

*Education and the Prevention and Combating of Hate Crimes and Hate Speech **Bill**, 2018*



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Part 3: Beckmann



THE HATE SPEECH BILL AND PAST INCIDENTS AND ALLEGED INCIDENTS OF HATE SPEECH IN EDUCATION

Introduction

- Comments, observations and questions from an educational perspective
- Victims **and perpetrators** natural or juristic persons?
- Real connection of **law – education – morals, ethics** point of departure / principle



HATE SPEECH AND HIGHER EDUCATION

1) UCT

2) US

3) Fees must fall



1) Hate speech and a parking lot fight



Fees must fall

- Started 2015 - Luvuyo Menziwa – SRC member, UP

“Reasons I hate white people: white privilege, white dominance, white arrogance, white monopoly capital and white superiority. F... white people, just get me a bazooka or AK47 so I can do the right thing and kill these demon possessed [sic] humans” (FB)

- 2018 Eq Court: guilty of hate speech: sanctioned
- 2019: “We also learned from him. A beautiful friendship was actually born out of this” (Spokesperson for White informal settlement)
- Legal sanction **not only option** in educational environment



Hate speech and school education

1) Language

1. Hoërskool (High School) Ermelo
2. Hoërskool Overvaal



Hoërskool Overvaal

- **2017 GDE instructed full to capacity Afrikaans medium school to enrol 55 learners who wanted to be taught through the medium of English. 2 English language high schools in the vicinity had spare capacity. School refused.**
- **2018 Courts found in favour of the school**
- **Violent protests: language issue was turned into a racial one, neighbouring teachers and learners AWOL to protest**



Hoërskool Overvaal

- **District official's affidavit:**

It is unbelievable ...that we still have a society that sees nothing wrong with the language that was used as a tool of segregation and discrimination during apartheid ... whose legacy is sorrow and tears to the majority of whom it was not their mother tongue.

- **Judge: I respectfully suggest that some senior peers of hers may consider investigating her conduct – (she threatened principals).**
- **Thus: Possible hate speech not to be ignored, dealt with in educational environment**



Hate speech and school education

2) Religion

1 Organisasie vir Godsdienste-Onderrig en Demokrasie v
Laerskool Randhart and Others

2 Layla Cassim



Layla Cassim



- 14-year-old Grade 10 Muslim
- Jhb indep prim school primarily attended by White Jewish learners
- Essay on Palestinian view of the Israeli-Palestinian conflict in reply to an article expressing the Israeli view – a teacher encouraged her to write the essay
- Suspended for ‘escalating behavioural problems’
- SAHRC found 1) her essay was not racist, anti-Semitic or anti-white and 2) the school exhibited a lack of respect for her right to freedom of expression of a minority opinion
- Relationship: freedom of speech, hate speech, minority rights

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Hate speech and school education

3) Race

1 Hoërskool Driehoek tragedy

2 Teachers called pupils baboons, K-word (Bloemfontein, 2014)

3 Laerskool (Primary/Elementary School) Schweizer Reneke
“Don’t search for racism where there’s none” (Prinsloo, J)

4 Mirrors and b...s

5 Unto dust



Mirrors and b...s



- 11 and 13 year olds told their father that a teacher walked around and held a mirror up to Black African learners and asked them “What do you see?” When learners indicated that they did not know, the teacher would tell them “A b...n... you see a b...!” They also told their father that they were being called “k...s”.
- The learners’ father did not believe them and did not act.
- Strategies to combat hate speech to include stakeholders such as parents to raise their awareness of the crime of hate speech and its impact on their children and to get their buy-in into programs



Unto dust Jewel of a case

**Cullinan. Offence: “Unto Dust” (HC Bosman) 19th century skirmish between white settlers and native South Africans
Burial party found that they “could not tell which was the white man and which the k...r”**



Teacher’s intention to “explain to the children the issues of racism and that we are all equal”.

A departmental official inclined to believe him but (100) parents believed there was “a lack of sensitivity in assigning the story and that some of their children were upset by it”.

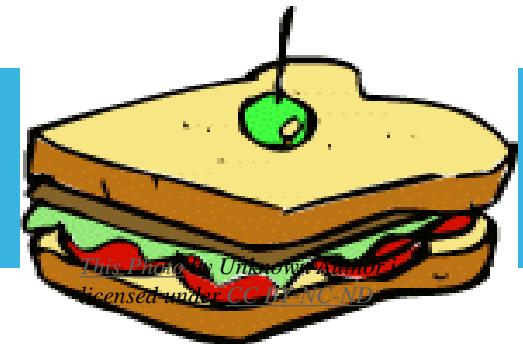
- **Racism sensitive; good (purest) intentions cannot save you**
- **Searching for racism where there is none? (SchwR case)
Evidence of intention to harm?**



Hate speech and school education

4) Ethnic or social origin

- **Phatlane (2007) ethnographic study at one of the first “racially transformed / integrated schools”**
- **Did not find hate speech in terms of Black and White but**
- **in terms of ethnic or social origin**
- **“Well, madam, he is Venda that is why - Vendas are mos somaar stupid!”**
- **“No madam, you must not eat it, because Tswanas are witches”.**



CHALLENGES FOR EDUCATIONAL FUNCTIONARIES

1 *Prima facie* incident of hate speech?



