

31 January
2017

Prevention and Combating of Crime, Hate Crimes and Hate Speech Bill

Submission to Department of Justice and
Constitutional Development by Media
Monitoring Africa on behalf of children from its
Empowering Children and the Media Programme



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Attention: Theresa Ross

Department of Justice and Constitutional Development

Email: hatecrimes@justice.co.za

31 January 2017

Dear Ms Ross

WRITTEN SUBMISSIONS ON THE PREVENTION AND COMBATTING OF HATE CRIMES AND HATE SPEECH BILL BY MEDIA MONITORING AFRICA ON BEHALF OF CHILDREN

MMA thanks the Department of Justice and Constitutional Development (the DJCD) for inviting members of the public to make submissions on this important Draft Bill, namely the Prevention and Combating of Hate Crimes and Hate Speech Bill (the Bill), and for undertaking publicly to ensure that all issues are fully aired and debated.

MMA formally requests the opportunity of making oral submissions at any hearings that the DJCD may hold in respect of the Bill.

1. Structure of the Children’s Submission

This submission is guided by the principle that children are active agents who, if given the opportunity and in accordance with their evolving capacity, have the ability to meaningfully contribute to various and often complex matters that affect their lives. Therefore, given the far reaching implications of the Prevention and Combating of Crime, Hate Crimes and Hate Speech Bill on the South African public including children, this submission outlines the views of children who engaged its contents and whose feedback has been pulled together and submitted as part of the civic participatory process. The **About MMA and its Child Participants** Section provides information on the organisation and the children behind the submission. The **Executive Summary** highlights the main findings from the children’s engagements. Under **General Feedback**, broad commentary can be found relating to the group’s views of the Bill in its current form and feedback relating to the definition of hate crimes which is outlined under the **Definition** Section. Child-driven insights relating to penal sanctions are explored under the **Sentencing and Alternatives** Section **while the Considering Schools section discusses implications of the Bill in the school environment** Under **Visual Illustrations**, the children’s art that accompanied their words is used to further illustrate their perspectives. The last section outlines the **Recommendations**.

2. About MMA and its Child Participants

Media Monitoring Africa (MMA) was established in 1993 in Johannesburg and has since developed from a pure monitoring-based project to a non-profit organisation that implements successful media strategies for change through engagement with relevant policy and using technology, social media and data tools to make our work more efficient and effective.

MMA acts in a watchdog role to promote ethical and fair journalism that supports human rights. Through lobbying and advocacy MMA further promotes democracy and a culture where media and the powerful respect human rights and encourage a just and fair society.

A further unique element of MMA's work is focused on improving the portrayal and participation of Children and the media. Children, i.e. Citizens under 18, account for 35% of our population, yet only 6% of our news.¹ We also know that children are afforded special protection under our constitution where section 28(2) states, "A child's best interests are of paramount importance in every matter concerning the child." While other elements of our work with children have involved dealing with media ethics and monitoring since 2013, we have been working with children to ensure that not only are their views taken into consideration in the media, but also that they are able to have a say in matters that impact them directly in policy matters. As we move into an increasingly digital reality, not only are more younger people dealing with, and at the coal face of, some of the biggest challenges and opportunities of being digital citizens, but equally importantly they are the ones who will have to deal with the impact of the policies we, as adults, decide on today. As a result we have worked with children to make their own policy submissions on the Revised Press Code, but also the Draft Film and Publications Amendment Bill.

On the 20th of January we hosted a workshop with 55 children between the ages 12-18 from four schools in Johannesburg who participate in the ECM (names listed under Annex A) to help them develop their own submission on the Draft Hate Crimes Bill.

Making Children's Views Real:

The following methodology was followed to ensure that MMA did not guide the children in their responses but that all child participants understood the Bill and unpacked issues of freedom of expression, different kinds of speech (including hate speech) for themselves to adequately engage with the Bill.

