

Pro Bono & Human Rights

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SOUTH AFRICA

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Access Chapter 2 admitted as *amicus curiae* in landmark sex work decriminalisation case

In May 2024 in the Western Cape Division of the High Court, S.H. and The Sex Workers Education and Advocacy Taskforce (SWEAT) launched a landmark legal challenge to decriminalise sex work in South Africa. In the application referred to as *S.H. and Another v The Minister of Justice and Correctional Services and Others*, SWEAT is the second applicant and positions itself in support of the first applicant, S.H., who is a sex worker based in Cape Town. The founding affidavit is deposed to by S.H., and in it she chronicles the harassment, lack of protection, stigmatisation and discrimination that she endures as a sex worker. In this groundbreaking and historic application, both S.H. and SWEAT seek to have the legislation that criminalises sex work in South Africa declared unconstitutional and to, as a consequence, have sex work decriminalised.

The application has become one of the most closely watched constitutional cases of the decade and has caught the attention of numerous public interest organisations – locally and internationally – who have put forward their strong interest in the outcome of the application, with some showing support for the application and others challenging the relief it seeks. That the application raises important constitutional and social issues of national import, is without question.

No less than 16 organisations made application to be joined to the proceedings as *amicus curiae*. On 1 September 2025, the Honourable Judge Le Grange of the Western Cape Division heard from all 16 *amicus* applicants, as well as from a further five organisations who sought joinder as respondents in the proceedings. Cliffe Dekker Hofmeyr's Pro Bono and Human Rights Practice represented the fourteenth applicant for admission as *amicus curiae*, being Access Chapter 2 NPO (AC2).

The decision as to the applications of the total 21 further parties to the proceedings was delivered in a powerful and emotional judgment handed down by Le Grange, J the next morning on 2 September 2025. In recognition of the important issues of public interest raised in the application, and in further recognition of the constitutional imperative for all voices and perspectives in matters such as these to be heard, all five organisations seeking joinder as respondents, and all 16 organisations seeking inclusion as *amici*, were admitted to the proceedings.

Legal framework being challenged

At the heart of the case are several statutory provisions that criminalise sex work:

- Section 20(1A)(a) of the Sexual Offences Act 23 of 1957 makes it a criminal offence for a person to have "unlawful carnal intercourse, or commit an act of indecency, with any other person for reward". In effect, this provision prohibits the exchange of sexual services for any form of payment.
- Section 20(1)(a) further criminalises living off the earning of such services, targeting not only participants but also anyone financially dependent on them.

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- Together with related provisions in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, these sections create ancillary offences that reinforce the criminal framework.
- Municipal By-Laws on Streets, Public Places, and the Prevention of Noise Nuisances also regulate and restrict such activity in public.

S.H. and SWEAT seek a declaration that these provisions are unconstitutional for infringing fundamental rights to dignity, equality, freedom and security of the person, as well as consequential relief.

AC2's unique perspective

AC2 is a non-profit organisation championing inclusion, with a particular focus on migration and sexual orientation, gender identity, gender expression and sex characteristics. Through its intervention as *amicus* in the proceedings, AC2 will assist the Court by highlighting how the criminalisation of sex work disproportionately affects LGBTQIA+ individuals, particularly transgender women and gender-diverse individuals, and how migrant sex workers face additional barriers, including policing practices, restricted access to healthcare, and obstacles to legal protection. AC2's submissions also address how the impugned provisions entrench stigma and systemic disadvantage, undermining constitutional guarantees of dignity and equality. These layers of exclusion make such individuals more vulnerable to violence, extortion, and exploitation, while also restricting their ability to access justice, protection, and essential healthcare.

When handing down judgment Le Grange J remarked that in cases in which applicants seek admission as *amicus curiae*, the court would ordinarily not admit such

a large number of *amici* as the likelihood of unnecessary and unhelpful overlap and duplication in submissions placed before the Court would increase, a position which is meant to be guarded against by the proper application of Uniform Rule 16A. However, Le Grange J quickly made clear that this is no ordinary case: the constitutional and social importance of this case justified the admission of a wide spectrum of perspectives, and a platform for the representation of the lived realities of the persons affected by the legislative provisions dealing with sex work.

The hearing of the main application has been scheduled for 18, 19 and 20 May 2026 in the Western Cape Division. The National Prosecuting Authority has confirmed a moratorium on prosecuting sex workers while the litigation proceeds. The admission of AC2 as *amicus curiae* underscores the importance of foregrounding the compounded marginalisation faced by LGBTQIA+ and migrant sex workers in the national debate on decriminalisation.

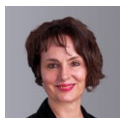
Our practice is honoured to have represented AC2 in support of the important work it does and the communities it serves, and in support of this landmark case. We look forward to presenting AC2's submissions at the hearing in May 2026, and to contributing to positive change in our constitutional dispensation.

Brigitta Mangale, Elgene Roos and Sibonokuhle Baart



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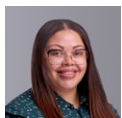
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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