
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**NOTICE 698 OF 2016****INVITATION TO COMMENT ON THE PREVENTION AND COMBATING OF HATE
CRIMES AND HATE SPEECH BILL: DEADLINE FOR COMMENT 1 DECEMBER 2016**

1. The draft Prevention and Combating of Hate Crimes and Hate Speech Bill (hereinafter referred to as “the Bill”) aims to-

- * give effect to the Republic’s obligations in terms of the Constitution and international human rights instruments concerning racism, racial discrimination, xenophobia and related intolerance in accordance with international law obligations;
- * provide for the offence of hate crimes and the offence of hate speech and the prosecution of persons who commit those crimes;
- * provide for appropriate sentences that may be imposed on persons who commit hate crime and hate speech offences;
- * provide for the prevention of hate crimes and hate speech;
- * provide for the reporting on the implementation, application and administration of this Act;
- * amend certain Acts of Parliament consequentially; and
- * provide for matters connected therewith.

2. The Bill is available for download on the website of the Department of Justice and Constitutional Development, at the following address: <http://www.justice.gov.za>. Alternatively, a copy of the Bill will be made available on request, which request should be directed to the person referred to in paragraph 4 below.

3. Any person wishing to comment on the Bill is invited to submit written comments to the Department of Justice and Constitutional Development on or before 1 December 2016.

Comments should be marked for the attention of **T Ross**:

(a) if they are forwarded by post, be addressed to -

The Department of Justice and Constitutional Development

Private Bag X81

PRETORIA

0001;

(b) if delivered by hand, be delivered at -

The Department of Justice and Constitutional Development

Salu Building

316 Thabo Sehume Street (Corner of Thabo Sehume and Francis Baard Streets)

PRETORIA;

(c) if they are delivered by E-mail, they can be sent to: **hatecrimes@justice.gov.za**; or

(d) if it is faxed, they can be faxed to **012 406 4632**.

4. For further information, please contact T Ross at **012 406 4759**.

REPUBLIC OF SOUTH AFRICA

**PREVENTION AND COMBATING OF HATE CRIMES AND HATE SPEECH
BILL**

.....
*(As submitted to Cabinet (proposed section 75); explanatory summary of Bill
published in Government Gazette No. of 2016) (The
English text is the official text of the Bill)*
.....

(Minister of Justice and Correctional Services)

[B - 2016]

BILL

To give effect to the Republic's obligations in terms of the Constitution and international human rights instruments concerning racism, racial discrimination, xenophobia and related intolerance in accordance with international law obligations; to provide for the offence of hate crimes and the offence of hate speech and the prosecution of persons who commit those crimes; to provide for appropriate sentences that may be imposed on persons who commit hate crime and hate speech offences; to provide for the prevention of hate crimes and hate speech; to provide for the reporting on the implementation, application and administration of this Act; to amend certain Acts of Parliament consequentially; and to provide for matters connected therewith.

PREAMBLE

SINCE the Constitution of the Republic of South Africa, 1996, commits the Republic of South Africa and its peoples to establish a society that is based on democratic values of social justice, human dignity, equality and the advancement of human rights and freedoms, non-racialism and non-sexism;

AND MINDFUL THAT—

- * section 9(1) of the Constitution provides that everyone is equal before the law and has the right to equal protection and benefit of the law;
- * section 9(3) and (4) of the Constitution provides that neither the state nor any person may, directly or indirectly, discriminate unfairly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth, and that national legislation must be enacted to prevent or prohibit unfair discrimination; and
- * section 10 of the Constitution provides that everyone has inherent dignity

- and the right to have their dignity respected and protected;
- * the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, prohibits unfair discrimination, hate speech and harassment and requires the State to promote the constitutional imperatives enshrined in section 9 of the Constitution; and
 - * section 16 of the Constitution gives everybody the right to freedom of expression, including -
 - * freedom of the press and other media;
 - * freedom to receive or impart information or ideas;
 - * freedom of artistic creativity; and
 - * academic freedom and freedom of scientific research,
 but which does not extend to –
 - * propaganda for war;
 - * incitement of imminent violence; or
 - * advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm;

AND BEARING IN MIND THAT—

- * section 7(2) of the Constitution provides that the state must respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights, which is the cornerstone of democracy in South Africa;
- * section 8(2) of the Constitution provides that a provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right;
- * the severity of the emotional and psychological impact of hate crimes and hate speech extends beyond the victim, to the group to which the victim belongs or is perceived to belong; and
- * South Africa has committed itself to uphold the Declaration adopted at the United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban;

