GALCK (Gay and Lesbian Coalition of Kenya) and both cases are being heard together. N.B. The decrim case was heard in February and a decision is likely this year.

In the registration case, a number of statements were made that make the case for decriminalisation:

“We must emphasize... that no matter how strongly held moral and religious beliefs may be, they cannot be a basis for limiting rights.”

“In Kenya, the Constitution is supreme The state... cannot rely on religious texts or its views of what the moral and religious convictions of Kenyans are to justify the limitation of a right... The Constitution is to protect those with unpopular views, minorities.”

Belize example

A regional assessment of the constitutional validity of Caribbean legislation criminalizing consensual adult same sex relations identified Belize as the best place for strategic litigation of this type. After extensive community consultations (nationally and regionally), a claimant (Caleb Orozco) and his organization (UNIBAM) was identified. International groups (The Human Dignity Trust, The International Commission of Jurists, and the Commonwealth Lawyers Association) intervened as interested parties to support Caleb and UNIBAM. The case was filed in 2010, the hearing was heard in 2013 and **successful judgement came in 2016** – a very lengthy first instance process. Evidence on the health (HIV/AIDS) and other impacts of criminalisation was critical. The importance of having a resilient claimant with community and family support was prominent in Belize. Church groups were the main opposition, and they initiated a very fervent campaign in the lead up to and during the hearing in 2013. Those groups have since fallen away and in March 2018 the final church group, the Catholic Church of Belize, withdrew from the appeal. The Government is appealing on limited grounds, but the AG may also be persuaded to withdraw the appeal in light of the fact that the Government accepts decriminalisation.

Interestingly, the litigation in Belize took place in **tandem with legal reforms** (major changes to the country's sexual offences to enhance the protection of women and children, providing for greater gender neutrality). These changes effectively made the case for decriminalisation because section 53 (the criminalizing provision of the Penal Code) stood out as an archaic and discriminatory provision.

India example

An example of how there can be setbacks but it is not always the end of the line.

Progressive High Court decision 2009, founded on international laws, health, privacy, equality and non-discrimination, decriminalized adult consensual same sex relations (s377 of the Indian Penal Code). This was overturned in 2013 by the Supreme Court in what was a major setback for India and globally on this issue. However, although the Supreme Court is the final court of appeal in India, this was not the end of the story as the parties filed an unusual petition called a curative review petition, which essentially asks the Supreme Court to review its own decisions as a means to prevent miscarriages of justice. The curative review petition has languished for a few years but in 2017 the Supreme Court, in a very progressive case on identity cards (which centered on the constitutional issue of privacy), took the opportunity to entirely undermine the earlier 2013 case, which recriminalised adult consensual same sex sexual relations. A new s377 petition together with the curative review are very likely to be heard this year and everyone is cautiously optimistic that we will once again have decriminalisation in India.

After re-criminalization, there was a spike in persecution of India's LGBT community - <https://www.reuters.com/article/us-india-rights-persecution/persecution-of-indias-sexual-minorities-surges-after-court-ruling-activists-idUSKBN0JP22920141211>

Some advice

- ❖ “Context is important but lessons from across the globe can help”
- ❖ “Use values language. People can be turned off by rights speak”
- ❖ “Legal reform, litigation, community-based activities and advocacy are not mutually exclusive. They can work in tandem. Importantly, don't put all your eggs in one basket but consider a multi-pronged approach.”
- ❖ Collecting evidence on health and other impacts of criminalisation is critical.
- ❖ On standing issues (who is able to bring a decriminalisation challenge), in our experience, individuals have not had to allege that they have committed an offence. It has been enough to state that the law forces them to choose to either be celibate or commit an offence. This has enabled them to demonstrate that they are an aggrieved person. The same argument could be used in Namibia.
- ❖ Important to have community support for litigants.
- ❖ Strategic litigation is by its very nature and multi-year endeavor as these cases are likely to be pursued to the final court of appeal. Staying power is important for all those involved.
- ❖ Arguments around equality and non-discrimination need to be well thought out and considered carefully. There is a risk of alleging that the sodomy law discriminates against men vis-à-vis women, as there are some examples of countries amending their laws to be gender neutral. There are other means to make equality and non-discrimination arguments.
- ❖ In our experience, conflating issues of criminalization and same sex marriage can be counterproductive because it is often used as by opposition parties as a reason to not decriminalize (the slippery slope argument).

“Litigation is an important tool, but only one in your arsenal. Legal change is a threshold issue but it needs to go hand in hand with social transformation to ensure sustainable change.” – Victoria Barnes, Human Dignity Trust

REAL STORIES, REAL PEOPLE

The consultation had two “streams” that worked together. One stream was technical: input from legal experts and strategists to help us all better understand how the law works. The other stream – personal: to remind us all of the lived realities of people who are directly and indirectly affected by the laws we would hope to change.

Rape, physical abuse, institutionalization, the denial of services, self-harm, dehumanisation. These were the common experiences described when seven people opened a window into their lives and shared the ways in which discriminatory laws affect their daily lives, limit their freedom and the pursuit of happiness.

