



**SOUTH AFRICAN HUMAN RIGHTS
COMMISSION**

**SAHRC Submission to DOJCS
regarding Hate Crimes & Hate
Speech Bill**

31 January 2017



SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Comments on the Draft Prevention and Combating of Hate Crimes and Hate Speech Bill

Submission to the Department of Justice and Correctional Services

January 2017

1. Introduction

The South African Human Rights Commission (SAHRC / Commission) welcomes the publication of the draft Prevention and Combating of Hate Crimes and Hate Speech Bill (Bill) by the Department of Justice and Correctional Services (the Department) for public comment.

The much anticipated Bill provides the opportunity for the SAHRC and other stakeholders to actively engage the draft legislation with a view to recommending measures to improve legislative frameworks in South Africa and ultimately strengthen human rights protection and promotion. The SAHRC recognises the essential role that civil society has played in advocating for the development of the Bill, and the lengthy process that has been undertaken to bring the Bill to fruition. The SAHRC thus welcomes these active steps taken by the State to ensure that it affords better protection to vulnerable groups and gives effect to South Africa's international and regional obligations.

The ultimate objective of the SAHRC is to fulfil its responsibilities and mandate to promote, monitor, fulfil and protect human rights in terms of the Constitution of the Republic of South Africa, 1996 (Constitution), the South African Human Rights Commission Act, 40 of 2013 (SAHRC Act), the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 (PEPUDA), and other applicable national legislation, and regional and international instruments. In particular, the SAHRC must ensure the development of a culture of human rights embedded in a society characterised by substantive equality, dignity and non-discrimination.

The outcomes of the public engagement process will greatly assist the SAHRC in developing the necessary processes and measures to achieve the aforementioned objectives to effectively and efficiently execute its mandate.

2. Mandate of the SAHRC

The SAHRC is a constitutionally created independent state institution. It is mandated by section 184 of the Constitution which states,

184. (1) The South African Human Rights Commission must-
- (a) Promote, respect for human rights and a culture of human rights;
 - (b) Promote the protection, development and attainment of human rights; and
 - (c) Monitor and assess the observance of human rights in the Republic.

In September 2014, the SAHRC Act came into effect, repealing its predecessor the Human Rights Commission Act, 54 of 1994. Section 13 of the new Act expands on the powers and functions of the SAHRC.

Accordingly, section 13(1) (a) (i) provides,

- (a) The Commission is competent and is obliged to-
- (i) Make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and the law, as well as appropriate measures for the further observance of human rights;

Section 13(1) (b) (v) further states,

- (b) The Commission-
- (v) Must review government policies relating to human rights and may make recommendations.

The Commission also has additional powers and functions prescribed under PEPUDA.¹ Under PEPUDA, the Commission is required to promote awareness of the right to equality, report to Parliament on the implementation of the legislation and propose recommendations to address any challenges related thereto.

2.1 International Mandate

As a national human rights institution (NHRI) the SAHRC is additionally guided by the *Principles Relating to the Status of National Institutions* (the Paris Principles) adopted by United Nations General Assembly Resolution 48/134 in 1993. The Paris Principles direct NHRIs in their duties and responsibilities and include, *inter alia*, the following relevant provisions:

3. A national institution shall, *inter alia*, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the

¹ In summary, the obligations on the Commission under PEPUDA entails:

To request any component of the State or any person to provide information on measures taken relating to the achievement of equality;

To include in the Commissions' Annual Report (section 15 report of the Human Rights Commission Act) an assessment on the extent to which unfair discrimination on the grounds of race, gender and disability still persists in the Republic, the effects thereof and recommendations on how best to address the problems;

To promote respect and protection of the right to equality and eliminate all forms of discrimination against all persons in particular on the basis of gender, race and disability;

To institute proceedings in the equality courts in accordance with section 20 and section 25 (3) (a) of PEPUDA;

To conduct investigations into any cases and make recommendations as directed by the court regarding persistent violations of PEPUDA;

To request from the Department of Justice the number of cases dealt with by the courts, the nature and outcome thereof; and

To consult with the Commission on Gender Equality when dealing with Equality Plans received from all the government departments.

legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.²

It is therefore within the aforementioned constitutional, statutory and international mandate, that the SAHRC presents its comments on the Bill to the Department.

