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Centre for Human Rights  
Faculty of Law

## PRESS STATEMENT

# CENTRE FOR HUMAN RIGHTS WELCOMES LANDMARK JUDGMENT ON CONSENT IN SEXUAL VIOLENCE CASES

4 October 2024

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The Centre for Human Rights, Faculty of Law, University of Pretoria welcomes the landmark judgment handed down by the Pretoria High Court on Monday, 30 September 2024 in the case of *The Embrace Project NPC and Others v Minister of Justice and Correctional Services* [Case no.:04856/22, Pretoria High Court].

In terms of the judgment, Baqwa J ordered that Sections 3, 4, 5, 6, 7, 8, and 9 read with section 1(2) of the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 are declared unconstitutional, invalid and inconsistent with the Constitution to the extent that these provisions do not criminalise sexual violence where the perpetrator wrongly and unreasonably believed that the complainant was consenting to the conduct in question, alternatively to the extent that the provisions permit a defence against a charge of sexual violence where there is no reasonable objective belief in consent. This significant judgment marks a pivotal moment in South Africa's legal approach to prosecuting sexual violence cases.

The Centre for Human Rights and the Psychological Society of South Africa, intervening as amicus curiae, and represented by Lawyers for Human Rights, played a crucial role in advancing psychological arguments that were extensively referenced in the judgment. Our submissions provided critical insights into the peritraumatic responses that survivors often experience during or immediately after sexual assault, and how these responses affect an individual's ability to refuse or withdraw their consent.

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Furthermore, we highlighted the misuse of the “defence of mistaken belief” as a loophole for perpetrators in the South African justice system.

The High Court’s recognition of the complexities surrounding consent will certainly have far-reaching implications for the prosecution of sexual violence in the country.

We extend our heartfelt thanks to our partners, the Psychological Society of South Africa for their invaluable expertise, and Lawyers for Human Rights for their steadfast support as our Attorneys of Record in filing these pivotal submissions. As this case proceeds to the Constitutional Court for confirmation, the Centre for Human Rights remains committed to advocating for justice for survivors of sexual violence and ensuring that our psycho-legal submissions continue to shape legal landscapes.

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