The purpose of the story telling was to connect decriminalisation with lived experiences; to connect heart and mind. The result was that and so much more. The experience of listening evoked anger, empathy, love, understanding, unity, fellow feeling, determination and grounded the discourse in humanity.

Excerpts from the I-Stories

"People feel they have the right to make me feel less than human... In 2016 I was violated, beaten up by boys from the area I used to stay... at hospital I was told to go and make a case. I went to the police station and was told I had brought it on myself"

"I am still living with the pain because of the brutality I have gone through... I was standing on my hotspot in Garten Street, by Uncle Spikes...the NDF, instructed by Nujoma, came... I was a young woman, wearing my wig, dressed up in my own clothes, with my make-up, high heels, standing there with blood red lipstick on my lips to look for my clients... This was rape. I started using drugs that night because of this brutality... Namibian lawmakers have been silent for many years. It is time for us to speak out about these stories so these laws can be abolished. We don't want special rights or treatment, just access to services and recognition"

"I got brutally raped... I went to the police station to lay charges... It is my right to get justice. However, the Act was used against me. Sodomy is illegal. You leave or be quiet. I had no choice".

"I decided to tell my father. I was taken to a mental hospital because my father told the police I was acting weird... In the North, they put a hot iron. It is more homophobic and traditional in the north...I was beaten up as Mr. Gay Namibia, brutally... You are placed in a corner and you cannot really exercise what you want... those in the closet are afraid to come out"

"In 2010 I met a man through a newspaper... I was raped. I tested positive...It was hard to get ARVs. For 6 years I never took medication. I got weak using alcohol and drugs. If sodomy was not illegal it would be easier for me to take this guy to court. I started working with New Era.... I was banned from covering LGBT stories. When I was raped I had nobody to turn to, so I became the voice of the voiceless. I would like to ask my comrades... I would like to challenge the sodomy laws".

"I am black, I am a woman, I am a gender non-conforming lesbian. Where am I and what recognition am I looking for in this country? ... I cannot engage with the sodomy debate if I cannot engage with the broader framework. It is important to make the national strategic framework more inclusive. I have a different way of looking at advocacy... strategic litigation is part of it... but it is a hot potato that rattles politicians... What about the stories of lesbians who are not activists? Their stories need to be told, not mine... As a movement we have grown very far, but we are not speaking the same language".

"Growing up in the Pentecostal Church... has been very hard for me. There were times when I found myself asking God that if homosexuality is not acceptable, then take it away from me... I had to suppress this me for 25 years... I was told to use my first salary to buy women's clothes and stand in front of the mirror and repeat 'I was born a woman'... Why am I doing this to myself? I know how God operates within me...I accept myself the way I am. I don't need anyone's acceptance or approval. We need our own spaces where we can fully worship our God in the way we want"

Group responses following the I-Stories

"You helped us to understand what it means to be a human being in this unjust environment".

"Stories like these open a new discourse, away from medical and sex".

"We need to be aware why it is that we want these changes, what kinds of impacts the laws have on individuals and communities...In our strategy there needs to be a big wellness component. People don't trust social institutions... there is nobody to turn to. They deal with themselves, turn to drugs and alcohol.... It is so hard to find support. There is a reason why we need to change these laws".

"The 'why' is to be found in these stories."

"Namibia is so committed to ending the HIV epidemic. Is this a pathway to normalize?"

"Thank you to all the contributors. This was very personal to me brings me to the point of saying 'How dare you'? How dare you think this is small?"

"I want to say thank you for these personal stories...made me recommit. For transwomen, it is a project on its own to get to a toilet...we are making ourselves projects. I don't want to lose that human face when we talk about this big strategy. I will never again question, as a lesbian woman, how does it benefit me? It's not about that. When I make it better for you, I make it better for me. It's about lives at stake here."

ENGAGEMENT, OPPORTUNITY AND STRATEGY

With a better understanding of the law, as well as the impact of the law on the lived realities of Namibian sexual and gender minorities, the convening participants had the opportunity to delve a little deeper during facilitated parallel conversation on engagement, opportunity and strategy. Participants moved from one conversation to the other under strict time limitations – but with room for sharing stimulating ideas and consensus building. A facilitator and rapporteur stayed with each conversation topic.

5 topics were explored:

- ❖ Working towards achieving decriminalisation – success stories
- ❖ Namibia’s Constitution
- ❖ The political and structural environment
- ❖ Decriminalisation strategies
- ❖ LGBT rights – pushing the envelope

Following are the key consensus points arising across the different conversations.

