



ILITHA LABANTU

PEOPLE WHO CARE ABOUT PEOPLE

SUBMISSION ON

PREVENTION AND COMBATING OF HATE CRIMES AND

HATE SPEECH BILL[B9B-2018].

25 MAY 2023

ATTENTION: Hon. S Shaikh, MP, Chairperson: Select Committee on Security and Justice.

Comments must be sent to HateCrimesBill9B-2018@parliament.gov.za

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Ilitha Labantu hereby welcomes the opportunity to comment on the The Prevention and Combating of Hate Crimes and Hate Speech Amendment Bill. **The organization is also available for Oral Presentation**

Introduction

Ilitha Labantu, established in 1989, is a social justice community organisation based in Gugulethu township, Cape Town with a specific focus on addressing violence against women, children, vulnerable groups and supporting those affected by it. Its services include psycho-social services, legal and policy advocacy services, educational and outreach services as well as community nutrition and development services. This is accomplished through individual and family counselling, providing emergency accommodation for women and their children, skills training, empowerment and capacity building workshops. The scope of its work is centred around meeting the needs of communities affected by high levels of violence and limited socio-economic opportunities. Located within the residential areas of its target group, Ilitha Labantu provides easily accessible services to Gender-Based Violence and Femicide survivors, victim families and the broader community.

This violence perpetrated against women denies women in both townships and rural areas an opportunity and legal right to live in an environment that is healthy and conducive for them to thrive. Gender based violence has crippled most communities in South Africa and we have seen how over the years, the plight faced by women and children in the form of abuse, secondary victimisation and trauma suffered by those who are directly and indirectly impacted by this pandemic is ever increasing. While we acknowledge that the prevalence of violence and all forms of abuse on women, children and the vulnerable is not a uniquely South African problem but a worldwide epidemic, we welcome the attempts to rectify where there has been failure to properly implement strategies in addressing this violence in our society and we will promote the advancement of the implementation of the National Strategy against GBVF.

PREVENTION AND COMBATING OF HATE CRIMES AND HATE SPEECH BILL

Ilitha Labantu welcomes the opportunity to comment on this Bill that will create criminal offences for hate crimes and hate speech. This bill aims to give effect to the obligations in the Constitution and international human rights instruments concerning racism, racial discrimination, xenophobia and related intolerance.

In accordance with international law obligations, it will provide for the offences of hate crimes and the offences of hate speech and for the prosecution of persons who commit those offences. It will also provide for appropriate sentences that may be imposed on persons who commit hate crime and hate speech offences whilst also providing for the prevention of hate crimes and hate speech as well as for the reporting on the implementation, application and administration of the Act, while giving effect to consequential amendments to certain Acts of Parliament and other matters connected therewith.

Even though the Constitution of South Africa provides for the establishment of a society that is based on democratic values of social justice, human dignity, equality, advancement of human rights and freedoms, non racialism and non sexism, South Africa currently has no clear legal framework for the state to properly address the scourge of hate crimes and speeches that are motivated by prejudice and intolerance. People are still specifically targeted on the basis of race, nationality, ethnicity, sexual orientation (special mention to the constant fear LGBTIQ+ community), religion and customs among others. The existing laws seem to be inadequate and also seem not to act as a strong deterrent to perpetrators of hate crime and speech.

Our Submission is as Follows:

SECTION	COMMENTS
<p>INTRODUCTION AND DEFINITIONS</p> <p>Section 1</p>	<p>The introduction of policy and legislation on hate crimes and hate speech is one of the means necessary to address the concept of hate crimes as well as the reforms that need to be made. We acknowledge the recognition and validation of definitions that acknowledge the unique harm inflicted upon victims targeted due to their characteristics. This will send a strong message that society recognizes the severity of hate-motivated crimes and speeches and is committed to addressing them appropriately. It will also create a symbolic value that demonstrates a societal commitment to equality, inclusivity, and justice, promoting social cohesion and respect for diversity within South Africa.</p>