The workshop structure (a workshop outline is provided under Annex B) followed a child rights driven participatory method where an ice-breaker was played to create a safe, friendly and familiar environment for the children. The introductory phase followed where the group discussed what

¹ Key Findings from media monitoring research analysis (available on request) undertaken by MMA in 2016 shows that children make up only 6% of news.

freedom of expression means and made distinctions between free speech and hate speech and how these are defined under the constitution. The following exercise involved exploring different kinds of speech, namely “Nice”, “Mean” and “Hate” speech. The participants had to come up with examples of each and place them on a continuum according to their own view of where each lies. They had to then shift them along the continuum according to how the Bill defines hate speech.

An MMA facilitator, from the organisation’s Policy Unit, then unpacked the Bill further with the group and discussed penalties of the Bill and implications for social media. This was followed by a question and answer session.

The main and last activity of the workshop involved splitting the group into smaller ones according to their schools, where they discussed and noted:

1. Their general feedback on the Bill
2. Their experiences of hate speech at their school and systems put in place to deal with it.
3. Different scenarios of what could be deemed as hate speech from their own perspectives and as defined under the Bill.

The children wrote their comments on a poster and also made drawings to illustrate their views.

Their comments and feedback have been collated into this submission by MMA on their behalf. As far as possible, the children’s comments have been quoted verbatim.

We respectfully submit that the submission provides a unique and invaluable perspective and would request that the issues raised are considered with the same weight as other key stakeholders. The Executive Summary detailed below outlines the highlights from this submission.

4. Executive Summary

This document is submitted to the Department of Justice and Constitutional Development by Media Monitoring Africa, a non-profit media watchdog organization based in Johannesburg on 31 January 2017. This action is undertaken on behalf of 55 children who participate in the organisation’s *Empowering Children and the Media* programme following a call for submissions to the South African public. Children deem the Prevention and Combating of Crime, Hate Crimes and Hate Speech Bill to be too broad and perceive it to be an impediment to freedom of expression.

1. They perceive the penal sanctions to be too harsh and suggest that alternative sentencing be sought out along the educational and restorative justice routes.

2. It has also been suggested that the definition of hate crimes include a focus on age and children and make room for more distinctions between “mean speech” and “hate speech”.
3. Recommendations have been made that the bill more carefully balances freedom of speech and hate speech amongst others.

5. General Children’s Feedback

After the introductory exercises with the group of child participants, it was clear that there is a need for legislation that deals with forms of hate crimes and speech. The children feel that the Prevention and Combating of Crime, Hate Crimes and Hate Speech Bill in its current form, partly fulfils this role but is largely lacking. Below are some of the insights from the various groups:

- At least some in the group felt that the Bill “has good intentions”; “protects more rights” and shows that “...there are a lot of issues (related to hate crimes and hate speech) to address.” However, the group noted how, “it has limitations” in how other forms of expression such as poetry and news media are not excluded or protected speech, thus limiting freedom of expression. While stressing how, media in particular, should not be exempt from hate speech, the children stressed how consideration should be made for the media, journalists, cartoonists and comedians etc. when dealing with hate speech and that there needs to be a fact based assessment as to whether the media is guilty of disseminating, producing or creating hate speech. The group added that the Bill needs to be explicit in how to deal with these “forms of expression” in their contexts.
- One group described the Bill as “too broad” and that while the advantage to this is the protection of more of the public’s rights, it is “overprotective” and will criminalise a lot of people and “restrict people’s opinions and freedom of speech”.
- Another group felt that the penal sanctions for hate speech (3 years for first time offenders and 10 years for repeat offenders) were “extreme” and “too harsh”. They questioned whether the government would have the capacity to deal with the implications of criminalising masses who, should the Bill remain unchanged, would be guilty of hate speech.
- When it came to the definition of hate speech under Section 4 of the Bill, the group felt that it does not sufficiently consider age and by extension children as a group subject to and as a basis of hate speech. One child for instance commented, “...If someone says something bad about a child then they won’t be punished because children are not involved.” The group noted how age, as grounds for discrimination, was included in the Equality Act but not in this Bill.

