



Liaison, Dialogue and Research

Reg no: 2006/020285/08

The Southern African Liaison Office (NPC)

Liesbeek House, River Park,  
Gloucester Road, Mowbray, Cape Town 7700

Tel: +27 (021) 680 5306

Email: [info@salo.org.za](mailto:info@salo.org.za)

[www.salo.org.za](http://www.salo.org.za)

[@salo\\_info](https://twitter.com/salo_info)

Policy Brief

28 September 2021, Zoom Platform

# SALO Public Multi-stakeholder Dialogue: Hate Crimes and Hate Speech Bill

- By Fowzia Davids and Resoketswe Tjie

**SALO PUBLIC MULTI-STAKEHOLDER DIALOGUE: HATE CRIMES AND HATE SPEECH PUBLIC DIALOGUE**

**TUESDAY 28 SEPTEMBER 11:00 TO 13:00**

**SPEAKERS INCLUDE:**



**MODERATOR:  
LWAZI SOMYA**



**KEYNOTE SPEAKER:  
DEPUTY MINISTER OF  
JUSTICE JOHN  
JEFFERY**



**BUSISIWE NXUMALO,  
DEPUTY  
CHAIRPERSON OF  
THE ANC GABY  
SHAPIRO BRANCH**



**ADVOCATE  
LETHOGONOLO  
MOKGOROANE,  
LEGAL  
PRACTITIONER AND  
SOGIE ACTIVIST**



**MULUTI  
PHIRI  
ADVOCACY  
OFFICER, CORMSA**



**BISHOP PAUL VERRYIN**



## Executive Summary

On 28 September 2021, the Southern African Liaison Office, in partnership with the Norwegian People's Aid, hosted a public multi-stakeholder dialogue on the Prevention and Combating of Hate Crimes and Hate Speech Bill. Speakers included John Jeffery, South African Deputy Minister of Justice and Constitutional Development; Advocate Letlhogonolo Mokgoroane, Legal Practitioner and Sexual Orientation and Gender Identity Expression Equality Bill (SOGIE) activist; Busisiwe Nxumalo, Deputy Chairperson of the African National Congress (ANC) Gaby Shapiro Branch; Muluti Phiri, Advocacy Officer at the Consortium for Refugees and Migrants in South Africa; and Bishop Paul Verryn, ordained minister of the Methodist Church of Southern Africa and refugee rights activist. The dialogue was chaired by SALO Research, Development, and Programmes Coordinator, Lwazi Somya.

This dialogue brought together African diplomats and dignitaries as key decision-makers and civil society and was centred around a forward-looking agenda that explored the different options for action, including a traditional securitised approach as well as one prioritising human security.

## Context / Importance of the problem

The dialogue was timely in that it was held a few days before Parliament closed submissions on the Hate Crimes and Hate Speech Bill (hereafter referred to as the Bill). The discussion looked at how hate crimes not only impact the LGBTQIA+ (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, Plus) community, but also race relations and crimes against other marginalised groups, including migrants. The discussion also unpacked what the Bill would mean to South Africans, and how to move forward as a society to build on what the Constitution had envisioned.

South African society is largely defined by its heteronormative nature, which is a significant determinant of marginalisation and discrimination against minority groups. Whilst the Bill is not a 'quick-fix' solution to systemic problems of marginalisation, it is a very important mechanism to address the current crisis that South African society faces, and will allow for successful prosecutions of hate crimes and hate speech. The Bill will form part of an attempt to foster a broader shift in mindsets, attitudes, and behaviours towards minority groupings. Although South Africa has a strong legislative environment and a Constitution that does not discriminate based on gender or identity, the lived experiences of minority groupings, including the LGBTQIA+ community and migrants, are not in line with the legislation.

There is a need for strong hate speech legislation to put in place tangible measures against individuals or groups that spew hate speech towards minority groups, especially as xenophobia, homophobia, and racism continue to enter mainstream discourse and actions. Dealing with hate speech strengthens the prevention of conflict, atrocities, crimes, and other serious human rights violations by preventing hate speech from escalating into hate crimes. It also promotes an inclusive society.