Using the constitution to humanize the work of decriminalisation

The Constitution emerged as the key advocacy and litigation tool across all groups. All groups also identified that language used from Constitution could provide a good means to communicate the DAN’s message and reach a wider audience. However, it is very important to do research first (focus groups, polling) on what may/would resonate with your various audience groups. Engaging with the Constitution was a new area, prompting new thinking. Up to now, only certain articles have been used by certain interest groups. The strength of the Constitution lies in its confirmation of rights and national values, as expressed in the Preamble. These include freedom, life, justice, liberty, peace and the pursuit of happiness. However,

- ❖ Constitutional literacy is weak and there is lack of constitutional conversation, particularly in local languages in rural areas. Radio would have the most effective reach.
- ❖ There is conflict between the secular state and religious beliefs. The Constitution is often misrepresented.
- ❖ The Constitution speaks to addressing the wrongs of colonialism, racism and apartheid. This includes the inherited laws which denigrate, suppress, control and undermine. Yet the sodomy and other discriminatory and unconstitutional laws remain.
- ❖ The constitution is there to protect unpopular, marginalized groups. Parliament constituency represents the majority.

“You have to feel the Constitution.”

“The Constitution should be celebrated”.

“I can now use the Constitution to speak to the hearts and minds of my constituency.”

“It is the job of civil society to challenge transgressions against the constitution.”

Strategic litigation is a process

- ❖ Understanding that litigation is incremental and organic surfaced in all groups.
- ❖ Greater clarity that the process is multi-pronged. Dialogue with different arms of Government, litigation, legal reform, advocacy and education can happen simultaneously. Each part can reinforce the other.
- ❖ A strategy to engage Government first, gather and document evidence and stories, ramp up community engagement and approach litigation incrementally on related but strategic issues (potential option to consider further would be challenging the Combatting of Domestic Violence Act) was a means to build towards decrim.
- ❖ Collecting evidence, documenting violations is critical for all avenues.

- ❖ Positioning for the Ombudsman’s conference is important.

“In Namibia, where no one has been prosecuted for sodomy in over a century, we need to articulate how the existence of the offence creates a problem in modern society.”

Community action is the engine which drives decriminalisation

- ❖ There was complete agreement that community action, including sensitization, engaging opinion leaders, movement building, organisational strengthening etc., is the foundation for decriminalisation. “It is what we already do”, but “we need to do more” and it needs to become more intentional towards a common goal.
- ❖ Include discussions on and references to the Constitution in community work. Use personalizing strategies in our sensitization work.
- ❖ Community consultations and feedback in our own community will be critical. “The reality is that the (LGBTI) community is very vulnerable on the ground. In order to understand that, you need to go into these vulnerable spaces.”
- ❖ Doing litigation or other legal reform work alongside community work helps gain traction. Small gains in the legal domain can help movement building.
- ❖ Essential to develop young activists to sustain the fight.

“We have focused so much on health, we haven’t even dealt with what the law says”.

“We are lucky in Namibia. People know the community exists. With the help of veterans, we can re-ignite and speak with one voice”.

“Strong threads came out on what can be possible. How it can look like at community level ... what can allies and partners do.... How advocacy at community level - what we are already doing – can lay the ground work with one voice, one agreed message”

“The most important work is the work that we as organisations do... but it must be focused.”

Who are our allies? Who is our audience?

- ❖ Resource and partnership mapping would be a useful exercise.
- ❖ MoHSS emerges as a key partner and entry point, due to their HIV strategy and the Minister’s insistence that condoms should be available in prisons. Also engage the Minister on the Sodomy law as an obstacle to HIV care and prevention. “Most of our work is done through the MoHSS. We capitalize on their resources; they capitalize on our experience and skills”.
- ❖ Retaining engagement with Parliamentary Standing Committees seen as a means of keeping the conversation with lawmakers alive.
- ❖ “We need to take more stock of where we come from and what we have achieved in the Human Rights Action Plan. We should contribute. Government likes shining. Don’t embarrass them.”
- ❖ The First Lady is sympathetic, but she has other priorities.
- ❖ Religious, cultural and political leaders are primary advocacy audience. Identify progressive leaders in these domains, who can speak to their peers.
- ❖ Engagement with academics is useful. “They generate evidence”.
- ❖ Our families and friends are key allies and can break through the practice of ‘othering’.

The role of the Law Reform and Development Commission

- The Law Reform and Development Commission (LRDC) is a government commission established in Namibia in 1992 to make recommendations for legal reforms.
- These recommendations are based on consultations with key stakeholders and the findings are presented to the Minister of Justice.
- LRDC has a mandate on obsolete laws and on human rights.
- The LRDC works with existing laws and the development of new laws based around strategic thematic areas, such as the Harambee Prosperity Plan.
- In 2018, the LRDC is reconstituting. This presents an opportunity to advocate for the appointment of an LGBT-friendly lawyer onto the Commission.
- The Chair of the LRDC is a member of the Cabinet Committee on Laws

- ❖ “A lot of us engage with the Government at the local level, whereas central government denies”. “I experience The National Council is more accessible than the National Assembly”.
- ❖ “There are many allies in the arts field, who can amplify our messages”.
- ❖ Namibia has a young population, it is essential to give attention to addressing young people. Many are more open.
- ❖ “Women tend to be more sensitive. We need to speak to the women in power, in households, the mothers. To shift patriarchy”. With more women in parliament, we have a more conducive environment for advocacy.
- ❖ Identify champions in the movement and alternative messengers.

“Identify your champions and make use of the relationships you have. The Ministers of Health and Justice are friendly. Create relationships with them. Find out about their views on LGBTI”.