AND SINCE the International Convention on the Elimination of All Forms of Racial Discrimination, to which the Republic is a signatory, requires States Parties to declare, among others, an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin,

PARLIAMENT of the Republic of South Africa therefore enacts as follows:—

Definitions

1. In this Act, unless the context indicates otherwise -
“communication” includes, without any limitation, any –

- (a) gesture;
- (b) display;
- (c) expression;
- (d) written, illustrated, visual or other descriptive matter;
- (e) oral statement;
- (f) representation or reference; or
- (g) an electronic communication,

and **“communicates”** and **“communicated”** have a corresponding meaning;
“court” means a Division of the High Court or a magistrate’s court for any regional division established in terms of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“data” means electronic representations of information in any form;

“data message” means data generated, sent, received or stored by electronic means;

“Director of Public Prosecutions” means a Director of Public Prosecutions

appointed in terms of section 13 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);

"electronic communication" means a communication by means of data messages;

"electronic communications system" means any electronic communications infrastructure or facility used for the conveyance of data;

"harm" includes any mental, psychological, physical or economic harm;

"hate crime" has the meaning assigned to it in section 3(1);

"hate speech" has the meaning assigned to it in section 4(1);

"intersex" means a congenital sexual differentiation which is atypical, to whatever degree;

"National Director of Public Prosecutions" means the person appointed by the President in terms of section 10 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);

"prescribed" means prescribed by regulation under section 10;

"the Act" or **"this Act"** means the Prevention and Combating of Hate Crimes and Hate Speech, 2016, and includes the regulations made in terms of the Act;

"victim" means a person, including a juristic person, against whom an offence referred to in section 3 or 4 has been committed and, for purposes of section 4, means any member of a group of persons contemplated in that section.

Objects of Act

2. The objects of this Act are to—
- (a) give effect to the Republic's obligations regarding prejudice and intolerance in terms of international law;
 - (b) provide for the prosecution of persons who commit offences referred to in this Act and provide for appropriate sentences;
 - (c) provide for the prevention of hate crimes and hate speech;
 - (d) provide for effective enforcement measures;
 - (e) provide for the co-ordinated implementation, application and

- administration of this Act; and
- (f) combat the commission of hate crimes and hate speech in a co-ordinated manner.

Offence of hate crime

3. (1) A hate crime is an offence recognised under any law, the commission of which by a person is motivated on the basis of that person's prejudice, bias or intolerance towards the victim of the hate crime in question because of one or more of the following characteristics or perceived characteristics of the victim or his or her family member:

- (a) Race;
- (b) gender;
- (c) sex, which includes intersex;
- (d) ethnic or social origin;
- (e) colour;
- (f) sexual orientation;
- (g) religion;
- (h) belief;
- (i) culture;
- (j) language;
- (k) birth;
- (l) disability;
- (m) HIV status;
- (n) nationality;
- (o) gender identity;
- (p) albinism; or
- (q) occupation or trade.

(2) (a) Any person who commits a hate crime is guilty of an offence and liable on conviction to a sentence as contemplated in section 6(1).

(b) Any person who attempts to commit, or performs, any

act aimed at participating in the commission of a hate crime is guilty of an offence and is liable, on conviction, to a sentence as contemplated in section 6(1).

(c) Any person who –

- (i) incites, instigates, commands, directs, aids, promotes, advises, recruits, encourages or procures any other person to commit a hate crime; or
 - (ii) conspires with any other person to commit a hate crime,
- is guilty of an offence and is liable, on conviction, to a sentence as contemplated in section 6(1).

(3) Any prosecution in terms of this section must be authorised by the Director of Public Prosecutions having jurisdiction or a person delegated thereto by him or her.

Offence of hate speech

4. (1) (a) Any person who intentionally, by means of any communication whatsoever, communicates to one or more persons in a manner that –

- (i) advocates hatred towards any other person or group of persons; or
- (ii) is threatening, abusive or insulting towards any other person or group of persons,

and which demonstrates a clear intention, having regard to all the circumstances, to –

- (aa) incite others to harm any person or group of persons, whether or not such person or group of persons is harmed; or
- (bb) stir up violence against, or bring into contempt or ridicule, any person or group of persons,

based on race, gender, sex, which includes intersex, ethnic or social origin, colour, sexual orientation, religion, belief, culture, language, birth, disability, HIV status, nationality, gender identity, albinism or occupation or trade, is guilty of the offence of hate speech.

