

The Prevention and Combating of Hate Crimes and Hate Speech Bill

Submission by the South African Jewish Board of Deputies

Introduction

In the two decades since the end of apartheid rule, South Africa has made significant progress in ensuring that human rights are respected and afforded to all. However, in stark contrast with our progressive policy and legislative guarantees for fundamental human rights, incidences of hate crimes, hate speech and bias-motivated violence have grown in recent years.

The South African Jewish Board of Deputies (SAJBD) is the representative body and human rights lobby of the South African Jewish community. In this capacity, the SAJBD is a founding member and current Steering Committee member, of the Hate Crimes Working Group (HCWG), a multi-sectoral network of civil society organizations that advocate for hate crimes awareness, education and legislation.

As an organization whose core mandate is to protect the civil liberties of South African Jewry through combating antisemitism and fighting against other forms of discrimination, we welcome the publication of the Prevention and Combating of Hate Crimes and Hate Speech Bill and are grateful for the opportunity to share our submission on the proposed Bill.

As a member of the HCWG, we support and endorse the submissions made by the HCWG on the Bill.

The SAJBD's submission begins with general comments on the Bill and then defines and unpacks the concept of antisemitism. A brief historical and contemporary perspective will then be presented regarding how this form of discrimination has manifested in South Africa specifically. Our submission then moves on to examine the issue of hate crimes and hate speech in South Africa, with suggestions on how best to prevent and combat this scourge based on the experiences and best practices of the South African Jewish community and other civil society groups.

General Comments on the 'Prevention and Combating of Hate Crimes and Hate Speech Bill'

The SAJBD supports the provision for perpetrators to be sentenced in accordance with the jurisdiction of the court in which they appear and that hate crimes have now been included in the minimum sentencing framework through amendment of that framework. We also support the separate minimum framework for hate crime.

The SAJBD also supports the provisions stating that the Minister of Justice and Correctional Services must liaise with the South African Police Services (SAPS) and the National Prosecuting Authority (NPA) to decide how to gather and report on hate crimes statistics.

All information collected should be reported to parliament, as stated in the Bill, and then to the public and institutions such as the South African Human Rights Commission (SAHRC) and the Commission for Gender Equality. However, the SAJBD submits that introducing a time frame for making these regulations is necessary to ensure the effective implementation of the Bill.

The SAJBD welcomes the introduction of a positive duty on the state to prevent and combat hate crimes. However, we note that key departments have not been expressly listed. We also submit that the duty to “cause programmes to be developed” is too vague.

We also note that the latest version of the Bill remains uncoded. We remain concerned that the Bill will be impossible to implement without a substantial commitment of resources.

Antisemitism

Definition of Antisemitism

Antisemitism constitutes prejudice against Jewish people, whether defined as an ethnic or a religious group or both. It can also refer to prejudice against Judaism, the Jewish religion. A working definition of what constitutes antisemitic behaviour might be “any malicious act aimed at Jewish people, organisations or property, where there is evidence that the act has antisemitic motivation or content, or that the victim was targeted because they are (or are believed to be) Jewish”. Such acts would include: assault, vandalism, threats, verbal abuse, graffiti, hate mail, boycott initiatives specifically aimed at South African Jews (including Jewish-owned or managed business enterprises) and the dissemination of overtly antisemitic literature.

Antisemitism is rooted in and expressed in terms of three broad categories, viz. **Ethnic/racial**, **Religious**, and **Political**.

Typically, **ethnic-racial** antisemitism attributes to Jews various negative character traits, variously depicting them as being by their intrinsic nature avaricious, treacherous, underhanded, manipulative, exploitative, materialistic, cowardly and vengeful. In its most extreme form, antisemitism demonizes Jewish people, representing them as being fundamentally evil and destructive to the rest of humanity. It assigns to them almost cosmic powers through which they orchestrate international events to their own advantage and to the detriment of everyone else. Since Jews are said to be the malevolent hidden hand behind everything that is wrong with the world, they feature prominently in the thinking of conspiracy theorists.

