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## **ANTI-HATE SPEECH BILL INTRODUCES NEW BUSINESS RISKS**

By Robert Davies (CGF: Lead Independent Consultant) and reviewed by Terrance M. Booysen

Saying or doing something racist, or performing various deeds which falls within a long list of things the Bill deems to be hate speech -- or a hate crime -- could see you ending up with a criminal record. It could also severely jeopardise your business, even if you had nothing to do with the original incident.

Minister of Justice and Correctional Services, Michael Masutha, has announced that government has published the *Prevention and Combating of Hate Crimes and Hate Speech Bill* ('the Bill') in the Government Gazette for public comment, which was approved for public consultation by the Cabinet on 19 October 2016.

Masutha said that the draft bill created offences of hate crimes and hate speech and would put in place measures to prevent and combat these offences. When enacted by Parliament, it is intended to build on the existing measures already in place (such as the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000) to combat the social ills of racism, xenophobia and related intolerances.

An overview of the Bill shows that the proposed legislation intends to:

1. give effect to the country's obligations in terms of the Constitution and international human rights treaties concerning racism, racial discrimination, xenophobia and related intolerance in accordance with international law obligations;
2. provide for the offence of hate crimes and the offence of hate speech and the prosecution of persons who commit those crimes;
3. provide for appropriate sentences that may be imposed on persons who commit hate crime and hate speech offences;
4. provide for the prevention of hate crimes and hate speech;
5. provide for the reporting on the implementation, application and administration of the Act;
6. amend certain Acts of Parliament relating to the new law.

*"It appears to the court that where a word bears more than one meaning and can be understood by the reasonable man in a defamatory and a non-defamatory sense, the particulars of claim should reveal what meaning the plaintiff alleges the offending word bore and in what sense it was used, and of course the evidence must establish that the offending word bore that meaning and was used in that sense."*

***Ciliza v. Minister of Police and another.  
(Natal Provincial Division)  
1976. May 24, June 4. JAMES JP and  
KRIEK J***

However, concerns about the Bill and the effects that it may have when it is passed by Parliament, have been raised by various parties, who say that it has gone too far. There is a fine line between freedom of speech and hate speech and the question is: how onerously will the new law be applied? With the government eager to be seen stamping out hate speech and crimes, the Bill may become a very blunt instrument to do so.

William Saunderson-Meyer, a well-known journalist, argues that there is already sufficient legislation in place to deal with hate speech and crimes, including the Constitution and Bill of Rights, and that “robust, or even crude language, satire, mockery and the right to offend are all important aspects of democracy.” (The Citizen, 29 October 2016)

A number of comedians have also cautioned against the adoption of the Bill saying that it is “too broad and very restrictive” and could end up with comedians being jailed for up to 10 years for doing what they do best: picking on individuals, particularly politicians, and mocking aspects of their behavior or character. (City Press, 30 October 2016)

The Bill proposes hefty fines and a maximum 10-year jail term for anyone convicted of showing prejudice, bias or intolerance on the basis of race, gender or sex as well as ethnic or social origin, colour, sexual orientation, religion, belief, culture, language, birth, disability, HIV status, nationality, gender identity, albinism and occupation or trade.

Besides the punishment prescribed by the Bill, there is a very real and considerable risk of reputational damage to the person convicted of - or even just accused of - any of the offences created by the new law and this reputational risk would very easily extend to the companies employing such individuals.

There are already a number of high profile cases where a company has suffered as a result of an employee's utterances or actions that emulate racial intolerance or hate speech. The consequences of Penny Sparrow's Facebook rant and Chris Hart's more balanced but perhaps also more esoteric Twitter comments immediately spring to mind.

It is clear that it is not just racism that could lead to a breach of the proposed new law. It potentially introduces a new and heightened level of intolerance that requires everyone to be more aware of their speech and activities and ensure that their attitude and behavior accords with the standards required by it. Companies should consider the impact this may have on their work place environment and review their key documentation and policies to update them and ensure compliance with the Bill when it is enacted.

Similar to most legislation that requires careful understanding in respect of its effect on an organisation's reputation and overall sustainability, CGF is able to assist organisation's to determine the necessary actions that may be required to prevent a calamity of epic proportions. Robert Davies, a CGF Lead Independent Consultant and attorney by profession, is able to assist organisations with an individual analysis of the organisation's potential risks posed by the Bill, and then offer a practical solution to navigate its pitfalls.

### ENDS

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