

# Oldest sexual abuse case heads to trial this Women's Month

The amendment of the Criminal Procedure Act to see sexual offences prosecuted, retrospectively, is set to come to life with what is set to be the oldest sexual abuse case to go to trial in South Africa.



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According to the *Pretoria News*, two local sisters Lisa van der Merwe, 56 and her sister Claudine Shiels, 60, were sexually abused, allegedly by their relatives from 1974 to 1979.

The two sisters will seek justice when their case goes before the Wynberg Magistrate's Court this month.

This as the country marks Women's Month and continues to fight the scourge of gender-based violence in the country.

In May 2018, Cabinet approved the introduction of the Criminal Procedure Amendment Bill of 2018 which amends the Criminal Procedure Act.

The proposed Amendment Bill will extend the list of sexual offences in respect of the prosecution and also allows for the charges to be instituted even after 20 years.

The amendments give effect to the South Gauteng High court judgement in the Levenstein case.

In the Levenstein case, Nicole Levenstein was one of the eight of a group of women who sought to lay criminal charges against the now late stockbroker Sidney Frankel, who they accused of being a paedophile.

In a unanimous judgment on the Levenstein case, the Constitutional Court found the law on limitation of which sexual offences could be prosecuted and the set lapse period of 20 years to be unconstitutional.

The judgment said the law was “inconsistent with the Constitution and invalid to the extent that it bars, in all circumstances, the right to institute a criminal prosecution for all sexual offences, other than rape or compelled rape, trafficking persons for sexual purposes and using a child or person who is mentally disabled for pornographic purposes, after the lapse of a period of 20 years from the time when the offence was committed”.

Noting the importance of amending the Criminal Procedure Act, Acting Cabinet spokesperson Phumla Williams said at the time the Amendment Bill will go a long way in tightening the justice system.

“The bill in itself says that from now onwards, even if it’s 20 years later, you can choose to come out because there are various reasons some people die in silence and don’t report these crimes but at a later stage a person will be able to say ‘I was raped by a neighbour or by my cousin’,” said Williams at the time.

In addition, the court ruled that their decision should apply retrospectively to 27 April 1994, meaning victims whose cases date back to this period can take attackers to court.

The amendments will allow the National Prosecuting Authority wider discretion to institute prosecutions in sexual offences in accordance with Chapter 2 of the Constitution.

## **Parliament given two years to amend law**

The Constitutional Court gave Parliament 24 months to “cure the constitutional defect” in the Criminal Procedure Act.

The Constitutional Court judges signalled that inaction by Members of Parliament would result in an automatic implementation of their ruling.

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