MODELS OF LAWS PROHIBITING DISCRIMINATION, HARASSMENT AND HATE SPEECH BASED ON PERSONAL CHARACTERISTICS

Comparative legal review of harassment and sexual exploitation laws across the Commonwealth
Outline

The Legal Assistance Centre and Sisters For Change have compiled four separate volumes of appendices to accompany the EJA report, *Comparative legal review of harassment and sexual exploitation laws across the Commonwealth*. The appendices are available in PDF format and provide excerpts of legislation on discrimination, harassment and sexual exploitation from across the regions of the Commonwealth, as well as relevant international and regional conventions and directives.

Appendix 3 Models of laws prohibiting discrimination, harassment and hate speech based on personal characteristics includes excerpts of laws prohibiting discrimination and harassment based on personal characteristics, aggravated offences and laws prohibiting hate speech, hate crimes and inciting violence from across the regions of the Commonwealth – Africa, Asia, Caribbean and the Americas, Europe and Pacific – as well as international and regional conventions prohibiting discrimination.

About Legal Assistance Centre

The Legal Assistance Centre (LAC) is a public interest law centre in Namibia which strives to make the law accessible to those with the least access, through education, law reform, research, litigation, legal advice, representation and lobbying, with the ultimate aim of creating and maintaining a human rights culture in Namibia.

About Sisters For Change

Sisters For Change (SFC) is an international NGO working to eliminate discrimination and violence against women and girls worldwide through legal reform, legal empowerment, legal accountability and legal advocacy strategies. SFC works to generate systemic change in how governments combat violence, structural change to give women voice and agency in justice systems and social change to end the social acceptance of violence against women and girls. SFC is active in the UK, India and Indonesia. As a member of the Equality & Justice Alliance, SFC is working to reform laws that discriminate against women and girls and LGBT people across the Commonwealth. SFC is currently working with the Governments of Namibia, Saint Lucia and Samoa on technical assistance programmes and is a member of the SADC Parliamentary Forum’s Technical Working Group on the development of a Model Law on Gender-Based Violence.

For more information visit

www.sistersforchange.org.uk
Follow us on @sisters_4change
Registered Company No. 9136425
Registered Charity No. 1165647

Copyright © Sisters For Change 2020

This work can be copied, shared and distributed, in whole or in part, for research, educational and public policy purposes subject to the condition that the work is not altered or adapted and the Equality & Justice Alliance is acknowledged as author of the work.

This work has been commissioned by Sisters For Change, a member of the Equality & Justice Alliance, but it has not been approved by, nor does it represent the opinions of, any other member of the Alliance.

Design by Bright Design, elaine_craig@hotmail.com

Sisters For Change is grateful to the UK Government Foreign & Commonwealth Office for supporting the work of the Equality & Justice Alliance.
Contents

A. Laws prohibiting discrimination or harassment based on personal characteristics

06 Commonwealth Africa
06 Namibia
07 South Africa
10 Commonwealth Europe
10 United Kingdom: England & Wales
13 United Kingdom: Scotland
14 Commonwealth Pacific
14 Australia: New South Wales
15 Non-Commonwealth Countries
15 Hong Kong
15 United States of America: Colorado

B. Aggravated offences including harassment motivated by personal characteristics

17 Commonwealth
17 Caribbean and Americas
17 Canada: Federal legislation
17 Commonwealth Europe
18 United Kingdom: England & Wales
18 United Kingdom: Scotland

C. Laws prohibiting hate speech, hate crimes and inciting violence

21 Commonwealth Pacific
21 Australia: New South Wales
22 Commonwealth Africa
22 South Africa
24 Commonwealth Europe
24 United Kingdom: England & Wales

