



t +27 021 556 5502
a P.O. Box 50110
West Beach
Cape Town 7441
e info@forsa.org.za
www.forsa.org.za

To: Mr V. Ramaano

PARLIAMENTARY PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES

Per e-mail: vramaano@parliament.gov.za

Re: CYBERCRIME AND CYBERSECURITY BILL B6-2017:

FOR SA's Supplementary Comments: Recommendations for amendments to sections 16 & 17 of the Bill

Date: 20 September 2017

-
1. We refer to the public hearings held by the Parliamentary Portfolio Committee on Justice and Correctional Services on the *Cybercrimes and Cybersecurity Bill* on 13 and 14 September 2017, and to the verbal representations made by Freedom of Religion South Africa (FOR SA) - particularly with regard to sections 16 and 17 of the Bill (relating to "malicious communications").
 2. We respectfully reiterate our submission that sections 16 and 17 of the Bill are unnecessary in light of existing legislation (such as the Intimidation Act, 72 of 1982 and Protection from Harassment Act, 17 of 2011) which already contain similar provisions, and existing legal remedies (such as interdictory relief, and damages claims for defamation and/or economic harm) which can be employed to prevent or sanction "malicious communications". In the circumstances, sections 16 and 17 should ideally be removed from the Bill.
 3. Should the Committee be of the opinion however that sections 16 and 17 should remain in the Bill, and should indeed criminalise certain categories of speech, we respectfully recommend that the sections be amended as per our suggestions below – particularly with a view to aligning it with similar provisions in existing legislation (including the Constitution):

3.1. By amending sections 16 and 17 of the Bill as follows:

“Section 16: Data messages which contain unprotected speech¹

(1) Any person who unlawfully makes available, broadcasts or distributes, by means of a computer system, a data message to a specific person, group of persons or the general public which amounts to:

- a) propaganda for war;*
- b) imminent violence; or*
- c) advocacy of hatred based on any one or more prohibited grounds, and that constitutes incitement to cause harm,*
is guilty of an offence.

Section 17: Prohibition on harassment²

(1) Any person who makes available, broadcasts, or distributes, by means of a computer system, a data message which he/she knows or ought to know:

- (a) causes harm; or*
- (b) inspires the reasonable belief that harm may be caused,*
to a specific person or group of persons by unreasonably engaging in communication aimed at that person or group of persons, whether or not the conversation ensues, is guilty of an offence.

(2) Any person who makes available, broadcasts, or distributes, by means of a computer system, a data message which subjects any person or group of persons to sexual harassment, in that the message or any part thereof:

- (a) Amounts to unwelcome sexual attention, in circumstances where the person who makes available, broadcasts, or distributes the message knows or ought reasonably to have known that such attention is unwelcome;*
- (b) Contains unwelcome explicit or implicit suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the specific person or group of persons at whom it was aimed, in circumstances which a reasonable person having regard to all the circumstances would have*

¹ The proposed amendments aim to reflect the language and intent of s 16(2) of the Constitution.

² The proposed amendments aim, as far as possible, to reflect the language and intent of the definition of “harassment” in s 1 of the Protection from Harassment Act, 2011.

anticipated that the specific person or group of persons at whom the message was aimed, would be offended, humiliated or intimidated;

- (c) Contains implied or expressed promise of reward for complying with a sexually-orientated request; or*
 - (d) Contains an implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually orientated request,*
- is guilty of an offence.*

Section 17A: Prohibition on Threats and Intimidation³

(1) Any person who, without having lawful reason to do so, makes available, broadcasts, or distributes, by means of a computer system, a data message:

- (a) with the intent to compel or induce a specific person or groups of persons, to do or to abstain from any act, or to assume or to abandon a particular standpoint; and*
- (b) which he knows or ought to know would reasonably be understood as threatening to kill, assault, injure or cause damage to any specific person or group of persons,*

is guilty of an offence.

(2) Any person who makes available, broadcasts, or distributes, by means of a computer system, a data message that:

- (a) has the effect; or*
- (b) it might reasonably be expected that the natural and probable consequence thereof would be,*

that a specific person or group of persons perceiving the data message:

- (a) fears for his/her own safety;*
- (b) the safety of his/her property; or*
- (c) the security of his/her livelihood,*

is guilty of an offence.

(3) Any person who makes available, broadcasts, or distributes, by means of a computer system, a data message:

- (a) with the intent to put in fear, or to demoralize, or to induce the general public, a particular section of the population or the inhabitants of a particular area in*

³ The proposed amendments aim, as far as possible, to reflect the language and intent of the Intimidation Act, 1982.

the Republic, to do or to abstain from doing any act, in the Republic or elsewhere; and

(b) which threatens, promotes or conspires with another person to commit, bring about, aid in, or perform an act of violence, is guilty of an offence.

(4) For the purpose of this section, “violence”, includes the inflicting of bodily harm upon, or killing of, or the endangering of the safety of, any person, or the damaging, destruction or endangering of property.”

3.2. By inserting, in section 1 of the Bill, and directly after the definition for “**Protection from Harassment Act**” and before the definition for “**public available data**”, the following definition:

*“**prohibited grounds**” means the “prohibited grounds” in sections 9(3) and (4) of the Constitution of the Republic of South Africa, 1996, namely race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth”*

We trust that these submissions will be of assistance to you. Should you have any queries, please do not hesitate to contact us.



Adv Nadene Badenhorst

Legal Counsel

Freedom of Religion South Africa (FOR SA)

E-mail: legal@forsa.org.za