- Another group felt that the definition of hate speech under the Bill needs to take cognisance of the different kinds of speech that exist and make clear distinctions between “mean speech” and hate speech. And that, currently, by failing to accomplish this, the definition sacrifices freedom of expression under the guise of protecting the public against discrimination based on sex, belief, culture and occupation. A specific example was made about how the public should be able to make comments or ridicule public officials and figures such as former SABC COO Hlaudi Motsoeneng who has a tendency to speak about himself in the third person or call himself God.

6. Sentencing and Alternatives

The group reviewed Section 6 of the Bill which deals with the penal sanctions of those convicted of hate speech. Their feedback is detailed below.

- The group felt that jail sentences were “too harsh” and would likely be disproportionate to the so-called crime. They suggested that alternatives to jail sentencing be sought out and that approaches such as fines, restorative justice with an emphasis on education on hate crimes be explored to rehabilitate offenders. One child commented, “They (offenders) shouldn’t go to jail. They won’t learn anything. They should go for counselling. They should pay a fine. We think it’s stupid because the whole country can’t go to jail if they are found guilty. They should build facilities to educate people about hate speech”.
- While others felt that there was still a case to be made for handing out jail sentences, they emphasised that this should be done in severe cases where there is clear intention to cause harm. Where there is no intention but rather ignorance, the group still favoured educational and restorative approaches. “I think that people who intentionally commit hate crime should go to jail but should also learn about their wrongdoings and should be punished. But if you don’t realise that you committed hate crime you can learn about hate speech at an institution so that you don’t do it again. But they shouldn’t be sentenced to jail because they didn’t do it intentionally”. On this point, MMA echoes its call for a narrower definition in its own submission particularly how “any expression that does not fit within the narrow confines of the wording of section 16(2) is constitutionally protected and any limitation thereon would be required to meet the tests contained in the general limitations clause set out in section 36(1) of the Constitution (our emphasis). Section 36(1) of the Constitution”.

The group also felt that an offender should apologise to the person that they hurt and/or offended but if the person does this repeatedly, they should be punished either by paying a fine or being sentenced to prison. The children also suggested that institutions where people can learn about “nice speech, mean speech and hate speech” should be opened.

- The group expressed concerns about the lack of clarity on how the Bill would deal with child offenders. Some suggested that older children, due to their maturity, should be held criminally liable but should not be jailed. The group suggested that they too should be educated: “They should not send the children to prison because they won’t learn from their mistakes so they should rather teach learners about nice speech, hate speech and mean speech.”

7. Considering Schools

In order to help understand the practical implications of the Bill, as well as how children may or may not currently experience hate speech or hate crimes, the workshop asked children to reflect on what currently happens at schools. The findings indicate that there is a gap in the Bill for dealing with issues of education around hate crimes and hate speech, and how often hate speech may well be linked to bullying. By only focusing on criminal acts and not mentioning bullying or restorative justice, or educational aspects in any manner, the problems the Bill seeks to address will not be resolved. Rather the children pointed out that with no school programmes on hate speech and hate crimes, with them not experiencing any real commitment to combating bullying, schools provided a breeding ground for hate crimes and hate speech – and as such the Bill fails to deal with or address this.

