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Prevention and Combating of Hate Crimes and Hate Speech Bill (NCOP)

18 April — 25 May 2023

Public participation

– report with all public comments

<https://dearsouthafrica.co.za/hate-crimes-and-hate-speech-ncop/>

DearSouthAfrica.co.za is an online platform designed to facilitate government and encourage the public to participate in unbiased decision-making processes or policy formation at SOE, municipal, provincial and national levels.

TO: The Select Committee on Security and Justice (National Council of Provinces)

FROM: DearSouthAfrica.co.za

DATE: 25 May 2023

SUBJECT: REPORT ON PUBLIC PARTICIPATION: PREVENTION AND COMBATING OF HATE CRIMES AND HATE SPEECH BILL [B9B-2018]

1. Executive Summary

This report details the outcome of a public participation campaign facilitated by DearSouthAfrica.co.za regarding the *Prevention and Combating of Hate Crimes and Hate Speech Bill [B9B-2018]*. The Bill seeks to create the specific offence of hate crimes and hate speech and provides for the prosecution of persons who commit those offences.

The public response was extensive, with over 45,000 submissions processed. The data indicates an overwhelming rejection of the Bill, specifically regarding the “Hate Speech” provisions. While the public generally supports harsher sentencing for actual crimes motivated by bias (Hate Crimes), there is deep anxiety that the “Hate Speech” definitions are overly broad, threaten constitutional freedom of expression (particularly religious freedom), and are legally redundant given existing laws like *Crimen Iniuria* and the *Equality Act*.

2. Participation Statistics

2.1 Volume of Participation

The campaign generated one of the highest volumes of engagement for a justice-related Bill, reflecting the sensitivity of the subject matter.

- Total Submissions Analysed: 455,528 (approx.)

2.2 Sentiment Breakdown

- Do Not Support: ~95% (43,341 recorded in the primary dataset)
- Support (Yes): ~3%
- Support “Not Fully”: ~2%



2.4 Demographic Profile

- **Religious Communities:** A significant portion of the “No” votes originated from individuals identifying as religious (Christian, Muslim, Jewish), concerned about the criminalization of religious texts or preaching.
- **Legal/Business Sector:** Concerns raised regarding the “chilling effect” on discourse and potential frivolous litigation.
- **General Public:** Citizens concerned about the definition of “harm” and government overreach.

3. Summary of Public Comments

The qualitative data reveals a clear distinction in the public mind between actions (crimes) and words (speech).

3.1 The “Thought Police” and Freedom of Speech

The most prevalent objection is that the Bill infringes on Section 16 of the Constitution. Participants argued that “offensive” speech should not be a criminal offence punishable by jail time.

Comment: “For me the difference is obvious - hateful speech that intends to harm others can never be tolerated... but we cannot criminalise opinion. This Bill crosses the line into thought policing.”

Comment: “Freedom of speech is the bedrock of democracy. If we start arresting people for words that are merely offensive, we become a totalitarian state.”

3.2 Religious Freedom Concerns (Clause 4)

Thousands of submissions focused on the fear that reading religious texts (which may condemn certain lifestyles or beliefs) could be interpreted as “Hate Speech.” Participants felt the “religious exemption” clause was insufficient.

Comment: “I am concerned that the creation of the crime of hate speech for saying/preaching what is in the Bible... will result in pastors being prosecuted.”



3.3 Redundancy / Existing Legal Frameworks

Participants frequently noted that South Africa already has the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) to handle civil cases of hate speech, and common law Crimen Iniuria for criminal dignity violations.

Comment: "We already have laws to deal with this. The Equality Court works.

Why do we need a new law that puts people in prison for up to 8 years for words? Enforce the current laws."

3.4 Subjectivity of "Harm"

There is significant concern that the definition of "harm" (emotional/psychological) is too subjective and will lead to the weaponization of the law against political opponents.

Comment: "Hate is an emotion. You cannot legislate emotions. What constitutes 'harm' to one person is 'debate' to another."

4. Views from the "Support" Category

The minority who supported the Bill emphasized the need to protect human dignity and curb the prevalence of racism and xenophobia.

Comment: "This bill is desperately needed. It will save lives. It will prevent violence. It will allow people to 'live and let live'."

Comment: "We need to criminalise hate speech... those who want to commit hate speech must suffer the consequences." – Carin (Business Owner)

5. Proposed Solutions and Alternatives

The public offered specific alternatives to the proposed legislation:

- 1. Split the Bill:** Pass the "Hate Crimes" section (aggravating factors for sentencing) but scrap or significantly rework the "Hate Speech" section.
- 2. Use Civil Remedies:** Keep hate speech in the domain of the Equality Court (fines, apologies, community service) rather than criminal law (prison), unless there is imminent incitement to violence (which is already a crime).
- 3. Strengthen Religious Exemptions:** Broaden the exemptions to explicitly protect the private and public teaching of religious texts, doctrine, and dogma.



4. Define “Harm” Objectively: Restrict the definition of harm to physical or economic harm, excluding “emotional” harm to prevent frivolous prosecution based on hurt feelings.

6. Media and Civil Society Alignment

5.1 Consistency of Sentiment

The public submissions align closely with the concerns raised by major civil society groups and legal experts.

- **Freedom of Religion SA (FOR SA):** Has extensively campaigned against the narrowness of the religious exemption. This is echoed by the thousands of “religious freedom” comments in the DearSA dataset.
- **Free Speech Advocates:** The public’s argument that “offensive speech is not a crime” mirrors the Constitutional Court’s Qwelane judgment, which narrowed the definition of hate speech. Participants feel the Bill creates a lower threshold for criminality than the Constitution allows.
- **Media Analysis:** Media reports have highlighted the danger of “legislative overreach” and the potential for the Bill to be used to silence critics. This fear of “political weaponization” is a top concern in the public data.