In South Africa, such thinking surfaces on a fairly regular basis in the social media, on extremist websites (generally radical right-wing or Islamist in nature), on call-in radio talk shows and via hate mail sent (usually anonymously) to Jewish individuals or organisations. Occasionally, even senior political leaders have been guilty of such rhetoric.

Religion-based antisemitism generally has its roots in the teachings of certain religions (e.g.,

the “Christ-killer” canard, which for centuries held Jews to be collectively guilty of the death of Jesus) or in grossly distorted depictions of Judaism as a religious faith (e.g. that its texts supposedly incite hatred against non-Jews or that the blood of murdered gentile infants is used in religious rituals).

Frequently, **politically-driven** hostility towards Israel crosses the line into prejudice against Jews as a people and religious community. While opponents of Israel generally claim to make a distinction between Jews as a religious and/or ethnic group and ‘Zionists’ (i.e. those who support/identify with the Jewish state), in practice, the more extreme the rhetoric against Israel, the greater the likelihood that Jews in general will become targets of racist threats; invective; and violence. One also increasingly finds that the terms “Zionist” and “Jew/Jewish” are being used interchangeably, thereby blurring the distinction between Zionism as a national political ideology and Jews in general. In the modern area, an ever increasingly proportion of antisemitic incidents around the world are linked in some way to anti-Israel sentiment. This phenomenon has been consistently born out since the beginning of the century by records of antisemitic incidents compiled annually by Jewish civil rights organisations around the world, including the Anti-Defamation League (USA), the Community Security Trust (United Kingdom), the Executive Council for Australian Jewry, the Conseil Représentatif des Institutions Juives de France and Bnai Brith Canada, as well as in South Africa by the SAJBD. Acts of antisemitic violence, vandalism and harassment typically increase during times of unrest in the Middle East, and acts of verbal and written abuse against regularly include elements of anti-Israel rhetoric.

In practice, there tends to be much overlap between the above three categories. Hence, one finds that ethno-racial antisemitism (depicting Jews as dishonest, exploitative, etc.) often include religious-based slurs and/or political aspects. Likewise, criticism of Israel or Zionism often crosses over into overtly antisemitic attacks against Jews as a people or Judaism as a religion. Such semi-veiled abuse has become commonplace in South Africa. It was especially prevalent during the war between Israel and Hamas in July-August 2014, where the social media was flooded with such comments and tweets as “Was Hitler Wrong about the Jewish evil? Compare what's happening today in Palestine with the Holocaust and Choose your name”.

Antisemitism in South Africa

South African Jewry are fortunate in that local rates of antisemitism are relative low compared with those of other countries with medium to large Jewish communities, both in terms of numbers of incidents and their severity. Most recorded incidents take the form of verbal abuse or hate mail. Incidents involving physical violence, while not unknown, are rare. On the other hand, there has been a slow upward trend in the number of incidents recorded annually in South Africa since the beginning of the millennium.

Times of intensified conflict between Israel and its neighbours invariably see a sharp rise in antisemitic activity locally. Another worrying trend has been the singling out of the Jewish community for specific denigration, and even threats, in times of political and/or social unrest in South Africa. This has surfaced in the form of graffiti, social media posts and face-to-face verbal abuse. Historically, Jewish communities have been especially vulnerable to

antisemitism during times of economic and political turmoil, and there are growing indications that current socio-economic problems confronting the country are similarly resulting in increased expressions of anti-Jewish sentiment within the general population.

Hate Crimes

With the high levels of crime in South Africa, there has been a tendency amongst policymakers to dismiss hate crimes as simply being criminal. Such an approach, however, fails to recognise the extreme and lasting damage such crimes do to the victims and members of their broader community.