“Namibia is small and connected. We have access to powerful people in different sectors.”

During the course of the convening, a cabinet reshuffle swapped the Attorney General and Minister of Justice portfolios. The new Minister of Justice is more progressive and sympathetic towards sexual and gender minorities, while the new AG is deemed more conservative in his stance.

What is our message? How will we communicate it?

- ❖ “The media is 100% out of tune with LGBTI”.
- ❖ Building a picture by documenting human stories and experiences of the Namibian sexual and gender minorities, including positive stories. A possible campaign that focuses on “what it means to be human, what it means to be happy – as a way of talking more broadly about the constitution”.
- ❖ “We can tell our stories openly on social media and radio.”
- ❖ “Beyond labels to human beings”, by illustrating that we have the same daily lives, as mothers, partners.
- ❖ Appealing to families, especially mothers. Asking the question: “are you having an LGBTI person in your family or community?” Highlighting positive stories, of family acceptance.
- ❖ “Moving away from being sexual beings. A focus on sodomy focuses on sex”.
- ❖ Using values language from the Constitution, particularly from the Preamble. These will also resonate with religious values. Avoid human rights language.
- ❖ “A key to messaging and language is to do some research... use focus groups”
- ❖ PV could provide the knowledge synthesis and research for the development of a unified media campaign.
- ❖ What is the voice of lesbian women in the sodomy discourse?
- ❖ Urban and rural: “do we have common understanding?” “Namibians are both urban and rural. How do we tap into Namibianness?”

“We should frame our language to appeal to the masses and use language that speaks to sameness”.

Coordination and identity

- ❖ To build unity, at regional level, “hold discussion groups, debate groups, facilitate knowledge sharing and challenges” amongst different groups.
- ❖ “We need a knowledge hub, a national LGBTI document warehouse” as well as custodian and generator of an evidence bank.
- ❖ Building a human rights defenders movement, knowledge partnership, synthesizing and research.
- ❖ “DAN needs to understand and communicate its role and work with the different partners to identify their roles towards the equality agenda.”
- ❖ We don’t know enough about what we are all doing, but we can feel the “strength of the movement.” “We should invest in not letting the movement break up”. Competition is a threat.
- ❖ “The level of engagement within sessions focused on the external. What about me?”

“The process is organic, but the DAN should hold everything together”.

KEEPING THE FUTURE SAFE

“I see that the future is possible – particularly what we can do, what is in our power right now... using our comparative strengths.”

Dr. Nick Hanson-James of Open Briefing, conducted a session focused on scenario thinking associated with pursuing a decriminalisation strategy. This session aimed to develop a set of plausible scenarios for Namibian government and societal responses to more-prominent advocacy along five sectors: Political, Economic, Technology, Logistical & ecological, Social. The security implications of each of these scenarios will further inform the development of risk strategies for decriminalisation in country.

Scenario thinking is a powerful strategic planning tool that was developed from methods traditionally used by military intelligence but adapted and adopted by the boardroom. Scenario thinking combines known facts about the future with key social, technical, economic, environmental and political trends that may act as driving forces as well as other factors that are difficult to formalise, such as deep shifts in values. It recognises that many factors may combine in complex ways to create sometime surprising futures. Scenario thinking can blend the known and the unknown into a limited number of internally-consistent views of the future that span a very wide range of possibilities.

Participants generally found this session to be enlightening, as many had not considered the various external factors that could impact this long-term trajectory of change. Some comments include:

“It was not easy but was a good mental exercise. I have to do strategic planning soon and will use this to do risk analysis”.

“As a general exercise... even applied to everyday life... risk analysis allows us to develop our thinking about threat and what might happen and allows us to examine mitigation strategies”

“It has helped me to realise the possible and potential risks and challenges on the road to decriminalisation”

“It raises awareness of things you might not have thought of, that can have an impact.”

The findings from this session will be captured in a separate report focused on safety and risk.

THE WHISPERING VOICE – POINTS OF RESONANCE

“By nurturing this whispering voice, we can become a lion’s roar”

Throughout the convening and the various sessions, there were some key points of resonance for the participants. These are presented below:

- ❖ **DAN is a living body:** DAN is more than an Alliance, it is a living body that unifies opposing, diverging and competing priorities. The strength of this body lies in the collective action of agents of change, that work towards common goals; “A win for one, is a win for all”.

“We are the DAN and the DAN is us”

- ❖ **Ownership and Common cause:** Key questions asked around this topic included: Who owns this agenda?; Who are our allies?; Does our messaging speak to a larger cause?
- ❖ **Redefining our narrative:** Language use and rhetorical devices employed in transforming discourse on issues pertaining to sexual and gender minorities in country became an important area of consideration. There were

several references made that the use of terms such as human rights could also be off-putting, and that values-based language resonates better.

