



## THE APOSTOLIC FAITH MISSION OF SOUTH AFRICA DIE APOSTOLIESE GELOOF SENDING VAN SUID-AFRIKA

(PBO no/WO nr: 930004069)

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### THE AFM'S PRINCIPLED POSITION ON THE PROPOSED BILL ON THE PREVENTION AND COMBATTING OF HATE CRIMES AND HATE SPEECH

The Apostolic Faith Mission of South Africa (AFM), is the oldest Classical Pentecostal Denomination in South Africa, founded in 1908. The AFM united into one multi-racial, multi-cultural and multi-linguistic church in 1996 and has 1.4 million members, 1532 congregations and 2498 pastors in the country. To a large extent, it is a microcosm of the South African society. The AFM is operative in more than 30 other countries globally, with national churches in most of them, of which the majority are on the African Continent. The Head Office is situated at 257 Jean Avenue, Building 14, Central Office Park, Centurion.

As a faith-based community, we believe that every human being is created in the image of God and as such, has intrinsic dignity and worth. Because God gives dignity and worth to all people, as human beings we ought to do the same. No person should suffer violence or hatred because of his or her race, nationality, sex, religion or any other characteristic.

As such, we commend the Department of Justice for what we believe to be a *bona fide* effort to contribute to the development of unity and cohesion in our country and to prevent and combat hate crimes and hate speech and to create an environment where South Africans can peacefully co-exist, despite our differences.

The AFM of SA:

- Understands the need of the State to prevent and combat hate crimes and hate speech in the country, where equality, freedom and human dignity is enshrined in the Bill of Rights as taken up in the Constitution.

- Believes that it is inappropriate to criminalize the Bible, our Sacred Text and insists that this text should be allowed to speak for itself. In practice this means that the proposed Bill should not prohibit the use of concepts, words and definitions as expressed in the Bible.
- Rejects and condemns hate crimes such as the practice of corrective rape, the looting and killing of refugees, racism expressed in derogatory statements against other racial groups, as well as the incitement of violence against people simply because they are different.

In the light of the above the AFM wants to make the following submission for consideration:

### **THE DEFINITION OF “HATE SPEECH” IS TOO BROAD**

1. Section 16(2)(c) of the Constitution limits “hate speech” to speech that amounts to “*an advocacy of hatred ... that constitutes incitement to cause harm*”. In terms of South African case law, the question of whether speech in fact “*advocates hatred*” and further “*incites harm*” (both elements of which need to be present in order to qualify as “hate speech”), is an objective enquiry. It asks whether a reasonable person, assessing the “*advocacy of hatred*” within the particular context, would objectively conclude that there was a real likelihood that the speech in question would cause harm.
2. Section 4(1) of the Bill, however, extends the scope of “hate speech” and lowers the threshold of what qualifies as “hate speech”, to speech that is “*threatening, abusive or insulting*” and which has the potential to “*bring into contempt or ridicule*”. All of the aforementioned terms are undefined in the Bill, and leave an opening for multiple interpretations and unfair applications. It is further evident that the focus of the impact of “hate speech” is largely subjective. It centers on the feelings and perceptions of the “victim”, who does not even need to be an actual victim. As such, it is in conflict with (and in contrast to) established case law, and it opens up the “hate speech” provisions of the Bill to abuse.
3. In light of the above, we have been advised and submit that the definition of “hate speech” in the Bill is both too broad and unconstitutional.

### **UNCONSTITUTIONAL IMPEDIMENT ON FREE SPEECH**

4. The effect of the excessively broad definition of “hate speech” in the Bill is that virtually any speech that anyone could potentially find offensive, could qualify as “hate speech” punishable by a fine and/or up to 3 years’ imprisonment for a first offence and up to 10 years’ imprisonment for a repeated offence (section 4(3) of the Bill).

5. By contrast, section 16 of our Constitution guarantees the right to “freedom of speech” – not the right to “freedom from offence”. This constitutional guarantee is a recognition that we live in a pluralistic society where people who hold diverse beliefs and views on matters should be free to express their views, openly and without fear of punishment. The “price tag” of this freedom is that we need to be willing to tolerate views that are different to our own – even views that we may find to be personally offensive, disturbing or shocking.
6. The right to freedom of expression is a vitally important right in our constitutional democracy, and as such it should be jealously guarded. If certain speech were to be criminalized, the effect would be that freedom of speech would be suppressed due to the fear of someone taking offence at something said and then filing a criminal complaint with the authorities. As a result, debate on issues such as what is true and untrue, right and wrong, just and unjust, would be effectively shut down and the constitutional promise of free speech for all, would be reduced to an empty promise on a piece of paper.