3. SAHRC's activities related to Hate Crimes and Hate Speech

Through the execution of its mandate, the SAHRC has engaged in measures to combat hate crimes and hate speech through its investigations, research and advocacy initiatives. The SAHRC is also actively involved structures such as the, *inter alia*, Equality Review Committee, National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerances (NAP) Working Group, LGBTI National Task Team and Working Group, and UN Working Group on the Implementation of the Convention on the Rights of People with Disabilities. It is pointed out that the SAHRC observed an increase in the number of total complaints lodged with the institution. From 1 April 2015 to 29 February 2016, a total of 716 complaints were lodged with the institution alleging a violation of the right to equality, the single largest proportion of complaints received overall. Furthermore, disaggregation of the data reveals that 68% of all equality-based complaints related to allegations of racial discrimination. As the Department is aware, in March 2016, the SAHRC held a commemorative conference to recognise the institution's 20 year milestone. The SAHRC specifically dedicated the theme of the conference to the fight against racism following an increase in the number of complaints lodged with the institution relating to allegations of racism perpetrated on social media. At the conference, the SAHRC reiterated its

² *Principles Relating to the Status of National Institutions*, available at <http://www.jus.uio.no/smr/om/nasjonal-institusjon/docs/paris--principles.pdf>, accessed December 2016.

commitment to substantively contribute to the constitutional ideals of a non-racial, non-sexist democracy.

In addition, the SAHRC is due to host a National Hearing on Racism and Social Media in South Africa during February 2017, calling on relevant government departments, regulatory bodies, civil society organisations, researchers, academics, media entities and social commentators to contribute toward awareness-raising on issues pertaining to racism and racial discrimination in the country. It is envisioned that the National Hearing will contribute to developing a more comprehensive understanding of the manner in which racism manifests in South Africa, and provide structured guidelines on how to respond to these varied issues in the advancement of substantive equality.

The SAHRC recognises that the phenomenon of hate crimes and hate speech in South African society is a manifestation of the continued social and economic divisions, intolerance and racist attitudes. In particular, the SAHRC recognises the sustained activism of a variety of civil society actors in advocating for the development of legislation to address deplorable hate crimes and ensuing violence against vulnerable and marginalised groups within South African society. The SAHRC notes calls made by the National Intervention Strategy (NIS) for the creation and maintenance of an effective database on crimes experienced by women and LGBTI individuals. The lack of disaggregated data reduces policy effectiveness, and does not allow for progress towards the protection of the rights of women and LGBTI individuals to be monitored. The creation and maintenance of an effective database, which also ensures that the details of crimes committed against LGBTI persons are comprehensively captured, must therefore be prioritised. The SAHRC therefore welcomes this crucial and urgent intervention aimed to curtail the prevalence of hate crimes in the country, which will provide the necessary impetus for the creation of such a database, and the sensitisation of officials who constitute the criminal justice system.

However, the SAHRC notes with concern that the draft Bill addresses both hate crimes and hate speech in a single piece of legislation. Whilst indeed inter-related, the SAHRC points out that hate crimes and hate speech are two distinct phenomena which require different response mechanisms in addressing or curtailing its prevalence. This is especially so as PEPUDA (albeit as a civil action) addresses hate speech through the Equality Courts.

With respect to freedom of expression, the SAHRC recognises that the Constitution allows for the limitation of the right in instances where, *inter alia*, such expression advocates hatred that is based

on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.³ Noting South Africa's colonial and apartheid past, various forms of expression, including language, media and imagery, were used to humiliate and subjugate vast portions of South Africa's society. Indeed, as highlighted by Mogoeng CJ in *South African Revenue Service v Commission for Conciliation, Mediation and Arbitration and Others*,

...there are many bridges yet to be crossed in our journey from crude and legalised racism to a new order where social cohesion, equality and effortless observation of the right to dignity is a practical reality.⁴

However, freedom of the press and other media, information, ideas, artistic creativity, academia and research, are also essential components in the development of a culture of human rights, transparency and accountability in South Africa's nascent democracy. The SAHRC sets out its concerns on the Bill hereunder.