- a. Humanity above SOGIE: We have to highlight the points of connection, instead of focusing on those elements of difference. The use of language that speaks of humanity could be central to messaging. Language from the Constitution, including the right to happiness, could be more effective than language that highlights the differences. President Geingob's term 'the Namibian House' and, from the Harambee Plan 'leave no-one behind' are very persuasive to "claim what we are already entitled to".
- b. The current narrative on sexual and gender minorities is still rooted in colonialism and founded on patriarchy. We need to challenge these views, as they are in direct opposition to our constitution.
- c. Rhetorical devices that speak to logic, ethics and hearts of Namibians are important considerations.

"We need to change the manner in which we are fighting this battle. If you want to see change, you will have to use the language used by the people you are asking recognition from."

"We have to reach the hearts and minds of people by documenting peoples lived realities and invoking empathy."

"Gatekeepers and lawmakers have a stance against LGBTI. We need to make them understand the impact on another human being."

- ❖ **Perpetuating the stereotype:** Some participants noted that through our actions, and the words that we use, we sometimes perpetuate negative stereotypes: promiscuous, hypersexualized, angry, combative, antagonistic. To increase our chances of success, we need to consider our own behaviors and become more aware of how certain actions could be perceived by those in power and with influence.

"How do we project ourselves? Do we not think we have contributed to the damage?"

"The real test will come with the kinds of lobbying you do in the initial stages... If you push and make uncomfortable, you will have lost the opportunity."

- ❖ **Societal transformative processes need strengthening:** In order to strengthen readiness for decriminalisation, a lot more work needs to be done with the general population, to change hearts and minds. Lessons need to be learnt from South Africa, where laws have been successfully changed but homo and transprejudice still prevail.

"We need to get back to our roots. Need to get into the hearts and souls of our communities"

"More than one avenue has surfaced. Changing narratives at community level is critical. This is not a sprint but a marathon. We are in a very unique position in Namibia to start right."

"In South Africa, recognition is there, but what does it mean?"

- ❖ **The pursuit of happiness is influenced by trust in national institutions.** "I started imagining institutions that are supposed to protect me being institutions I can trust. The process of building these institutions is exciting and helps me think differently".
- ❖ **These laws affect us all:** Laws that criminalize sodomy and other deemed unnatural sexual offences, do not only affect male bodied individuals. Our trans-communities, as well as lesbian communities are affected, largely based on prevailing homo- and transprejudice in country. It was noted that these groups are often dismissed in the larger discourse, and too often the lesbian voice is silenced in the larger KP programming. There was an agreement in the

room that these laws are a human rights violation, affecting many, directly or indirectly, and evidence is needed to show the effects of the various groups.

“Criminalizing same sex sexual activity affects the trans community. The law creates thoughts in people’s heads... access to services is denied for a law which is not used”.

“If one group still feels oppression ... none of us are free”.

Strategic considerations

❖ **Pushing the envelope:** Three strategic considerations were identified:

- Getting to grips with the rules of Standing
- working with the attorney general
- incremental litigation.

“There are sufficient legal avenues ... and ammunition, to push the envelope. We have a mandate on obsolete laws. The sodomy law is one of them”.

We can challenge on compliance with the Constitution and international instruments, in relation to the sodomy law. The President has also recently spoken about getting rid of laws which no longer sits well with modern Namibia. The identification of issues, public consultations and long process would follow.

“If the Namibian Constitution has a gap, we should be able to import international law into domestic law”.

❖ **Contributing to knowledge and evidence:** Generating evidence, sharing of stories, as well as looking at the potential uses of evidence was also frequently mentioned as an important area of consideration.

❖ **Strategic funding:** Be clear on the ask and sell. At present, resources are limited, and we need to consider the most cost-effective ways in realizing our collective goals. Potential funders need to know what we are offering, and we need to define our ask.

“Understanding where the human rights agenda fits in the funding space”.

❖ **Explore and strengthen programming to address intersectionality between different population groups:** Mama Africa noted that it was important that we ensure that no population is left behind and expressed her preference to focus on the Combating of Immoral Practices Act as it relates to both sex workers and trans-communities, especially in relation to expressing their sexuality and gender identities. However, it was also pointed out that progress on the one area, also touches on the other, and that these two movements are not mutually exclusive: “In a very practical way, I see very obviously, on many pieces of this road map, that sex work is also incorporated. Building an alliance around a common human rights ethos strengthens the ability of the Alliance to work on others... All kinds of victories can be achieved.”

❖ **Collective activism and finding the intersectionality:** The sex worker movement has made a lot of headway in terms of facilitating dialogue with parliament. Mama Africa urged activists to consider these advancements: “We must not forget that the Special Committee on Social Affairs agreed to take our representations to the Speaker of the parliament, so that he can lobby for a motion in the house”. Other activists also called for increased visibility of activists from all sexual and gender minority groups in support of ongoing cases, as these cases could potentially start establishing jurisprudence on SOGIE issues in country.

