



ANCWC LGBTIAQ+ desk

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INPUT ON HATE CRIMES AND HATE SPEECH BILL



INTRODUCTION

The African National Congress remains the only inclusive political party with the establishment of the the ANCWL LGBTIAQ+ desk in all provinces and . The desk was established to establish and entrench a human rights culture in our society as laid out in the Constitution and especially in the Bill of Rights. We believe that the post-apartheid transformation process of our society must also involve the removal and prevention of discrimination and prejudice based on sexual orientation and gender identity (SOGI), patriarchal and hetero normative privilege, cis-sexism and ideas that inhibit the full realisation of sexual and gender minority liberation. In line with this, we uphold six values enshrined in our Constitution

- **Freedom**
- **Equality**
- **Human dignity**
- **Non-discrimination**
- **Non-racialism**
- **Non-sexism**



INPUT ON HATE CRIMES AND HATE SPEECH BILL

PROPOSALS FROM THE TT continued...

1. Under the heading BILL (Purpose) add:

“To give effect.....international human rights instruments concerning racism, racial discrimination, xenophobia, **homophobia, biphobia, the protection against violence and discrimination based on sexual orientation and gender identity**, and related intolerance,...

Motivation:

There are UN General Assembly and UNHRC Resolutions on this matter:

- (A/HRC/RES/17/19 DATED 14 JULY 2011 – on having a panel discussion **(No Mention of SA)**)
- A/HRC/RES/27/32 dated 2 October 2014 – notes report and panel discussion and requests updating of the report a/hrc/19/41) **(SA in FAVOUR)**
- A/HRC/res/32/2 dated 15 July 2016 – details actions **(sa ABSTAINED FROM VOTING ON THIS RESOLUTION!!! – SA should still sign this resolution)**



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PROPOSALS FROM THE TT continued...

2. PREAMBLE

- Add under “mindful that- the increased killings and other hate crimes perpetrated against the LGBTQIA+ community
- Add under “and since” – origin, and the UN General Assembly and the UNHRC has adopted resolutions on the protection against violence and discrimination based on sexual orientation and gender identity,

Motivation:

- Gives legal force and effect for the purposes of any legal constitutional or public challenges to the sections of the bill and act once passed.
- Foreground discrimination against LGBTQIA+ community and political commitment to stop this
- Align with all relevant international obligations i.r.o. LGBTQIA+ community
- Become part of global movement to stop discrimination against LGBTQIA+ community



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PROPOSALS FROM THE TT continued...

3. DEFINITIONS

- Add definition of LGBTQIA (persons who identify as lesbian, gay, bisexual, transgender, queer, intersex, asexual, gender-fluid, gender non-conforming and non-binary)
- Add definition of Violence / violent acts (meaning physical; sexual; psychological, causes harm, injury, disability or death)
- Add definition of discrimination to read as "discrimination as defined in the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000" or include full definition from PEDUDA.



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PROPOSALS FROM THE TT continued...

4. DEFINITIONS continued

- Add definition of gender identity and sexual based on Yogyakarta principles developed by 29 experts from 25 countries which although not yet an international treaty is used by many countries including South Africa.
 - *Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.*
 - *[2] Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms."*



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PROPOSALS FROM THE TT continued...

4. DEFINITIONS continued...

Motivation:

- Gives legal force and effect for the purposes of any legal constitutional or public challenges to the sections of the bill and act once passed.
- Displays understanding of LGBTQIA+ issues and moves away from narrow definition of sexual orientation which generally refers to whether a person is homosexual, heterosexual or bi-sexual.
- Important that all aspects of violence are defined and covered as a hate crime
- Important to show link between discrimination and hate crime



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PROPOSALS FROM THE TT continued...

5. OFFENCE OF HATE CRIME AND OFFENCE OF HATE SPEECH

- replace (q) and (oo) sexual orientation with LGBTQIA status/identity

or

- leave sexual orientation and add LGBTQIA+ status/identity

- should we add a clause under offence of hate crime along the lines that any VIOLENCE perpetrated against persons based on their

characteristics as listed in 3 (1) (a to q) that is motivated by prejudice will be considered a hate crime offence?

Motivation:

Moves away from narrow definition of sexual orientation which generally refers to whether a person is homosexual, heterosexual or bi-sexual.



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PROPOSALS FROM THE TT continued...

6. PENALTIES OR ORDERS

- There should be inclusion of specific statutory offences and especially offences relating to Direct violence against LGBTQI+ individuals and Femicide.

We propose that a stipulation be added for offenses against LGBTQI+ persons in the Criminal Law Amendment Act 105 of 1997. This would involve amending in schedule 2 Part 1 to include corrective rape or corrective murder and gender based rape or murder.

- If the perpetrator of such a killing is a first-time offender is the penalty of a fine or a sentence not exceeding 3 years enough?)

- Is the penalty of fine or imprisonment not exceeding 5 years enough?)

- do we need to have a separate penalties or orders sections if the Criminal Procedures Act is going to be used?



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PROPOSALS FROM THE TT continued...

7. PREVENTION OF HATES CRIMES AND HATE SPEECH

- Should we add two (2) clauses, i.e:

- * a clause on the Department of Social Development training social workers and care-workers on educating communities on available public services provided to prevent and combat hate crimes and hate speech
- * a clause encouraging civil society organizations in all their forms to work in a social compact with government on prevention and public awareness campaigns

Motivation

- Social workers are often at the coal face working within communities and the first port of call for communities that experience domestic and community-based violence
- Given limited resources government and civil society organisations should work in a social compact to deal with these matters.



Strengthening the bill

All spheres of government : local , government and national must work together with communities and community based organizations to deal with continued discrimination against persons on the grounds as expressed by clause 3 and 4

- The department of monitoring and evaluating should sphere head this process to ensure that monitoring and evaluating strategies are implemented in the various forms of governments and report to Parliament on an annual basis
- The department of sports and culture should formulate policy guidelines for social cohesion at various levels of government



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PROPOSALS FROM THE TT continued...

7. GENERAL QUESTIONS

- How do we prevent delays with investigations and prosecutions of hate crimes and hate speech cases? Can we set timeframes within which these must be concluded from the date of reporting?
- will the Bill hold the Health department accountable on service delivery especially coming to transgender people