A hate crime has been defined by the Organisation for Security and Cooperation in Europe (OSCE) as 'a criminal act committed with a bias motive'. Accordingly, it is an act perpetrated against people, property or an organisation which constitutes a criminal offence and which is motivated, in part or whole, by bias or hate. There are two key components of hate crimes: The first is that the incident comprises of a criminal offence under other existing laws. The second element is that some form of specific bias was involved in the selection of the victim.

While hate crimes can involve mixed motives they also incorporate a range of crimes where the victim's actual or perceived identity plays a part. Hate crimes can therefore be described as an 'identity crime' - actions are directed at the identity of the victim and motivated by bias not against the individual but of the group to which they belong.

Crimes of hate may also be defined as 'message crimes', as the actions of the perpetrator impacts beyond the direct victim to others of the targeted group. In this way, a victim is often selected on the basis that they are a symbol of a broader group of people.

Hate crimes are dangerous acts motivated by bias and can target overlapping aspects of a victim's identity – because of this overlap it is best to address hate crimes in a holistic manner by devising interventions to address a range of forms of prejudice. Hate crimes often take place in an environment where discrimination against particular groups is socially acceptable.

The need for hate crimes legislation in South Africa

Unfortunately, there is currently no mechanism for reporting or recording hate crimes in South Africa in a way that distinguishes them from any other crimes. As a result, there is no way to accurately assess the levels of hate crime across the country.

Despite the lack of an official reporting mechanism for hate crimes, civil society has observed clear trends regarding certain types of hate crimes in South Africa. The 'corrective rape' of black lesbians; race-related attacks; and attacks on foreign nationals such as the xenophobic violence of May 2008 and March 2015, as well as incidents of religious intolerance, all continue to occur. The lack of measures taken to address these acts has created a culture of impunity for hate crime offenders.

Introducing legislation and policy on hate crimes in South Africa will therefore help to

address not only crimes where the perpetrators are motivated by hatred or bias but will also improve access to justice for all South African residents. Laws on hate crimes will allow the police and justice officials to track trends of crime targeting certain groups and will ultimately improve the security of all vulnerable communities.

The SAJBD notes that South Africa's Constitution protects the right to equality and requires that national legislation must be enacted to prevent or prohibit unfair discrimination. As a nation, therefore, we have a positive obligation to tackle all forms of discrimination. South Africa also has international legal obligations to honour on this issue and the Bill is an important step in this direction.

Beyond the legal response

As the Hate Crimes Working Group states, whilst a legal response to hate crime is only one form of intervention necessary to address the complex intersection of bias and violence, it can serve as an important tool for combating impunity and providing access to criminal justice for victims.

The SAJBD wishes to stress our strong conviction that the final version of the Bill must be so framed as to make its practical implementation possible.

Civil society has also stressed that another key intervention regarding hate crimes is the need to monitor these incidences around the country and assess the response provided to victims. The HCWG states that monitoring hate crimes helps to:

- understand where they are taking place and which areas require specific targeted interventions;
- recognise when hate crimes increase and what factors influence this;
- track access to criminal justice for hate crimes victims by assessing the numbers of arrests and successful prosecutions;
- and oversee any challenges within the criminal justice system, if there are major differences between the number of hate crimes being reported and the number being successfully prosecuted.

The challenge of underreporting means that it is essential that civil society and the SAHRC work with the public to assist them in reporting hate crimes. The monitoring tool developed by the HCWG is one example of how hate crimes in different parts of the country can be monitored as well as assessing assistance given to victims.

As well as designing strategies to address social forms of intolerance, it is important that senior government and other religious and community leaders regularly speak out on hate crimes and associated prejudices. These public pronouncements will send a clear message that acts of discrimination will not be tolerated and the perpetrators held accountable.

In view of the greater impact that their words have, those in leadership positions must be especially careful not to make statements (publicly or even in private communications) that

denigrate or otherwise unfairly discriminate against particular groups on the basis of race, religion, ethnicity or other prohibited grounds.