### **UNCONSTITUTIONAL IMPEDIMENT ON RELIGIOUS FREEDOM**

7. Section 15 of our Constitution guarantees everyone the right to freedom of conscience, religion, thought, belief and opinion. According to our Constitutional Court, this right includes *“the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination” (S v Lawrence, 1997).*
8. The definition of “hate speech” in the Bill poses a severe threat to religious , because it could be employed to muzzle (and/or have the unintended effect of muzzling) believers across the different faith groups from expressing (whether to a public or private audience) their sincerely held religious convictions and beliefs. The expression of these beliefs may be perceived or experienced by those who hold to different convictions and beliefs as *“threatening, abusive or insulting”* and intending to *“bring [them] into contempt or ridicule [them]”*.
9. By way of example, in terms of the proposed definition of “hate speech” (section 4(1) of the Bill):
  - 9.1. If a pastor were to say from the pulpit that prostitution (or abortion, or euthanasia) is wrong, it is entirely possible that he/she could be charged with “hate speech” based on his/her perceived intolerance towards a particular *“occupation or trade”* and, if found guilty, be sentenced to 3 years in jail; -This would be a fundamental impediment to the proclamation of the Gospel and the role of the church in society.

- 9.2. If a believer were to have a conversation with a person of a different faith or someone who does not share or accept his/her religious beliefs and convictions (on, for example, the way to salvation, creationism, gender issues, marriage, procreation, discipline of children, etc.), and that person were to take offence in any way, the believer could potentially face a charge of “hate speech” based upon a perceived prejudice towards the other person’s “*religion*” or “*belief*”;
- 9.3. If someone were to share a post on social media that says that while God loves all people, He does not approve of sex outside of marriage, which is between a man and a women -that person could potentially be charged with “hate speech” based on his/her perceived intolerance of another person’s *morality*, even where there is no actual victim!
10. Experience in the USA, UK and other Western democracies has shown that liberal activists, driving anti-religion and anti-natural family agendas, frequently employ “hate speech” laws to hinder or stop the teaching, preaching and publishing of religious content which they regard as unfavourable, offensive or “harmful” to their cause. In fact, “hate speech” legislation in Europe has become so problematic that even mainstream Christian beliefs and values expressed publicly and privately have led to arrest and prosecution, fines, imprisonment, loss of employment, being barred from entering various professions, etc.
11. This Bill, which seeks to broaden the definition of “hate speech” and thereby limit the right to freedom of speech, is deeply problematic in a democracy. True democratic freedom demands individual freedom. Citizens cannot be truly free unless they are able to say what they believe and to live according to their beliefs, freely and without fear of harassment or punishment by the State. In a proper democracy, religious convictions and beliefs should be respected and accommodated, not suppressed or punished. No one should be forced to choose between obeying their conscience or obeying the law, especially where they face the penalty of harsh consequences if they choose to obey their conscience or religious convictions. Should it be passed in its current form, this is exactly the negative consequence that this Bill will achieve.
12. In the light of the above, we are advised and submit that, should the “hate speech” provisions in the Bill remain, it will be both appropriate and necessary to insert a “religious exemption clause” in order to protect adequately and give effect to the constitutional right to freedom of religion, belief and opinion. (In this regard, we draw attention to the *proviso* in section 12 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 (“the Equality Act”) as an example of a legislative exemption on the “hate speech” and unfair discrimination prohibitions in section 10 and 12 of the same Act).

## **ADDITIONAL “HATE SPEECH” LAWS ARE UNNECESSARY**

13. We have been advised and submit that “hate speech” is already prohibited in South African law and can therefore be dealt with effectively in terms of the Equality Act and the common-law crime of *crimen injuria* (willful injury to someone’s dignity).
14. As such, it is unnecessary to create an additional law that will have the effect of placing further strain (in terms of time, effort and money) on our already burdened courts and on the police, who will be tasked with the investigation of “hate speech” charges and obliged to make arrests, etc. in terms of the Bill.
15. It is submitted that, if there is a genuine need for additional measures to deal with “hate speech”, this result can be effectively achieved by amending the Equality Act and/or further empowering the bodies or forums responsible for enforcing the “hate speech” laws which are already in place.

## **CONCLUSION**

16. While the objectives of the Bill are commendable, we submit that the “hate speech” provisions in the Bill are too broad and also in conflict with the rights to freedom of expression and freedom of religion guaranteed by the South African Constitution. We further submit that since “hate speech” is already prohibited in South African law, an additional law is unnecessary.
17. In the circumstances, we appeal to government / Parliament to:
  - 17.1. Omit the “hate speech” provisions from the Bill altogether and, only if necessary, amend and improve the “hate speech” provisions in the Equality Act; and
  - 17.2. In the event that the “hate speech” provisions remain in the Bill:
    - 17.2.1. Limit the definition and scope of “hate speech” in the Bill to bring it in line with section 16(2) of the Constitution; and
    - 17.2.2. Insert a religious exemptions clause that adequately protects the constitutional right to freedom of religion and religious expression.

Should you have any questions, please do not hesitate to contact us. We are prepared to present this paper before any parliamentary commission. Please also keep us informed of future developments and invite us to any future discussions in relation to this issue.

Yours faithfully,

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