## Attacks and Discrimination

The deliberate attacks on queer bodies in this country are reversing the gains of South African democracy and the work that queer activists have done. Being a gender minority in this country is a harsh reality, which stems from a lack of tolerance for one another. As per Busisiwe Nxumalo, the implementation of the Bill becomes of paramount importance. They continue to state,

*“It will be one of the many mechanisms that will protect gender minorities in South Africa. We must also listen to the calls of other queer activists across the African continent who are also calling for queer rights to be recognised as human rights on the continent. We have seen what is happening in the different countries: in Uganda, Ghana, and many other countries.”*

Busisiwe also highlighted the plight of sex workers and the continuous criminalisation of sex work. Sex workers experience abuse and exploitation, specifically by law enforcement and the police, who have the responsibility to uphold the law. They stated that the continued criminalisation of sex work also undermines sex workers' ability to seek justice. Moreover, they stated that the decriminalisation of sex work would assist sex workers to have legal protection and the ability to access key rights such as justice and healthcare. It will also help to destigmatise sex work and give them more agency.

The last part of the Bill discusses the programs that must be developed regarding the officials involved in investigations and prosecutions of hate crimes. There is a need for thorough retraining of police, which has to be mandatory, and for police to be better equipped to handle reported crimes. Any official found to have violated the law should bear the consequences. Busisiwe continues to mention that there is a need to encourage civil society and other organisations to work with the government to promote a public awareness campaign on preventing hate crimes and hate speech. It is concerning that the Bill has not been implemented after five years. Busisiwe further highlighted that,

*“The Gaby Shapiro [ANC] Branch has had a loose coalition with other LGBTI NGOs where we have had multiple discussions around the Hate Crime and Hate Speech Bill where we have gotten together and made a three-page solid proposal of amendments of what we think the department should take into consideration. The considerations and suggestions we've made have been so inclusive because they include people within and outside the political space, and we think that this work is great. Generally, we also believe that this is a collective responsibility.”*

### **What will the Legislation Achieve?**

It is important to note that the goal of Hate Crimes legislation is not only to prevent Hate Crimes (which no law can truly achieve) but also to provide the government and civil society with vital information about the nature and prevalence of this type of crime to assist in the development of appropriate tools for combatting hate crimes. Hate crime legislation has symbolic value as well - it sends a strong message to society that such actions will not be accepted. Hate crime legislation that contains clear

responsibilities for stakeholders and is thoroughly executed will be a significant instrument in the fight against hate crimes.<sup>1</sup>

The Bill must therefore be implemented effectively. Such a Bill should protect the rights of the people that are affected and those being discriminated against. Bearing that in mind, Section 9 of the Constitution speaks about equality before the law. Sections 9(3) and 9(4) are important because they put an obligation on the state and private individuals to not unfairly discriminate against people based on several things such as race, gender, nationality, social origin, class, and pregnancy.

## **Understanding the Constitution**

Advocate Letlhogonolo Mokgoroane highlights that the Bill fits into the broader context of rights enshrined in the Constitution to not be unfairly discriminated against. The South African Constitution is clear when it comes to hate speech and hate crimes. Two sections in the Constitution prohibit hate speech: Section 16 and Section 10 of the Equality Act. Everyone has the right to freedom of speech, which includes freedom of the press and other media, freedom to receive or transmit information or ideas, freedom of creative creation, academic freedom, and freedom of scientific study. This freedom, however, is restricted, and it does not include propaganda for war, incitement to violence, or the promotion of hatred based on race, ethnicity, gender, or religion, which constitutes incitement to damage.

Section 10 of the Act states that no one may publish, disseminate, advocate, or express statements against any person that may reasonably be considered to reflect a clear intention to be hurtful, harmful, or provoke violence, and/or to promote or spread hatred. The publication of such expression is permitted, provided the expression is truly for the goals of artistic creation, academic and scientific study, fair and accurate reporting, or the publication of any information, advertisement, or notification in the public interest.<sup>2</sup>

## **Migrants**

Xenophobia affects migrants that reside in South Africa. Perceptions that migrants are stealing jobs from locals are one of the main drivers of xenophobia. Muluti Phiri clarified that research shows that there is no evidence that migrants cause unemployment. International migrants contribute to the economy through rent and by paying value-added tax. The intersectionality of unfavourable migration policies, community intolerances, and prejudices increases refugees' and migrants' vulnerability to hate crimes.