To address the social causes underlying hate crimes, multilevel responses are required including those aimed at increasing diversity awareness in local communities, and education and training programmes for service providers.

Recording of 'incidents'

In countries such as the United Kingdom, the government records 'hate incidents' that do not by themselves constitute crimes. These may include insults, threats and other incidents which serve as an early warning system of threats to social cohesion and can build a pattern of incidents leading up to a hate crime which may assist in its prosecution.

The SAJBD believes that it would be useful to maintain a register of hate incidents at police stations where people can report threats, insults and other bias-related incidents. It should be mandatory to incorporate the data from these registers into a national database that is publicly accessible. Also, third party reporting for hate crimes should be introduced. This allows for representatives, such as community leaders or non-governmental organizations, to report a hate crime on the victim's behalf. This strategy to guard against secondary victimization has been highly effective in countries such as the United Kingdom and the United States. Effective training for police officers on how to deal with a victim of a hate crime is also essential.

Intersectoral Committee

As the HCWG has previously noted, a number of pieces of legislation include provisions for the establishment of an Intersectoral Committee, comprised of the relevant government departments, to oversee the implementation of the Act. Such a mechanism would be vital in legislation on hate crimes given that a number of departments need to work collaboratively to effectively address hate crimes. In particular, it is critical that both the police and the National Prosecuting Authority be required to collect and maintain statistics regarding the number of suspected hate crimes cases reported and then the number of crimes prosecuted. This will help monitor trends of where hate crimes are occurring; how successful police are being in making arrests; as well as monitor the percentage of successfully prosecuted hate crimes cases. This should be updated and made publicly available at intervals that are prescribed in the legislation.

Prioritised Prosecutions and Investigation Guidelines

The SAJBD wishes to stress that a crucial response following a hate crime is for justice to be served quickly because of the incidence's negative impact on social cohesion and the traumatic impact of the crimes.

The SAJBD calls for investigation guidelines for:

- police to assist with awareness around hate crimes;
- the collection of statements on hate crimes;

- evidence collection;
- and ways to avoid secondary victimisation of the victim.

The HCWG cites an example of such guidelines is the manual developed by the Association of Chief Police Officers in the United Kingdom. Training for police or guidelines supporting investigations for evidence of a bias motive are essential.

Prosecuting Guidelines

Many countries have also developed guidelines for prosecutors to prosecute hate crimes and this is important in South Africa. According to the HCWG, prosecuting guidelines would be essential to cover the following: how to make the best use of the provisions of hate crimes legislation; what evidence is required to charge a person with a hate crime; how to manage cases where the victim has withdrawn their support for the case; accepting pleas; and communication to the victims or victims' community regarding decisions to withdraw or alter charges.

The SAJBD therefore strongly recommends the development of clear and effective prosecuting guidelines on hate crimes. A further recommendation is the development of a specific unit within the NPA to oversee the prosecutions of hate crime offenders.

Community Impact Statement

Whilst the SAJBD agrees with and is encouraged by the inclusion of a Victim Impact Statement or VIS in the Bill, we would like suggestion the inclusion of a 'Community Impact Statement' or CIS in addition to the VIS.

The Crown Prosecution Service in the United Kingdom describes a community impact statement as a short document illustrating the concerns and priorities of a specific community over a set time period.

Community impact statements can assist criminal justice agencies understand the wider impact of hate crime and can improve decision making and increase public confidence.

A community does not just have to be determined by geographic areas. A community can also be defined as a group of people who interact and share certain characteristics, experiences or backgrounds, and/or are located in proximity to each other.

CIS have been utilized effectively in the United Kingdom, and this could be a good example of how to use this tool in dealing with hate crimes. More information can be found on the Crown Prosecution Service website (<https://www.cps.gov.uk/legal-guidance/community-impact-statements>)

Public Awareness

The SAJBD also recommends the creation of public awareness campaigns against hate crimes. These could form part of broader efforts aimed at improving diversity and

promoting social cohesion in the country. Internationally, various countries have tackled public awareness campaigns for hate crimes, such as the United Kingdom.

