

REPUBLIC OF SOUTH AFRICA

**PRESCRIPTION IN CIVIL AND CRIMINAL MATTERS (CERTAIN
SEXUAL OFFENCES) AMENDMENT BILL**

(.....)

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

BILL

To amend the Prescription Act, 1969, so as to extend the list of sexual offences in respect of which prescription does not commence to run under certain circumstances in respect of a debt based on the commission of any of those alleged sexual offences; to amend the Criminal Procedure Act, 1977, so as to extend the list of sexual offences in respect of which a prosecution may be instituted after a period of 20 years has lapsed since the date of the alleged commission of a sexual offence; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 12 of Act 68 of 1969, as substituted by section 68 of Act 32 of 2007 and section 48 of Act 7 of 2013

1. Section 12 of the Prescription Act, 1969, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) (a) Prescription shall not commence to run in respect of a debt based on the commission of an alleged sexual offence **[as contemplated in sections 3, 4, 17, 18(2), 20(1), 23, 24(2) and 26(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007,]**—

(a) of rape, indecent assault, incest, or violation of a corpse, insofar as it relates to the commission of a sexual act with a corpse, which was committed before 16 December 2007;

(b) as provided for in sections 9, 12, 13, 14, or 15, read with section 22, of the Sexual Offences Act, 1957 (Act No. 23 of 1957);

(c) of possession of child pornography as contemplated in section 2(1) of the Indecent or Obscene Photographic Matter Act, 1967 (Act No. 37 of 1967);

(d) of commercial sexual exploitation of children as contemplated in section 50A of the Child Care Act, 1983 (Act No. 74 of 1983);

- (e) of possession or distribution of child pornography as contemplated in section 24B of the Films and Publications Act, 1996 (Act No. 65 of 1996);
 - (f) of commercial sexual exploitation of children as contemplated in section 141(1)(b), read with section 305(1)(c), of the Children's Act, 2005 (Act No 38 of 2005);
 - (g) as provided for in sections 3 to 12, 14 to 26, 55 and 71 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); and
 - (h) an alleged offence as provided for in sections 4, 5, and 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013, during the time in which the creditor is unable to institute proceedings because of his or her mental or psychological condition.
- (b) Paragraph (a) is deemed to have come into operation on 27 April 1994."

Substitution of section 18 of Act 51 of 1977, as substituted by section 68 of Act 32 of 2007 and amended by section 48 of Act 7 of 2013 and section 8 of Act 8 of 2017

2. The following section is hereby substituted for section 18 of the Criminal Procedure Act, 1977:

"Prescription of right to institute prosecution

18. (1) The right to institute a prosecution for any offence, other than **[the offences of]**—

- (a) murder;
- (b) treason committed when the Republic is in a state of war;
- (c) robbery, if aggravating circumstances were present;
- (d) kidnapping;
- (e) child-stealing;

- (f) **[rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively] the offences—**
- (i) of rape, indecent assault, incest, or violation of a corpse, insofar as it relates to the commission of a sexual act with a corpse, which was committed before 16 December 2007;
 - (ii) as provided for in sections 9, 12, 13, 14, or 15, read with section 22, of the Sexual Offences Act, 1957 (Act No. 23 of 1957);
 - (iii) of possession of child pornography as contemplated in section 2(1) of the Indecent or Obscene Photographic Matter Act, 1967 (Act No. 37 of 1967);
 - (iv) of commercial sexual exploitation of children as contemplated in section 50A of the Child Care Act, 1983 (Act No. 74 of 1983);
 - (v) of possession or distribution of child pornography as contemplated in section 24B of the Films and Publications Act, 1996 (Act No. 65 of 1996);
 - (vi) of commercial sexual exploitation of children as contemplated in section 141(1)(b), read with section 305(1)(c), of the Children's Act, 2005 (Act No 38 of 2005); or
 - (vii) as provided for in sections 2 to 12, 14 to 26, 55 and 71 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);
- (g) genocide, crimes against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002;
- (h) any contravention of section 4, 5 or 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013);
- [(hA) trafficking in persons for sexual purposes by a person as contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;**
- (i) **using a child or person who is mentally disabled for pornographic purposes as contemplated in sections 20(1) and 26(1) of the**

Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;] or

(j) torture as contemplated in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013), shall, unless some other period is expressly provided for by law, lapse after the expiration of a period of 20 years from the time when the offence was committed.

(2) Subsection (1)(f) is deemed to have come into operation on 27 April 1994."

Short title

3. This Act is called the Prescription in Civil and Criminal Matters (Certain Sexual Offences) Amendment Act, 2019.