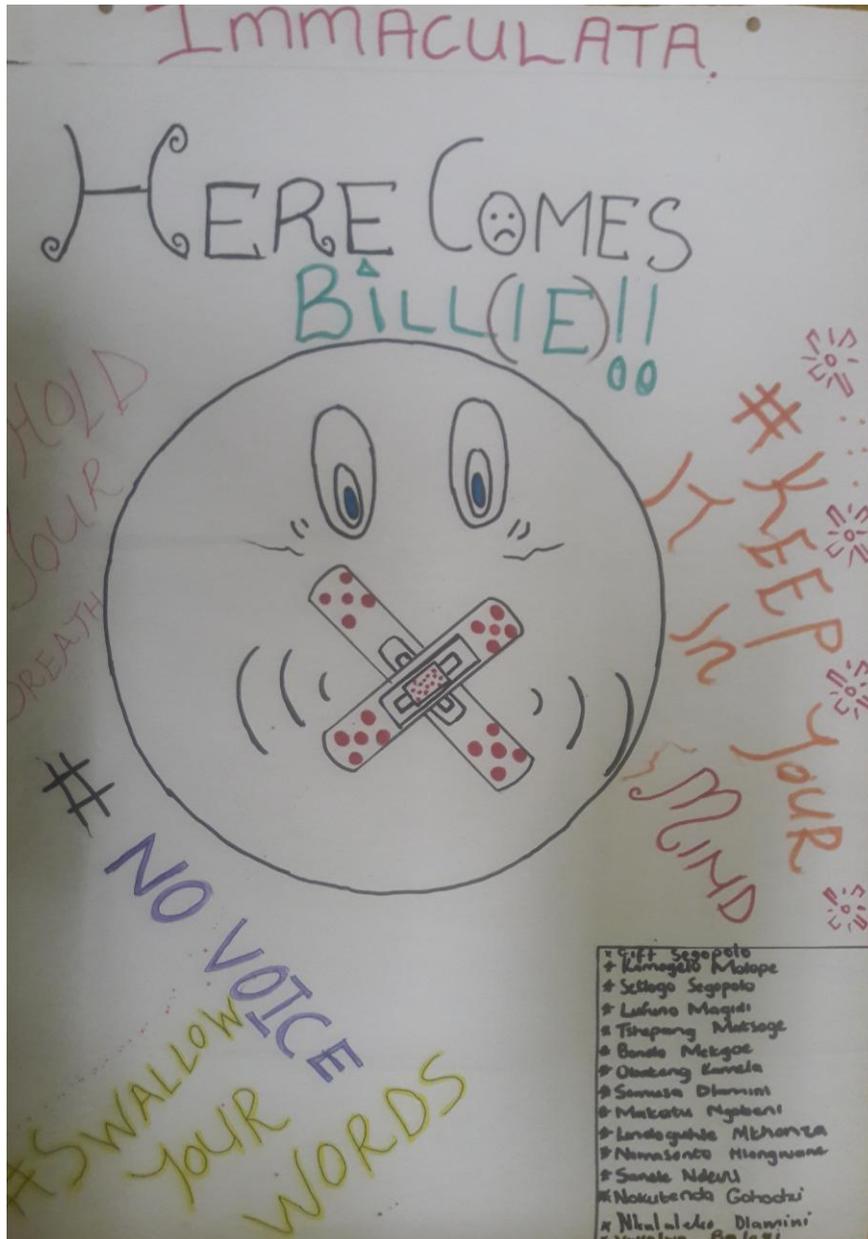
The group highlighted the need for the Bill to consider how hate speech should be dealt with in environments such as schools where most children can be found and where they are likely perpetuating such crimes. Bullying for instance and discrimination on the basis of nationality (punishable under the Bill) were used as examples however it was clear, at least in this group’s experience, that bullying was not taken seriously in schools, implying that hate speech would likely be dealt with similarly and that schools lacked an understanding of hate speech and proper systems to adequately deal with it.

8. Visual Illustrations

As part of their engagement with the Bill, the children were asked to visually represent their views to further illustrate and summarise their individual group discussions. The drawings presented below, further highlight the children’s concerns regarding punitive sentences and their views on how the Bill restricts freedom of speech.

Group 1:

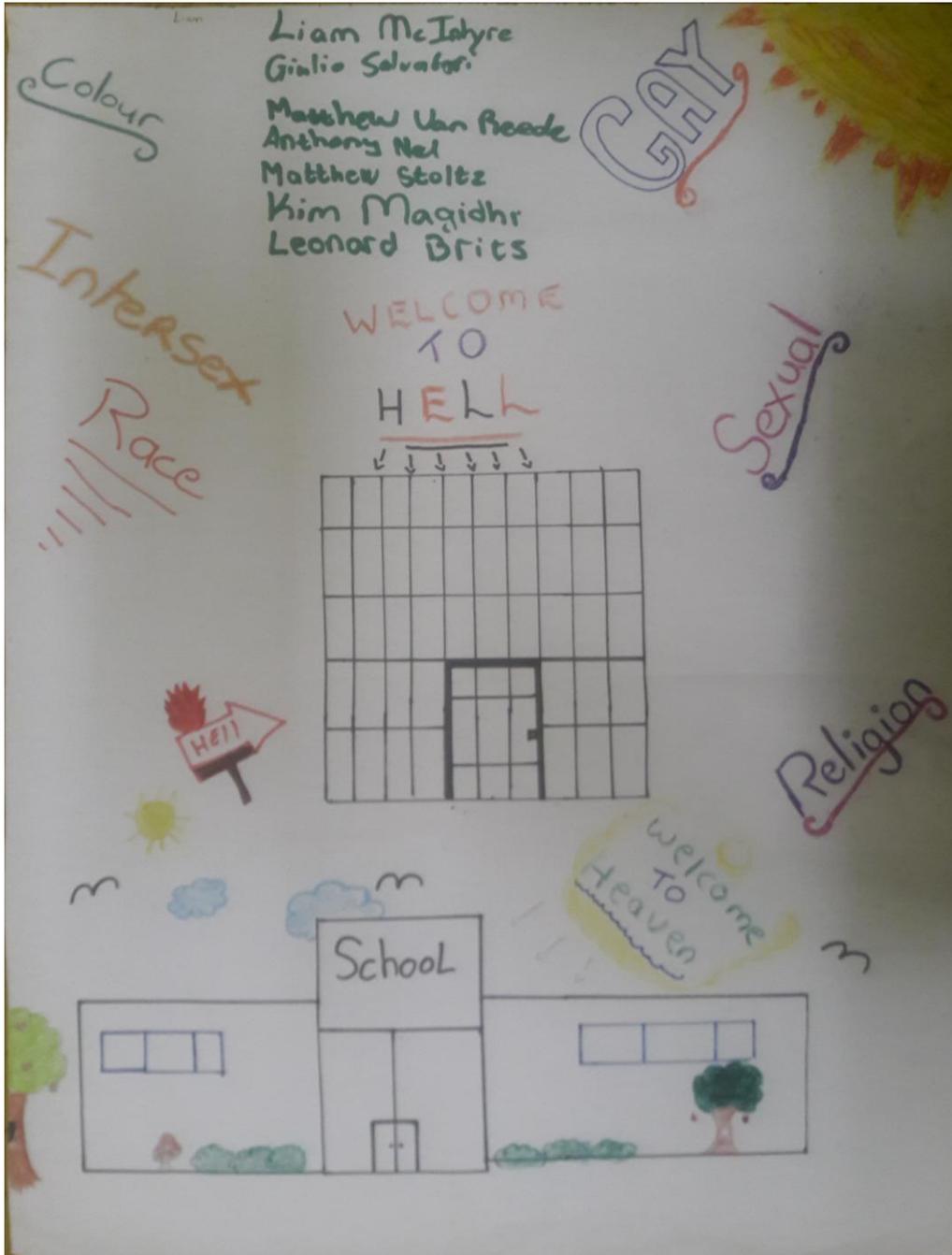
Something dreaded is coming – In their poster this group drew a picture of a face with band-aid over its mouth to illustrate one’s restrictions on freedom of expression as a result of the bill. This is also evident in the bold words accompanying the image such as “No Voice”; “Swallow your Words” and “Keep it in your mind”. The headline on the poster titled, “Here comes Bill(ie)” suggests dreading what is to come, i.e., Bill(ie) or the Bill.



HERE COMES BILL(IE): Group 1’s image focused on censorship.

Group 2:

The second group drew a jail cell, depicted as “Hell” juxtaposed to “Heaven” in the form of a school. This is in line with the children’s views that jail sentences should be the last resort for hate speech offenders, particularly in the case of children and that education is the best alternative.