The importance of the Bill will be in its effective implementation to change the reality on the ground for vulnerable communities and for this goal to be successful campaigns to change attitudes and mindsets in the public domain will be essential.

Hate Speech and Social Media

Social Media Regulation

In today's world people communicate with one another often through online social media, especially Facebook and Twitter. Inevitably, certain individuals have abused these platforms by using them to propagate hatred (including incitement to cause harm) on racial or other prohibited grounds. A high and steadily growing proportion of hate speech incidents in South Africa today emanate from social media. In addition to offensive comments posted by the users, such sites are frequently also used as vehicles to disseminate online hate material, including inflammatory photographs, cartoons and YouTube clips. The harmful impact that this is having on inter-group relations and social cohesion cannot be overstated, as the bitterly divisive controversy that erupted in the wake of offensive Facebook comments at the beginning of 2016 starkly demonstrated.

At the core of this problem is the fact that no regulatory body is empowered to monitor and moderate social media discourse in South Africa. This is in contrast to the print and broadcast media, which are essentially self-regulating, but where effective complaints and adjudication structures are in place to deal with incidents where they do occur. As a result, offensive comments that no responsible newspaper would publish or radio station would allow routinely appear on social media sites. Many users would seem to operate on the assumption that what they post on their private sites is essentially no different from what they might say in private conversation, that is, their own business. This is a serious misapprehension, since what is published in the public domain by definition cannot be regarded as a private communication.

An additional problem is that social media sites allow for offensive material, including death threats, to be sent anonymously, pseudonymously or under false identities. The Jewish community, as well as other communities in South Africa, has been subjected to numerous such attacks over the past two years. Only through obtaining the necessary user details from the operating social media companies is it possible to take action against those responsible, but to date social media sites have been resistant to releasing such information and will only (theoretically) do so when approached by a bona fide law enforcement agency engaged in a criminal investigation.

It is therefore strongly recommended that measures be introduced that will hold social media users, and the platforms that host them, more accountable for what they put out in the public domain. This might include:

- Establishing an independent regulatory body to which South African social media users can report incidents of hate crimes to the organisation, which can collate and

pass this information to the respective policing authorities. Adequate funding for such a body would be essential.

- Convening a Commission of experts to explore and make findings as to what constitutes undesirable “hate speech”; to (so far as possible) establish where the boundary lies between it and expressions of opinion that are acceptable, even if robust, and to illustrate its findings with actual examples of what has appeared online. Such a commission should include constitutional law experts, media professionals, civil society organisations involved in human rights, freedom of expression and anti-racism programmes and academics and educators with specific knowledge in analysing and understanding racism and other forms of prejudice, whether from a historic, sociological, psychological, feminist or other such point of view.
- Implementing education and training for law enforcement workers and for magistrates, prosecutors and other court officials to assist them in identifying where violations of anti-hate speech laws have taken place and what procedures should be followed in such cases. Currently, there is a serious dearth of knowledge, particularly within the police services, regarding how to deal with complaints of this nature.

Hate Speech – The Issue of Freedom of Expression

Racist and other forms of hate speech, particularly on social media but also to a growing extent surfacing in the realm of political discourse, is generating unhealthy levels of anger, hurt, fear and racial polarisation throughout South African society. This raises the critical question as to whether existing legislation prohibiting hate speech is adequate, and if not, how this might be remedied in the new Hate Crimes Bill.

The two most important pieces of existing legislation laying down guidelines as to where the boundaries lie between legitimate freedom of expression and prohibited hate speech are Section 16(2) of the Bill of Rights and the Promotion of Equality and the Prevention of Unfair Discrimination Act (2000) - hereafter PEPUDA, which is intended to give effect to the constitutional right.