D. International and Regional Conventions prohibiting discrimination

27 International Convention on Civil and Political Rights 1966
28 International Convention on the Elimination of all Forms of Racial Discrimination 1966
30 Additional Protocol to the Convention on Cybercrime, concerning criminalisation of acts of a racist and xenophobic nature committed through computer systems 2003
31 African Union Convention on Cybersecurity and Personal Data Protection 2014
32 SADC Model Law on Computer Crime and Cybercrime 2013
32 Durban Declaration and Programme of Action 2001
Focus of review

1. Australia  Population of 25,499,884
2. Canada  Population of 37,742,154
3. Hong Kong  Population of 7,496,981
4. Namibia  Population of 2,494,530
5. South Africa  Population of 58,558,270
6. United Kingdom  Population of 67,530,172
7. United States of America  Population of 331,002,651
A. Laws prohibiting discrimination or harassment based on personal characteristics

5 Models of laws prohibiting discrimination, harassment and hate speech based on personal characteristics
A. Laws prohibiting discrimination or harassment based on personal characteristics

Commonwealth Africa

NAMIBIA


   Article 10 Equality and Freedom from Discrimination
   (1) All persons shall be equal before the law.
   (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

   Article 19 Culture
   Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.

   Article 21 Fundamental Freedoms
   (1) All persons shall have the right to:
       (a) freedom of speech and expression, which shall include freedom of the press and other media;
       ...
       (c) freedom to practise any religion and to manifest such practice;
       ...
   (2) The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

   Article 23 Apartheid and Affirmative Action
   (1) The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices.


   11. Inciting Racial Disharmony
   (1) No person shall publicly use any language or publish or distribute any written matter or display any article or do any act or thing with intent to -
       (a) threaten or insult any person or group of persons on the ground that such person belongs or such persons belong to a particular racial group; or
       (b) cause, encourage or incite hatred between different racial groups or persons belonging to different racial groups; or
       (c) disseminate ideas based on racial superiority.
A. Laws prohibiting discrimination or harassment based on personal characteristics

(2) For the purposes of subsection (1) “article” shall include any flag, insignia or emblem.

(3) No person shall establish, support or be a member of or participate in the activities of an organization or movement of which the aim is disseminate any ideas based on racial superiority aimed at members of any particular racial group or engage in activities aimed at causing, bringing about, promoting or contributing to any such disseminating of such ideas or engaging in such activities.

14. Offences and penalties

(1) Any person who contravenes any provision of sections 2 to 12, both inclusive, shall, subject to subsection (2), be guilty of an offence and on conviction be liable -

(a) in the case of an offence in terms of any of those sections, except section 11, to a fine not exceeding N$80 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; and

(b) in the case of an offence in terms of section 11, to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

(2) No person shall be convicted of an offence under subsection (1) of section 11 -

(a) if the act complained of was, at the time of the commission thereof, relevant to any subject of public interest, the discussion of which was for public benefit, and if on reasonable grounds such person believed the statement or statements concerned to be true; or

(b) if such person, in good faith and with the intention of removing matters tending -

(i) to threaten or to insult any racial group or any person belonging to such racial group; or

(ii) to cause, encourage or incite hatred between different racial groups or between persons belonging to different racial groups,

pointed out such matters; or

(c) if it is established that the language, publication or distribution complained of communicated the truth and that the main purpose thereof was to so communicate the truth and not to cause any of the acts referred to in that subsection.

16. Compensation for damages

(1) Whenever the court convicts any person of an offence under this Act, the court may, upon the application of the complainant, if he or she has suffered damage as a result of an act in respect of which that person was so convicted, award the complainant compensation for such damage.