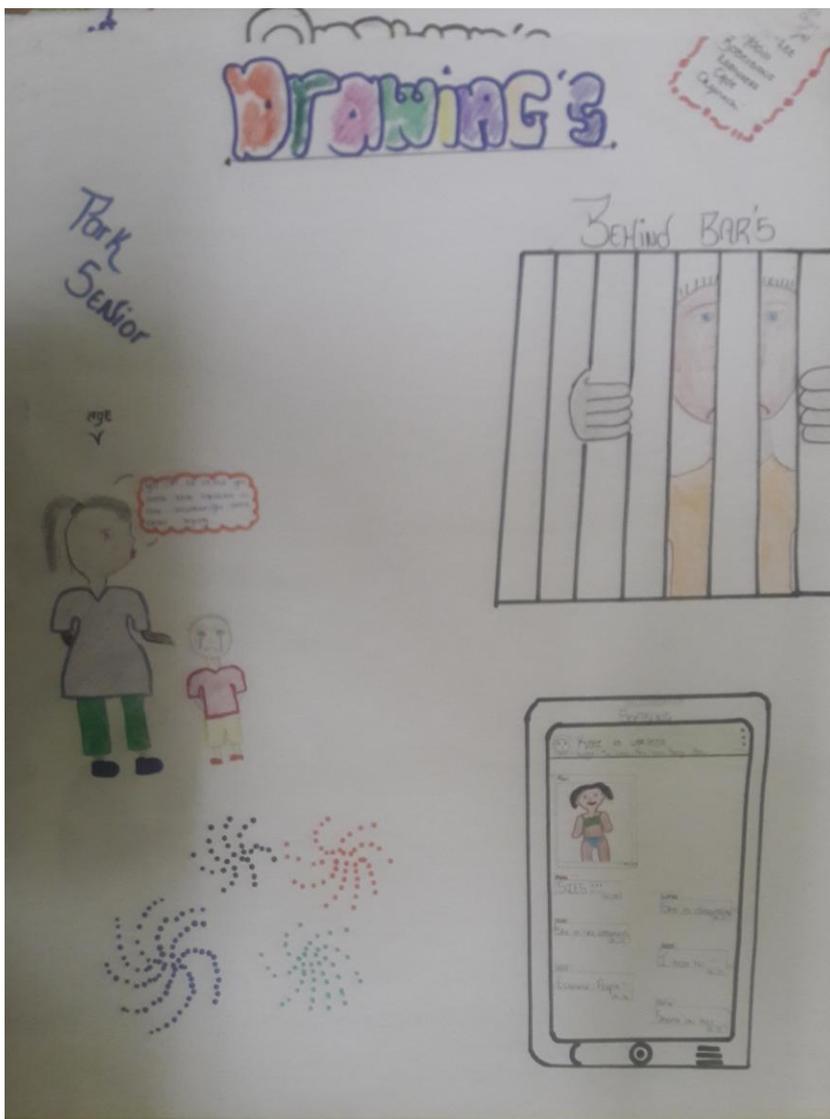


HELL AND HEAVEN: Group 2’s poster speaks to the harshness of jail sentences.

The group also accompanied their images with various words including “Religion”; “Intersex”, “Race” which represent the various groups a person can be found guilty of promoting hatred towards.

Group 3:

Echoing their peers sentiments, Group 3, illustrated the harshness of the penal sanction on hate speech by drawing a figure with a sad face, locked behind bars. In addition, the group depicted a WhatsApp conversation where a group of children are insulting another child, again highlighting the blurred lines between different kinds of speech and hate speech.



LOCKED BEHIND BARS: Group 3’s poster brought a social media element to the fray.

The group's last image represents an adult saying to a child, "You can be 13 but you aren't that important in this situation. You aren't clever anyway". This image speaks to the children's concern that the definition of hate speech does not cater for children as it does not consider age, as grounds for hate speech.

Group 4:

The last group showed support for doing away with hate crime by drawing a heading with the words "Hate Crime" in the middle of their poster with a red stripe struck across the wording. The group further highlighted how pervasive discrimination is in our society by loosely referencing statistics from the Federal Bureau of Investigation in the United States, again in support of legislation that regulates hate speech against various groups in our society.



NO TO HATE CRIMES: Group 3's poster supported legislation dealing with hate crimes.

Group 4's poster also nodded to the disapproval of jail sentences, through images of a jail cell and handcuffs. These again speak to the group's concern that the penal sanctions for hate speech are "extreme" and "too harsh".