Section 16(2) of the Constitution reads:

(2) The right in subsection (1) does not extend to:

(a) propaganda for war;

(b) incitement of imminent violence; or

(c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Everyone has the right to freedom of expression, which includes freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research.

PEPUDA, gives detailed effect to section 16(2), imposing express limitations on freedom of

expression which is not constitutionally protected.

Regarding how the prohibition of hate speech (which also includes the publication and/or dissemination of written forms of communication and information) is addressed in PEPUDA, the following sections are of particular relevance:

Section 10(1) reads:

Subject to the proviso in section 12. no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to -

- (a) be hurtful;*
- (b) be harmful or to incite harm;*
- (c) promote or propagate hatred.*

“Prohibited grounds”, as defined under 1(xxii), are identified as: race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Section 12(a) & (b) of the Act further determines that no person may—

- (a) disseminate or broadcast any information;*
- (b) publish or display any advertisement or notice, that could reasonably be construed or reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person: Provided that bona fide engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.*

Of further relevance is Section 7(a), which holds that “no person may unfairly discriminate against any person on the ground of race, including (a) the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence”.

In the view of the SAJBD, the relevant sections of PEPUDA are sufficiently far-reaching in scope and likewise sufficiently precise for purposes of addressing instances of hate speech as and when they occur. This immediately calls into question whether the inclusion of a specific section on hate speech in the Hate Crimes Bill is necessary, or indeed desirable. Section 4(1) of the Hate Crimes Bill essentially reproduces the basic principles expressed in PEPUDA, while also expanding on them.

Rather than having two very similar laws on the statute books it is strongly recommended that the anti-hate speech sections of the Hate Crimes Bill be removed and that instead the relevant sections of PEPUDA be revisited with a view to their possible amendment.

There are aspects of 4(1) of the Hate Crimes Bill that might well be incorporated in some

form in PEPUDA. An example is 4(1)(i) & (ii), which declare that “any person who intentionally, by means of any communication whatsoever, communicates to one or more persons in a manner that (i) advocates hatred towards any other person *or group of persons*; or (ii) is threatening, abusive or insulting towards any other person *or group of persons*, to be guilty of the offence of hate speech [our emphasis]. The inclusion of the words “group of persons” is in fact a significant departure from PEPUDA, which refers only to offences against a specific individual. The inclusion of such wording would also make it an offence to denigrate specific groups, whether defined by race, religion, ethnicity or other of the prohibited grounds listed above.

In view of the pressing need to address the new realities created by electronic communication, Section 4(1)(b) of the Hate Crimes Bill might also be considered for incorporation in some form in PEPUDA. This section reads:

4(1)(b) Any person who intentionally distributes or makes available an electronic communication which constitutes hate speech as contemplated in paragraph (a), through an electronic communications system which is –

- (i) accessible by any member of the public; or
- (ii) accessible by or directed at a specific person who can be considered to be a victim of hate speech, is guilty of an offence.

Challenges of Implementation

The real problem would appear not that existing anti-hate speech legislation is inadequate but that there are serious problems in terms of how the law is being implemented. In the experience of the SAJBD, it is proving very difficult in practice to follow through hate speech complaints, whether through the SA Human Rights Commission or the Equality Courts. It can take years for a single complaint to be pursued through to a satisfactory conclusion, and sometimes the process stalls altogether. Neither the SA Human Rights Commission, nor the Equality Courts, are sufficiently resourced to deal timeously and efficiently with even those cases that are brought to their attention. The processes laid down for following through complaints may also be too cumbersome, necessitating a review process. Members of the public are also, by and large, unaware of existing remedies and how to access them. This in turn points to the need for further education, preferably starting at senior school level.

Empowering Institutions dealing with Hate Crimes and Hate Speech

Institutions like the SAHRC are severely under-resourced, resulting in large and growing backlogs in terms of complaints waiting to be dealt with and inordinately long waiting periods between the submission of a complaint and its eventual resolution.