## **Religion is used to promote Hate Speech**

Bishop Paul Verryn highlighted the religious issues that still abound in our liberated nation. Many religious institutions are concerned that their ability to preach sections of

---

<sup>1</sup> Open Society Foundation. (2017). *WHY DOES SOUTH AFRICA NEED HATE CRIMES LEGISLATION?* Retrieved May 26, 2022, from <https://www.saferspaces.org.za/uploads/files/Advocacy-Brief.pdf>

<sup>2</sup> SAHRC. (2017). *Hate Speech Information Sheet*. Retrieved May 26, 2022, from <https://www.sahrc.org.za/home/21/files/Hate%20Speech%20Information%20Sheet-%20print%20ready-.pdf>

the Bible may be construed as hate speech under the Bill. Biblically-based value judgments of homosexuality are routinely preached, spoken about, and generally perpetuated in South African Christianity. Christians and their leaders are well-known for claiming that homosexuality is mentioned in the Bible as a "sin" or an "abomination." In response, Christians say that their consciences as religious people compel them to have, proclaim, and publicise homophobic ideas and, in some cases, to act on them.<sup>3</sup>

Christian teaching on homosexuality exacerbates LGBTQI+ people's mental health and suicide rates, which are already high, according to the Pew Research Centre<sup>4</sup>. Over half (55%) of LGBTQI+ persons in South Africa fear discrimination based on their sexual orientation or gender identity. Discrimination has been experienced by 44% of respondents in their daily lives. According to a 2016 study, LGBTQIA+ youth are up to four times as likely as their straight peers to attempt suicide. Those who are rejected by their relatives are eight times more likely to attempt suicide.<sup>5</sup>

Given the clear proof of the harm caused by homophobic hate speech and the fact that openly homophobic views are made public regularly by both believers and leaders of Christian organisations, a high number of incidents should be submitted to the South African Human Rights Commission (SAHRC). After all, the SAHRC's mandate is to deal with hate speech that causes injury. Despite this, just a few dozen cases of homophobic hate speech (originating from any source) are submitted to the SAHRC each year. Some cases that appear to have validity are turned down. Simultaneously, the SAHRC receives hundreds of reports of racial hate speech each year, greatly outnumbering their homophobic counterparts.

## The Evolution of the Bill

Deputy Minister John Jeffery explained the process of how the Bill came to be. Initially, the Bill only covered hate crimes – the provision for hate speech was added later after several incidents of racism pointed to the need thereof. The Bill was drafted by the Department of Justice and went to the Legislature after that. The draft Bill garnered many comments and inputs. One of the amendments made before the Bill was introduced was to include a partial exemption for proselytising and preaching anti-LGBTQIA+ sentiments, as long as these do not incite violence.

The Qwelane<sup>6</sup> case was used as an indication of what changes should be brought to the Bill to ensure that it is passed and effective. According to the Deputy Minister, one

---

<sup>3</sup> Webster, C. (2019). *How should Biblically-based Homophobic/Hate Speech be treated in South Africa, legally and socially?* ResearchSpace. Retrieved May 27, 2022, from [https://researchspace.ukzn.ac.za/xmlui/bitstream/handle/10413/16394/Webster\\_Charles\\_Julien\\_2019.pdf?sequence=1&isAllowed=y](https://researchspace.ukzn.ac.za/xmlui/bitstream/handle/10413/16394/Webster_Charles_Julien_2019.pdf?sequence=1&isAllowed=y)

<sup>4</sup> Pew Research Center,. (2016). *Religion in Everyday Life*. Retrieved May 26, 2022, from <https://www.pewresearch.org/religion/2016/04/12/religion-in-everyday-life/>

