

Pioneering constitutional challenge to discriminatory laws targeting LGBT Namibians filed at High Court

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On the 27 June 2022, Friedel Dausab, a 48-year-old activist, filed a case before the High Court challenging the constitutionality of Namibia's sodomy offences.

The criminalization of sodomy is found in the Common Law of Namibia, which was inherited from South Africa at independence. Currently, this law, along with the common law crime of "unnatural sexual offences", criminalizes certain sexual acts between men. The sentences attached to the offences are not clear.

By criminalizing consensual same sex-activity between men, the criminal offences violate fundamental rights enshrined in the Constitution of the Republic of Namibia and the African Charter on Human and Peoples' Rights. These include the rights to equality and non-discrimination, human dignity, privacy and expression.

'How adults conduct their private lives within loving, consensual relationships, and in the intimacy of their own homes, should not be a matter for state interference,' says Flavian Rhode, Executive Director of Positive Vibes Trust, a Namibian organization campaigning for equity and justice for all people, including the lesbian, gay, bisexual and trans (LGBT) community, which is supporting Mr Dausab in his legal challenge.

'The Namibian Constitution - the supreme and homemade law of our land - should be respected and upheld as sacrosanct. Obsolete and outdated colonial laws that breach our Constitution have no place in a diverse, post-independence Namibia, and should be relegated to the history books,' added Rhode.

There is no evidence of that anyone has been convicted under the common law sodomy offence since independence, although there have been arrests. Nevertheless, the mere existence of these offences is itself a violation of human rights. The Namibian LGBT community suffers verbal and physical abuse, violence, harassment, blackmail and discrimination as a result of the environment of shame that these laws create, says Positive Vibes Trust.

'I am challenging these laws as a lifelong and dedicated activist because I am acutely aware that criminalization is a clear obstacle to living a full, open, honest and healthy life. Through my own personal experience, I can also attest that they hinder the prevention of HIV infections and access to lifesaving treatment to prevent AIDS, whilst making gay men like me easy targets for abuse,' says Friedel Dausab. 'But most of all, I am tired of feeling like a criminal on the run in my own country simply because of who I am. Just like most Namibians, I want the chance to find love and to know that I belong.'



Mr. Dausab and Positive Vibes Trust are not alone in the belief that these laws need to go. In a recent report, the Namibian Law Reform and Development Commission said, ‘The Namibian house encompasses all Namibians and the laws on sodomy and unnatural sexual offences are contrary to fostering a culture of dynamic inclusion for all members of society, including the LGBTI community. These laws should be repealed.’

Many of Namibia’s neighbors, such as Angola, Mozambique, Botswana and South Africa, have already decriminalized same-sex sexual activity, leaving the country as an outlier in the region.

Notes to editors

- Positive Vibes Trust (PV) 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 is represented by a Namibian legal team and Gilbert Marcus SC, and is supported by the [Human Dignity Trust](#).

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