❖ **Country readiness and timing of interventions:** Hearing that the parliamentary route in Namibia is not advisable or ready, “does that exclude parliamentary advocacy?” Activists were cautioned, to be strategic in the timing of their

political advocacy engagements, and in their language use. Messaging needs to take account of the language used within the Constitution of the Republic of Namibia. Timing needs to take account of the political context, such as the election periods. For example, as Namibia is currently planning for the 2019 election, a direct challenge to the decriminalisation of sodomy might not be the best opening strategy. Messaging focused on the constitutional fundamentals, as well as strengthening community engagement should rather be prioritised during this period, to promote community readiness for subsequent legal challenges.

LOOKING TO THE HORIZON

“It’s like a spider’s web. DAN is the spider, the rest of us is the web..... a web is so sensitive, so sympathetic, so coordinated. A spider’s web is very strong.” – Rosa Namises, Women’s Solidarity Namibia

This analogy of a spider’s web provided the backdrop for the sharing of “Vision”, by 8 participants.

These participant, ranging from directors of LGBT-focused organisations, leaders feminist and sex worker movements, field workers, had one common thread throughout their shared visions: A call to action: for everyone, regardless of SOGIE, race, age, socio-economic background, to become active agents of change; to challenge self; to collaborate in the advancement of common goals; and strive collectively to enhance the futures of all sexual and gender minorities in country. Some excerpts of these visions are shared below:



Figure 4: Rosa Namises – Director: Women's Solidarity Namibia

Collective activism

“In this spider’s web... movement in one part affects another...we can’t leave each other behind...we need to find our place in that spider’s web.”

“I trust myself. In this movement we need to look at trust – trust of self, movement, fellow activists and beyond us to the power we have as a collective. We need each other. It is time that we start this year off by creating space to speak truth, to be honest. Let’s check ourselves, check the journey we are on. Let past experiences be a lesson and guide us moving forward.”

“We must not feel special. There are other people out there who you can work with. If you are not disciplined, it is hard to work with you. It’s about all of us”.

“Mothers stand up! Sisters stand up! Accompaniment is not a specific action in a specific space. It is a lifelong commitment.”

Active Agents of change

“I am sad, but there is hope. Recognise yourself. You are part of the law. Don’t think first 'I am trans'. Self-actualize. You are recognised. Reclaim, please people! Reclaim lack of enforcement”.

“My vision of freedom is to explore the power within me. It starts with me. If I am feeling weak, not centered, what purpose do I have for this movement? The road is something beyond us. We may not be there at the end.”

“We need to stay uncomfortable and impatient.... And constantly question what will get us to that future”.

“I am privileged. I am a foot soldier...I don’t have money or big house. The only thing I have is my brain and my heart. We want to see change. We need to put in the work”.

Leave no one behind

“What does it mean for me as a trans sex worker if one day LGBTI rights are there? What about transgender sex workers? Then no one is free. In Swakopmund I said that the Immoral Practices Act of 1980 is about both LGBTI and sex workers. Let’s go back and do our homework, so we don’t feel left behind. In South Africa they have legalized same sex marriage but left behind the sex workers movement. They are still under oppression.”

“I have always had a problem with the LGBTIQ construct. I have always found it difficult that complex, diverse people are trying to classify ourselves. For the future, my hope is that we don’t define ourselves by what makes us different, but what makes us the same. Namibianness, humanity”

“For me the future.... is when a trans woman doesn’t have to go to South Africa, a child doesn’t have to leave the classroom because they are bullied and the teacher doesn’t stand up for them. It means being able to move into any public space as who you are. None of the labels matter anymore”

BRINGING IT ALL TOGETHER

The final task of the gathering was to bring together the ideas, opportunities and principles which had risen to the top of the collective agenda. In grouping these ideas under 7 headings, we were asked to consider the following:

- ❖ Action on the Road should link the personal, the social and the legal
- ❖ Reclaiming the narrative
 - Who is it who decides our story, who defines what it should be?
 - What is the story that we tell about ourselves? About our identities, about who we are, about what defines ourselves?
 - In what language – and in whose – do we think and speak of ourselves?
 - What would be the indigenous/Namibian/African ‘language’ and ‘vocabulary’ that would give our experience most meaning.... first to ourselves and then to others?
- ❖ We are **not all the same**
 - Identities differ
 - Perceptions differ
 - Experiences differ
 - Contexts differ
 - We are urban and we are rural
- ❖ We are **connected by sameness**
 - Common humanity
 - Common Namibianness
 - Common constitutional values and morality
- ❖ Look around
 - Use examples from our roots
 - Use old wisdom and experiences
 - Learn from the other liberation struggles
 - Mind the generation gap

“There is a road which leads to freedom, the end of fear, equality, transformed values, and common humanity. Do we want to be on that road together? Not defending it but reclaiming.”

This was the central question which was asked during this last session.

While many voiced a resounding yes, the steps to be taken, platforms to use, and strategies to be employed were still questioned. Some responses to this central question:

“Is there another road? For me there is no other road if we want to get something done.”

“We had a legal officer who was working on LGBTI issues. Later on, she had to excuse herself because there was pressure. She was pushed into a corner.”

“I ask myself, what am I committing myself to? Decriminalisation? or taking a step back and looking broader?... Shifting mindset on how we advance a collective agenda so we can all advance it as a national agenda, as Namibians, not just LGBTI.”

