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FOR IMMEDIATE RELEASE

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Constitutional Court decision in Qwelane case is a win for womxn's rights in South Africa

The [Women's Legal Centre](#) (WLC) is encouraged by the Constitutional Court's decision, handed down today, which confirms that section 10(b) and 10(c) of the *Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000* ("PEPUDA") as constitutional.

The WLC welcomes today's judgment as an important acknowledgement of the State's constitutional duty to protect womxn from violence in all forms, including the regulation of, harmful, hateful and often violent misogynistic speech.

The landmark case of *Qwelane/South African Human Rights Commission* highlights the tension between freedom of expression and protection against hate speech. The case dealt with the constitutionality of section 10 of PEPUDA, which regulates hate speech. The case began in 2008 after Jon Qwelane, then a journalist at the *Sunday Sun* tabloid newspaper wrote a homophobic column titled "Call me names, but gay is NOT okay ...".

In 2017, the Gauteng High Court sitting as an Equality Court found that Qwelane's column constituted hate speech under section 10 of PEPUDA. In 2019 the Supreme Court of Appeal set aside the Equality Court judgment, finding section 10 of PEPUDA to be invalid on grounds of vagueness and therefore unconstitutional. On 22 September 2020, the case was heard by the Constitutional Court.

The WLC joined the matter as amicus curiae, or friend of the court, making submissions to bring a feminist lens to the case, focussing on misogynistic language as a form of violence against womxn, how it enables and perpetuates violence against womxn, and how limiting this type of language under PEPUDA is constitutionally justifiably permissible.

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“PEPUDA speaks to the value systems enshrined in our Constitution and the rights that accompany them. The WLC welcomes the Constitutional Court’s recognition that the regulation of hateful speech directed at womxn and other vulnerable groups as laid out in PEPUDA strikes an appropriate balance between the right to freedom of expression and the right to equality, dignity, safety and security. We are pleased to see the Constitutional Court uphold the State’s obligation’s in this regard as it reaffirms that speech is and can be harmful and capable of inciting harm and promoting hatred. The judgment comes at a time when women in our country are seeing increased aggression and violent language and speech because of their gender. We are happy that the Court has recognised that there is a need to limit and restrict speech in circumstances where particularly vulnerable members of our society are at risk,” notes Bronwyn Pithey and Charlene May, attorneys at the WLC.

The full verdict can be found here: <https://bit.ly/2V420mk>

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The Women’s Legal Centre is an African feminist legal centre that advances womxn’s rights and equality using tools such as litigation, advocacy, education, advice, research and training.

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