<sup>5</sup> John Shore, 2017, Gay Teen Suicides, Bullying and Christianity: A Talk with the Trevor Project Director (citing Massachusetts 2007 Youth Risk Survey), [http://www.huffingtonpost.com/john-shore/a-talk-about-gay-teensui\\_b\\_745912.html](http://www.huffingtonpost.com/john-shore/a-talk-about-gay-teensui_b_745912.html)  
Pew Research Center,. (2016). *Religion in Everyday Life*. Retrieved May 26, 2022, from <https://www.pewresearch.org/religion/2016/04/12/religion-in-everyday-life/>

<sup>6</sup> "The matter concerns an article that the late Mr Jon Qwelane had published in the Sunday Sun in 2008, entitled "Call me names – but gay is not okay". In the article, Mr Qwelane called upon

change that was needed was for the two requirements of hatred and inciting harm to be read conjunctively. The way the Bill currently stands under Clause 4 is that there is an “or” between these two requirements, which should be “and” instead.

### **What does the Bill do?**

The Bill has a list of categories for discrimination on which hate crimes are based. The Bill requires that the crime is motivated by a person’s intolerance or prejudice against a victim – not hatred. “Hatred” as such is more difficult to prove in a court than prejudice. Deputy Minister John Jeffery explained it thus:

*“When it comes to hatred, you will remember, that Penny Sparrow didn't hate black people. Calling black people "monkeys" was a term of endearment according to Penny Sparrow; which, obviously, is total rubbish. But you just have to prove prejudice or intolerance rather than hatred because hatred is something that most people will deny.”*

Hate speech is effectively a new crime and there is a list on which it should be ground to qualify as hate speech. Two provisions are in the hate crimes list but not in the hate speech list – political affiliation and occupation or trade. The reason that trade was not included is that there were concerns that this could limit criticism of politicians. Political affiliation was left out to avoid restricting people from engaging with one another politically. These have consequences, in that people in certain occupations, such as sex workers, do not enjoy protection from hate speech. Further, political intolerance often leads to violence.

The Deputy Minister was clear that the Bill on its own is only one of the tools to tackle hate crimes and hate speech. It is the stick that can be used to punish people, but a lot more needs to be done to change attitudes and do away with intolerance in South African society.

### **Critique of policy options**

- The criminalisation of sex work, abuse, and exploitation of sex workers is ongoing, particularly by law enforcement and the police, who are tasked with upholding the law.
- Strong hate speech laws are needed to put in place tangible sanctions against people or groups who spew hate speech against minority groups, especially when xenophobia, homophobia, and racism continue to pervade mainstream discourse and behaviour.

---

*politicians to amend the Constitution of the Republic of South Africa, 1996 (Constitution) so as to remove the equal protection of the law afforded to the LGBTQI+ community. Mr Qwelane further compared homosexual people to animals, and accused them of catalysing the erosion of societal values.”* South African Human Rights Commission. 2021. Media Statement: SAHRC welcomes Constitutional Court Judgment in Qwelane v SAHRC and Another. 3 August. Available: <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2753-media-statement-sahrc-welcomes-constitutional-court-judgment-in-qwelane-v-sahrc-and-another> [17 June 2022]

- One of the limitations of the Bill is that it allows for insults against minority groups to go ahead; for example, bigoted rhetoric against homosexual people. It does, however, outlaw saying something that might constitute an incitement to cause harm.
- The intersectionality of unfavourable migration policies, community intolerances, and prejudices increases refugees' and migrants' vulnerabilities to hate crimes.

