

REPUBLIC  
OF  
SOUTH AFRICA



REPUBLIEK  
VAN  
SUID-AFRIKA

# Government Gazette Staatskoerant

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PRETORIA, 23 OCTOBER 1998  
OKTOBER

No. 19349

## GOVERNMENT NOTICE

### DEPARTMENT OF JUSTICE

No. R. 1354

23 October 1998

### THE CONSTITUTIONAL COURT

**NOTICE IN TERMS OF RULE 4(8) OF THE RULES OF THE CONSTITUTIONAL COURT MADE BY THE PRESIDENT OF THE CONSTITUTIONAL COURT IN CONSULTATION WITH THE CHIEF JUSTICE UNDER SECTION 171 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (ACT NO.108 OF 1996), AND SECTION 16 OF THE CONSTITUTIONAL COURT COMPLEMENTARY ACT, 1995 (ACT NO.13 OF 1995) IN:**

Case CCT 11/98

**THE NATIONAL COALITION FOR GAY AND  
LESBIAN EQUALITY**

First Applicant

**THE SOUTH AFRICAN HUMAN RIGHTS  
COMMISSION**

Second Applicant

versus

**THE MINISTER OF JUSTICE**

First Respondent

**THE MINISTER OF SAFETY AND SECURITY**

Second Respondent

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## ORDER OF COURT

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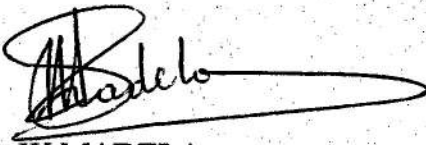
- 1.1. The common law offence of sodomy is declared to be inconsistent with the Constitution of the Republic of South Africa, 1996 and invalid.
- 1.2. In terms of section 172(1)(b) of the 1996 Constitution, it is ordered that the order in paragraph 1.1 shall not invalidate any conviction for the offence of sodomy unless that conviction relates to conduct constituting consensual sexual conduct between adult males in private committed after 27 April 1994 and either an appeal from, or a review of, the relevant judgment is pending, or the time for noting of an appeal from that judgment has not yet expired, or condonation for the late noting of an appeal or late filing of an application for leave to appeal is granted by a court of competent jurisdiction.
- 1.3 In all cases of sodomy which do not relate to conduct constituting consensual sexual conduct between adult males in private, the order in 1.1 will come into effect on the date of this judgment.
- 2.1. Section 20A of the Sexual Offences Act, 1957 is declared to be inconsistent with the 1996 Constitution and invalid.
- 2.2. In terms of section 172(1)(b) of the 1996 Constitution, it is ordered that the order in paragraph 2.1 shall not invalidate any conviction in terms of section 20A of the Sexual Offences Act, 1957 unless that conviction was related to conduct that took place after 27 April 1994 and either an appeal from, or a review of, the relevant judgment is pending, or the time for noting of an appeal from that judgment has not yet expired, or condonation for the late noting of an appeal or late filing of an application for leave to appeal is granted by a court of competent jurisdiction.
- 3.1. The inclusion of the common-law offence of sodomy in Schedule 1 of the Criminal Procedure Act, 1977 is declared to be inconsistent with the provisions of the 1996 Constitution and invalid.
- 3.2 In terms of section 172(1)(b) of the Constitution, it is declared that the order referred to in para 3.1 shall not invalidate anything done in reliance on the inclusion of "sodomy" in the schedule, as incorporated in the provisions of section 37(1)(a)(iv) of the Criminal Procedure Act, 51 of 1977; section 3(1)(b) of the Intercepting and Monitoring Prohibition Act, 127 of 1992 (read with the definition of "serious offence" under section 1 of that Act); and section 13(8) of the South African Police Service Act, 68 of 1995, unless a court of competent jurisdiction decides that it is just and equitable that conduct pursuant to such reliance shall be declared invalid, provided that due regard must be had to the provisions of section 35(5) of the 1996 Constitution.

3.3 In terms of section 172(1)(b) of the Constitution, it is declared that the order referred to in para 3.1 shall, in all cases other than those mentioned in paragraph 3.2 above, not invalidate anything done in reliance on the inclusion of "sodomy" in the schedule, unless a court of competent jurisdiction decides that it is just and equitable that conduct pursuant to such reliance shall be declared invalid.

4.1. The inclusion of the common-law offence of sodomy in schedule 1 of the Security Officers Act, 92 of 1987 is declared to be inconsistent with the provisions of the 1996 Constitution and invalid.

4.2. In terms of section 172(1)(b) of the Constitution, it is declared that the order referred to in paragraph 4.1 shall not invalidate anything done in reliance on the inclusion of "sodomy" in the schedule of the Security Officers Act, 1987, unless a court of competent jurisdiction decides that it is just and equitable that conduct pursuant to such reliance shall be declared invalid.

Thus done at JOHANNESBURG on 16 October 1998



W MADELA

REGISTRAR : CONSTITUTIONAL COURT

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*Government Notice*

- 1354 Constitution of the Republic of South Africa (108/1996): Notice in terms of Rule 4 (8) of the Rules of the Constitutional Court made by the President of the Constitutional Court in consultation with the Chief Justice under section 171.....

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