“What road am I putting myself on? (There may be) differences in how we get there and how we prioritise. But the end of the road is the same. Yes, I want in.”

“We want to. We are already on some kind of road. We want to be on it together. How do we include everyone, including those who are not LGBTIQ+? We need to be more aware, self-aware. It is not just Friedel. I am fast. Do I wait for someone who is slower? ... It needs patience to be on the road together.”

“Readiness puts me in the building. I am not representing my own interests here, I am representing a constituency. It is very hard for me. I cannot do that. I need to consult my constituency... If they allow me or now allow me, I will come back and tell you.”

“I am stuck.... We need to try to take on the government, see what they think and do. If you look at Botswana, they have tried. We are not yet trying. I am on the road, but not sure if I am moving forward or not. As least we must try. Maybe they are just waiting for us.”

“It feels like we are going backwards. The main agenda here is decriminalisation. Presentations were helping us to look at risks, challenges, gaps...The greatest weapon we have is focus. What I am hearing is that we are losing focus. I am ready and want to move ahead. I have already done the assessment and know what we need.”

“AHA” Moments

“My wow moment was to see where we are at the moment. It makes me realise that people like Linda and Friedel have done a lot of work to bring us to this point.”

“.. I realise how much skill and capacity our leaders have.... Each and every one has something to bring”.

“We stand on the shoulders of people who came before us”.

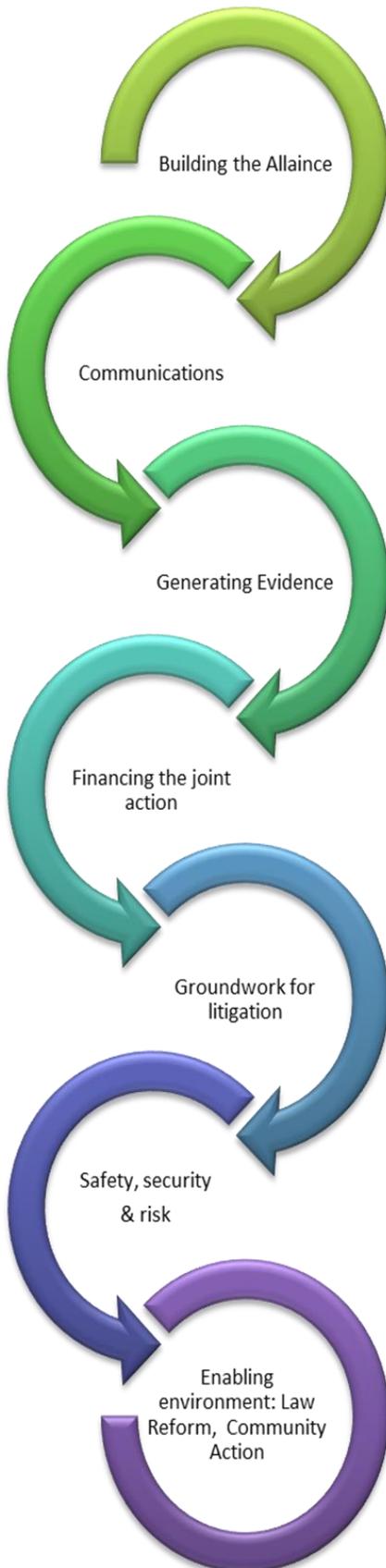
“My surprise was the Constitution. The way we used it before didn’t help us much. It took someone from outside to remind us that we can claim, not ask.”

“The first panel – our lived realities – reaffirmed our purpose of why we are here”.

Following this, the group then had opportunity to contribute to 7 broad strategic considerations. These are presented below³.

³ Further detail is provided in the “FROM RECOGNITION TO RECLAMATION, A BROAD STRATEGIC FRAMEWORK – A ROADMAP – FOR JOINT ACTION TOWARDS EQUALITY FOR SEXUAL AND GENDER MINORITIES IN NAMIBIA, February 2018. Document attached.

THE 7 SPHERES OF ACTION



- Strengthen the DAN as a vehicle to build the movement and carry the Agenda.
- Ensure everyone understands what and who the Alliance is.
- Establish the vision of the Alliance.
- Build and strengthening what we have.
- Provide for a Coordinator position.
- Individual organisations align their strategies with that of the Alliance.
- Look for intersectionality and broad alliances, not exclusively LGBTI.
- Recognise and use individual and organisational strengths.
- Clarify milestones & strengthen M&E processes.
- Link the urban to the rural, decentralizing services and resources.
- Build a knowledgehub.
- Encourage complementarity, not competition.
- Ensure flexibility of strategy, based on evolving community needs.

- Clearly define and articulate the vision, the motivation and the rationale.
- Hold focus groups to help determine the communication strategy.
- Develop and test messages.
- Identify the audiences – courts, law-makers, general public, LGBTI constituency.
- Be mindful of language.
- Develop partnerships to amplify messaging.
- Coordinate messages and communications.
- Design and develop communications materials for broader public use – information packages, briefing notes, fact sheets.
- Perform media analysis and monitoring
- Use arts and media to tell our story, to make data more accessible.
- Link social change with legal change

- Document stories and experiences of individuals and communities, emphasizing impact.
- Identify topics for research that build the evidence base and strengthen communication & messaging.
- Formalise a strategic partnership with an academic research institution, to generate, analyse, authenticate and publish evidence.
- Document success and best practise.
- Disaggregate data appropriately.

