



FW de Klerk
FOUNDATION

SUBMISSION ON THE HATE CRIMES AND HATE SPEECH BILL: RIGHT TO FREEDOM OF EXPRESSION UNDER ATTACK

On 31 January 2017, the FW de Klerk Foundation, together with other advocates of freedom of expression, made a written submission to the Department of Justice on the *Prevention and Combating of Hate Crimes and Hate Speech Bill* (Hate Crimes and Hate Speech Bill). The Foundation used the opportunity to highlight that bolstering, consolidating and empowering existing laws and institutions is a sounder starting point than promulgating new laws with harsh consequences.

In brief, the Hate Crimes and Hate Speech Bill aims to criminalise the offences of hate speech and hate crimes. In terms of this proposed Bill, it is possible for a person to be imprisoned for three years following their first conviction for the offence of hate speech, with ten years imprisonment for subsequent offences.

The Foundation's submission draws a clear distinction between the offence of hate crimes and hate speech, with the focus on the constitutionality of the offence of hate speech. We propose that the offence of hate speech be excluded in its entirety from the ambit of the Bill. The vague and far-reaching offence of hate speech does not fall within the constitutional parameters of hate speech in terms of Constitution. Therefore, it cannot be considered a reasonable limitation on the hard-fought right to freedom of expression. Freedom of expression should be strenuously defended in a robust democracy so as to shape the country we hope to leave for future generations. Considering the lack of statutory defences in the Bill, the Foundation's concern is that the offence of hate speech could be greatly abused, and in turn stifle democratic debate in our society. The collective effect is that while hate speech is abhorrent, freedom of speech and expression should not be sacrificed at the altar of opportunism or populism.

The Foundation further briefly considered the offence of hate crimes. There is a need for proper reporting and data collection relating to hate crimes and that will be made possible by this Bill. However, it is vital that the offence of hate crimes be clearly defined and in line with international approaches. If there is no underlying criminal offence committed in terms of our criminal law, then no hate crime could exist.

[Full text of submission available on the Foundation's website: www.fwdeklerk.org]

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