

DRAFT PROHIBITION OF HATE SPEECH BILL, 2004

The Ad Hoc Joint Committee on Promotion of Equality and Prevention of Unfair Discrimination Bill, in its report to Parliament on 21 January 2000, adopted a resolution in which the Minister for Justice and Constitutional Development was, among others, requested to give consideration to the following:

- (a) **Tabling legislation in Parliament which deals with the criminalisation of hate speech. Such measures must be consistent with section 16 of the Constitution and the Convention on the Elimination of All Forms of Racial Discrimination. In addition, such legislation, needless to say, will also be required to create offences relating to hate speech.**
- (b) **Taking any other measures that may be necessary to give effect to the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, to the extent that these have not been dealt with in this or other relevant legislation.**

The objects of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000), are, among others, to provide for measures to facilitate the eradication of unfair discrimination, hate speech and harassment, particularly on the grounds of race, gender and disability. Section 10 of the Act specifically prohibits hate speech. The Convention on the Elimination of All Forms of Racial Discrimination, to which South Africa is a signatory, requires States Parties to declare, among others, the dissemination of ideas based on racial superiority or hatred a punishable offence. The attached draft Prohibition of Hate Speech Bill, which criminalises hate speech, gives effect to the provisions relating to hate speech contained in the above-mentioned Act and Convention.

Please note that the Bill is a draft working document intended for discussion purposes only. Your comments on this working document would be appreciated.

Please forward your comments on or before 14 June 2004 to:

Ms Poovindree Naidoo
Department of Justice and Constitutional Development
Legislative Development
Private Bag X81, Pretoria, 0001

Tel:(012) 315 1480
Fax: (012) 315 1618
E-mail: PNaidoo@justice.gov.za

REPUBLIC OF SOUTH AFRICA

PROHIBITION OF HATE SPEECH BILL, 2004

DRAFT

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B - 04]

B I L L

To prohibit hate speech; and to provide for matters connected therewith.

Preamble

WHEREAS the Constitution of the Republic of South Africa, 1996, commits the Republic of South Africa and its people to establish a society based on the democratic values of social justice, human dignity, equality and the advancement of human rights and freedoms, non-racialism and non-sexism;

AND RECOGNISING THAT—

- section 16(1) of the Constitution provides that everyone has the right to freedom of expression; and
- section 16(2) of the Constitution provides that the right to freedom of expression does not extend to, among others, advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm;

AND BEARING IN MIND THAT—

- section 7(2) of the Constitution provides that the State must respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights, which is the cornerstone of democracy in South Africa; and
- section 8(2) of the Constitution provides that a provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right;

AND WHEREAS Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination, to which South Africa is a signatory to, requires States Parties to declare, amongst others, an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin;

AND IN ORDER TO criminalise participation in, or promotion of, hate speech that is based on race, ethnicity, gender or religion, thereby committing the Republic of South Africa to the elimination of all forms of discrimination,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Application of Act

1. (1) This Act does not exclude or limit the concurrent application of any other law in so far as the provisions of such other law are not inconsistent with this Act.

(2) If any conflict relating to a matter dealt with in this Act arises between this Act and any other law, other than the Constitution or an Act of Parliament expressly amending this Act, this Act prevails.

Offences and penalties relating to hate speech

2. (1) Any person who in public advocates hatred that is based on race, ethnicity, gender or religion against any other person or group of persons that could, in the circumstances, reasonably be construed to demonstrate an intention to—

- (a) be hurtful;
- (b) be harmful or to incite harm;
- (c) intimidate or threaten;
- (d) promote or propagate racial, ethnic, gender or religious superiority;
- (e) incite imminent violence;
- (f) cause or perpetuate systemic disadvantage;
- (g) undermine human dignity; or
- (h) adversely affect the equal enjoyment of any person's or group of person's rights and freedoms in a serious manner,

is guilty of an offence.

(2) Any person who is convicted of an offence referred to in subsection

(1) is liable, in the case of—

- (a) a first conviction, to a fine or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment; and
- (b) a second or any subsequent conviction, whether for the contravention of the same or some other provision of that subsection, to a fine or to imprisonment for a period not exceeding six years, or to both such fine and such imprisonment.

(3) For the purposes of this section—

- (a) "in public", without derogating from the ordinary meaning of those words, means—
 - (i) in the sight or hearing or presence of the public;
 - (ii) in a public place; or
 - (iii) in the sight or hearing of people who are in a public place; and
- (b) "public place" includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

Exceptions

3. Section 2(1) does not apply to any *bona fide* engagement in—

- (a) artistic creativity;
- (b) academic and scientific inquiry;
- (c) fair and accurate reporting in the public interest; or
- (d) publication of any information, advertisement or notice that is in accordance with section 16 of the Constitution of the Republic of South Africa, 1996.

Vicarious liability

4. (1) The common law principles of vicarious liability apply to the criminal liability established by this Act.

Short title

5. This Act is called the Prohibition of Hate Speech Act, 2004.