



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/>

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	831					
► 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	1062					
► self-employed	378					
► 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					
► (blank)	1					
▼ Yes I do	1575					
top-reason:	Count (All):					
▼ the offence of hate speech	845					
status:	Count (All):					