*Mojapelo, J (Eq
Court):*

Display in your
home?

Gratuitous public
display

Reasons I hate white people:
white privilege, white
dominance, white arrogance,
white monopoly capital and
white superiority. F...k white
people, just get me a
bazooka or AK47 so I can do
the right thing and kill these
demon possessed [sic] humans

*They found peaceful
Africans here. They killed
them. They slaughtered
them like animals. We are
not calling for the
slaughtering of white
people – at least not for
now.*





'It's Not Made in China' *Sunday Times* 1/9/2019





NMMU PE 2/9/2019 EFFSC

Management promised to deploy adequate security personnels

Our struggle to put students underneath a conducive environment

FORWARD with needs and demands of our lovely students

DOWN with corruption and neglect of students

DOWN with capitalists and misogynists

Run incompetent leaders... Run! *RNEWS* 2/9/2019



White expat South African gets R1m after being called k-word in England (Citizen, 3/9/2019)



- A South African-born 35-year-old man who has lived in England since he was 18 has won a payout valued at about R1 million after being subjected to racial abuse.
- Colleagues called him both the n-word and the k-word

- **Someone shared an image of Hoch’s head photoshopped on to the body of a starving black child, captioned: “Donate £1 a month to save this poor child.”**
- ... even called a “foreign c**t”
- Photoshopped next to a black woman and her child, with the caption: “Congratulations Wayne on the newborn.”



2 Clear and **not so clear cases**



* *AISA SA campaign 29/7/2019*

• *South Africans to sign a petition to “wipe the smile off his [Dr Verwoerd’s] face and ensure this never happens”*

* *“If we don’t get behind education, we are fulfilling his legacy”
also written on photograph*

* *AISA aim: to cast aspersions on Dr Verwoerd / Afrikaners?*

*Use of Dr Verwoerd’s picture to suggest that he would be smiling
at the poor state of education for Black African children today*

* *BUT First ed. system for Black African children in Africa. Maths
HG*

* *People who put opinions in the public sphere should be very careful
about what they say and how they say it so that the risk of hate speech
(and the harm it can do) can be minimised.*



3 Victim (and perpetrator) statements

- *Bill only refers to victim statements. Perpetrators? To be used by prosecutor where practicable*
- *Physical, psychological, social, economic or any other consequences of the offences for the victim and his or family member or associate to be clear*
- *Educators may have to make statement on behalf of, or help learners*
- *Knowledge and understanding of the law in general and the Bill in particular assumed wherever and in whatever capacity educators are involved in hate speech cases – research points to deficient knowledge of the law*
- *Also used in disciplinary hearings at schools?*



4 What is not hate speech?

*Anything that would otherwise qualify as hate speech in terms of clause 4 (1) will not apply to anything done **in good faith** in the **course of engagement** in:*

- *any **bona fide artistic creativity, performance or expression which does not constitute incitement to cause harm** as contemplated in clause 4 (1)*
- *any **academic or scientific enquiry***
- *fair and accurate reporting or commentary in the public interest*
- *any bona fide interpretation and proselytising or espousing any **religious tenet, belief, teaching, doctrine or writing which does not advocate hatred that constitutes incitement to cause harm***

*Educators may have to judge in a number of ways: **Le Roux and Others v Dey**, US students who published article after research – equipped?*



5 Who is the perpetrator and who is the victim?

- Easy?
- US? *Overvaal? AISA – Verwoerd again*



6 Punishment for offenders

- ✓ *Education officials cannot employ the sanctions available to courts*
- ✓ *but could design their own disciplinary or punishment measures to suit the offence, the perpetrator and the victim*
- ✓ *It should also not be harmful to the education process*
- ✓ *but should use education to foster acceptable use of the right to freedom of expression.*



RECOMMENDATIONS

Clause 9 of the Bill

- *State and institutions to promote awareness of the prohibition of hate crimes and hate speech, aimed at the prevention and combating of these offences*
- *Education and information campaigns [including social context training] to inform public to ensure that all “public officials [including educators] who may be involved in the investigation and prosecution of hate crimes and hate speech are educated and informed ...”*
- *Assistance and advice to complainants / perpetrators*



