



To: The News Editor

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FOR IMMEDIATE RELEASE:

PRESS RELEASE

High Court strikes down discriminatory law targeting LGBTQ+ Namibians

WINDHOEK: On 21 June 2024, in a monumental victory for human rights, the High Court of Namibia struck down discriminatory laws criminalising same-sex sexual acts between men.

In their ruling, the three-judge bench found that:

- The common law offence of sodomy is declared unconstitutional and invalid.
- The common law offence of unnatural sexual offences is declared unconstitutional and invalid.
- The inclusion of the crime of sodomy in schedule 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977) is declared unconstitutional and invalid.
- Section 269 of the Criminal Procedure Act, 1977 (Act 51 of 1977) is declared unconstitutional and invalid.
- The inclusion of the crime of sodomy in schedule 1 of the Immigration Control Act, 1993 (Act 7 of 1993) is declared unconstitutional and invalid.
- The inclusion of the crime of sodomy in section 68(4) of the Defence Act, 2002 (Act 1 of 2002) is declared unconstitutional and invalid.
- ‘Today marks a hugely significant milestone in Namibia’s history and is a momentous and welcome win for LGBTQ + people and all those who value human rights,’ says Friedel Dausab, an LGBTQIA activist who brought the legal challenge.

‘I challenged these laws as a committed activist because I was personally and acutely aware that criminalisation was a clear obstacle to my living a full, open, honest life. I can also attest that the sodomy offences hindered the prevention of HIV infections and access to lifesaving treatment to prevent AIDS, and made gay men like me easy targets for abuse.’

POSITIVE VIBES TRUST

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‘But most of all, because of this decision, I no longer feel like a criminal on the run in my own country simply because of who I am. Just like most ordinary Namibians, I’ve always wanted the chance to find love and to know that I belong. Today, I feel closer to that goal.’

‘We enthusiastically welcome this legal victory, which validates and affirms the rights of LGBTQ+ Namibians to equal treatment under the law, as laid out in our Constitution - the supreme and homemade law of our land,’ says Flavian Rhode, Executive Director of Positive Vibes Trust, a Namibian organisation campaigning for equity and justice for all people, including the LGBTQ+ community, and which supported Friedel Dausab in this case.

‘How adults conduct their private lives within loving, consensual relationships, and in the intimacy of their own homes, should never have been a matter for state interference,’ added Rhode. ‘Obsolete and outdated colonial laws that breach our Constitution have no place in a diverse, post-independence Namibia, and we celebrate today that they have been resolutely relegated to the history books.’

The criminalisation of sodomy was found in the common law of Namibia, which was imposed under colonial rule by South Africa and remained in force after independence. The sodomy law, along with the common law crime of “unnatural sexual offences”, criminalised certain sexual acts between men. The sentences attached to the offences were not clear.

The pioneering case challenging the constitutionality of Namibia’s sodomy offences was filed in June 2022 by Friedel Dausab, who asserted that by criminalising consensual same-sex activity between men, the offences violated fundamental rights enshrined in the Constitution of the Republic of Namibia and the African Charter on Human and Peoples’ Rights. These included the rights to equality and non-discrimination, human dignity, privacy and expression.

It does not appear that anyone had been convicted under the common law sodomy offence since independence, although there had been arrests. Nevertheless, the mere existence of these offences was itself a violation of human rights. In the past year, Namibia has experienced a distressing surge in hate speech and a clearly-connected rise in homophobia, enabling violence and harassment and culminating in at least six brutal murders of individuals who identified as LGBTQIA, says Positive Vibes Trust.



In the SADC region, Namibia now joins more than half of the member countries which have now decriminalised same-sex sexual activity, such as Mauritius, Angola, Lesotho, Mozambique, Botswana, Seychelles and South Africa.

Notes to editors

- [Positive Vibes Trust](#) is a Namibian-registered queer organisation working primarily in Namibia and Africa, with programs in the Middle East, South-East Asia & Central America. PV's work centres around the themes of development, human rights and inclusion. In Namibia, much of PV's work focusses on the realisation of the rights of LGBT communities, as well as sex workers.
- Friedel Dausab was represented by Gilbert Marcus SC, Natasha Bassingthwaighte, Ramon Maasdorp, Michaela Kritzinger and AngulaCo Inc. Technical assistance was also provided by the [Human Dignity Trust](#).

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