

Media Statement

Court case seeks to the end the prescription of sexual offences.

Today 22 May the Women's Legal Centre will appear as a 'friend of the court' (*amicus curiae*) in the South Gauteng High Court in the matter between Levenstein (and 7 others) and Sidney Frankel, the Minister of Justice and Constitutional Development, and the Director of Public Prosecutions, Gauteng (Case 29573/2016). The WLC largely supports the case of the applicants (Levenstein & others) who are seeking to declare section 18 of the Criminal Procedure Act as unconstitutional in that it bars the right to prosecute all sexual offences, other than rape, after a lapse of 20 years after the offence has been perpetrated.

The Applicants allege that the First Respondent (Mr Frankel) committed a range of sexual offences against the Applicants between 1976 and 1991. The sexual offences were of a nature that did not constitute rape, but were indecent assault. Although the sexual offences law was changed in 2007 by the Criminal Law (Sexual Offences and Related Matters) Amendment Act to broaden the definition of rape (the common law limited rape to vaginal penetration by a penis) to include both anal and oral penetration, section 18 still limits the prosecution of other sexual offences, for example sexual assault, exposing a child to pornography and certain trafficking offences involving sexual offences.

The WLC will make the following submissions:

1. No sexual offence should prescribe. Special considerations apply and must be taken into account when considering the issue of prescription of sexual offences due to the unique nature of sexual offences and the state's constitutional obligations to prosecute these offences. The reasons for the delay in reporting sexual offences is well recognised, such as fear of reprisal from the perpetrator, self blame and lack of support from family and community members. Significantly, studies indicate the high levels of dissatisfaction with the criminal justice system experienced by sexual offences survivors; adult women are well aware of systemic beliefs and attitudes of officials which results in secondary victimisation.
2. The current law arbitrarily distinguishes between rape and other sexual offences, assuming that rape is more serious. The concept of seriousness based on 'harm' or moral gravity does not take into account the level of trauma endured by survivors of sexual offences which varies independently of the 'seriousness' of the offence. This concept of 'seriousness' is linked to patriarchal notions and assumptions that penetrative sexual offences are more serious (and should be excluded from prescription) than non-penetrative sexual offences.

3. Section 9 of the Constitution which provides that everyone is equal before the law and has the right to equal protection and benefit of the law. To distinguish between rape and other sexual offences results in an unequal application of the law and discriminates against those survivors of sexual offences other than rape. This allows perpetrators who committed other sexual offences to escape prosecution simply as a result of the passage of time.
4. All sexual offences are serious and can have detrimental and long term effects on the survivor. Sexual offences survivors must be given the opportunity to approach the criminal justice system for legal recourse, irrespective of the nature of the sexual offence, when the offence was committed, or whether the survivor is an adult or child when the offence was committed

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