

Hate Crimes in South Africa



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University of Cape Town

Executive summary

For the past few years South Africa (SA) has had an increasing prevalence of intolerance and lack of social cohesion, which has resulted in violence out breaks throughout the country. On the backdrop of this rising violence towards the Lesbian, Gays, Bisexuals, Transgender and Intersex (LGBTI) persons in SA, the Southern African Liaison Office (SALO) hosted a dialogue on August 26th 2015 under the theme ‘Hate Crime in South Africa’. The purpose of the dialogue was to bring a variety of stakeholders together to discuss the various challenges faced by the LGBTI community on a daily basis and to explore possible solutions. The discussion centred around disagreements regarding criminalising hate speech in SA and exploring ways to ensure that members of the LGBTI community feel as safe as any other ordinary citizen in SA.

Mr Lwazi Somya of SALO opened the discussion by introducing the panellists and briefly highlighting the growing prevalence of hate crimes in SA. Among the discussants was, Honourable Mr John Jeffery, the Deputy Minister of Justice and Constitutional Development who also leads the national LGBTI National Task Team which is government’s response to LGBTI issues, Ms Thato Pule who is a member of the Student Representative Council (SRC) at University of Cape Town (UCT) and Ms Pam Dhlamini the Chairperson of Rainbow UCT Society who is also a social justice activist. Their respective presentations were followed by a question and answer session from the Participants and Mr Athenkosi Thoba of SALO gave the vote of thanks.

Summary of presentations

Deputy Minister John Jeffery, Deputy Minister of Justice and Correctional Services



Deputy Minister John Jeffery began his presentation by highlighting that there is currently no specific legislation against hate crimes in SA. The courts recognise motivation behind hate crimes as aggravating factors, meaning if one is killed or assaulted because of their perceived sexual orientation or identity the perpetrator is charged with assault or murder. All hate crimes are already offences thus have no special category which highlights that they are hate crimes.

He indicated that the Department of Justice and Constitutional Development is however in the progress of drafting legislation and policy framework for hate crimes, namely the Hate Crime Bill. This Bill, upon its completion, will be published for public input and reviewed and amended accordingly.

He asserted that hate speech will however be excluded in the legislation due to lack of consensus on the definition of the concept, and that it will continue being dealt by the Equality Courts under the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA). The difference in the remedy of a hate speech to that of a hate crime is that, for hate crimes, guilt has already been established through physical evidence of a crime being done. Therefore, the courts have to decide on the level of punishment, on the other side, in a hate speech case the complaint and the accused are given the platform to present their arguments and the courts have to decide if the accused is guilty, Mr Jeffery pointed out. He highlighted that having legislation will help in keeping record and monitoring hate crimes in SA.

Ms Pam Dlamini, Chairperson of Rainbow UCT Society



Ms Pam Dlamini stated that she strongly believes hate speech should be part of hate crime legislation, because it is a form of violence and often the source of hate crimes. Moreover, she advocated for distinction in charges for perpetrators of hate crimes because they are of a specific mind-set that needs to be recorded as so. She also made reference to the brutal murder Eudy Simelane in 2008 as she felt it was wrong for the state to classify it in the same scale as any other murder. She argued that the murderer was of a specific mind set and that should have been highlighted.

Ms Thato Pule, UCT SRC Member



Ms Thato Pule began her speech by highlighting that hate crimes towards the LGBTI community is also exacerbated by the need to categorise people. She made an example of an evaluation form which needs for the audience to state whether they are male or female. Ms Pule shared sentiments with Ms Dlamini that excluding hate speech from the hate crimes legislation will leave the legislation prone to inadequately addressing hate crimes. She stated that hate speech is a form of violence in itself and a source of physical violence in most cases. Therefore, excluding it in the legislation portrays South Africa's under developed understanding of violence, gender and sexuality. She explained that by not criminalising hate speech, the state will be perpetuating stereotypes embedded in hate speech, and thus dealing with symptoms rather than the core of the problem.

