



FOR IMMEDIATE RELEASE
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**AGC MEDIA STATEMENT ON COURT OF APPEAL JUDGMENT
IN POFMA APPEALS CA 47 AND 52 OF 2020**

Some reports in the media of the recent Court of Appeal Judgment in CA 47 and 52 of 2020 convey the impression that the Attorney-General had argued that it is the Minister who determines, under the Protection of Online Falsehoods and Manipulation Act (“**POFMA**”), the truth or falsity of a statement of fact. This is incorrect. The Attorney-General’s position has consistently been that it is the Court which ultimately determines the truth or falsity of the statement. That is why there is an appeal mechanism in POFMA. The Courts are the final arbiters, as the Government has repeatedly stated, and as the statute provides.

2 The reporting is from a passage in the Court of Appeal Judgment (which fairly sets out the Attorney-General’s argument) in a different context. The appellants had argued that Part 3 of POFMA was unconstitutional because (in their argument) it sought to restrict free speech. The Attorney-General pointed out why this was misconceived. In addition, the Attorney-General also relied on the principle that false speech as identified by the Minister cannot be protected as free speech under the Constitution. In this context, the Court of Appeal held that a statement that has been identified by the Minister as a false statement of fact nevertheless continues to enjoy constitutional protection at least *until it has been judicially determined to be a false statement of fact*. The Court of Appeal also held that the issuance of a Correction Direction by the Minister does not restrict the right to freedom of speech, and is constitutional.

3 The Attorney-General acknowledges and respects these holdings of the Court of Appeal.

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