SOUTH AFRICA


1. Definitions

“harassment” means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to-

(a) sex, gender or sexual orientation, or

(b) a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group;
A. Laws prohibiting discrimination or harassment based on personal characteristics cont

“HIV/AIDS status” includes actual or perceived presence in a person’s body of the Human Immunodeficiency Virus (HIV) or symptoms of Acquired Immune Deficiency Syndrome (AIDS), as well as adverse assumptions based on this status;

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

“marital status” includes the status or condition of being single, married, divorced, widowed or in a relationship, whether with a person of the same or the opposite sex, involving a commitment to reciprocal support in a relationship;

“pregnancy” includes any condition related to pregnancy, intended pregnancy, potential pregnancy or termination of pregnancy;

“prohibited grounds” are-

(a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and HIV/AIDS status; or

(b) any other ground where discrimination based on that other ground-
   (i) causes or perpetuates systemic disadvantage;
   (ii) undermines human dignity; or
   (iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a);

“sex” includes intersex;

11. Prohibition of harassment
No person may subject any person to harassment.

20. Institution of proceedings in terms of or under Act

(1) Proceedings under this Act may be instituted by-
   (a) any person acting in their own interest;
   (b) any person acting on behalf of another person who cannot act in their own name;
   (c) any person acting as a member of, or in the interests of, a group or class of persons;
   (d) any person acting in the public interest;
   (e) any association acting in the interests of its members;
   (f) the South African Human Rights Commission, or the Commission for Gender Equality.

(2) A person wishing to institute proceedings in terms of or under this Act must, in the prescribed manner, notify the clerk of the equality court of their intention to do so.

21. Powers and functions of equality court

(1) The equality court before which the proceedings are instituted in terms of or under this Act must hold an inquiry in the prescribed manner and determine whether unfair discrimination, hate speech or harassment, as the case may be, has taken place, as alleged.

(2) After holding an inquiry, the court may make an appropriate order in the circumstances, including –
   (a) an interim order;
   (b) a declaratory order;
   (c) an order making a settlement between the parties to the proceedings an order of the court;
   (d) an order for the payment of any damages in respect of any proven financial loss, including future loss, or in respect of impairment of dignity, pain and suffering or emotional and psychological suffering, as a result of unfair discrimination, hate speech or harassment in question
   (e) after hearing the views of the parties, or, in the absence of the respondent, the views of the complainant in the matter, an order for the payment of damages in the form of an award to an appropriate body or organization;
   (f) an order restraining unfair discriminatory practices or directing that specific steps be taken to stop the unfair discrimination, hate speech or harassment;
   (g) an order to make specific opportunities and privileges unfairly denied in the circumstances, available to the complainant in question;
A. Laws prohibiting discrimination or harassment based on personal characteristics

(h) an order for the implementation of special measures to address the unfair discrimination, hate speech or harassment in question;
(ii) an order directing the reasonable accommodation of a group or class of persons by the respondent;
(i) an order that an unconditional apology be made;
(k) an order requiring the respondent to undergo an audit of specific policies or practices as determined by the court;
(l) an appropriate order of a deterrent nature, including the recommendation to the appropriate authority, to suspend or revoke the license of a person;
(m) a directive requiring the respondent to make regular progress reports to the court or to the relevant constitutional institution regarding the implementation of the court’s order;
(n) an order directing the clerk of the equality court to submit the matter to the Director of Public Prosecutions having jurisdiction for the possible institution of criminal proceedings in terms of the common law or relevant legislation;
o a an appropriate order of costs against any party to the proceedings;
p o an order to comply with any provision of the Act.

(3) An order made by an equality court in terms of or under this Act has the effect of an order of the said court made in a civil action, where appropriate.

2. Prevention and Combating of Hate Crimes and Hate Speech Act 2018

3. Offence of hate crime

(1) A hate crime is an offence recognised under any law, the commission of which by a person is motivated by that person’s prejudice or intolerance towards the victim of the crime in question because of one or more of the following characteristics or perceived characteristics of the victim or his or her family member or the victim’s association with, or support for, a group of persons who share the said characteristics:

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

(2) 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).

(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.

Penalties or orders

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 of the following forms of penalties which the court sentencing the person considers appropriate and which is within that court’s penal jurisdiction:

(a) imprisonment, periodical imprisonment, declaration as an habitual criminal, committal to any institution established by law, a fine, correctional supervision or imprisonment from which a person may be placed under correction supervision, as contemplated in section 276 of the Criminal Procedure Act; or
A. Laws prohibiting discrimination or harassment based on personal characteristics cont

(b) postponement or suspension of the sentence or a caution or reprimand, as contemplated in section 297 of the Criminal Procedure Act.