Lastly, the group also draws attention to social media, represented through the different icons of various social media networks namely, *Facebook, Youtube, WhatsApp and Twitter*. This again highlights the implications of the Bill on social media and its users.

9. Recommendations

Following engagement and feedback on the Prevention and Combating of Crime, Hate Crimes and Hate Speech Bill, the following recommendations have been made by children:

- The Bill needs to more prudently balance freedom of expression against hate speech and consider different contexts which are currently ignored such as news media, comedy, political cartoon illustration etc. The Bill should also allow for distinction between different kinds of speech in order to ensure that speech that is not hate speech is not criminalised.
- The Bill needs to be less “broad” and “overprotective” as this will criminalise a lot of people and “restrict people’s opinions and freedom of speech”.
- The penal sanctions for hate speech in their current form are “extreme” and “too harsh”. They need to be reviewed and alternatives to jail sentencing should be sought out such as fines, restorative justice with an emphasis on education to rehabilitate offenders. There is also a need to consider the victims in this process and how they are affected. Where possible, opportunities should be made for offenders to apologise to their victims. Repeat offenders should either be fined or imprisoned.
- The following suggestions for hate speech offenders should be considered: community service, service to the victims; bans from going online/social media if found guilty of hate speech on these platforms, seeking forgiveness online whether you are guilty of hate speech or not (for wider audiences), attending forums or rehabilitative programmes dealing with hate speech.
- The Bill should clearly state where fines collected from hate speech should be directed. These could be channelled into building help-centres, facilities in communities or public offices (such as the Department of Social Development) for the purposes of educating and rehabilitating offenders.
- Hate Speech offenders should participate in part-time courses as a penalty. They should attend a “six-month-course” and “write an exam” to see if they have learnt something. The courses must be “mixed” in terms of race, gender, religion etc. as this will in itself help with hate speech issues by exposing offenders to different groups of people.

- Clear intention to cause harm should be emphasised in the Bill and where there is none, rehabilitative measures should be implemented.
- The Bill should more clearly deal with child offenders and consider their ages in relation to their punishment. Child offenders should also be rehabilitated and educated rather than jailed.
- Age and by extension children should be considered grounds for hate crimes as in the Equality Act.
- The Bill should consider the school environment and the implications and practicalities of penalising hate speech in these spaces.
- The Bill should consider how school curriculums can be used to educate children on hate speech.

Submitted for and behalf of the children below

Compiled by: Ayabulela Poro and George Kalu (Media Monitoring Africa)

ANNEXURE A

List of schools and pupils names

EDENVALE HIGH SCHOOL		
Name	Sex	Age
1. Quinlan du Preez	Boy	16
2. Kalheb Butler	Boy	15
3. Connor Rowe	Boy	16
4. Gregory Wright	Boy	15
5. Dylan Tjabring	Boy	16
6. Luca Mihajlouc	Boy	15
7. Trent Howes	Boy	15
8. Nathan Coombs	Boy	15
9. Liam McIntyre	Boy	16
10. Giulio Salvaroti	Boy	16
11. Matthew van Reede	Boy	16
12. Anthony Nel	Boy	16
13. Matthew Stoltz	Boy	15
14. Kim Maghidi	Boy	15
15. Leonard Brits	Boy	15
16. Reuben Diedericks	Boy	15
17. Dylan Erasmus	Boy	17
18. Aidan Mulder	Boy	16
19. Triston Naidoo	Boy	14
20. Duncan Cuttell	Boy	16

21. James van Trotsenburg	Boy	17
22. Gabriel Wallis	Boy	17
23. Matthew Bove	Boy	17
24. Khutso Madiba	Girl	16
25. Gennadii Kolomyteyn	Boy	17
PARK SENIOR PRIMARY		
26. Adilla Bloem	Girl	13
27. Tashyln Smith	Girl	13
28. Jamie-Lee Le Kay	Girl	13
29. Onyinyechi Akujiobi	Boy	13
30. Carle Prinsloo	Boy	12
31. Ramogelo Molope	Girl	16
32. Makatu Ngobeni	Boy	16
33. Somuba Dlamini	Boy	15
34. Ntshuxeko Nkuna	Girl	13
35. Basetsana Nokhonoana	Girl	13
IMMACULATA SECONDARY		
36. Setlhogo Segopolo	Boy	15
37. Lindokuhle Mkhonza	Girl	17
38. Nokukhanya Mulovhedzi	Girl	17
39. Obakeng Kamela	Girl	17
40. Sanele Nduvu	Girl	15
41. Tshepang Matsoge	Girl	16
42. Bonolo Mekgoe	Girl	17