Ethical dimension

- * *Link between ethics, values, morality, rights. justice*
- **Ed docs:** *Par 4 of the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners & Manifesto on Values, Education and Democracy & SACE Code of Professional Ethics*
- **Chief Justice** *“I believe that we can only become a better people if religion could be allowed to influence the laws that govern our daily lives starting with the Constitution of any country”* * **All religions implied**



Ubuntu

- Lamont, J (*Afri-Forum and Another v Malema and Others*) refers to concept of Ubuntu as used in the Epilogue to Constitution of 1993
- **Ubuntu-based jurisprudence has been developed particularly by the Constitutional Court**
- **Ubuntu is recognised as being an important source of law**
 - **within the context of strained or broken relationships amongst individuals or communities**
 - **and as an aid for providing remedies which contribute towards more mutually acceptable remedies for the parties in such cases.**



Ubuntu is *A concept which –*

- 1) *is to be contrasted with vengeance;*
- 2) *dictates that a high value be placed on the life of a human being;*
- 3) *is inextricably linked to the values of and which places a high premium on dignity, compassion, humaneness and respect for humanity of another;*
- 4) *dictates a shift from confrontation to mediation and conciliation;*
- 5) *favours the re-establishment of harmony in the relationship between parties and that such harmony should restore the dignity of the plaintiff without ruining the defendant;*



Ubuntu is *A concept which –*

- 6) *favours restorative rather than retributive justice;*
- 7) *operates in a direction favouring reconciliation rather than estrangement of disputants;*
- 8) *works towards sensitising a disputant or a defendant in litigation to the hurtful impact of his actions to the other party and towards changing such conduct rather than merely punishing the disputant;*
- 9) *promotes mutual understanding rather than punishment;*
- 10) *favours civility and civilised dialogue premised on mutual tolerance*

Concept which ought to counter hate speech?

Tolmay, 2019)

Also an educational matter

- *Some hate speech issues could be resolved inside education, awareness raised of the meaning and interpretation of the right to freedom of expression*
- *Each **HIGHER EDUCATION INSTITUTION** needs to develop its own regime for combating, preventing and dealing with hate speech*
- *In the **US** (1995) more than 350 colleges and universities “regulated some forms of hate speech” (Hudson, 2017).*
- *The “speech codes that have been challenged in court have not fared well. Courts have struck these policies down as being either **overbroad or vague** (Hudson).*
- *Hate speech strategies need to be legally valid, educationally and academically sound and carefully formulated*



CONCLUSION



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Rising tide of hate

The rainbow nation



CONCLUSION

- *Ritchie (2019) we [South Africans] teeter on the edge [...] the inexorable rising tide of hate” (fuelled primarily by political and race considerations)*
- *Concern: Not to promote the combating and preventing of hate speech legislation at the expense of freedom of expression*
- *Canada (Bergman, 2019) Canadian charter does not define hate speech and is a “catchall for whatever the Canadian government deems politically inopportune”*



CONCLUSION

- **Disputable but educationally relevant statement: An ethical or moral content basis that draws from, or happens to tally with religious beliefs could strengthen efforts to prevent hate speech and inculcate appropriate moral and ethical behaviour**
- *Drawing from ethics, morality, religion not entirely taboo in South Africa:*
 - *Thuma mina (Isiah 6:8) (SONA, 2018)*
 - *Contentious debate during constitutional negotiations – principled compromise to include “Nkosi sikelel’iAfrika” in all 11 official languages in preamble of the Constitution (Sachs in Bhardwaj, 2014)*
 - *Chief Justice’s comments*



CONCLUSION

Some *religious* guidelines:

- What does the LORD require of you but to *do justice, and to love kindness, and to walk humbly* with your God? (Micah 6:8) (*How can hate speech flourish in such a setting?*)
- God gave us “the *ministry of reconciliation*” (*restore to friendship or harmony, to settle or resolve*) (2 Corinthians 5:18) (*NT Ubuntu?*)
- Billy Graham: *We are not going to reorder man’s social injustice, war, poverty, and disease by legislation in the congresses and parliaments to produce such benevolent acts of man that all hate will be abolished.* (*Implication: Trying to legislate hate speech out of existence not the answer?*)



CONCLUSION

- Freedom of expression matters the most in cases that provoke controversy (Adv Gilbert Marcus SC in the Masuku Constitutional Court case)
- In an open and free society such as SA sometimes you will be exposed to views or symbols which make you uncomfortable. Protecting the right to freedom of expression includes protecting the rights of those who have vile views (BusLive).
- Poster after Christchurch mosque shooting: “Not in New Zealand!” leads to a rhetorical question “Could the Bill lead to a South African poster: ‘Hate speech – not in our educational institutions!’”?