An illustrative example is a complaint of hate speech lodged by the SAJBD in August 2014 against then Congress of South African Trade Unions (COSATU) Western Cape chairman Tony Ehrenreich. It was only in September 2018 – four years later – that the SAHRC issued a ruling upholding the SAJBD’s complaint and it took nearly two more years before Ehrenreich finally complied with the ruling by furnishing an acceptable apology for his offending statements. This is a period of 6 years to see a single complaint through to conclusion. Delay in the process and finalization of complaints itself severely undermines the constitutional rights that

PEPUDA is intended to facilitate.

It is further relevant to point out that even this long-delayed outcome was only achieved as a result of innumerable communications from and frequent meetings between the SAJBD and the SAHRC.

It is therefore recommended that these bodies be significantly strengthened in terms of personnel, training and resources. Inter alia, this would entail:

- Increasing the professional staff of the SAHRC, Equality Courts, broadcasting regulatory authorities and the like to enable complaints to be dealt with more timeously and efficiently. The possibility of bringing on board retired judges and legal practitioners to assist on a reduced fee or pro bonum basis could be looked into.
- Training of personnel (including magistrates in the Equality Courts), particularly in their understanding of the legal issues concerning freedom of expression and its limitations, including what can be said to be constitutionally prohibited hate speech.
- There is often little understanding by the public of how the Chapter 9 Institutions and Equality Courts work and how, in practical terms, they should go about approaching them where need be. To ensure that these institutions are properly utilised, the public needs to be educated regarding their purpose and functions, with such education preferably being part of the high school syllabus.

Restorative Justice

Education, acculturation and sensitivity training

In protecting South Africans from hate crimes and hate speech, there is a need to address the root cause of the problem and change 'hearts and minds' on the issue of tolerance and diversity.

How people view and relate to those who differ from them – by race, religion, sexual orientation or in many other ways - is conditioned by the culture in which they are raised and the environment in which they grow up and are educated. The challenge, therefore, is to foster a culture of respect for and tolerance of difference at all levels of society, with particular focus placed on the youth.

Restorative justice methods are therefore essential in addressing instances of hate and preventing them from happening in the future. Educational workshops fostering tolerance not only address the motivations behind, and prevent, racism and discrimination in all its forms but can also be effectively utilized as a form of restorative justice in instances where hate speech and or hate crime have occurred.

The SAJBD recommends bolstering current restorative justice programmes in the county and the expansion of tolerance education, which must indeed be regarded as a crucial component of the school syllabus. Support should be given to practitioners currently engaged in this work and ways to roll out successful programmes should be encouraged. An

example of such restorative justice work and tolerance education are the programmes provided by the South African Holocaust & Genocide Foundation in their three centres in Cape Town, Durban and Johannesburg.

Conclusion

Hate crimes and hate speech are not reconcilable with the democratic principles of equality and human rights for all, as envisioned in South Africa's Constitution and Bill of Rights. These acts of hate damage social cohesion and have no place in a country still healing from the wounds of its oppressive and racist past.

South Africa has a constitutional commitment, as well as various obligations under international law, to achieve equality for all in our country and prevent and combat all forms of discrimination. As such, it is vital that our existing laws against hate speech are effectively implemented and comprehensive legislation on hate crimes is enacted. History has taught that what often ends in genocide and crimes against humanity, like the Holocaust and apartheid, begins with words and isolated hateful actions. Essential to the efforts to combat hate is the need to support and expand initiatives and educational programmes on tolerance so that South Africa can be a nation where diversity is truly respected and embraced.

The SAJBD is encouraged that the Bill has reached this important stage and look forward to it being passed along with meaningful timeframes and reporting structures.

The SAJBD would welcome the opportunity to make an oral submission on the Bill to the National Council of Provinces.