

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

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Our strategy today



💣 *Introductory stage settings*

💣 *The purpose of the Bill*

💣 *The roles of the Bill in education*

💣 *Its possible contributions to accountable education*

💣 *The Hate Speech Bill and Past Incidents and Alleged Incidents of Hate Speech in Education*

💣 *Recommendations on Combating and Preventing Hate crimes and Hate Speech*

💣 *Conclusion*

Heeding Ritchie's warning that **"SA is teetering on the edge of a rising tide of hate"**

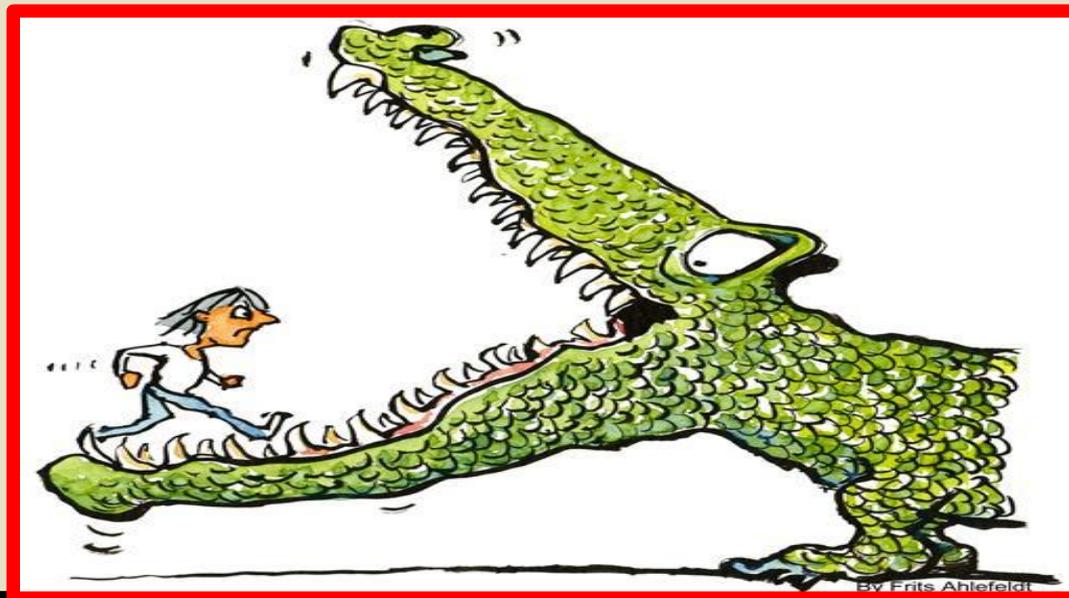
Indicating challenges + offering recommendations towards combating and preventing hate speech

Our strategy today...

💣 Heeding Ritchie's warning:

"SA is teetering on... edge of... rising tide of hate"

💣 Indicating challenges + *offering recommendations*:
combating and preventing hate speech



Introductory stage settings

... Diversity at so many levels in South Africa ...

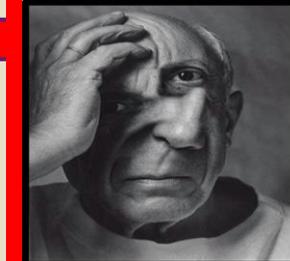
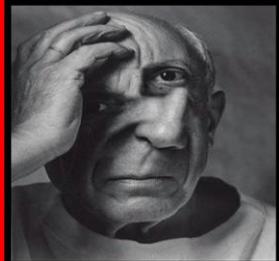
 *Oppressive past* → *new cohesion* → *tension expected...*

 *Tensions turn* → *hate speech* → *right's violation!*

 *Unfair freedom of expression* →
emotional, mental, physical and/or economic harm

 *Doing justice to the right to freedom of expression*

a perennial challenge





Introductory stage settings...

 **Number of judgments in Equality Court and other courts**

 Perhaps most prominent:

ANC v Sparrow (01/16) [2016] ZAEQC 1 (10 June 2016)

(White woman hate speech about Black African holiday makers)

 Regular **media reports** on alleged racist incidents

 Perhaps most poignant on 01/02/2019, The Citizen:

“BLF ‘celebrates’ Hoërskool Driehoek [Driehoek High School] tragedy as ‘punishment’ from ‘ancestors’ and ‘God’”

(Daniel Friedman)



The purpose of the Bill: *Parliament's intent*

💣 *Heeding four signposts = three sections (sec.9(1, 3, 4)), 10 & 16)*

SA Constitution

= one Act (PEPUDA)

*Promotion of Equality and Prevention of Unfair Discrimination Act
4 of 2000*

💣 *Recognizing four indicators = two sub-sections (sec.7(2) & 8(2))*

SA Constitution

= one international commitment

*Declaration and Programme of Action: World Conference against
Racism, Racial Discrimination, Xenophobia and Related Intolerance*

