



## MINISTRY OF JUSTICE AND CORRECTIONAL SERVICES

Republic of South Africa

**Media Release  
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### **Justice Minister Welcomes *Qwelane* Judgment by the Constitutional Court**

The Minister of Justice and Correctional Services, Mr Ronald Lamola, welcomes the *Qwelane* judgment handed down by the Constitutional Court on the 30<sup>th</sup> of July 2021.

In a unanimous judgment, penned by Majiedt J, the Constitutional Court handed down judgment in an application for confirmation of an order of constitutional invalidity granted by the Supreme Court of Appeal (hearing an appeal from the High Court of South Africa, Gauteng Local Division, Johannesburg), concerning section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (“PEPUDA”).

Mr Qwelane was the author of a 2008 newspaper article comparing LGBTIQ+ people to animals and holding them responsible for the degeneration of values in society.

The South African Human Rights Commission referred the hate speech complaint to the Equality Court, while Mr Qwelane, in response, instituted a constitutional challenge against section 10(1) of PEPUDA, which defines and prohibits hate speech.

The Court found section 10(1) of the Equality Act to be unconstitutional to the extent of the inclusion of the term “hurtful”.

The Court further held that the declaration of constitutional invalidity should be suspended for 24 months to afford Parliament an opportunity to remedy the constitutional defect.

Importantly, the Court ordered that in the interim, section 10 should be read to refer exclusively to speech that is *harmful and incites hatred*.

Mr Qwelane's offending statements, made against the LGBTIQ+ community, were declared by the Court as being harmful and to incite harm and propagate hatred and thus amounts to hate speech in terms of the elements of section 10(1).

*"We welcome the judgment as it brings certainty and clarity as to what constitutes hate speech. With this certainty, other pending draft legislation, such the Prevention and Combating of Hate Crimes and Hate Speech Bill, which is currently before Parliament, may be proceeded with.*

*This judgment comes at a time when our country marks the 25<sup>th</sup> Anniversary of the Constitution.*

*Judgments such as these provide legal certainty and develop our constitutional jurisprudence on issues such as freedom of expression and issues of equality. This can only serve to deepen constitutionalism in our society,"* Minister Lamola said.

**ISSUED BY THE MINISTRY OF JUSTICE AND CORRECTIONAL SERVICES**

**Mr. Chrispin Phiri**

**Spokesperson: Ministry of Justice and Correctional Services**

**081 781 2261**