4. SAHRC Concerns on the Bill

4.1 Alignment with International human rights framework

The SAHRC notes that the Bill seeks to give effect to the country's international obligations under human rights instruments concerning racism, racial discrimination, xenophobia and related intolerance. The SAHRC further notes the South African government's review during 2016 under the International Covenant of Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), respectively, and that its associated treaty body committees issued observations and recommendations to the State. In this regard, the SAHRC points out that the Human Rights Committee (HRC) expressed concern about the 'numerous manifestations of racism and xenophobia, including violent attacks against foreign nationals and migrants, refugees and asylum seekers' and the inability of the State to prevent and address racist and xenophobic attacks and hold perpetrators accountable.⁵ The HRC specifically recommended that the government should,

...redouble its efforts to prevent and eradicate all manifestations of racism and xenophobia, protect all communities in South Africa against racist and xenophobic

³ Section 16(2) of the Constitution of the Republic of South Africa, 1996

⁴ CCT 19/16 at par 1

⁵ UN Human Rights Committee (HRC), *Concluding observations on the initial report of South Africa*, 27 April 2016, CCPR/C/ZAF/CO/1 See para 14

attacks, and improve policing responses to violence against non-nationals. Effective investigations into alleged racist and xenophobic attacks and other hate crimes should be conducted systematically, perpetrators should be prosecuted and, if convicted, punished with appropriate sanctions, and victims should be provided with adequate remedies. The State party should also pass appropriate legislation explicitly prohibiting hate crimes and hate speech as soon as possible.⁶

Similarly, the Committee on the Elimination of Racial Discrimination (CERD) expressed concern at the rise of hate crimes and hate speech in South Africa, including 'physical attacks against certain ethnic groups and non-citizens, discriminatory statements by State officials and politicians, and the increase in the use of media and the internet to propagate racist hate speech.'⁷ Whilst acknowledging steps taken by the South African government to enact legislation addressing these phenomena, the CERD specifically recommended that the government, *inter alia*, ensure that the Bill is in accordance with the ICERD (and its general recommendations), and that all incidents of hate crimes and hate speech are investigated and prosecuted. The CERD further called on the government to,

...conduct educational campaigns to address the root causes of prejudices and promote tolerance and respect for diversity, with a focus on the role and responsibilities of journalists and public officials in that regard.⁸

Hate Speech

In specific relation to hate speech, the SAHRC notes that the right to freedom of expression, although fundamental, may only be limited in certain circumstances⁹ and raises its concern that the current drafting of section 4 of the Bill may go further than justifiable limitation allows. In interpreting the context of this right, the HRC in General Comment No. 34, specifically states that,

When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action

⁶ Ibid, para 15

⁷ UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined fourth to eighth periodic reports of South Africa*, 5 October 2016, CERD/C/ZAF/CO/4-8 para 12

⁸ Ibid, para 13

⁹ UN HRC, General Comment 34, *Article 19: Freedom of opinion and expression*, CCPR/C/GC/34, para. 22; also see, Article 19(3) and 20 of the International Covenant on Civil and Political Rights

taken, in particular by establishing a direct and immediate connection between the expression and the threat.¹⁰

The SAHRC is aware that the Bill seeks to align with the ICERD, and establish criminal offences for hate speech. *Prima facie*, this complements article 4(a) of ICERD indeed places an obligation on the State to,

...declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.¹¹

However, the SAHRC emphasises that the, 'offence punishable by law', does not necessarily imply criminal sanction, as clarified by the CERD in its General Comment No. 35. In this regard, it is recommended that the criminalisation of hate speech, 'should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, inter alia, the nature and extent of the impact on targeted persons and groups.'¹² Furthermore, that the application of criminal sanctions should be governed by principles of legality, proportionality and necessity.¹³

