

9/11/2018





SELECT COMMITTEE ON COMMUNICATIONS
AND PUBLIC ENTERPRISES:


PUBLIC HEARINGS ON THE
FILMS AND PUBLICATIONS AMENDMENT BILL
[B 37B-2015]

FREEDOM OF RELIGION SOUTH AFRICA

General

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Freedom of Religion South Africa (FOR SA) is a NPC that works to protect and promote the right to religious freedom.
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FOR SA represents a constituency of approximately **6 million people** from different faiths in South Africa.
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FOR SA's concerns relate primarily to the **proposed definition of "hate speech"** in the Bill. With regards to the remainder of the Bill, we affirm and endorse the submissions made by Cause for Justice.

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Concerns & Objections to Bill

The proposed definition of "hate speech" in the Bill is:

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1. Over-broad and an impermissible limitation on freedom of speech, and for that reason unconstitutional; and
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2. Could have a major chilling effect on freedom of speech (including religious speech).

*Note: Definition of "hate speech" in Equality Act, 2000 challenged for same reasons (in *Qwelane* case, currently pending before the Supreme Court of Appeal)

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Starting Point: Constitution

☞ S 16 of the Constitution: **Freedom of Expression**

- (1) *Everyone has the right to freedom of expression, which includes –*
- (a) *Freedom of the press and other media;*
 - (b) *Freedom to receive or impart information or ideas;*
 - (c) *Freedom of artistic creativity;*
 - (d) *Academic freedom and freedom of scientific research.*

- (2) *The right in subsection (1) does **not** extend to –*
- (a) *Propaganda for war;*
 - (b) *Incitement of imminent violence;*
 - (c) *Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.*

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Bill's definition

☞ Section 1(i):

*“**hate speech**” includes any speech, gesture, conduct, writing, display or publication which is prohibited in terms of section 16(2) of the Constitution of the Republic of South Africa, 1996, which propagates, advocates or communicates words against any person or identifiable group, which words could reasonably be construed to demonstrate a clear intention to be harmful, to incite harm and promote or propagate hatred against the said person or identifiable group”.*

See also related sections 16(f)(ii); 19; 27; and 28(a)(2) of the Bill.

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Comparison of Constitution and Bill

“Hate speech”, in terms of Constitution, requires:

- ☞ 1. An **“advocacy of hatred”** (i.e. calling for, or making a case for hatred”) – not mere *“communication of words”* as required by the Bill; and
- ☞ 2. Must be on **listed grounds**, namely race, ethnicity, gender and religion – versus Bill’s unrestricted scope.
- 3. Objectively speaking, an **“incitement to cause harm”** (i.e. a pressing, or stirring up, of someone to act in a violent or physically harmful manner) – versus Bill’s subjective enquiry into the intention of the speaker and/or objective enquiry into what a reasonable person would’ve inferred from the speech.

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Chilling effect on (religious) speech

- Right to free speech (including religious speech) is an exceptionally important right in the Constitution, and a cornerstone of democracy.
- While Constitution clearly prohibits "hate speech", it does not prohibit speech which individuals / groups may find unfavourable or offensive e.g. holy texts from Bible or Koran.
- Current definition of "hate speech" could be used to (or effectively) muzzle believers across different faiths from expressing their sincerely held religious convictions and beliefs which may be considered "harmful".


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Recommendation

Amend the definition of "hate speech" in the Bill to read as follows:

"hate speech" includes any speech, gesture, conduct, writing, display or publication which amounts to:
a) the incitement of imminent violence; or
b) the advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm, as contemplated by s 16(2) of the Constitution."

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Protecting and promoting
freedom of religion in South Africa!

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