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| **COSATU Submission:** **Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill****28 February 2020** |
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**Submitted to:****Portfolio Committee:** **Justice and Correctional Services****National Assembly****Parliament****Republic of South Africa** |

1. **Introduction**

COSATU welcomes and supports the Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill.

The Bill is progressive and seek to enhance the protection of victims of sexual offences and must thus be supported. COSATU urges Parliament to ensure the speedy passage of the Bill.

Whilst COSATU supports the Bill and its enactment, we believe that there are several critical and unconstitutional and other flaws that must be addressed as a matter of urgency before the Bill can be passed.

If these flaws are not addressed it will serve only to leave thousands of victims of sexual offences behind and open to abuse.

1. **Delays in Passing Legislation**

The federation is alarmed though at the unreasonable length of time it has taken Parliament to process the Sexual Offences Amendment Bill.

Judgement was passed down by the Constitutional Court on 14 June 2018. Parliament was given 24 months to make the necessary legislative amendments by the Constitutional Court.

We are now 3 months short of that deadline. In short Parliament will fail to meet the 2 year deadline set by the Constitutional Court.

It is simply unacceptable for Government and Parliament to once again fail to abide by very generous timeframes set by the Constitutional Court to correct constitutionally invalid and discriminatory legislation.

There are no acceptable excuses for this lack of urgency by Parliament and government. This is not a once off occurrence. But in fact a frequent problem on the part of the legislature and the executive that must be addressed.

The public cannot be expected to take Parliament seriously if its Members fail to perform the role entrusted to them by the Constitution as well as to fulfill specific requests from the Constitutional Court.

The continuous failures by the executive to table legislation and by the legislature to draft and pass legislation timeously have a detrimental impact upon workers and the vulnerable.

Where the executive fails to lead, then Parliament is fully empowered by the Constitution to draft and adopt the necessary legislation. Lethargy is not a virtue.

1. **COSATU Support for the Sexual Offences Amendment Bill**

COSATU welcomes and strongly supports the Bill. The objectives of the Bill are progressive.

The Bill seeks to correct the constitutionally unfair and acceptable consequences of the 20 year prescription of prosecutions for any sexual offences in terms of common law or statute.

COSATU supports this Bill as it will now eliminate this unfair and serious form of discrimination and in effect a get out of jail free card for rapists and other sexual offenders. This is a critical weapon in the struggle to protect survivors of sexual offences.

1. **COSATU’s Proposed Amendments to the Sexual Offences Amendment Bill**
	1. **27 April 1994 Commencement of Prescription**

The Bill provides for the commencement of prescription for cases from 27 April 1994, in other words the date when the Interim Constitution came into effect.

However the effect of imposing this date is a form of prescription in itself. It allows for a prescription for sexual offences that occurred before 27 April 1974. This in itself is unconstitutional, discriminatory and a cruel form of victimisation.

There is provision in law for retrospective legislation. The removal of prescriptions in 2020 for sexual offences from 27 April 1974 is confirmation of this.

There is no Constitutional provision requiring such a limitation. If a retrospective removal of 20 year prescription from before 27 April 1994 can be effected in 2020, then any such prescriptions for sexual and other offences provided for in the Bill be can and must be removed.

**COSATU Proposal:**

In short, the date of 27 April 1994 must be removed and the bill be amended to remove any form of prescription for the sexual and other offences referred to in the Bill.

* 1. **Bail for Sexual Offences**

The levels of sexual violence in South Africa are at horrific levels. Few perpetrators are charged, prosecuted, convicted and imprisoned.

Most perpetrators are known by the survivors.

Some of the key reasons that survivors do not lay charges or see through the prosecution of their cases, is that the accused are usually granted bail, are granted in a short space of times and are subject to intimidation by the accused with little protection from the state.

Survivors need to be assured that they will be protected from being a victim a second time.

**COSATU Proposal:**

The Bill be further strengthened by providing for the automatic denial of bail to persons accused of sexual offences.

* 1. **Ukuthwala Cases**

The kidnapping of women and often minors in the name of Ukuthwala remains a serious problem in certain parts of South Africa.

Government has repeatedly committed itself to enacting legislation to halt any cultural practises that result in the kidnapping of women and minors, their subsequent forced marriage and related sexual offences that may be committed.

However government has repeatedly failed to act upon this commitment.

**COSATU Proposal:**

A bill or an amendments to the Sexual Offences Bill be drafted to prohibit any cultural practises that result in the kidnapping of women and minors, their subsequent forced marriage and related sexual offences that may be committed as a matter of priority.

1. **Conclusion**

COSATU welcomes and supports the Bill. The federation urges the speedy passage of the Bill by Parliament and its ascension by the President.

COSATU urges Parliament to insert its proposed amendments with to removing the 27 April 1994 limitation to prescription for sexual offences.

The Bill should be further amended to remove the option of bail for persons accused of sexual offences.

Legislation should be drafted to tackle serious offences committed under the Ukuthwala and other cultural activities.

COSATU hopes that its submission and proposals will assist the Portfolio Committee with its critical task in ensuring the speedy passage of the Bill.

The federation trusts that’s its proposed amendments will be considered and enacted upon.

Thank you.

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