According to Ms Pule, the state has to transform its intuitions to accommodate LGBTI persons. She made an example of how gay people are put in either a male or female cells when arrested and are often called derogatory terms like 'isitabane' or 'moffie' by other cell members. She felt that the state needs to reflect on its role in perpetuating stereotypes, especially because the LGBTI community looks to the state for protection.

Deputy Minister John Jeffery



Responding from comments put forward by Ms Dlamini and Ms Pule, Deputy Minister John Jeffery argued that they are putting too much responsibility on the state which is unrealistic considering the complexity and lack of clarity on the parameters of the matter. He stated that if there is a direct link to a hate speech inciting violence then the person will be dealt with by the equality court.

Mr Jeffery argued that criminalising hate speech would not be the solution especially with the unclear parameters of what constitute hate speech. He encouraged victims of hate speech to utilise equality courts as they have already been in place as a remedy to hate speech. He stated that unfortunately after twenty-one years of freedom people still do not see things the same and thus emphasised the need for dialogue around such issues. He further pointed out the importance of public participation in legislation formulation, stating that the Hate Crimes Bill will give civil society a platform to engage in three phases. The first phase will request for input after the draft is final, followed by inputs and after the draft has been reviewed by the cabinet and the final inputs would after it has been reviewed by Parliament.

Contributions from the floor

Among many contributions from the floor was the importance of social structures and the focus not only on transgender or lesbians, but to focus holistically on social issues in educating or putting some kind of awareness. The role of participation from the family, society and the community was emphasised,



instead of leaving all the responsibility to government. There was an encouragement to engage with parties such as the Queer Revolution in order to get people information from who actually experience this the discussed challenges. It was pointed out that, it is very hard to decide on something that one has not been through; without lived experience.

It was further highlighted by the floor that there has to be a proper definition of hate speech. This would help towards legislation and the regulation of people's behaviour. Hate speech applies in many contexts and it should be considered as a hate crime. The issue of hate crimes is multi-faceted and therefore other government departments need to get involved, and other parties are needed to educate people. Civil society and young people specifically need to strategise and think about what they really want government to do.

Ms Pam Dlamini

Ms Dlamini stated that the right to sexual orientation is included in the bill of rights, however LGBTI persons still have to fight for that right. She pointed out that religion is not the only factor influencing the prevalence of hate speech. It is also things like culture, as they shape people's perspectives on what is right and wrong. She recollected a movement called Congress of Traditional Leaders that advocated for sexual orientation to be removed from the constitution because it believed same sex relationship are wrong. Culture has over the years changed and it is time for people to also start changing and move with the times, she argued.

Ms Dlamini pointed out that there is little commitment from the state in dealing with LGBTI issues. She made an example of a case in 2013, where eight LGBTI persons were brutally murdered two weeks before Nelson Mandela day, but the state said very little about it, instead focused on publicising Nelson Mandela day. She conveyed her dissatisfaction with an advert created by the state in an effort to educate people about LGBT issues, expressing that the advert reinforced several negative stereotypes and that she felt that LGBTI persons were not consulted in creating it.

According to Ms Dlamini, what is more disappointing was to hear that some schools do not want to have LGBTI educational programmes because teachers say it is against their religion or culture. Making an example of an instance where a lesbian girl committed suicide and left a note to her mother saying that it is because she was afraid to come out. She articulated that the girl was afraid because when she spoke to her teacher, her teacher told her "the Bible says there's no Adam and Steve, there's Adam and Eve".

Deputy Minister John Jeffery

Deputy Minister Jeffery highlighted the strides SA has taken in addressing LGBTI issues, while acknowledging that there are some challenges even though a lot has been done. The state has also replicated the national task team concept in every province. He pointed out that task teams have the responsibility to see that crimes against LGBTI persons are properly investigated and dealt with them accordingly by the justice system and he encouraged students to utilise such forums.