Reports of the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

In 2012, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression released a report focusing on specifically on hate speech and incitement to hatred.¹⁴ Whilst noting the significance of laws that conform to international norms and principles to combat hate speech, the Special Rapporteur emphasised the importance of non-legal measures to tackle the root causes of hatred and intolerance.¹⁵ To this end, the Special Rapporteur, *inter alia*, recommended the following,

¹⁰ Para 35 CCPR/C/GC/34, relating to freedoms of opinion and expression

¹¹ Article 4(a) of ICERD

¹² Para 12, CERD/C/GC/35

¹³ Ibid

¹⁴ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/67/357, 7 September 2012

¹⁵ Ibid, p. 2

- i. That only serious and extreme instances of incitement to hatred be prohibited as criminal offences.¹⁶ Furthermore, that States establish high and robust thresholds in this regard which includes the following elements: severity, intent, content, extent, likelihood or probability of harm occurring, imminence and context. Such examination must be performed on an ad hoc basis, taking context into consideration;¹⁷
- ii. For other types of hate speech that do not meet the threshold of advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, the Special Rapporteur recommends that States adopt civil laws, with the application of diverse procedural and substantive remedies, such as restoring reputation, preventing recurrence and providing financial compensation;¹⁸ and,
- iii. Training should be offered to the judiciary to ensure a clear and consistent understanding of the forms and thresholds of hate speech under international law. In addition, continuing education opportunities for legal professionals and law enforcement officials in relation to relevant national and international provisions, including thresholds for incitement, should be made widely available.¹⁹

In 2016, the Special Rapporteur issued two further reports focusing on the intersection of State regulation, the private sector and freedom of expression in a digital age;²⁰ and contemporary challenges confronting freedom of expression.²¹ In these reports, the Special Rapporteur recognised the role of the private sector in expanding freedom of expression and access to information, including social media.²²

The reports seek to unpack, *inter alia*, whether private entities ought to have the same responsibilities as public authorities; whether these responsibilities should be derived from human rights law; and how the relationships between corporate actors and the State ought to be structured. The Special Rapporteur acknowledged that the information and communication sector is constantly in rapid development, and that consequently, legal and policy interventions may fail

¹⁶ Ibid, para 79

¹⁷ Ibid

¹⁸ Ibid, para 80

¹⁹ Ibid, para 82

²⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/32/38, 11 May 2016

²¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/71/373, 6 September 2016

²² A/HRC/32/38, Par 2

to address trends that are only now emerging or have yet to emerge.²³ The Special Rapporteur further outlined content restrictions by governments and individuals to restrict expression deemed to constitute extremism or hatred, hostility or harassment, as a thematic area that requires further reporting.²⁴ However, the Special Rapporteur concluded that the digital environment will encounter persistent threats to freedom of opinion and expression. These threats include, *inter alia*, 'government dominance of, or attempts to dominate sources of information, using tools of censorship against online services and infrastructure; the failures of many business enterprises to ensure the promotion and protection of rights in pursuit of commercial interests; and the often contradictory demands of individuals that business entities provide them not only with security, but also convenience, connectivity, and community'.²⁵ The Special Rapporteur concluded further that while States must not require or otherwise pressure the private sector to take steps that unnecessarily or disproportionately interfere with freedom of expression – whether through laws, policies or extra-legal means – private entities must ensure the greatest possible transparency in their policies, standards and actions that implicate freedom of expression and other fundamental rights.²⁶

Importantly, the Special Rapporteur has emphasised that although non-State actors can present serious threats to many people exercising their right to expression, State policies aimed at restricting freedom of expression can risk undermining the media, critical voices and activists.²⁷ Freedom of expression remains vital to public participation and debate, accountability, sustainable development and human development, and the exercise of all other rights.²⁸ Indeed, as noted by the Special Rapporteur, 'expression should provoke controversy, reaction and discourse, the development of opinion, critical thinking, even joy, anger or sadness – but not punishment, fear and silence'.

