



HATE SPEECH BILL SUBMISSION

1. Introduction

1.1 Section 16 of the Constitution was a contentious issue in the ANC study group that was dealing with it, led by Dr Naledi Pandor and crafted by Adv. Enver Surty during the crafting of this Constitution. The contention has been on his inclusion of the word “religion” on the Freedom of Expression clause to extend that it took the intervention on Madiba to settle that matter before the NEC at that time.

Madiba said to the NEC leadership at that time which included our current president, Cyril Ramaphosa:

“Since when are we opposed to religion? Our foremost leaders in the ANC were religious leaders. The ANC always respected and protected religion. Has something changed? If indeed we are saying that religion had no place in the struggle and will be of no consequence in our democratic society, please let me know... It appears as if the objection is not about a qualifier in terms of race or gender, but only on the basis of religion. This I cannot fathom or understand. Either we include religion with race and gender, or we have no internal qualifier at all. Personally, I am rather surprised at the narrow opposition.” (pg.171-175, “In Pursuit of Dignity” By Mohamed Enver Surty)

1.2 This speaks to how much Madiba valued and respected the contribution played by the religious leaders and sector in our struggle to attain this Freedom and the sector would play in the life of our newly found democracy.

2. Weaponization of Proposed Law Against Preachers

2.1 Now we have come full cycle since that time but this time around the irony is that the issue of Freedom of Expression within the context of religion is downplayed and was not thoroughly investigated by the National Assembly which passed this Bill. This was observed in the utterances aimed at preachers which were questionably made by both Hon. Maseko-Jele and Deputy Minister John Jeffrey. It is against this backdrop that as a sector our suspicions where this Bill is concerned were confirmed. Our suspicions have been that this Bill is aimed as an ammunition against preachers and preaching amongst other things.

2.2 As a body with a constituency of 1300+ pastors of Pentecostal and Charismatic Churches, we are asking ourselves questions and concerned based on the utterances by Hon. Maseko-Jele MP (ANC), and Deputy Minister Jeffrey (ANC) as to, what did they mean by:

*“We are **making sure that the preachers must stay on the line.** When you preach, preach the gospel. **Stop talking things that will be insulting to people.**” (Hon. Maseko-Jele, National Assembly, 14 March 2023)*

- a) What does make sure mean?
- b) What does “stay on the line” mean?
- c) What does “the gospel” and “talking things that will be insulting to people” mean?

“ ”



2.3 We see that it would be good for NCOP Select Committee to have a thorough discussion with us members of the religious sector to clear that grey area before the president can assent to signing this Bill into law, in its current format.

3. Definitions of words

3.1 The other matter has to do with definition of words which is something that was a battle in the *Qwelane vs SAHRC and Another*. If legal minds could battle that way over meaning of those words on “prohibition grounds” in both Section 16 of the Constitution and Section 10(1) of the Equality Act, that says in this process, the meaning of words should not be downplayed with simplistic statements as most members of the National Assembly did.

3.2 Having clear meaning of key words like “harm”, emotional”, “psychological” and “social” mean within the context of the religious adherents, without being subjective. The meanings in the current Bill are too vague and can be vulnerable to abuse as rightfully stated by Hon Yako MP (EFF) and Hon. Swart MP (ACDP):

“We must first decide what is harm according to court standards and this is where the grey areas are because if as law makers, we cannot clearly define what harm is, that leaves to the court to decide and this Bill should be succinct in its definition.” (Hon. Yako, National Assembly 14 March 2023)

What was concerning after she made that valid and excellent point was EFF voting for a Bill with unclear definitions.

“If one considers the definition of “harm” it’s still very broadly defined as any emotional, psychological, physical, social or economic harm. What does social harm mean?” (Hon. Swart, National Assembly 14 March 2023)

If Hon. Swart and Hon. Yako as law makers have a challenge with definitions, then how will our sector manage to make sense of the Bill if it is signed into law? This is not limited to the two of them but also other law makers and law interpreters (judiciary).

3.3 The meaning of “hate speech” itself. During the deliberations both at the Constitutional Courts and in the National Assembly, both legal minds as well as members of parliament have been battling to clearly define what hate speech is without gravitating to hate crime meaning. If hate speech means hate crime, why have both in the same Bill and if they differ where is their distinction? So that one will know whether they are within the hate speech zone or hate crime zone.

3.4 In the quest of trying to understand the meaning of words from members of the Assembly, what we gathered is subjective reasoning and political point scoring. It would be well to get objective meanings for us as citizens not polarized by political statements and overtones.

4. Duplication of Legislation and Violation of the Constitution

4.1 The proposed Bill is basically a repetition and duplication of the available legislation with a different label.



- 4.2 Section 10(1) of Equality Act (PEPUDA) and Section 16 (2) already makes provision on the prohibition of Hate Speech, and the grounds thereof.
- 4.3 The Qwelane vs SAHRC and Another case is testament that there are legal instruments within the Constitution and the law to address the prohibition of Hate Speech, if that was not the case, our courts could have not arrived at an amicable judgement.
- 4.4 We are identifying a Constitutional violation and overreach that this Bill will come with based on the words of Hon. Maseko-Jele's utterances cited above. Section 30 and 31 of the Constitution makes it clear that persons including juristic persons (the Church), have the right to use their preferred language, express and practice the culture and religion of their choice within their community.

5. Proposed Penalty

- 5.1 It cannot be appropriate for a pure Hate Speech offense to bear the same weight of Hate Crime, if Hate Speech and Hate Crime are differently defined by this proposed Bill. This is why definitions needs to be clearly cut between the two, to minimize confusion and subjectivity in courts.
- 5.2 It cannot be appropriate for Hate Speech penalty to carry that sentence of up to 8 years when it is not a Hate Crime as proposed in Section 6(3) of the Bill.

6. Recommendations

- 6.1 NCOP Select Committee to convene a consultation session with the Religious Sector, The State, the South African Human Rights Commission, the Commission for Gender Equality, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and Judicial Education Institute mentioned in Section 9 to better inform Exception Section 4(2) of the proposed Bill where religious sector matters are concerned.
- 6.2 The proposed consultation in 6.1 will also assist those organs of state to have a better perspective in carrying the Prevention, Education and Awareness campaigns as envisioned in Section 9 of the Bill where issues of the Religious Sector are concerned.

The total scrapping of this Bill and amending of existent ones where there are gaps with consideration of proposed consultations as stated in 6.1 and 6.2 above.

Compiled by Lucas Nkosi on Behalf of the Council of Charismatic Council!

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