

Talk on Hate Crimes



Left- Right : Bram Hanekom- Director PASSOP, John Jeffrey- Deputy Minister of Justice and Constitutional Development; Lwazi Somya- SALO intern; Sheila Barsel- SACP Central Committee Member, Molly Dhlamini- Manager, Projects & Stakeholder Engagement

That Place, Observatory, Cape Town 21st May 2015

Executive summary

On the 21st of May, the Deputy Minister of Justice and Constitutional Development, John Jeffery addressed a SALO (the Southern African Liaison Office) dialogue on Hate Crimes. The dialogue focused specifically on xenophobia, sexual and gender-based violence, religious intolerance, and racism. Mr. Lwazi Somya opened the proceedings by introducing SALO, stating that the work of SALO includes various aspects including creating spaces to provide dialogue as well as discussion on issues that are relevant, not only to South Africa (SA) but the continent in general.

Other speakers included Mr. Braam Hanekom of People Against Suffering, Oppression and Poverty (PASSOP) and Ms. Sheila Barsel, a member Central Executive Committee of the South African Communist Party (SACP).

The talk was enhanced by participation from students, academics, civil society organisations, and young people from various youth organisations.

Braam Hanekom, People Against Suffering, Oppression and Poverty (PASSOP)

In his welcome remarks, Mr Braam Hanekom stated that the SA Government took a long time to respond to the violence against foreign nationals in 2008 and asserted that although civil society has been highly critical of the government, the blame is not government's alone. He went on to state that religious bodies, NGOs, and community based organisations need to do more to address the divisions between various communities.

Deputy Minister John Jeffery, Deputy Minister of Justice and Constitutional Development



Deputy Minister John Jeffery stated that South Africa was the first country in the world to outlaw discrimination against intersex people and provide for intersex people to be able to choose a particular sex. The South African Promotion of the Equality Act prohibited discrimination against someone on the basis of them being intersex. He stated that such violations could be taken to the Equality Courts, as they are civil matters and could result in penalties, fines, or having the perpetrator ordered to take corrective action.

He acknowledged that Equality Courts do not seem to be used enough and encouraged people to make more use of them as they are an operational means of enforcing rights.

Regarding racism, racial intolerance, xenophobia, and other related intolerances, he stated that South Africa has taken a bit long to finalise the National Action Plan because they want to involve everybody and have an in-depth consultation. South Africa will not invent anything new but rather offer more contributions around coordinating and monitoring issues of racism, racial intolerance, and xenophobia, as required by the World Conference against Racism.

The SA Department of Justice has a draft Policy on Hate Crimes which it intends to continue to highlight and develop into legislation. He indicated that hate related offences are already denoted as crimes. Although explicitly labelling them as hate crimes is important, it is not going to make much difference in terms of sentencing. He indicated that the most contentious area is around hate speech because there is, on one hand, the right to freedom of speech, whilst on the other, there is the legal notion of 'hate speech' which potentially limits freedom of expression.

Hate speech is already prohibited from a civil law perspective, in terms of the Promotion of the Equality Act, and hate speech complaints can be taken to the Equality Court.

CONTRIBUTIONS FROM THE FLOOR

There is a lot of advocacy for nation-building, yet the government is not engaging the necessary institutions and stakeholders. This begs the question: what is the Department of Justice doing to engage? Government was encouraged to engage a variety of people, especially the rural areas, the townships, and the youth, to ensure that these constituencies of society are aware of and have access to Equality Courts.

South African society has come up with a 'we are one' slogan as a way to combat xenophobic attacks. In light of this, what is the government doing to ensure that xenophobic attacks don't erupt again? One of the contributors stated that some people cited the abuse of authority, especially the use of violence by authorities as an attempt to silence people from expressing their frustrations. Communities felt that force was used instead of trying to create and establish a proper forum centred on providing possible solutions to the problems that they are experiencing in their communities.

There is a question in South Africa of whether there is a class struggle or a race struggle, however the two cannot not be separated as they are intertwined. SA has been referred to as having two economies and those economies also have racial underpinnings. Therefore, the issue of inequality cannot be addressed without having considered the issue of race. The economy is key to the promotion of nation building.