He further highlighted that research shows that homophobia is a recent phenomenon and is not necessarily linked to tradition. He stated that the state is doing a lot to change society's attitude towards the LGBTI community. According to Mr Jeffery, the government has been making strides to deal with public servants who discriminate in delivering public services and it encourages people report such discrimination. He asserted that the advert mentioned by Ms Dlamini was one of the state's attempt to educate society about LGBTI issues, which seems to have had far less effect than hoped for.

Ms Thato Pule

Ms Pule argued that the state should be the most responsible in ensuring the eradication of hate crimes, because it has more resources than civil society organisations. Moreover, she stated, if properly researched society will see that religion is a baseless argument for not legitimising LGBTI rights. Furthermore, culture should not be an issue because all South Africans abide by the constitution and the constitution states that we all have equal rights, hence culture should also accommodate the LGBTI community.

Ms Pam Dlamini

Ms Dlamini stated that LGBTI community do not feel safe in SA due to all the hate crimes; the continuous fear for their safety often restricts them from going to certain places. She stated that LGBTI persons are entitled also to feel safe and should not constantly feel the need to protect themselves. She argued that training of public servants on LGBTI issues is necessary as this would reduce the prevalence of secondary violence sometimes inflicted on victims when reporting their cases. Civil Society Organisations (SCOs) have very little influence in curbing hate crimes because they are often under resourced and underfunded. Ms Dlamini reiterated that education plays an important role in eradicating hate crimes, both formal and informal education. She argued that parents should teach their children to refrain from using phrases such as "that is so gay" from a young age.

Ms Thato Pule

Ms Pule further stated that society at large has failed the LGBTI community because even after 21 years of liberation, people still have negative stereotypes that dehumanise the LGBTI community. She argued that society will not see that its behaviour is wrong unless there is a law that clearly states it. Therefore, hate speech should also be criminalised because it incites violence. Ms Pule expressed her feeling that the LGBTI community will feel safer knowing that people who are against their existence are committing a punishable crime.

Deputy Minister John Jeffery

Deputy Minister Jeffery reiterated that it is incorrect to solely hold the state responsible for eradicating hate crimes and hate speech. He argued that the state is there to formulate policies and make laws, and so far, it has made great strides in formulating policies and laws to eradicate hate crimes and create an inclusive society. Mr Jeffery pointed out that the state has limited power in changing societies attitudes. He stated that certain government departments have started training their staff on LGBTI issues. Mr Jeffery concluded by expressing that SA is suffering from a lack of social cohesion and the government is working on a national action plan on racism, xenophobia and all other intolerances that are further dividing citizens.



Vote of thanks: Athenkosi Thoba, SALO

Mr Athenkosi Thoba gave a vote a thanks. He thanked the panellists for giving insightful conversation in terms of hate crime issues, the participants for a fruitful discussion and donor partners for their contribution to this dialogue. SALO continue to hold these dialogues to allow for engage between relevant stakeholders including students, he concluded.

Conclusions

Dialogues are often exclusionary, especially to poor and uneducated communities that cannot eloquently present their grievances. It emerged from this dialogue workshop that, it is imperative to hold workshops like these in rural communities with government officials present. Such gathering would give ordinary people and policy makers a first-hand experiences of what people go through. Civil Society is important in order to take such dialogues forward and ensure that everyone is included. It was articulated that society should stop making excuses about not understanding what LGBTI means, and people to actively educate themselves.

Freedom of speech and identity politics continue to contribute to the spread of hate crimes. This is partly due to the fact that some people justify their hate speech as a freedom of speech. Therefore, by failing to criminalise hate speech against the LGBTI, the state seems to be avoiding dealing with the backlash from religious and cultural institutions, the discussion pointed out. Consequently, it is the responsibility of the state to take this forward, because it is a very powerful and it is well resourced. Yet is importance that SA is commended for the strides it has taken, as it the discussion highlighted that SA was first country in Africa to provide for sexual orientation as a basis for which you cannot be discriminated against, fifth country in the world to recognise same sex marriages, and first and only in Africa.

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.

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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.

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