(b) Any person who intentionally distributes or makes

available an electronic communication which constitutes hate speech as contemplated in paragraph (a), through an electronic communications system which is –

- (i) accessible by any member of the public; or
- (ii) accessible by or directed at a specific person who can be considered to be a victim of hate speech,

is guilty of an offence.

(c) Any person who intentionally, in any manner whatsoever, displays any material or makes available any material which is capable of being communicated and which constitutes hate speech as contemplated in paragraph (a), which is accessible by or directed at a specific person who can be considered to be a victim of hate speech, is guilty of an offence.

(2) (a) Any person who attempts to commit, or performs, any act aimed at participating in the commission of an offence referred to in subsection (1) is guilty of an offence and is liable, on conviction, to a sentence as contemplated in section 6(3).

(b) Any person who –

- (i) incites, instigates, commands, directs, aids, promotes, advises, recruits, encourages or procures any other person to commit; or
- (ii) conspires with any other person to commit,

an offence referred to in subsection (1) is guilty of an offence and is liable, on conviction, to a sentence as contemplated in section 6(3).

(3) Any prosecution in terms of this section must be authorised by the Director of Public Prosecutions having jurisdiction or a person delegated thereto by him or her.

Impact of offence on victim

5. (1) For purposes of this section, a victim impact statement means a sworn statement or affirmation by the victim or someone authorised by

the victim to make a such statement on behalf of the victim which reflects the physical, psychological, social, financial or any other consequences of the offence for the victim and his or her family member.

(2) The prosecutor may, when adducing evidence or addressing the court on sentence in respect of an offence under this Act, consider the interests of a victim of the offence and the impact of the offence on the victim, and, where practicable, furnish the court with a victim impact statement provided for in subsection (1).

(3) If the contents of a victim impact statement are not disputed, a victim impact statement is admissible as evidence on its production.

Sentences

6. (1) Subject to subsection (2), any person who is convicted of an offence referred to in section 3 is liable, on conviction to any sentence, as contemplated in section 276 or 297 of the Criminal Procedure Act which the court sentencing the person considers appropriate and which is within that court's penal jurisdiction.

(2) If a person is convicted of an offence referred to in section 3, the court that imposes the sentence must –

(a) if section 51 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), is not applicable; and

(b) in the case of –

(i) damage to, the loss of, or the destruction of, property or the loss of money;

(ii) physical, or other injury; or

(iii) loss of income or support,

suffered by the victim as a result of the commission of the offence, regard the fact that the person has been convicted of a hate crime, as an aggravating circumstance.

(3) Any person who is convicted of an offence referred to in

section 4 is liable, in the case of –

- (a) a first conviction, to a fine or to imprisonment for a period not exceeding three years, or to both such fine and imprisonment; and
- (b) any subsequent conviction, to a fine or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

Directives

7. The National Director of Public Prosecutions must, after consultation with the Director-General: Justice and Constitutional Development and the National Commissioner of the South African Police Service, issue directives regarding all matters which are reasonably necessary or expedient to be provided for and which must be complied with by all members of the prosecuting authority who are tasked with the institution and conducting of prosecutions in cases relating to hate crimes and hate speech in order to achieve the objects of this Act, including the following:

- (a) The manner in which cases relating to hate crimes and hate speech are to be dealt with, including –
 - (i) the circumstances in which a charge in respect of such an offence may be withdrawn or a prosecution stopped; and
 - (ii) the leading of relevant evidence indicating the presence of prejudice, bias or intolerance towards the victim in order to secure a conviction contemplated in section 3(2); and
- (b) the collection and analysis of information contemplated in section 8.

Reporting on implementation of Act

8. (1) The Minister must –
- (a) after consultation with the Cabinet member responsible for policing, make regulations on the information to be collected and collated by the South African Police Service; and

- (b) after consultation with the National Director of Public Prosecutions, make regulations on the information to be collected and collated by the national prosecuting authority,

in order to enable effective monitoring, analysis of trends and interventions and to provide quantitative and qualitative data, as may be prescribed.

(2) The information contemplated in subsection (1) must be made available in the prescribed manner and at the prescribed times to –

- (a) Parliament;
- (b) the Chairperson of the South African Human Rights Commission; and
- (c) the Chairperson of the Commission for Gender Equality.

Prevention of hate crimes and hate speech

9. (1) The State has a duty to promote awareness of the prohibition against hate crimes and hate speech, aimed at the prevention and combating of these offences.