The South African legal system is still very problematic as it is largely Eurocentric, it has a Roman-Dutch legacy and is also partially adapted from the English system. This begs the question of whether it is relevant to the majority of South Africans.

RESPONSES FROM THE PANEL

Deputy Minister John Jeffery

Deputy Minister John Jeffery expressed his view that the problem is not lack of action on the part of government, but the divisions within society which need to be addressed. He acknowledged that there is a confluence of race and class but how much of the hate crimes are due to race?

He indicated that government has programmes in place which are designed to inform society about the SA justice system and these include:

- ❖ A workshop titled 'Know your Constitution' which tries to coordinate what the different organisations are doing to promote constitutional awareness, organisations such as: the Government Departments, Chapter 9 Organisations, the Human Rights Commission.
- ❖ A programme with the Foundation for Human Rights to promote human rights, supported by the European Union. The programme has an emphasis on socio-economic rights.

He acknowledged that government still has a lot to do, especially with regard to nation-building.

With regards to people losing faith in government, he stated that the government provides a number of resources and services for South Africans. The amount of support that the state is giving, in terms of housing and grants, is extensive and more so as resources are limited and therefore when there are a lot of migrants coming into the country it becomes a problem to provide for everyone. The problem with South Africa's approach to immigrants is resource linked, he argued.

Regarding the issue of land, Deputy Minister Jeffery stated that SA did not have a revolution but had a negotiated settlement and therefore land can only be given back by compensation. One of the problems with land redistribution programme is the issue of productivity, there are issues where communities are given back the land but don't want to live in a rural area which results in leasing it back to the white farmers.

Sheila Barsel, Member Central Executive Committee of the South African Communist Party (SACP)

Sheila Barsel expressed her disappointment with the Truth and Reconciliation Commission (TRC): it was a process that should never have taken place the way it did because there was a lot of truth, little reconciliation, and absolutely no justice. She indicated that when looking at nation-building, there is a tendency to look at race and class, yet class is really what underpins the differences and the inequalities. She expressed her worry about the conflation of race and class.

Braam Hanekom



Regarding the Home Affairs policy on Zimbabweans, Braam Hanekom indicated that the approach of documenting the undocumented Zimbabweans was very progressive and very welcoming. The SA government has to define immigration policy that also accommodates the humanitarian needs of South Africans, he argued. SA has a problem of inequality, and the racialisation of the economy is something that needs to be recognised, because the redistribution of wealth in SA has not happened.

Regarding xenophobic attacks, Braam expressed that one of the problems is the criminalisation of the entire community based on the actions of an individual. Another challenge is that communities sometimes take a collective punishment approach. He expressed that it is vital to analyse the correlation between xenophobia and class, because xenophobia is a class issue, not a race issue.

Conclusions

There is a need to address the divisions that exist; there is a need for ongoing projects through mosques, churches, civil society organisations, as well as political formations, to address the challenges that have been utilised by opportunistic criminal elements as a justification for looting and violence against other people. SA society should look inward and find ways to deal with problems without taking advantage of vulnerable communities that are

not the cause of the problems. The class struggle is a big cause of frustration for SA and it is, therefore, the responsibility of society at large, including government.

There has to be an agreement within SA on what hate speech is. Political education is also very important for SA communities. The nation-building debate is something SA needs to engage more on.

The analysis and recommendations included in this Policy Dialogue Report do not necessarily reflect the view of SALO or any of the donors or conference participants, but rather draw upon the major strands of discussion put forward at the event. Participants neither reviewed nor approved this document. The contents of the report are the sole responsibility of SALO, and can under no circumstances be regarded as reflecting the position of the donors who provided financial assistance for this policy dialogue session.

About the Southern African Liaison Office:



The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy especially regarding African crises and conflicts.

SALO would like to thank

(in alphabetical order) the Department of International Relations and Cooperation (DIRCO), the European Union; Friedrich-Ebert-Stiftung (FES); Irish Aid and the Embassy of Ireland, Pretoria; the Embassy of the Kingdom of the Netherlands in South Africa; the Royal Norwegian Embassy, Pretoria; The Olof Palme International Centre; Open Society Foundation; the Southern African Trust and UK aid, among others, for their ongoing support of our Policy Dialogue Series.



