



**Submission in response to the Prescription in Civil and Criminal Matters
(Sexual Offences) Amendment Bill [B22 – 2019]**

26 February 2020

For attention: Mr Vhonani Ramaano
Per email: vramaano@parliament.gov.za
Portfolio Committee: Justice and Correctional Services

Dear Mr Ramaano

1. We attach the written submission of the Helen Suzman Foundation on the Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill [B22 – 2019]
2. Should you have any queries, kindly contact Lee-Anne Germanos at lee-anne@hsf.org.za.

Francis Antonie
Director

Director: Francis Antonie

Trustees: Cecily Carmona • Max du Plessis • Cora Hoexter • Nick Jonsson • Daniel Jowell • Kalim Rajab • Gary Ralfe • Rosemary Smuts
• Richard Steyn • Phila Zulu

1. Introduction

- 1.1. The Helen Suzman Foundation (“HSF”) welcomes the opportunity to make submissions to the Portfolio Committee on Justice and Correctional Services (“the Committee”) on the Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill [B22 – 2019] (“the Bill”).
- 1.2. The HSF is a non-governmental organisation whose main objective is to promote and defend the values of our constitutional democracy in South Africa, with a focus on the rule of law, transparency and accountability.

2. Background to the Bill

- 2.1. The HSF recognises and commends the work of this Committee to bring the provisions of both the Prescription Act and Criminal Procedure Act in line with the interim order in the judgment of *Levenstein and Others v Estate of the Late Sidney Lewis Frankel and Others* 2018 ZACC 16. The Committee’s foresight to amend the law on the prescription of civil claims arising from the commission of sexual offences, in addition to the court ordered amendment on prescription for the institution of criminal prosecution, is recognized in particular.
- 2.2. Section 18 of the Criminal Procedure Act placed a bar of 20 years on the right to institute prosecution for all sexual offences other than rape, compelled rape, human trafficking and the use of persons who lack legal capacity for pornographic purposes. The Constitutional Court in *Levenstein* found that there was no rational basis for the distinction among the different sexual offences. As a result, the imposition of a 20 year prescription period for the prosecution of most sexual offences, with an exemption for others, was held to be unconstitutional. The Court ordered that the exemption to prescription placed on prosecution must include “*any sexual offence in terms of the common law or statute*”. This would be effective retrospectively from 27 April 1994. This is captured in the Bill.
- 2.3. Section 12(4) of the Prescription Act exempts the prescription of civil claims arising from the commission of certain crimes. The HSF commends the Committee for taking the Constitutional Court judgment in *Levenstein* a step further by amending the Prescription Act to align with the Court’s ordered amendment of the Criminal Procedure Act. The exemptions

to the running of prescription for a civil claim or debt in section 12(4) of the Prescription Act now include a claim arising from the commission of “*any sexual offence in terms of the common law or a statute*”, as opposed to specific sexual offences only.

2.4. Sections 12(4)(ii) and 13 of the Prescription Act have been further amended by the Committee to provide for persons with “*mental or intellectual disability, disorder or incapacity*”, replacing the words “*insane*” and “*psychological condition*”, respectively, in order to account for victims who may be in a position to institute proceedings but suffer relapses which prevent them from doing so.

3. Substantive comments

3.1. The removal of prescription in criminal and civil matters pertaining to all alleged sexual offences removes the artificial distinction previously created by legislation, which suggested that certain sexual offences are graver than others. Victims of any sexual offence are faced with the same obstacles in reporting. These include personal, social, psychological and structural disincentives. The amendment recognises and assists in reducing the effects of systemic sexual exploitation – being secrecy, fear and shame – by affording victims an indefinite period of time to report the alleged offences.

3.2. The Bill refers to “*mental or intellectual disability, disorder or incapacity*”, which replaces the words “*insane*” and “*psychological condition*”. The memorandum to the Bill explains this amendment to provide for victims of sexual offences who are in a position to institute proceedings, but then suffer relapses which prevent them from doing so. However, this particular intention is not made clear or articulated sufficiently either in the amendment or the Bill. The concern is that without the memorandum, the Committee’s, and in due course Parliament’s, original intention will be lost with time.

Lee-Anne Germanos

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