- Work with international and regional partners to assist with fundraising (but be aware of issues around funding from the North).
- Build collaborative partnerships with civil society and private sector for financing.
- Hold organisations and government accountable who receive funds in the name of key populations.
- Start a go fund me account for litigation.
- Individual organisations include the strategy in their own work plans and budgets and fundraise for specific parts of the strategy.
- Be involved in the political dialogue of the EU and position for funding.

- Identify criteria and capacities required for a legal team and select a team accordingly.
- Prepare a test case on GBV domestic protection order, to include same-sex couples.
- Explore interest/timing/readiness of a single or set of claimants to directly bring a case on decriminalisation of the sodomy law.
- Explore community readiness to support such litigation.
- Analyse historic and current cases to strengthen future strategies.
- Learn from regional work and practices.
- Strengthen public interest in litigation.

- Develop a clear safety and security plan, including crisis response and reporting mechanisms.
- Make the plan inclusive – beyond major towns, inclusive of families and partners.
- Promote self-reliance and planning for personal safety.
- Provide practical safety tools.
- Set aside resources for security – e.g. rapid response fund.
- Embrace a holistic approach to wellness – physical, emotional, spiritual.
- Pay attention to self-harm, substance abuse, intimate partner violence.
- Strengthen relationship with MGECW, including identification of safe spaces.

- Sensitize judges and parliamentarians.
- Facilitate linkages between community/constituency and LRDC.
- Consider Engaging the Attorney General to refer decriminalisation of sodomy law to the Supreme Court for an opinion on its constitutionality.
- Participate in the public conferences, e.g. Ombudsman
- Participate in Section 10 Working Committees of LRDC.
- Refer sodomy law to the LRDC under the Obsolete Laws Project as unconstitutional and no longer in keeping with modern Namibia.
- Participate in/make submissions to the Parliamentary Committee on Social Affairs.
- Pursue National Human Rights Action Plan.
- Sensitize traditional leaders, faith-based leaders
- Identify and sensitize champions – sports personalities, celebrities, arts sector, private sector
- Strengthen legal and constitutional literacy at community & constituency levels, to enable full engagement with concepts, vision and messages.
- Engage families and the broader public
- Be active in other movements

FULL CIRCLE - FINAL WORDS

“We are more ready than we think. A lot of what we need to do has already started. It is about looking at it differently.” “Frustration with the call for patience, timing, using their language. The need to balance the ability for Rachel to feel free in her own country vs having to tread carefully. There is dissonance”.

“Having the whole of the LGBTI spectrum here and looking at how severely these laws impact on individuals, it is high time we prioritize those who are severely affected by these laws. If we speak from a broader spectrum we will lose urgency. Trans women are most severely discriminated.”

“It helps to frame around major themes that emerged. Some work is already happening, some still needs to happen. How do we consolidate, prioritize? Who takes the initiative to identify milestones so that we can measure our progress?”

“The DAN may be abstract now, but this is the thing through which we will develop the DAN..... In the next two days, a team will pull it together into something clearer.... DAN will pursue the agenda, but we are all in it together”.

“I feel comfortable. I see a clear picture of the elements we need to cover to reach a future we cannot yet see. The job of crafting it will be the next step.”

“How OK are we that different people/organisations will do different pieces at different times, but the DAN will hold it together?”

“The case I am involved in will go ahead. Successful or not is in the hands of the court. Our biggest concern is going to be funding. Can the DAN help? Start a revolving fund for litigation?”

“In the example of the Eastern Caribbean.... with diverse organisations and diverse priorities.... it took a long time to come together. Their key aim was to have consensus...They had broad priorities: strategic litigation, incremental litigation, broader advocacy, law reform initiatives, and capacity building, and finding a roadmap that everyone bought into was no mean feat. Kenya is an example of a more fractured movement. Litigation was the priority for NGLHRC and they pushed ahead when others in the community doubted that strategy. ... The stage the DAN is at is a good one, but it is hard. Don't be disheartened.”

“Some we can start doing now. Gathering evidence...Organisations are sitting with data. Where do we have current funding? If we wait we will miss opportunities.”

“We need to remind ourselves that we didn't come this week to get bogged down into an action plan, but first to get consensus that we wanted to do this as an Alliance. This is one agenda out of many. First focus on same sex conduct, to be strategic. It will be a journey not everyone will be happy with.... let's focus on what keeps us together.”

“So, if the question is do I want to embark upon a journey with all of you, in which we pull together as a movement and where the work we are already doing is more focused, has one message, one agenda for reclaiming our space in Namibian society. A road which will hopefully include decriminalisation somewhere down the line. Then I say I want to.”

- Madelene Isaacks, Co-Chair the DAN