4.2 Alignment with regional human rights framework

The SAHRC notes South Africa's submission to the African Commission on Human and Peoples' Rights of its combined second periodic report under the African Charter on Human and Peoples' Rights (ACHPR) and under the protocol to the African Charter on the Rights of Women in Africa (ACRWA). In terms of Article 9 of the ACHPR, which speaks to freedom of information and

²³ Ibid, par 82

²⁴ Ibid, par 75

²⁵ Ibid, par 82

²⁶ Ibid, par 85; see also par 89

²⁷ A/71/373, par 2

²⁸ Ibid, par 3

expression, the government submits that ‘any law that seeks to restrict freedom of expression, must be in conformity with section 36 of the Constitution, and in particular, it must not make inroads which are far too extensive to render the right a nullity’.²⁹

Declaration of Principles on Freedom of Expression in Africa

The Declaration expands on Article 9 of the ACHPR, and reaffirms that ‘freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy’.³⁰ Further, ‘any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society’.³¹

In June 2016, the African Commission resolved to revise the Declaration through its Special Rapporteur on Freedom of Expression and Access to Information in Africa, taking into account developments in the areas of freedom of expression and access to information on the continent since the adoption of the Declaration in 2002.³²

4.3 Definitions Clause

The SAHRC recommends that further definition be provided to the terms “gesture” and “display”, and specific threshold and/or elements of “economic harm”. The SAHRC further recommends the provision of circumstances under which a “juristic person” can endure a hate crime or hate speech as envisioned under sections 3 and 4 of the Bill.

The SAHRC welcomes the inclusion of the term, “intersex”, in the definitions clause, read with the prohibited grounds as listed under section 3(1). However, it is recommended that the definition of both “gender” and “sex” is incorporated so as to differentiate between these categories and provide clarity in the application of the legislation.

²⁹ Republic of South Africa Combined Second Periodic Report under the African Charter on Human and People’s Rights and Initiation Report under the Protocol to the African Charter on the Rights of Women in Africa, August 2015, par 185

³⁰ African Commission on Human and People’s Rights, *Declaration of Principles on Freedom of Expression in Africa*, Article 1(1)

³¹ *Ibid*, Article 2(2)

³² African Commission on Human and People’s Rights, *Resolution to Revise the Declaration of Principles on Freedom of Expression in Africa*, ACHPR/Res.350(EXT.OS/XX)2016, June 2016

4.4 Clause 3: Offence of Hate Crimes

The SAHRC notes from section 3(1) that the elements of the crime of "hate crime" are not easily identifiable from the section and would welcome clarity on the elements which would need to be proved for a crime of "hate crime", as noted from section 3(2)(a) of the Bill that "hate crime" is a separate offence in and of itself.

The SAHRC recommends further definition to the term "gender", noting the inclusion of "gender identity" as prohibited grounds listed under section 3(1). The SAHRC further recommends that "HIV status" be broadened to include "health status". Further, the SAHRC recommends further definition to "occupation or trade".

In addition, the SAHRC notes the inclusion of "intersex", "HIV status", "nationality", "gender identity", "albinism" and "occupation or trade" as categories which are not listed as "prohibited grounds" in the definitions section of PEPUDA. The SAHRC recommends an amendment to this definition contained in PEPUDA to ensure consistency between the Bill and PEPUDA. Furthermore, the categories of "pregnancy", "marital status", "age" and "conscience" have been omitted from section 3(1) of the Bill whereas those categories are included as "prohibited grounds" in terms of PEPUDA.

4.5 Clause 4: Offence of Hate Speech

The SAHRC recommends further definition as to what constitutes "insulting", as provided for under section 4(1)(a)(ii) and "ridicule", as provided for under section 4(1)(bb). The SAHRC recommends further definition to the term "gender", noting the inclusion of "gender identity" as prohibited grounds listed under section 3(1). The SAHRC further recommends definition to "occupation or trade".

Furthermore, the SAHRC recommends consistency with the grounds listed in section 4(a) and the "prohibited grounds" contained in PEPUDA.

