**3. Report of the Portfolio Committee on Justice and Correctional Services on the Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill [B22 - 2019] (National Assembly – section 75), dated 11 March 2020**

The Portfolio Committee on Justice and Correctional Services, having considered the Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill [B22 – 2019], referred to it and classified by the Joint Tagging Mechanism (JTM) as a section 75 Bill, reports the Bill with amendments [B22A - 2019]. The Committee, furthermore, wishes to report as follows:

* 1. On 14 June 2018, the Constitutional Court, in *Levenstein and Others v Estate of the Late Sidney Lewis Frankel and Others* 2018 ZACC 16 (‘‘the *Levenstein* matter’’), declared that section 18 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), is inconsistent with the Constitution to the extent that it bars, in all circumstances, the right to institute a prosecution for all sexual offences, other than those listed in section 18*(f)*, *(h)* and *(i)* of the said Act, after the lapse of a period of 20 years from the time when the offence was committed.
  2. The Constitutional Court afforded Parliament 24 months to enact remedial legislation, that is before 14 June 2020.
  3. On 30 May 2018, the Criminal Procedure Amendment Bill, 2018, which proposed to amend section 18 of the Criminal Procedure Act, 1977, was introduced in Parliament before the Constitutional Court delivered its judgment.
  4. On 16 January 2019, the Minister informed the Speaker that the applicants in the *Levenstein* matter had decided to also challenge the constitutional validity of section 12(4) of the Prescription Act, 1969, (Act No. 68 of 1969). The Speaker was informed that the Minister was withdrawing the Criminal Procedure Amendment Bill, 2018, and that a single Amendment Bill would be prepared to deal with proposed amendments to section 18 of the Criminal Procedure Act, 1977, and section 12 of the Prescription Act, 1969. The Bill was subsequently withdrawn on 24 January 2019.
  5. On 27 November 2019, the Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill was tabled and referred to the Committee for consideration and report, proposing amendments to section 18 of the Criminal Procedure Act, 1977, and sections 12 and 13 of the Prescription Act, 1969.
  6. In response to the call for public comment, the Committee received a total of seven (7) written submissions from:
* Mr MJ Buthelezi.
* Commission for Gender Equality (CGE).
* Congress of South African Trade Unions (COSATU).
* Embrace Dignity.
* Helen Suzman Foundation (HSF).
* Lawyers for Human Rights (LHR).
* Women’s Legal Centre (WLC).
  1. The Committee held public hearings at Parliament on 4 March 2020, where the following interested parties made oral presentations:
* Commission for Gender Equality (CGE).
* COSATU.
* Embrace Dignity.
* Lawyers for Human Rights (LHR).
* Women’s Legal Centre (WLC).
  1. Several of the submissions expressed the concern that the retrospective declaration of constitutional invalidity of section 18 of the Criminal Procedure Act, 1977, to 27 April 1994 by the Constitutional Court meant that the 20-year restriction in respect of certain sexual offences would still be applicable in respect of offences committed before 27 April 1994. The Committee does not agree with the aforementioned. The Committee is of the view that section 18, with specific reference to the right to institute a prosecution, will upon amendment also apply to the right to institute a prosecution in respect of the category of offences which were committed before 27 April 1994 and which were excluded from the ambit of section 18 of the Criminal Procedure Act, 1977. The Bill, therefore, now proposes the following provision: ‘The right to institute a prosecution that, in respect of any offence referred to in subsection (1)(*eA*) and (*f*), has lapsed before the commencement of the Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Act, 2019, is hereby revived.”.
  2. With regard to the concerns that were raised with regard to the retrospective application of section 12(4) of the Prescription Act, 1969, the Committee is of the view that these may be misplaced. The only restriction that applies in terms of section 12(4) of the Prescription Act, 1969, which deals with when prescription begins to run, is that proceedings should be instituted within a specific period after a person has recovered from certain stipulated impediments. Section 12(4) does not regulate or place any restriction on the period when the person concerned was unable to institute proceedings. In other words, section 12(4) does not apply retrospectively. The Committee, therefore, is of the view that it is unnecessary to include a reference to 27 April 1994.
  3. Many submissions proposed to remove the commencement of civil prescription altogether in respect of all sexual offences. The Committee, however, is of the view that an amendment such as this is of a substantive nature and should be carefully considered, among others, with specific reference to the horizontal application of fundamental rights.

**Report to be considered**