

COSATU Submission:

**Prevention and Combating of
Hate Crimes and Hate Speech Bill**

01 October 2021



Submitted to:

**Portfolio Committee:
Justice and Correctional Services**

**National Assembly
Parliament**

Republic of South Africa

1. Introduction

The Congress of South African Trade Unions (COSATU) welcomes the tabling and supports the passage of the Prevention and Combating of Hate Crimes and Hate Speech Bill.

Its passage is long overdue and needed given South Africa's history.

Whilst COSATU supports this progressive Bill, we believe two amendments are needed to further strengthen it in its provisions dealing with the definition of harm and in its limitations on sentences.

The Bill will be a critical tool in combating hate crimes and hate speech, however it alone will not resolve these challenges. Additional social-economic interventions are required to deal with these legacies of apartheid and colonialism.

2. COSATU Support for the Objectives of the Bill

COSATU supports the Bill in principle. It is a progressive Bill that seeks to strengthen the state's ability to prosecute hate crimes and hate speech.

The Bill seeks to ensure that legislation dealing with hate crimes and hate speech are in line with the Constitution and the Bill of Rights' protections from unfair discrimination.

South Africa's histories of colonialism and apartheid are well known. Their central ethos besides economic exploitation, were hate crimes, hate speech and unfair discrimination.

The history of hate crimes and the consequences of hate speech internationally are well known. They include Rwanda's genocide in 1994, the civil war in the former Yugoslavia during most of the 1990s, the Holocaust in World War II amongst others.

Whilst South Africa became a democratic state in 1994 and adopted a progressive Constitution prohibiting unfair discrimination in 1996, we have still witnessed many cases of hate speech and hate crimes.

Whilst some have merely infringed upon individual's right to dignity, others have been accompanied by violence. The possibility for mass violence based upon hate speech cannot be taken lightly as witnessed by the recent widespread violence, destruction and criminal behaviour in July 2021 in KwaZulu-Natal and Gauteng.

3. Constitutional Right to Freedom of Speech and Political Beliefs

It is important that the Bill achieves the correct balance between prohibiting hate speech and simultaneously recognising and not infringing unfairly the constitutional rights to freedom of speech and political belief.

The removal of political affiliation or conviction as well as occupation or trade from cover from hate speech help provide this balance.

Political parties will in the course of election campaigns and the normal engagements of political discourse criticise, often very robustly other political parties.

Trade unions will too in the course of collective bargaining and recruitment and other campaigns robustly criticise the owners and managers of companies.

Both are part of the nature of constitutional democracies. Neither constitutes hate speech. Their omission is important to ensure the Bill achieves the correct balance in protecting the rights of individuals from hate crimes, but also in recognising the rights to political expression.

4. COSATU Concerns with the Definition of Harm

COSATU supports the definition of harm in the Bill as referred currently to as “harm” means any emotional, psychological, physical, social or economic harm”.

The Federation is however concerned that it omits cultural harm. The Bill does recognise hate speech and hate crimes that impact upon culture. However, this is not carried through to the recognition of harm.

The harm persons or communities can suffer from hate speech and hate crimes can materialise culturally as well. Examples include the recent attacks on African citizens of Cape Town from exercising their cultural practises on a beach. It may include similar prevention of Muslim communities from carrying out religious or cultural practises e.g. the call to prayer as occurred in Centurion a few years ago.

Often these result in certain individuals mobilising communities through hate speech against such cultural practises. This does a massive impact on the affected persons’ culturally and otherwise.

COSATU Proposal:

- Insert the word “cultural” after “social and before or economic harm” in the definition of harm in Clause 1 of the Bill.

5. COSATU Concerns with the Limitation of Sentences

Clause 6 (3) (a) and (b) provide for maximum sentences of 3 and 5 years respectively for persons convicted of hate speech.

COSATU appreciates that such sentences may be fair in certain instances, e.g. where the harm is limited to a person’s dignity etc.

COSATU is deeply concerned that such limits may not be correct in cases where persons guilty of hate speech inspired others to commit violence and serious criminal offences. For example, during the Rwandese genocide, Radio Television Libre des Mille Collines was used to mobilise thousands of people to commit genocide. Similar examples can be found elsewhere in South Africa and other countries’ history.

In such instances, whilst the person may only have committed hate speech in their instigation, they are surely also guilty of hate crimes as their speech was used to mobilise and persuade others to commit hate crimes and other serious criminal acts. The limitation of sentencing in such cases to 3 or 5 years of such instigators would not be just.

COSATU Proposal:

- Remove or qualify the limitation of the provisions for 3 and 5 year sentencing limits to exclude persons guilty of instigating others to commit hate crimes and other serious criminal acts.

6. Conclusion

COSATU supports the speedy passage of the Prevention and Combatting of Hate Crimes and Hate Speech Bill. It will play a key role in empowering the state to tackle such crimes and in protecting the rights of citizens.

It is inline with and gives expression to the Constitution and the Bill of Rights. It provides a fair balance with rights of all citizens.

COSATU believes the Bill needs to be strengthened to recognise the harm hate speech can do to citizens' cultural rights.

The Federation believes that the current limit of 3 and 5 years' sentencing is inappropriate for persons guilty of instigating the committing of hate crimes and needs to be increased or amended.

COSATU trust that the Portfolio Committee will take its proposed amendments into consideration during its deliberations.

Thank you.



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