

CCT 314/24

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IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA



CCT CASE NO: \_\_\_\_\_

HCGDP CASE NO: 48656/22

In the matter between:

**THE EMBRACE PROJECT NPC**

First Applicant

**INGE HOLZTRÄGER**

Second Applicant

**CENTRE FOR APPLIED LEGAL STUDIES**

Third Applicant

and

**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

First Respondent

**MINISTER IN THE PRESIDENCY FOR WOMEN,  
YOUTH AND PERSONS WITH DISABILITIES**

Second Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Third Respondent

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**APPLICATION FOR CONFIRMATION**

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**KINDLY TAKE NOTICE** that the First and Second Applicants hereby apply to this Court in terms of section 172(2) of the Constitution, read with section 15(1)(b) of the Superior Courts Act 10 of 2013, and rule 16(4) of the Constitutional Court Rules, for an order on the following terms:

1. Confirming paragraphs 1-4 of the High Court's order, which was handed down on 30 September 2024 by Baqwa J, which provides:

- “1. Sections 3, 4, 5, 6, 7, 8, 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 believe in consent.
2. The declaration of invalidity in paragraph 1 is suspended for a period of 18 months to allow the constitutional defects to be remedied by Parliament.
3. During the 18 month period referred to in paragraph 2, the following words shall be read into the Act:

*‘56(1A) Whenever an accused person is charged with an offence under section 3, 4, 5, 6, 7, 8, 9 or 11A, it is not a valid defence for that accused person to rely on a subjective belief that the complainant was consenting to the conduct in question, unless the accused took objectively reasonable steps to*

*ascertain that the complainant consented to sexual conduct in question.'*

4. *The declaration of invalidity and reading in shall operate only with prospective effect from the date of this order and shall have no effect on conduct which took place before the date of this order."*

2. Varying the order above in the following respects:

2.1. In paragraph 1 of the order, by the addition of section 11A.

2.2. Ordering that should Parliament fail to cure the defect within the period of suspension, the interim reading in paragraph 3 will become final.

3. Directing that the costs of this application, including the costs of two counsel, are to be paid jointly and severally by any Respondents opposing the relief sought.

**TAKE NOTICE FURTHER THAT** the Founding Affidavit of **LEE-ANNE GERMANOS** will be used in support of the application along with a Confirmatory Affidavit of **INGE HOLZTRÄGER**.

**TAKE NOTICE FURTHER THAT** the First and Second Applicants have appointed the offices of its attorneys of record, set out below, as the addresses at which they will accept notice and service of all documents in these proceedings. The First and Second Applicants' attorneys will also accept electronic service at the following email addresses: [tina.power@powerlaw.africa](mailto:tina.power@powerlaw.africa) and [slindile.khumalo@powerlaw.africa](mailto:slindile.khumalo@powerlaw.africa).

**TAKE NOTICE FURTHER THAT** if you intend on opposing the relief sought in this application, you are required to:

- (a) notify the First and Second Applicant's attorneys in writing within **15 (fifteen)** days and to appoint in such notice an address within 15 kilometres of this Court at which you will accept notice and service of all process in these proceedings;
- (b) within **15 (fifteen)** days after you have so given notice of your intention to oppose the application, to file your answering affidavit(s), if any.

**TAKE NOTICE FURTHER THAT**, in terms of rule 16(4) of the Constitutional Court Rules, this application will be disposed of in accordance with the directions issued by the Chief Justice.

Dated at **JOHANNESBURG** on this the **21<sup>st</sup>** day of **OCTOBER 2024**.



**POWER AND ASSOCIATES**

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**Ref: PSIEP-202122**

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- AND TO: THE REGISTRAR**  
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- AND TO: CENTRE FOR APPLIED LEGAL STUDIES**  
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