*= the range that personal hate
crimes/hate speech consequences could have*

The purpose of the Bill: *Parliament's intent...*

🧨 Apart from the four signposts and four indicators above, Parliament also answers to the **United Nation's 1965 International Convention on the Elimination of All Forms of Racial Discrimination***

🧨 The United Nation's call is, among other things, to:

- ☠️ declare *distributing ideas founded on hatred,*
- ☠️ *racial superiority,*
- ☠️ *provoking racial discrimination & violent actions,* or
- ☠️ *encouraging such actions* against any group of different ethnic origin and/or skin colour **"an offence punishable by law"**

* *International Convention on Elimination of All Forms of Racial Discrimination, adopted & opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965.*

Entry into force 4 January 1969, in accordance with Article 19

The purpose of the Bill: Seven objects or aims

The objects of this Bill are to:

1. **carry out SA's responsibilities** re intolerance & prejudice as pictured **internationally**;
2. **specify prosecution** of people committing violations referred to & **suggest proper sentences**;
3. **support deterring** hate crimes & hate speech;
4. **stipulate** effective measures towards **application**;
5. **effect synchronized running, enacting & applying** of the Bill;
6. **tackle** hate crimes & hate speech in **synchronized way**; and
7. **collect & keep record of statistics** about hate crimes & hate speech (Bill, 2018:4).

Four reflections on the purpose of the Bill

- ★ Wasserman (2017) opposes the proposed criminalisation of hate speech *for ideological, practical, and legal reasons*; calls the Bill “a highly contested piece of draft legislation that has generated a large amount of debate” & pinpoints the lack of definitions as a shortcoming (hate speech elements: “harmful”; “propagates”; “publishes”)
- ★ de Vos (2019) worries about muzzling critics and stopping “difficult discussions” – such as on gender, race and sexuality
- ★ Devenish (2019) refers to the “new and contentious statutory offence of hate speech”
- ★ Botha (2019) argues that the “unreasonably broad limitation” in restricting freedom of speech cannot be justified

3. The role of Hate Speech Bill in education

3.1. Introduction

- ▶ Educational institutions are **not immune** to hate crimes and hate speech.
- ▶ **Some principals do not report some incidents** that take place in schools because they **fear** that others may view them as unable to effectively manage their schools (SACE, 2011:12).
- ▶ This paper identifies **at least 9 roles** which will be discussed in detail in the paragraphs that follow.
- ▶ In educational institutions, **stakeholders** such as learners, students, teachers, lecturers, non-teaching staff, parents, community members and leaders, local business leaders, governing bodies and state representatives should play an important role in the implementation of the Bill.

3.2 Prevention of hate crimes and hate speech

- ▶ **Creation of a hate crimes and hate speech-free South Africa.**
- ▶ Section 9(2) of the Bill indicates that “one or more Cabinet members, designated by the President, must cause programmes to be developed in order to **educate the public and train public officials on the prohibition, prevention and combating hate crimes and hate speech.**
- ▶ **Public educational institutions are some of the state organs that should benefit from these programmes** in order to prevent hate crimes and hate speech.
- ▶ Section 9(3) states that the South Africa Judicial Education Institute must **develop and implement training courses,** including social context courses training courses for judicial officers for the purpose of presiding in court proceedings.

3.3 Understanding of hate crimes and hate speech characteristics/ grounds

- ▶ The Bill provides a **clear understanding** of what constitutes hate crime and hate speech in terms of section 3(1) and 4(1).
- ▶ Hate crimes and hate speech are not racial incidents only. They are also based on age; albinism; birth; colour; culture; disability; ethnics or social origin; gender or gender identity; HIV status, language; **nationality, migrant or refugee status**; occupation or trade; political affiliation or conviction; race; religion; sex, which include intersex; and sexual orientation.
- ▶ During the process of **training and educating stakeholders in education**, an understanding of the characteristics of hate crimes and hate speech should be part of the programme.

3.4 Enforcement of existing hate crimes and hate speech laws

- ▶ The preamble of the Hate Speech Bill reminds the citizens of **South Africa that laws against hate crime and hate speech existed from long ago in our country.** The problem is that they were **not enforced.**
- ▶ The preamble indicates the **provisions of international law, the Constitution of South Africa and relevant legislation that should be enforced.**
- ▶ The Bill provides that the above mentioned laws should be **enforced by all stakeholders in education (organs of state).**

3.5 Introduction of harsher punishment

Offences of hate crimes had **harsher punishments even before this Bill**.

Section 6(3) of the Bill introduces **imprisonment for offences of hate speech** up to a period not exceeding five years for any subsequent conviction.

The **schedule of the Bill (not section 6)** provides for amendments that should be effected in the Child Justice Act 75 of 2008 to **accommodate any person under the age of 18 years**.

Children (learners) who commit hate crimes and hate speech will be punished in terms of chapter 2 of the Child Justice Act 75 of 2008.

Harsher punishment such as imprisonment for children will be implemented in terms of section 77 of the Child Justice Act 75 2008 which states that:

- ▶ It should be done by the **Child Justice Court**,
- ▶ a child must be **14 years or older**, and
- ▶ must only do so as a measure of **last resort** and for the **shortest appropriate period of time**.