(2) Without derogating from the general nature of the duty referred to in subsection (1), the Cabinet members responsible for the administration of justice, policing, communications, basic education and higher education and training, home affairs and labour must cause programmes to be developed in order to –

- (a) conduct education and information campaigns on the prohibition against hate crimes and hate speech aimed at the prevention and combating of these offences;
- (b) ensure that all public officials who may be involved in the investigation and prosecution of hate crimes and hate speech are educated and informed of the prohibition against these offences;
- (c) provide assistance and advice to any person who wants to lodge a complaint of a hate crime or hate speech; and
- (d) train public officials on the prohibition, prevention and combating of hate crimes and hate speech.

Regulations

10. (1) The Cabinet member responsible for the administration of justice may or must, where applicable, make regulations regarding any matter which is required or permitted by this Act to be prescribed by regulation or any other matter which is necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) Any regulations made under this section –

- (a) must be submitted to Parliament for approval 60 days prior to the publication thereof in the *Gazette*;
- (b) which are not approved within the 60 day period referred to in paragraph (a) are deemed to have been approved by Parliament; and
- (c) which may result in expenditure for the State must be made in consultation with the Minister of Finance.

(3) Regulations made in terms of this section may, in respect of any contravention or failure to comply therewith, prescribe as a penalty a fine or imprisonment for a period not exceeding 12 months.

Laws amended

11. The laws referred to in the second column of the Schedule are hereby amended to the extent indicated in the third column of the Schedule.

Short title and commencement

12. This Act is called the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE
AMENDMENTS**

(Section 11)

Number and year of law	Short title	Extent of amendment
Act No. 51 of 1977	Criminal Procedure Act, 1977	<p>1. The amendment of section 18—</p> <p>(a) by the substitution for paragraph (a) of the following paragraph: <u>"murder, including murder which constitutes a hate crime as contemplated in section 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016;"</u>;</p> <p>(b) by the substitution for paragraph (c) of the following paragraph: <u>"robbery, if aggravating circumstances were present or if the victim of the robbery was also a victim of a hate crime as defined in section 1 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016;"</u>; and</p> <p>(c) by the substitution for paragraph (f) of the following paragraph: <u>"rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, including rape or compelled rape which constitutes a hate crime as contemplated in section 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016;"</u>.</p> <p>2. The insertion after section 270 of the following section: "Hate crimes"</p> <p style="padding-left: 40px;"><u>270A.</u> <u>If the evidence on a charge for a hate crime as contemplated in section 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016, does not prove the commission of the offence so charged but proves the commission of the underlying offence on which the hate crime is based, the accused may be found guilty of the underlying offence in question so proved."</u></p> <p>3. The amendment of Schedule 5 by the insertion after the item 10 of the following item: <u>"Arson, housebreaking, whether under the common law or a statutory provision, with the intention to commit an offence, or an offence referred to in</u></p>

Number and year of law	Short title	Extent of amendment
		<p><u>section 1 of the Intimidation Act, 1982 (Act No. 72 of 1982), any of which constitutes a hate crime as contemplated in section 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016.</u>"</p> <p>4. The amendment of Schedule 6—</p> <p>(a) by the substitution in item 1 for paragraph (b) of the following paragraph:</p> <p style="padding-left: 40px;">“(b) the victim was –</p> <p style="padding-left: 80px;">(i) a law enforcement officer performing his or her functions as such, whether on duty or not, or a law enforcement officer who was killed by virtue of his or her holding such a position; [or]</p> <p style="padding-left: 80px;">(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1; or</p> <p style="padding-left: 80px;">(iii) <u>a victim of a hate crime as defined in section 1 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016;</u>”</p> <p>(b) by the substitution in paragraph (c) of item 1 for subparagraphs (i) and (ii) of the following paragraphs:</p> <p style="padding-left: 40px;">“(i) Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, <u>including rape or compelled rape which constitutes a hate crime as contemplated in section 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016;</u> or</p> <p style="padding-left: 40px;">(ii) robbery with aggravating circumstances <u>or if the victim of the robbery was also a victim of a hate crime as defined in section 1 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016;</u> or”;</p> <p>(c) by the deletion in item 2 of the word "or" at the end of paragraph (b)(ii);</p> <p>(d) by the insertion in item 2 of the word "or" at the end of paragraph (b)(iii);</p> <p>(e) by the addition in paragraph (b) of item 2 of the following subparagraph:</p> <p style="padding-left: 40px;">“(iv) <u>is a victim of a hate crime as defined in section 1 of the Prevention and</u></p>