## Questions from the floor

**Questions from the chat:** *“How long do you think it will take to alter and legislate the Hate Crimes Bill? What kind of punishment should be made a legal requirement?”*

*“How do we cope with cultural and societal norms and standards that allow certain behaviours? How can we successfully communicate this knowledge to the public and induce a mind change when we take it to them?”*

*“How far and broad can this communication spread? Are changes required of all citizens?”*

**Safoora Sadek:** *“I would like to ask Mike Batley if he has any thoughts on whether restorative justice concerns should be addressed in the Hate Crimes and Hate Speech Bill?”*

**A question from Facebook:** *“Since various anti-xenophobia, anti-homophobia, and anti-racism organisations are interested in this Bill, has it resulted in greater solidarity networks within South Africa concerning Hate Crime and Hate Speech in particular, and have these networks been able to push [for] greater networks of solidarity?”*

## Responses from panellists and the way forward

### Advocate Letlhogonolo Mokgoroane

Answering the question on the duration of the Hate Crimes Bill

*“The procedure will take some time. The first round of public comment is now open. It will be presented to the National Assembly. If the National Assembly approves it, it will be sent to the NCOP. There will be a second round of comments. If it is approved by the NCOP, it will need to be signed by the President, which will take some time. I can't offer you a time period.”*

**and**

*“When it comes to culture, many people consider it to be a static entity. However, culture is ever-evolving. We know that women were not permitted to vote 100 years ago, and we know that culture is changing. We need to think of culture as a continually changing continuum.”*

Answering the question about changes from citizens:

*“Changes are mandatory for every citizen. I suppose there will be national campaigns about prevention, literally roadshows about these types of things in remote areas, so it would be interesting to see how the state and all these people handle these matters.”*

### **Mike Batley**

Thoughts on restorative justice concerns

*“I believe it would be beneficial if this Bill could simply broaden its scope to include the significance of restorative justice and conversation rather than dismissing it. I believe it provides an opportunity for knowledge and involvement, and hence it should not be limited to a diversion or a pre-trial environment. It might be incorporated into sentencing, for example, to provide the victim another platform to express themselves. Participating in a meeting with the offender under the correct circumstances, with adequate facilitation, and then crafting a sentence from the context of the conversation may be quite beneficial. In terms of the Criminal Procedure Act, nothing prevents a prosecutor from doing so.”*

### **Deputy Minister John Jeffery**

On restorative justice concerns

*“The concern was if we put in too much relating to restorative justice, then it may get used by prosecutors to say ‘no, this crime wasn’t that serious, we’re going to mediate it, and the two must speak to each other’ and then the case will be withdrawn. So, that was the reason we didn’t include issues on restorative justice; but it was – particularly even in the Hate Crimes Working Group – a debate between people as to whether it should be there or not.”*

### **Safoora Sadek**

In terms of solidarity networks concerning Hate Speech and Hate Crimes

*“When we first started working together, we started thinking about hate crimes and hate speech laws. We have formed a partnership. This group consists of around 30 partners. We joined this partnership group when the Bill was cleared for publishing and the deadline was set for October 1 to allow individuals to indicate their support for the bill. We were able to detect that more individuals were opposing the Bill, notably the hate speech component, around a week after the public process was opened. The campaign was intensified. As a result, we drafted generic letters.”*

### **Busisiwe Nxumalo**

Adding to what Safoora said,

*“We’ve also been able to broaden the partnership to include a number of higher education institutions. We have received proposals from other SRCs, including WITS, Rhodes, and others, using the generic letter and logo.”*

## Recommendations

- A group of people should be set up who are prepared to hold religious institutions accountable for some of the actions they perpetuate that dehumanise people.
- A small think tank should be formed aimed at educating people beyond their prejudices.
- There is a need for community sensitisation and understanding of issues of migration.
- For this bill to be effective, it must include an integrated effort to prevent further attacks against non-nationals.
- There is a need to conduct community mobilisation, including imbizos and community workshops on the Bill, as well as on xenophobia.

## Conclusion

This dialogue brought many stakeholders together to engage on an important topic that involves the social cleavages that the South African society faces; in particular, looking at how hate crimes impact not only the LGBTQIA+ community but also race relations and crimes against other marginalised groups such as migrants. This Bill is a way to punish people for hate crimes and hate speech, but it is not a panacea to racism, homophobia, xenophobia etc. Attitudes in South Africa need to change for these types of crimes to be successfully prevented. Recommendations and questions to reflect on came from this fruitful discussion.

---

*The analysis and recommendations included in this 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.

---

*SALO would like to thank Norwegian People's Aid (NPA) for their direct support of this event*



**Norwegian People's Aid**