<p>OBJECTIVES</p> <p>Section 2</p>	<p>We welcome the purposeful intent of creating a law that holistically provides for hate crimes and speech given the background of a society that continues to experience such forms of crimes despite the Constitution's stance on all matters concerning the dignity of all people. Cognisance is also noted that South Africa also incorporates international instruments in the legal system as shown by being a signatory to the International Convention on the Elimination of all forms of Racial Discrimination.</p>
<p>OFFENCE OF HATE CRIME</p> <p>Section 3</p>	<p>We welcome the definition of a hate crime as we feel it is in line with the grounds for equality protection in the Bill of Rights and that it protects categories or groups of people who are targets of hate speech. We welcome the fact that this definition ensures the protection of all those recognised by our Constitution and will protect many vulnerable groups often facing extreme discrimination, marginalisation and risk of violence. We are certain that bill, once law, will provide specific protection to marginalized communities that are more likely to be targeted based on their identity and this will help create a safer environment that fosters a sense of security within those communities.</p>
<p>OFFENCE OF HATE SPEECH</p> <p>Section 4</p>	<p>We welcome the definition of hate speech as this has been a problematic issue in this age of technology which presents unique challenges in terms of print and widespread use of the internet and social media platforms. Hate speech which is discriminatory is easily spread reaching larger audiences with significant impact on individuals and communities. Cyber hate often on online platforms through comment sections and forums are common spaces where hate speech occurs. The online environment enables individuals to hide behind anonymity and continue with impunity because they are</p>

	<p>emboldened to engage in hateful behavior that they might not exhibit in face-to-face interactions.</p> <p>We also welcome the balance that is provided for under hate speech in terms of all <i>bona fide</i> speech and expression.</p> <p>However, we submit that it is challenging to draw a clear line between hateful speech and protected expression given the fact that it is a subjective and context dependant test. South Africa is very diverse in terms of culture, religion, politics, race among others which therefore needs a balance to safeguard the limitations placed under hate speech.</p>
<p>VICTIM IMPACT STATEMENT Section 5</p>	<p>We welcome the provision of Section 5(1) of the Bill providing for a victim impact statement that is to be taken into consideration in prosecuting offences in that it includes someone authorised by the victim to make such a statement on behalf of the victim. We often find in practice that through counselling, social workers often have ability and capacity to represent affected people and are able to provide impact statements. This is very important because sometimes, there is the tragic reality that the victim is deceased and not able to give voice to the impact of the crime for themselves. Therefore, allowing for the broader community will mean that support groups especially NGOs and CBOs will be able to give input of how the crime has affected certain categories of people in different communities.</p>
<p>PENALTIES OR ORDERS Section 6</p>	<p>We welcome the penalties and orders that courts may impose on offenders of hate crime and hate speech because this will discourage potential offenders from engaging in these acts that that are not only harmful to the individual concerned, but also make a mockery of the provisions set in the Bill of Rights and other laws which give effect to the Constitution. The sentences upon conviction provided for in this bill indicate a commitment</p>

	to ensure that a society envisaged by the Constitution is realisable.
NATIONAL INSTRUCTIONS AND DIRECTIVES Section 7	<p>We welcome the coordination and collaboration among the South African Police Service(SAPS), Department of Justice and Constitutional Development(DOJ) and the National Prosecuting Authority(NPA) to align efforts and work together on issuing instructions and directives that will ensure clarity and consistency in the implementation of the hate crime and hate speech laws, policies, and procedures so that there is consistency.</p> <p>We however have to submit that in terms of training that is to be done with SAPS and NPA, there is often lack of compliance and accountability seeing that these departments may be under resourced. We have stakeholders who are able to give training because of their experience in the space perhaps because of their work with different communities. We would like to submit that these stakeholders be instrumental in terms of also providing the much needed training and sensitization for these departments.</p>
REPORTING ON IMPLEMENTATION OF ACT Section 8	Noted.
PREVENTION OF HATE CRIMES AND HATE SPEECH Section 9	While we note and welcome the provisions hereunder, especially the commission given to the South African Human Rights Commission, the Commission for Gender Equality and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, we have to submit that we see no effort to bring on board the Department of Basic Education(DBE) to promote awareness seeing that the Department of Basic Education(DBE) is responsible and has a

	<p>mandate for overseeing primary and secondary quality education in the country. Knowing that South Africa has a literacy crisis, and the general population(those not seeking further or higher education) after leaving school will not pay attention to any other forms of learning. The DBE is must be roped in to develop the national curriculum promoting the objectives of this bill so that there is improvement in the quality awareness that must be achieved.</p>
<p>REGULATIONS Section 10</p>	<p>Noted.</p>
<p>LAWS AMENDED Section 11</p>	<p>Noted.</p>