Number and year of law	Short title	Extent of amendment
		<p style="text-align: right;"><u>Combating of Hate Crimes and Hate Speech Act, 2016; or</u>”;</p> <p>(f) by the substitution for item 4 of the following item: “Robbery[involving]— (a) <u>involving</u> the use by the accused or any co-perpetrators or participants of a firearm; (b) <u>involving</u> the infliction of grievous bodily harm by the accused or any of the co-perpetrators or participants; [or] (c) <u>involving</u> the taking of a motor vehicle; <u>or</u> (d) <u>where the victim is a victim of a hate crime as defined in section 1 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016.</u>”;</p> <p>and</p> <p>(g) by the insertion after the item 4 of the following item: “An offence referred to in section 1A of the <u>Intimidation Act, 1982 (Act No. 72 of 1982), which constitutes a hate crime as contemplated in section 4 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016.</u>”.</p>
Act No. 105 of 1997	Criminal Law Amendment Act, 1997	<p>1. The amendment of Part I of Schedule 2—</p> <p>(a) by the substitution in item 1 for paragraph (b) of the following paragraph: “(b) the victim was – (i) a law enforcement officer performing his or her functions as such, whether on duty or not; [or] (ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), at criminal proceedings in any court; <u>or</u> (iii) <u>a victim of a hate crime as defined in section 1 of the Prevention and Combating of Hate Crimes and Hate</u>”.</p> <p>(b) by the substitution in paragraph (c) of item 1 for subparagraphs (i) and (ii) of the following subparagraphs: “(i) Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, <u>including rape or compelled rape which constitutes a</u></p>

Number and year of law	Short title	Extent of amendment
		<p> <u>hate crime as contemplated in section 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016; or</u> (ii) robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977) or if the victim of the robbery was a victim of a hate crime as defined in section 1 of the <u>Prevention and Combating of Hate Crimes and Hate Speech Act, 2016;</u>". </p> <p>(c) by the substitution in paragraph (b) of item 2 for subparagraph (ii) of the following subparagraph: "(ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; [or]";</p> <p>(d) by the addition in paragraph (b) of item 2 of the following subparagraph: "(iv) <u>is a victim of a hate crime as defined in section 1 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016; or</u>";</p> <p>(e) by the deletion in paragraph (b) of item 3 of the word "or" at the end of subparagraph (ii);</p> <p>(f) by the addition in paragraph (c) of item 3 of the following subparagraph: "(iv) <u>is a victim of a hate crime as defined in section 1 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016; or</u>"; and</p> <p>(g) by the addition of the following item: <u>"An offence referred to in section 1A of the Intimidation Act, 1982 (Act No. 72 of 1982), which constitutes a hate crime as contemplated in section 4 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016."</u> </p> <p>2. The amendment of Part II of Schedule 2—</p> <p>(a) by the substitution for item 2 of the following item: "Robbery— (a) when there are aggravating circumstances; [or] (b) involving the taking of a motor vehicle; or (c) <u>where the victim is a victim of a hate crime as defined in section 1 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016.</u>"; and</p> <p>(b) by the addition of the following item: <u>"Arson, housebreaking, whether under the common</u> </p>

Number and year of law	Short title	Extent of amendment
		<p><u>law or a statutory provision, with the intention to commit an offence or an offence referred to in section 1 of the Intimidation Act, 1982 (Act No. 72 of 1982), any of which constitutes a hate crime as contemplated in section 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016."</u></p>
Act No. 75 of 2008	Child Justice Act, 2008	<p>The amendment of Schedule 3—</p> <p>(a) by the substitution for item 3 of the following item:</p> <p style="padding-left: 40px;">"3. <u>Murder, including murder which constitutes part of a hate crime as contemplated in section 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016."</u>;</p> <p>(b) by the substitution for items 6 and 7 of the following items, respectively:</p> <p style="padding-left: 40px;">"6. Robbery –</p> <p style="padding-left: 80px;">(a) where there are aggravating circumstances; [or]</p> <p style="padding-left: 80px;">(b) involving the taking of a motor vehicle; <u>or</u></p> <p style="padding-left: 80px;">(c) <u>where the victim is a victim of a hate crime as defined in section 1 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016.</u></p> <p style="padding-left: 40px;">7. Rape or compelled rape referred to in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No.32 of 2007), respectively, <u>including rape or compelled rape which constitutes a hate crime as contemplated in section 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016."</u>;</p> <p style="padding-left: 40px;">and</p> <p>(c) by the addition of the following item:</p> <p style="padding-left: 40px;"><u>"23. Arson, housebreaking, whether under the common law or a statutory provision, with the intention to commit an offence or an offence referred to in section 1 or 1A of the Intimidation Act, 1982 (Act No. 72 of 1982), any of which constitutes a hate crime as contemplated in section 3 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2016."</u></p>