

Family Action South Africa

NPC 2015/180599/08
P O Box 141, Ladismith 6655, Western Cape, South Africa
Tel: 087 809 6428 Fax: 086 53 509 53
Email: office@familyaction.co.za www.familyaction.co.za



29 June 2021

Department of Justice and Constitutional Development

Attention Ms Fathima Bhayat

RE: PROMOTION OF EQUALITY AND THE PREVENTION OF UNFAIR DISCRIMINATION AMENDMENT BILL

Dear Ms Bhayat

Family Action South Africa is a faith-based organisation, specially dedicated to the protection and nourishing of the family institution, understood in its immemorial and Biblical sense. The organisation is deeply concerned at the growing intrusion of the State into the lives of citizens and the diminishing of individual freedoms and property rights. As such, it is profoundly disturbed at many of the proposed changes envisaged in the “PEPUDA” Bill.

In short, we have serious concerns as to the Bill’s broadening of the definitions and scope of the current Act, arguably sufficient to cover unfair discrimination. The Bill impinges on Constitutional freedoms which are specifically protected in Sections 15 and 16 – these guaranteeing “freedom of religion, belief and opinion,” and “freedom of expression” respectively. In essence, the Bill seriously overreaches, and opens the road to interference of the State in religious Bodies’ freedom to fearlessly enunciate doctrines and policies in accordance with their own statutes and policy guidelines. As such, it presents a serious threat, not only to these, but to Business and the economy at large. Ideally, it should be entirely scrapped, as it is arguably superfluous.

Concepts around equality and discrimination are difficult to pin down and provide objective definitions of universal application. The Bill, as currently promulgated, provides for the draconian intrusion of the State into matters outside its sphere and competence. We are particularly concerned that the right of individuals – be it in the context of their religious organisations, or in the media, in educational institutions, voluntary associations and the like – to express and promote beliefs/opinions contrary to those held by other interest groups and sectors, may be curtailed. The very broad terms of reference, will facilitate the suppression of opinions – which for some maybe sacred and inviolable, and to others prejudiced or intolerable. Also disturbing, is how innocent persons may be caught up in the web of this proposed legislation and incur unjust penalties for actions either unbeknown to them, or in which they had no direct involvement

There will certainly be no shortage of persons who will make use of the ambiguities embedded in many of the proposed changes, to advance their agendas, and tie up individuals or institutions in wasteful and time consuming litigation.

As regards “Equality,” and its definition in the Bill, the celebrated Catholic thinker, Professor Plinio Correa de Oliveira points out that not all “inequalities” are *per se* unjust. Some are certainly in accord to the natural order. He writes:

“All men are equal by nature, and different only in their accidents. The rights they derive from the mere fact of being human are equal for all: the right to life, honour, sufficient living conditions (and therefore the right to work), property, the setting up of a family, and, above all, the knowledge and practice of the true religion. The inequalities that threaten these rights are contrary to the order of Providence. However, within these limits, the inequalities that arise from accidents such as virtue, talent, beauty, strength, family, tradition, and so forth, are just and according to the order of the universe” (Corrêa de Oliveira, *Revolution and Counter-Revolution*, 51).

Thus, we respectfully submit the following comments, and strengthen our misgivings with the addition of the names below, who have added their voice to our submission.

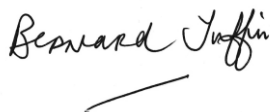
1. The broadening of the definition of “discrimination,” which could potentially criminalise one for acts of which one is basically unaware, or which are unintentional. The criteria for determining discrimination is changed from an objective definition to the subjective feelings of the alleged complainant. Currently, there has to be specific intent to discriminate and prejudice. This could potentially open a floodgate of litigation. Furthermore, no distinction is made between acts of fair or unfair discrimination. From morning to night, one “discriminates” (makes choices) in every single action constituting a day’s activities and interactions! How many of these daily decision-making exercises (in whatever sphere of national life) could potentially land one in hot water, as a “wounded” party reads “discrimination” into this or that action? This could especially impact on Businesses.
2. An example of the ambiguity prevalent in the proposed Bill, and potential legal minefield, is also evident in the definition of “equality” which is now slated to include “*equal right and access to resources, opportunities, benefits and advantages*,” and “equality in terms of impact and outcomes,” and “substantive equality...” Is one not justified in asking, **“What exactly do these things mean in practice?”**
3. In the section under “Prevention and general prohibition of unfair discrimination,” provision is made for the following addition: “Any person who causes, encourages or requests another person to discriminate against any other person, is deemed to have discriminated against such other person.” This is very sweeping and wide open to interpretation. There is real potential to fall foul of the law without any intention to unfairly discriminate.
4. In similar vein, the notion of holding an employer “jointly and severally liable” for any contravention of the Act by an employee or agent, is inexplicable! Especially where, due to ambiguities in definitions, “contraventions” may quite easily be incurred unintentionally,

or through ignorance/absent-mindedness, etc. - thereby making innocents into “offenders!”

5. It cannot be made legally binding on a nation’s citizens the “duty and responsibility to eliminate discrimination and promote equality,” as defined in the Bill. This is especially so, when the definition of these concepts is hazy and far-reaching. It would demand from citizens’, actions and an ideological mind-set, with potential violation of conscience, beyond their duties as law-abiding inhabitants of a nation.
6. The Act will vest the State, relevant Minister or “Constitutional institutions,” with power to enforce compliance to the Bill or to whatever “Codes of Practice” the Minister may deem fit for this or that institution. This will further increase the intrusion of the State in the life of the nation and open the door to abuse of power in the furtherance of ideological agendas and objectives.
7. The Act will create added regulation in a climate (particularly business) already stifled by over-regulation. The financial burden which the Act will impose on businesses, community-based organisations and traditional institutions, etc. to “promote equality,” will only add to existing economic woes. In addition, and most alarmingly, it is made incumbent upon “all persons, non-governmental organisations, community-based organisations or traditional institutions,” a “must” that they “promote equality in their relationships with other bodies **and in their public activities.**” (own emphasis) Religious groups would naturally fall into this sphere. The potential for State heavy-handedness, regulation of religion, and consequently persecution and harassment, is enormous. The freedom to pursue and propagate belief systems contrary to the Bill’s provisions, as well as freedom of expression and association, enshrined in the Constitution, are potentially under grave threat. This is especially so since the core beliefs of most religious institutions will be at variance with the Bill’s understanding of discrimination and equality.

In general, the Bill is overly complex, convoluted and bureaucratic, and one discerns an ideological vein permeating all, making it somewhat difficult to pick up and isolate all objectionable aspects. Overall, it is a somewhat draconian Bill; unnecessary, burdensome, imposes adhesion to debatable and ill-defined concepts, threatens fundamental democratic freedoms (particularly religious) and ideally, should be radically overhauled or better still, scrapped in its entirety.

Sincerely Yours

A handwritten signature in cursive script, reading "Bernard Tuffin". The signature is written in dark ink and is positioned above a short horizontal line.

Bernard Tuffin

President