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The Hate Crimes & Hate Speech Bill



23 February 2017, JHB

Introduction

On the 23rd February 2017, SALO held a dialogue on the “The Prevention and Combating of Hate Crimes and Hate Speech Bill”. The keynote speaker for this dialogue was Hon. John Jeffery, Deputy Minister of Justice and Constitutional Development. The aim of the dialogue was to provide a concise overview of the proposed Hate Crimes and Hate Speech bill. The robust discussions and engagements, that characterised this event highlighted the complexities of crafting legal frameworks, to criminalise related prejudice and racism. The timing of the dialogue was also notable, as it coincided with the rising of xenophobic tensions in Gauteng, which had reverberations throughout the country.

Key Issues Raised

Aim of the Bill

It was noted that the proposed Hate Crimes and Hate Speech bill essentially denotes and identifies new criminal offences in the form of hate crimes and hate speech. Ms. Naidoo posited: “[t]he aim of the bill is to hold perpetrators of hate crimes accountable and provide a means to monitor efforts and trends in addressing hate crimes”.

Challenges around establishing Hate Crimes legislation

Hon. Jeffery noted that one of the key challenges, pertaining to establishing legislation around hate crimes, relates to the specificity and consistency of the application of the proposed law. For instance, if the bill is passed there would be a minimum sentence for ‘corrective’ rape, he noted. This is important to highlight, as there is currently no minimum sentence for the aforementioned sexual violence against women who identify as LGBTQIA+. Therefore, it will be important to note this and align it to other existing legislation that relates to sexual violence. Closely related to this concern is the issue of potentially balancing rehabilitation and punitive measures. Hon. Jeffery asserted:

“[t]here was debate in the Hate Crimes Working Group on that. I don’t think there was consensus. The difficulty we faced, is, if you are saying that you are making hate crimes more serious, then you start allowing for diversions and rehabilitative sentences, you’re almost saying it’s not so serious and, apparently, examples of rehabilitative sentences used were not particularly successful”

The South African context necessitates the formulation of the Hate Speech provision

Though the initial bill only covered hate crimes, the South Africa context, it has been argued necessitates the including of hate speech. Hon. Jeffery explained that, initially, the ‘contentious’ hate speech provision of the bill was not going to be included because of the complications that can arise, in terms of its formal adoption and application in relation to issues pertaining to freedom of religion and freedom of speech. However, the prevalence of racially motivated slurs and insults within the social space in South Africa, particularly on social media, necessitated a hate speech provision.

Whether Parliament or the Judiciary should lead on framing legislation

Hon. Jeffery raised the issue of whether it should be left to the ‘courts’ to interpret existing legislation, in manner that is sensitive and attuned to hate crimes, or whether it should be the task of parliament to set out concise and clear legislation around hate crimes that can then be implemented by the courts. The honourable minister gave the example of how parliament’s formulation of the sexual offences act provided an important guiding framework for rape cases. This clarified the disputes under common law about what specific actions constituted sexual assault or violence in relation to rape crimes.

The Hate Crimes and Hate Speech proposed law needs to be complemented by other far reaching interventions

Several speakers acknowledged the underlying fact that the Hate Crimes and Hate Speech bill primarily addressed symptomatic issues, such as racial slurs or attacks on non-nationals, and not the root causes that underpinned crimes motivated by prejudice or hate. These root causes are complex and remain a key challenge for South Africa, examples of this include structural inequality and institutionalised prejudice and racism. However, it was also noted that these challenges are not unique to South Africa and the current international context highlights the prevalence of prejudice and intolerance across many societies.

Recommendations

Strengthening of the partnership and cooperation between government and civil society

The partnership between government and civil society around hate crimes has been integral, in terms of facilitating outreach and engagement around the proposed legislation. However, as noted by Roshan Dadoo, it is important that civil society bodies do not operate in isolation from each other. This is vital in order to ensure that all those who are potentially affected by hate crimes are included in the development of the bill. In this sense, the proposed law will relate to a broad scope of those whom are highly likely to be adversely affected by hate crimes, including: LGBTQIA+ persons, non-nationals, and sex workers. Therefore, the civil society actors who closely work with the aforementioned groupings, and others, should focus on the commonalities and 'intersections' between their focus areas, in terms of their cooperation with government.

The need to popularise the Prevention of Unfair Discrimination Act (PEPUDA) and the Equality Courts

It was highlighted that the Equality Courts, established through the PEPUDA framework, are under utilised. There is a need to provide more information about PEPUDA and the Equality Courts through broader and instructive outreach initiatives. To complement this, accessibility to the equality courts has to be improved. This is highly important in light of how a significant number of South Africans have had to struggle with legal costs. Therefore, the Equality Courts are a necessary, and key vehicle through which to address hate related crimes.

South Africa needs to ensure that its proposed Hate Crimes legislation complements and aligns with International law, regional, and global multilateral initiatives.

It is important to ensure that the hate crimes legislation that South Africa will develop, and ultimately implement, will be in tandem with widely accepted international norms and values. In light of this, South African policymakers and civil society will have to review the Hate Crimes and Hate Speech Bill in terms of the international treaties that South Africa has ratified; as well as acknowledge recommendations from

multilateral bodies such as the United Nations Human Rights Council and the African Court on Human and People's Rights.

***List of Speakers (from left to right in image above)**

1. Hon. John Jeffery, Deputy Minister of Justice and Constitutional Development
2. Ms. Roshan Dadoo, Director, Regional Advocacy Officer, Consortium for Refugees and Migrants in South Africa (CoRMSA)
3. Mr. Katlego Rasebitse, Advocacy Liaison Office, Sex Workers Education and Advocacy Taskforce (SWEAT)
4. Ms. Corlett Letlojane, Executive Director of the Human Rights Institute of South Africa (HURISA)

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 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.

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