3.6 Ethical and moral element of education

- ▶ The Bill has a **direct link to the ethical and moral element of education.**
- ▶ **Value-based and value driven education** should be based on a sense of spirituality and even in **religion education.**
- ▶ **Religion Education is therefore an educational programme with clearly defined and transferrable skills, values and attitudes as the outcome.**
- ▶ **The Life Orientation learning area, through programmes like Life Skills, Religion Education and Social Responsibility, is well positioned to impact on the ethical and moral dimensions of pupil development”.**
- ▶ The Hate Speech Bill has a role **in teaching stakeholders in education about good ethics and morals.**

3.7 Definition of behaviour towards others

- ▶ The Bill has a **goal of changing the behaviour** of South African citizens, including stakeholders in education.
- ▶ The use of **punishment alone without teaching and training a person to behave is fruitless.**
- ▶ Nyathi (2018:38) postulates the following when referring to the court case of *ANC v Sparrow*: “... if change is a goal, **community service coupled with equality training could have served a more appropriate remedy** to challenge the respondent’s idea about space”.
- ▶ Stakeholders in education should **behave in a manner that respects, protects, promotes and fulfils all the rights enshrined in the Bill of Rights** (Section 7(2) of the Constitution of South Africa).

3.8 Addressing social problems arising from hate crimes, hate speech and lack of cohesion

- ▶ Hate crimes and hate speech are “a new dynamic in social conflict” (Nyathi, 2018:42)
- ▶ Serious conversation and social interaction across all section 3 and 4 grounds of the Bill are needed.
- ▶ The preamble of the Bill indicates: “severity of the emotional and psychological impact of the hate crimes and hate speech extend beyond the victim, to the group to which the victim belongs or is perceived to belong”.
- ▶ “... they can even cause a civil conflict” said Bishop Victor Phalana (Hazeleponics, 2017).
- ▶ Stakeholders in education should be taught and trained.

3.9 Protection of values and fundamental rights

As in section 1 of the Constitution of South Africa, the preamble of **the Bill protects democratic values** such as

- ▶ social justice,
- ▶ human dignity,
- ▶ equality and
- ▶ the advancement of human rights and freedoms,
- ▶ non-racialism and non-sexism

As in the Bill of Rights, the preamble protects fundamental rights such as:

- ▶ equality (section 9),
- ▶ human dignity (section 10) and
- ▶ Freedom of expression (section 16).

The **International law such as the International Convention on the Elimination of all Forms of Racial Discrimination** promotes the right to equality

The **Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000** provides for the promotion of rights related to equality and for the prevention of unfair discrimination.

3.10 Prevention of unnecessary obstacles in education

- ▶ create obstacles to education. Hate crimes and hate speech
- ▶ They affect teaching and learning. Haris (2004) points out that at Hoërskool Vryburg, various incidents of racism and violence resulted in a high level of community polarisation and spilled into racial tension beyond the school.
- ▶ They cause conflict and violence in schools.
- ▶ Success implementation of the Bill will help in preventing these obstacles in educational institutions.
- ▶ **“SA is teetering on the edge of a rising tide of hate”**

4. Its possible contributions to accountable education

4.1 Introduction

Section 8 of the Bill promotes **accountability** by indicating:

- ▶ **who** should account,
- ▶ **to whom** they should account and
- ▶ **on what** they should account.

4.2 Who should account

According to Section 8(1)(a-b) of the Bill the following people should account:

- ▶ Cabinet member responsible for the administration of justice,
- ▶ the Cabinet member responsible for policing, and
- ▶ National Director of Public Prosecution.

Educational institutions also submit reports according to their line function.

The question is how this Bill will hold private sector accountable on hate crimes and hate speech? A

Gelashvili (2018:56) states “... the question on private authority and whether they should have responsibilities similar to public authorities are unavoidable”.

4.3 To whom should reports be made

According to Section 8(2) of the Bill, report should be made to:

- ▶ Parliament,
- ▶ the Chairperson of the SAHRC,
- ▶ the chairperson for and
- ▶ the chairperson of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

Educational institutions should account to the Department of Basic Education and the Department of Higher Education and Training.

4.4 On what educational institutions should account

Quantitative and qualitative data. Data may be based on the following:

- ▶ hate crime and hate speech incidents
- ▶ how they prevent and combat hate crimes and hate speech
- ▶ how they prevent and combat chaos and disorder (protests)
- ▶ how they teach about respect for the rule of law,
- ▶ how they teach learners and students good moral and good behaviour, and
- ▶ ethical behaviour of educators and other staff members on issues that concern hate crimes and hate speech.

Conclusion

- ▶ The Bill has an important role to play in education.
- ▶ Stakeholders in education should be taught and trained on how to prevent and combat hate crimes and hate speech.
- ▶ They should teach and train members of the community on how to prevent hate crimes and hate speech.
- ▶ The Bill has a direct link to the ethical and moral element of education and should be used and promoted to prevent conflict, violence and obstacles in education and the broader community.