

SUBMISSION TO THE
SELECT COMMITTEE ON SECURITY AND JUSTICE
IN THE NATIONAL COUNCIL OF PROVINCES
for the
**PREVENTION AND COMBATING OF
HATE CRIMES AND HATE SPEECH BILL
[B9B-2018]**

17th May 2023

ATTENTION:

HONOURABLE S SHAIKH
Chairperson of the Select Committee of Security and Justice
Email: HateCrimesBill9B-2018@parliament.gov.za
Email: sshaikh@parliament.gov.za

SUBMITTED BY:

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Dear Honourable Shaikh,

**THIS LETTER SERVES AS A SUBMISSION FOR PUBLIC COMMENT
ON THE PREVENTION AND COMBATTING OF HATE CRIMES & HATE SPEECH BILL.**

Who we are:

Same Love Toti is a human-rights based LGBTI organisation, that serves sexual and gender diverse populations in KwaZulu-Natal, and advocates for LGBTQI+ human rights across South Africa and globally. We serve on many committees that promote inclusion and social cohesion in communities. We also serve on the Hate Crimes Working group steering committee.

Our concerns:

Our members and other lesbian, gay, transgender, intersex and gender non-conforming individuals are faced with the daily threat of homophobic, transphobic, intersexphobic and biphobic hate crimes and hate speech. These crimes range from harmful hate speech and often escalate to physical abuse, rape, assault, violence and murder. These are crimes based in bias that dehumanises and demonises sexual and gender minority groups that are seen as different to the majority.

Secondary victimisation at police stations and from other first responders, is a problem that makes reporting such cases difficult which prevents there being a true record of the extent of these crimes. In the absence of this data, it is impossible to adequately provide effective awareness programs to address bias and discord within society.



According to the Progressive Prudes document (2011) which is in the public domain:

- 80% of hate crimes are not reported
- 3,7 million people that openly describe themselves as LGBTQI+
- 3 million people admit that they might commit violence against LGBTQI+ in the future
- Alarmingly, 750 000 have openly admitted to being violent towards LGBTQI+ people.
- 51% of people in South Africa feel that everyone should have equal rights,
- 72% believe that LGBTQI+ people are morally wrong.

The stigma, heteronormativity and cisnormativity in communities and families, means that LGBTQI+ become an easy target, and perpetrators can act with impunity. This is why this law should be passed as soon as possible so that there is protection for the most vulnerable minority groups and LGBTQI+ communities.

Lack of legislation:

PEPUDA and Crimen Injuria have been civil remedies that have been used to address hate crime and hate speech, but there is no legislation that sanctions the state to provide justice for victims of hate crime and hate speech. South Africa has a Constitutional obligation to prohibit discrimination, and hate crimes are the extreme expression of bias and hatred. South Africa needs to take a strong stand against discrimination, especially considering our heinous past.

Implementation and Funding:

The implementation of this Bill will require training SAPS and various other bodies, in how to prevent secondary victimisation and how to achieve the goals and aims of this Bill. Awareness campaigns, teaching in schools, sensitisation of government departments, government officials, medical staff and bodies, will require time, expertise and resources.

We suggest making a commitment to adequate funding to effectively implement this bill.

Hate Speech :

After the precedent set by the Jon Qwelane case, hate speech has been clearly defined in the bill, including the harm that hate speech inflicts on the individual. Hate speech creates barriers to social cohesion and should be eradicated. There is no place for extreme expressions of bias especially in a country with a Constitution that protects everyone from discrimination.

Contrary to popular fears, there is no threat to freedom of speech, freedom of religion, or any other freedom based in the inherent human rights of the individual. The bill itself protects all the human rights of every individual and should be embraced as such.

Freedom of speech does not entitle the speaker to engage in hate speech. We need hate speech protection.

Hate Crimes :

LGBTQI+ individuals are being murdered, assaulted and violated. LGBTQI+ youth are being ostracised, bullied and humiliated in schools across the country. This forces many to drop out of school which impacts their chances of meaningful employment.

We desperately need this hate crime bill!

- We need the statistics on hate crimes that will be gathered when this bill is implemented.
- We need the prevention strategies to be extensive and embedded in all facets of our diverse society.
- We need government to take a strong stand against hate crimes, intolerance and discrimination.



- Minority Rights are human rights.
- LGBTI rights are human rights.

International obligations:

South Africa has many international obligations to protect the inalienable, inherent human rights of every individual. Namely:

- Universal Declaration of Human Rights
- African Charter on Human and People's Rights, *especially resolution 275*, The protection against violence and human rights violations against persons based on their real or imputed sexual orientation or gender identity.
- African Charter on the Rights and Welfare of the Child
- Convention Against Torture and other Cruel and Inhumane or degrading Treatment or Punishment and its Optional Protocol
- Convention on the Rights of the Child
- International Convention on Social, Economic and Cultural Rights

Our Constitution:

Finally, our Constitution is the guiding document for all those living in South Africa. It provides protection from discrimination based on sexual orientation and gender, among other protected characteristics. While we cannot change the shameful discrimination in our country's history, we can assure that discrimination never forms part of our future! We must take a strong stand against hatred and discrimination, by enacting this bill. Our Constitution demands it!

In conclusion:

We need to live in a way that protects our own human rights to life, to safety, to dignity, to education, to freedom and equality. We also need to protect the human rights of others within the jurisdiction of South Africa.

This bill will save lives. This bill will protect human rights. This bill will improve the lives of individuals. This bill will foster social cohesion in our country, and enable millions to achieve their full potential as contributing members of society.

Do not allow discrimination to continue in South Africa. Pass this bill now!

ORAL SUBMISSION:

I would be honoured to give an oral presentation to the Select Committee of Security & Justice, and the National Council of Provinces. It is important for all of us to have our voices heard, and for us to also speak up for those who cannot speak for themselves.

Sincerely yours,

Kim Lithgow

Founder and CEO of Same Love Toti

Founder and CEO of PFLAG South Africa

Co-Deputy Chair of the Steering Committee for the Hate Crimes Working Group