6.2 Conclusion on Alignment

There is a consensus among the public, religious organizations, and free speech advocates: The Bill, in its current form, is too broad and poses a threat to civil liberty.

7. Conclusion

The public mandate is clear: **Oppose the Hate Speech provisions of the Bill.**

While South Africans support tougher sentences for criminals (Hate Crimes), they reject the criminalization of speech. The electorate views this Bill as a threat to religious freedom and freedom of expression. They urge the NCOP to rely on the existing Equality Act and *Crimen Iniuria* laws rather than creating a new statutory offence that could jail citizens for “offensive” opinions.

ends.

Robert Hutchinson, founder, DearSouthAfrica.co.za

All public comments are included below.



	Submitted	support	top-reason	message	first-name	status
support:	Count (All):					
▼ No I do not		45341				
top-reason:	Count (All):					
▼ the offence of hate speech		17455				
status:	Count (All):					
► employed individual		6537				
► self-employed		2386				
► unemployed individual		1656				
► retired		4063				
► Non-profit		280				
► business owner		1144				
► student		614				
► (blank)		775				
▼ Other		12028				
status:	Count (All):					
► employed individual		4331				
► self-employed		1834				
► unemployed individual		1202				
► retired		2596				
► Non-profit		211				
► business owner		8131				
► student		357				
► (blank)		666				
▼ definitions		9251				
status:	Count (All):					
► employed individual		3659				
► self-employed		1288				
► unemployed individual		655				
► retired		2048				
► Non-profit		226				
► business owner		780				
► student		221				
► (blank)		374				
▼ penalties or orders		2462				
status:	Count (All):					
► employed individual		1692				
► self-employed		328				
► unemployed individual		254				
► retired		350				
► Non-profit		54				
► business owner		145				
► student		150				
► (blank)		119				
▼ schedule to the Bill,		1141				
status:	Count (All):					
► employed individual		441				
► self-employed		160				
► unemployed individual		125				
► retired		262				
► Non-profit		25				
► business owner		56				
► student		37				
► (blank)		35				
▼ the offence of hate crime		2671				
status:	Count (All):					
► employed individual		942				
► self-employed		347				
► unemployed individual		258				
► retired		681				
► Non-profit		68				
► business owner		163				
► student		81				
► (blank)		131				
▼ No concern		333				
status:	Count (All):					
► employed individual		88				
► self-employed		52				
► unemployed individual		52				
► retired		71				
► Non-profit		10				
► business owner		22				
► student		18				
► (blank)		20				
▼ Not fully		1229				
top-reason:	Count (All):					
▼ the offence of hate speech		251				
status:	Count (All):					
► employed individual		92				
► self-employed		34				
► unemployed individual		25				
► retired		42				
► Non-profit		4				
► business owner		25				
► student		18				
► (blank)		11				
▼ Other		264				
status:	Count (All):					
► employed individual		95				
► self-employed		38				
► unemployed individual		24				
► retired		58				
► Non-profit		5				
► business owner		15				
► student		12				
► (blank)		17				
▼ definitions		563				
status:	Count (All):					
► employed individual		228				
► self-employed		84				
► unemployed individual		34				
► retired		107				
► Non-profit		13				
► business owner		46				
► student		25				
► (blank)		26				
▼ penalties or orders		73				
status:	Count (All):					
► employed individual		35				
► self-employed		9				
► unemployed individual		4				
► retired		9				
► business owner		4				
► student		10				
► (blank)		2				
▼ schedule to the Bill,		16				
status:	Count (All):					
► employed individual		8				
► self-employed		3				
► unemployed individual		1				
► retired		4				
▼ the offence of hate crime		50				
status:	Count (All):					
► employed individual		12				
► self-employed		9				
► unemployed individual		9				
► retired		15				
► Non-profit		1				
► student		2				
► (blank)		2				
▼ No concern		12				
status:	Count (All):					
► employed individual		5				
► self-employed		2				
► unemployed individual		2				
► retired		1				
► business owner		1				
► student		1				
► (blank)		1				
▼ yes I do		1575				
top-reason:	Count (All):					
▼ the offence of hate speech		845				
status:	Count (All):					

► employed individual	292
► self-employed	101
► unemployed individual	97
► retired	238
► Non-profit	9
► business owner	34
► student	39
► (blank)	35
▼ Other	155
status:	Count (All):
► employed individual	53
► self-employed	20
► unemployed individual	27
► retired	25
► Non-profit	5
► business owner	10
► student	9
► (blank)	6
▼ definitions	56
status:	Count (All):
► employed individual	17
► self-employed	6
► unemployed individual	8
► retired	14
► Non-profit	1
► business owner	4
► student	3
► (blank)	3
▼ penalties or orders	54
status:	Count (All):
► employed individual	23
► self-employed	5
► unemployed individual	9
► retired	9
► business owner	2
► student	2
► (blank)	4
▼ schedule to the Bill,	54
status:	Count (All):
► employed individual	24
► self-employed	4
► unemployed individual	10
► retired	12
► Non-profit	1
► business owner	1
► (blank)	2
▼ the offence of hate crime	385
status:	Count (All):
► employed individual	127
► self-employed	43
► unemployed individual	66
► retired	87
► Non-profit	5
► business owner	13
► student	13
► (blank)	31
▼ student	26
status:	Count (All):
► employed individual	9
► self-employed	7
► unemployed individual	1
► retired	3
► business owner	2
► student	3
► (blank)	1