

## Multi-Stakeholder Dialogue on the: Hate Crimes and Hate Speech Bill



*On the 20<sup>th</sup> of November 2018, the Southern African Liaison Office (SALO) with direct support from the Norwegian Embassy in Pretoria, hosted a multi-stakeholder dialogue on the Hate Crimes and Hate Speech Bill. The event was aimed at promoting civil society engagement, as well as providing feedback. The workshop sought to provide a platform to allow for introspection on how different communities will be affected by the bill. Deputy Minister John Jeffery of the Department of Justice and Constitutional Development was the keynote speaker and provided the legal overview, other speakers at the event were Professor Tim Murithi who is the head of the Justice and Peace Building Programme at the Institute for Justice and Reconciliation in Cape Town; Funeka Soldaat is the founder of Khayelitsha-based lesbian advocacy group, Free Gender; and lastly Judith Mukuna, a Refugee rights activist originally from the DRC and working at the Scalabrini Center in Cape Town as a student mentor.*

## Key Issues:

### **Hate Crimes are directly connected to notions of peoples' identity**

The Hate Crimes Working Group notes that sexual orientation, religion, and nationality are the key underpinning causes of hate crimes in South Africa. In light of this it is clear that there is a tangible link between how people identify themselves and how others view this within South African society. Therefore if one's sexual orientation is viewed in a prejudiced manner by certain sectors of society, this heightens the risk of possible hate crime. An example of this, which was discussed by Ms Funeka Soldaat, is the targeting of black women who identify as LGBTI in impoverished South African communities such as Khayelitha in Cape Town. Closely connected to this issue is the fact that hate crimes disproportionality affect black non-South Africans, thereby highlighting how African migrants in South Africa are adversely affected by hate crimes (such as xenophobia). It is also interesting to observe how hate crimes related to both LGBTI and xenophobia are predominantly located in impoverished South African communities.

### **The Hate Crimes Bill seeks to address the issue of secondary victimisation**

A key concern that has been consistently raised by civil society is the issue of how victims of hate crimes (especially women and LGBTI persons) often face the likelihood of "secondary victimisation", as they seek recourse or justice for hate crimes perpetrated against them. Secondary victimisation is usually experienced when victims of hate crimes attempt to report their particular case(s) to public healthcare or security officials. In relation to this Minister Jeffery asserted that the Hate Crimes Bill:

*"will allow for an effective coordination between government and service providers to reduce the impact of secondary victimisation on hate crimes victims. Secondary victimisation takes place when victims are subject to...insensitive or inappropriate behavioural comments by [for example] police, healthcare or justice officials"*

The issue of secondary victimisation emphasises the importance of sensitising public officials to concerns around gender, LGBTI and race in terms of ensuring professional, empathetic, and informed responses to victims of hate crimes. This will mitigate against the potential bias and prejudice of security, healthcare and justice officials as they deal with individuals distressed or affected by hate crimes.

### **Racism still blights post-apartheid South Africa**

Contemporary South Africa is still plagued by racist behavior and attitudes, a quarter century (25 years) after apartheid. In this regard it is highly worrying that South Africa's transition towards a more just

society is still being undermined to a great degree by hate crimes related to race. Such a context highlights the importance of the Hate Crimes Bill. As noted by Professor Tim Murithi, it is apparent that there is a “reproduction of racist ideology [as well as] the persistence of notions of [race] supremacy” in 21<sup>st</sup> century South Africa. Therefore there is still a lot of work to be done to dismantle the institutions and discourses that underpin such ideologies and racist ideas in South African society. It is important to take this into consideration, as this is the backdrop, which informs the implementation of the Hate Crimes Bill in the country.

### **Hate crimes occur within a context underpinned by complex power relations**

It was noted by Ms Judith Mukuna that there is a spectrum with regards to the severity of hate crimes, for example, if one is to evaluate the impact of students wearing offensive T-shirts as opposed to the hate speech of an influential leader. The impact of these two differing examples will vary or contrast in terms of seriousness and gravity. This raises the question of how implementation of the Hate Crimes Bill will relate in terms of the categorisation and evaluation of different hate crimes noting the power dynamics involved. Taking into consideration South Africa’s difficult history, it becomes clear that when investigating hate crimes, state officials have to be careful when observing what was said or done and by whom, as aspects such as race and gender are important to consider. Therefore it is crucial to note that hate crimes occur within an environment that is characterised by varying power relations, an issue which has to be seriously considered by legislators and justice officials.

## **Recommendations**

### **Greater civil society oversight over the implementation of the Hate Crimes Bill**

It is imperative for civil society to hold government accountable in terms of the implementation of the Hate Crimes Bill. The work of groups such as Free Gender are important in terms of ensuring that the Justice ministry is able to effectively carry out its mandate with regards to hate crimes. This is because civil society is able to raise awareness of hate crimes and generate sustained advocacy around the adverse impact of particular hate crimes (as highlighted by LGBTI activists and groupings in impoverished South African communities). Civil society stakeholders also serve as a “port of call” for incidents of secondary victimisation, a key oversight area for civic organisations.

### **Social media and tech companies have to play a role in mitigating hate crimes**

Noting the increase in the prevalence of hate crimes on social media and internet platforms, it is important for social media and tech companies to play an active and preventive role in relation to hate crimes. The intensifying presence of conservative populist views and notions on social media platforms

is fermenting potential hate crimes, and generating an environment which fosters adverse aspects such as hate speech and xenophobia. Therefore tech companies and multimedia platform corporations have a responsibility to assist the state and civil society in preventing the pervasiveness of hate crimes.

### **The implementation of the Hate Crimes Bill has to be accompanied and enhanced by complementary nation-building and civic programmes**

The Hate Crimes Bill primarily addresses the symptoms and complications that arise from the deep-seated structural challenges that afflict South Africa, including: inequality, unemployment, and high levels of poverty. The aforementioned structural challenges are compounded by the lingering legacies of racism and homophobia in post-apartheid South Africa. In light of this, it is imperative for government, opposition political parties, educational institutions, religious bodies, and broader civil society to rally together and partner around the South African nation-building project. There has to be consensus building by the aforementioned stakeholders relating to the values and aspirations that South African citizens should strive to adhere to, both at the local and international levels. The process of facilitating a national dialogue in order to foster greater unity and harmony is prescribed by the National Development Plan. However, there have not yet been concerted and sustainable efforts to facilitate this ambitious albeit vital dialogue to date. The nation-building agenda at the national level will need to be complemented by local or community-oriented civic programmes that seek to cultivate improved community ties and relations. A united South Africa that promotes dialogue between all its citizens across identity, cultural and political lines will be better equipped to deal with hate crimes.

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*The analysis and recommendations included in this Policy Brief 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 brief 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.

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