The SAHRC wishes to emphasise the position of the CERD and General Comment 35, and the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, noted earlier. Further, the SAHRC points out the obligations of South Africa under the ACHPR, the Declaration of Principles on Freedom of Expression in Africa, and the integral role that South Africa plays in the advancement of democracy on the continent.

4.6 Clause 5: Impact of offence on victim

The SAHRC welcomes the inclusion of victim impact statements in the Bill. In particular, the SAHRC welcomes the inclusion of section 5(3) as a necessary positive step in the eradication of secondary victimisation of the victim.

However, the SAHRC points out that the prevalence of secondary victimisation in South Africa's law enforcement system is a significant issue that requires specific and targeted action.³³ In this respect, the SAHRC is of the view that greater capacitation is required within the entire law enforcement landscape to eradicate secondary victimisation and ensure that the right to access to justice is prioritised.

The SAHRC also notes that as the definition of "victim" in the Bill includes a juristic person, section 5(1) of Bill can be utilised for sole financial harm.

4.7 Clause 6: Sentences

In relation to the sentencing of alleged perpetrators of hate speech in particular, the SAHRC notes the position of the CERD and General Comment 35, and the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, noted earlier.

The SAHRC notes that section 6(2) of the Bill states that a hate crime will be regarded as an aggravating circumstance in sentencing. The SAHRC notes section 4(2)(a) which stipulates hate crime as a separate offence and welcomes further clarification.

4.8 Clause 7: Directives

In addition to issuing Directives, the SAHRC recommends that further clarity is provided in the proposed legislation of the obligations of both the National Director of Public Prosecutions (NDPP) and the South African Police Service (SAPS) in investigating and prosecuting cases relating to hate crimes and hate speech to achieve the objectives of the Bill. The SAHRC also recommends that training on the Bill be provided to members of the SAPS and the National Prosecuting Authority (NPA), in advance of its intended promulgation.

4.9 Reporting on the Implementation of the Act

In addition to the role of the SAHRC as envisioned under section 8(2)(b), the SAHRC seeks further clarity with respect to its monitoring role, and the nature of the relationship between the SAHRC,

³³R Jewkes & N Abrahams 'The epidemiology of rape and sexual coercion in South Africa: An overview' (2002) 55 *Social Science & Medicine* 1321-1244

the NDPP and the SAPS in relation to the collection and collation of data as provided for under section 8.

The SAHRC recommends inclusion of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL). The SAHRC recommends that further clarity is provided of the monitoring roles of each of the Chapter 9 institutions provided for in the Bill.

The SAHRC particularly seeks clarity as to the extent of its monitoring role, noting the criminal nature of the Bill. Further, the consideration of additional allocation of resources to execute its duties as envisioned in the Bill, in the collection, collation and analysis of data received by the NDPP and SAPS.

4.10 Clause 9: Prevention of hate crimes and hate speech

The SAHRC recommends that provision is made for all State institutions and officials receive educational training to promote awareness of the prohibition against hate crimes and hate speech, aimed at the prevention and combating of these offences.

4.11. Clause 10: Regulations

The SAHRC recommends that in addition to consultation with the Minister of Finance pertaining to the resource expenditure, such consultation must take place with all bodies tasked with implementing the Bill.

5. Conclusion

The enactment of legislation does not, in itself, address the challenge of race-related or other forms of discrimination. Notwithstanding the enactment of PEPUDA, South Africa continues to grapple with the remnants of its apartheid past and existing social fissures. It is therefore essential that due consideration is given to making this legislation accessible and ensure that infrastructural capacity is strengthened to guarantee effective implementation. Consequently, adequate resourcing for the development of a system which captures and stores disaggregated hate crimes and/or hate speech data, as well as training of officials on the determination of what constitutes a hate crime and/or hate speech will be essential to ensure that the objectives of the Bill are achieved.

The SAHRC extends its gratitude to the Department for the extension afforded in commenting on the draft legislation and avails itself for further engagement on the Bill.

END