

FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION

(Incorporating Fish Hoek, Clovelly and Sun Valley)

P.O. Box 22125, Fish Hoek 7974
Web: www.fishhoekratepayers.com

TO: MR V RAMAANO,
PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES
vramaano@parliament.gov.za

**SUBJECT: COMMENTS ON THE PREVENTION AND COMBATING OF HATE
CRIMES AND HATE SPEECH BILL ¹**

DUE: 31 JANUARY 2019

1. DISCUSSION

The Parliamentary Portfolio Committee on Justice and Correctional Services has asked for our opinion on the controversial Prevention and Combating of Hate Crimes and Hate Speech Bill. To most of us, this is just an exercise to comply with the Declaration signed at the United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. That is, this bill is not needed. In fact, it falls short in its definitions of hate crime and hatred and will fall foul of our Constitution's section 16 giving everyone the "limited" freedom of expression which states that all components must be present collectively to criminalise hate speech. This bill separates these components as punishable criminal activities and thus, will be challenged. The additional traits in sections 3(1) and 4(1) beyond the Constitution's, will probably also be challenged in the Constitutional Court. For instance, our Constitution does not mention xenophobia. Also, this bill ignores the civil penalties already present under the Promotion of Equality and Prevention of Unfair Discrimination Act and the doctrine of *crimen injuria*.

Losing the freedom of expression reminds one of the previous draconian tyranny under the Suppression of Communism Act / Internal Security Act. This is, losing the freedom of expression is a threat to democracy. Governments should not try to control expression like some thought control experiment in a science fiction movie.

We are all different. How can one describe another person or group now with all the potential descriptors that are contained in section 3(1) and repeated in section 4(1). Just describing someone in this group is not indicative of prejudice or intolerance. Being allowed to describe other individuals or groups gives us descriptors, which aids conversations.

Where "harm" is described in the definitions Section 1 as meaning "any emotional, psychological, physical, social or economic harm", one could claim emotional or

¹ <https://dearsouthafrica.co.za/wp-content/uploads/2018/11/B9-2018-Prevention-Combating-of-Hate-Crimes-Hate-Speech.pdf>

psychological harm when one is identified in one of the categories in section 3(1) or 4(1) when all the person was trying to do was to identify the other person to another.

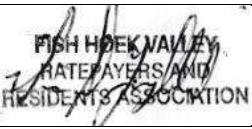
Definitions Section 1 says that “hate crime” has the meaning assigned to it in terms of section 3(1) and “hate speech” has the meaning assigned to it in terms of section 4(1), but they are not defined properly. Section 3(1) just lists an expanded group of categories without defining “hate crime”. Section 4(1)(a) does add hatred, but when does the escalation of dislike become hatred? As it stands, it is just subjective sensitivities.² When does insulting, showing contempt, mocking or ridiculing someone cross some imaginary boundary and become hatred? Public participation demands that government be responsive to the views of the public.³ Is the Government again trying to block public participation?

As this bill is short on the definitions of hate crime, what constitutes hatred and exact penalties, this bill will provide no relief to the courts which must do the job the legislatures failed to complete. We all look forward to a new example being set during upcoming Parliamentary procedures.

2. RECOMMENDATIONS

Therefore, it is recommended for the reasons stated in this report, that:

- This bill is scrapped; or failing that:
- This bill is redrafted to reflect our Constitution.

NAME & SURNAME	Brian Youngblood, Chair: Fish Hoek Valley Residents and Ratepayers Association (FHVRRA)
CONTACT NUMBERS	Cell: 084 3 99 99 33
E-MAIL ADDRESS	bdyoungblood@gmail.co.za
SIGNATURE	
DATE	16 January 2019

Other references:

<http://www.justice.gov.za/legislation/hcbill/hatecrimes.html>

<https://www.thesouthafrican.com/south-africa-hate-speech-bill-public-comment/>

<https://dearsouthafrica.co.za/constitution-of-south-africa/>

² <https://city-press.news24.com/Voices/exploring-the-constitutional-definition-of-hate-speech-20181231>

³ https://www.huffingtonpost.co.za/martin-van-staden/hate-speech-bill-a-threat-to-democracy-in-south-africa_a_23374035/