43. Vuyelwa Baloyi	Girl	18
44. Nokutenda Gohodzi	Girl	13
45. Nomasonto Hlongwane	Girl	17
46. Lufuno Magidi	Boy	17
47. Nkululeko Dlamini	Boy	16
TROYEVILLE PRIMARY		
48. Israel Benjamin	Boy	12
49. Abe Ghebreyesus	Boy	14
50. Longo Ngalamulume	Boy	13
51. Kasimu Mushaba	Boy	12
52. Nasivic Kitambia	Boy	12
53. Sabelo Ngubane	Boy	12
54. Buhle Mazibuko	Girl	12
55. Andisiwe Ndimu	Girl	11

ANNEXURE B

PREVENTION AND COMBATING OF CRIME, HATE CRIMES AND HATE SPEECH BILL CHILDREN'S WORKSHOP OUTLINE

Duration	Activity	Description	Objective	Preparation
09:00-09:30	Introduction: Ice breakers	Nyama Nyama Game and the classifying game	Fun light ice breaker activities that get the children moving as well as to start thinking about similarities and differences that form part of society's prejudice.	
09:30-09:50	Introduction to the topic. Free Speech-Hate Speech	The facilitator will start by asking the participants the following to get their understanding: What is hate speech? What is free speech? Ask the participants to give examples	Building skills and providing knowledge around issues of free speech and hate speech and how to tell the difference. Also making sure that they understand the implications of confusing the two for our democracy and freedoms.	Look at what the constitution says about hate speech and free speech
09:50-10:15	Activity: Hate speech according to the constitution	The facilitator will draw a scale on the board with "Nice speech, Mean speech and Hate speech". The participants will then use the definition they have learnt to write up examples of these three speeches and post them on the scale.	This activity will ensure that participants have real life examples that help them differentiate between the different speeches under the constitution and most importantly which ones are protected and which ones aren't.	Printed sentences that depict different speeches for the activity
10:15-10:25	Unpacking the Bill Part 1 - Definitions	The facilitator will explain and discuss what the Bill is all about. Also unpack how the Bill defines hate speech	Simply giving a global view of the Bill in a manner that is understandable to children.	The Bill needs to be summarised and translated into a child friendly version. Be prepared to explain what it means to balance rights.
10:25-10:35	Activity: Hate speech according to the new Bill	Facilitator will go back to the scale that was drawn and together with the children will start to move posts according to what is considered hate speech from the Bill.	Participants will get an opportunity to reflect on what hate speech is as described in the constitution and the new Bill and the possible implications this may have on their lives and the way they communicate with others.	
10:35-11:00	TEA BREAK			

11:00-11:20	Unpacking the Bill Part 2	<p>facilitator will discuss the Bill in detail to outline the following:</p> <p>What are the main pillars of the Bill?</p> <p>Penalties involved if found to be an offender.</p> <p>The implications the Bill has on so</p>	<p>Focus on the most important building blocks of the Bill</p> <p>Explain or have a discussion on what led to the formulation of this Bill</p>	<p>Being able to clearly identify the main elements and pillars of the Bill.</p>
11:30-13:00	<p>Activity - Responding to the Bill: Getting participants to discuss and share what they think about the Bill as per presentation.</p>	<p>The facilitator will split all participants into groups of 5 with X people per group. Each group will be given a piece of paper with the following:</p> <ol style="list-style-type: none"> 1. Brief notes that describe fundamental pillars of the Bill - 	<p>To solicit honest and authentic views of children with regards to the Bill and to use this information in their submission.</p>	<p>Preparation of questions that would make it easy and practical to structure a submission document.</p>
13:00	LUNCH			