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

Commonwealth Europe

UNITED KINGDOM
ENGLAND & WALES

1. Equality Act 2010

26 Harassment

(1) A person (A) harasses another (B) if-
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of-
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if-
(a) A engages in unwanted conduct of a sexual nature, and
(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if-
(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
(b) the conduct has the purpose or effect referred to in subsection (1)(b), and
(c) because of B’s rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account-
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are-
- age;
- disability;
- gender reassignment;
- race;
- religion or belief;
- sex;
- sexual orientation.
27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

2. Crime and Disorder Act 1998

... Part II – Racially or religiously aggravated offences: England and Wales

28. Meaning of “racially or religiously aggravated”

(1) An offence is racially or religiously aggravated for the purposes of sections 29 to 32 below if—
(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a racial or religious group; or
(b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

(2) In subsection (1)(a) above—
“membership”, in relation to a racial or religious group, includes association with members of that group;
“presumed” means presumed by the offender.

(3) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above whether or not the offender’s hostility is also based, to any extent, on any other factor not mentioned in that paragraph.

(4) In this section “racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

(5) In this section “religious group” means a group of persons defined by reference to religious belief or lack of religious belief.

29. Racially or religiously aggravated assaults

(1) A person is guilty of an offence under this section if he commits—
(a) an offence under section 20 of the Offences Against the Person Act 1861 (malicious wounding or grievous bodily harm); or
(b) an offence under section 47 of that Act (actual bodily harm); or
(c) common assault, which is racially or religiously aggravated for the purposes of this section.

(2) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable—
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.

(3) A person guilty of an offence falling within subsection (1)(c) above shall be liable—
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
A. Laws prohibiting discrimination or harassment based on personal characteristics cont

30. Racially or religiously aggravated criminal damage

(1) A person is guilty of an offence under this section if he commits an offence under section 1(1) of the Criminal Damage Act 1971 (destroying or damaging property belonging to another) which is racially or religiously aggravated for the purposes of this section.

(2) A person guilty of an offence under this section shall be liable -
   (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
   (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or to both.

(3) For the purposes of this section, section 28(1)(a) above shall have effect as if the person to whom the property belongs or is treated as belonging for the purposes of that Act were the victim of the offence.

31. Racially or religiously aggravated public order offences

(1) A person is guilty of an offence under this section if he commits -
   (a) an offence under section 4 of the Public Order Act 1986 (fear or provocation of violence);
   (b) an offence under section 4A of that Act (intentional harassment, alarm or distress);
   (c) an offence under section 5 of that Act (harassment, alarm or distress), which is racially or religiously aggravated for the purposes of this section.

(2) [Repealed]

(3) [Repealed]

(4) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable -
   (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(5) A person guilty of an offence falling within subsection (1)(c) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(a) or (b) above, the jury find him not guilty of the offence charged, they may find him guilty of the basic offence mentioned in that provision.

(7) For the purposes of subsection (1)(c) above, section 28(1)(a) above shall have effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.

32. Racially or religiously aggravated harassment etc.

(1) A person is guilty of an offence under this section if he commits -
   (a) an offence under section 2 or 2A of the Protection from Harassment Act 1997 (offences of harassment and stalking); or
   (b) an offence under section 4 or 4A of that Act (putting people in fear of violence and stalking involving fear of violence or serious alarm or distress), which is racially or religiously aggravated for the purposes of this section.

(2) [Repealed]

(3) [Repealed]

(4) A person guilty of an offence falling within subsection (1)(a) above shall be liable -
   (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(5) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(a) above, the jury find him not guilty of the offence charged, they may find him guilty of either basic offence mentioned in that provision.

(6) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(b) above, the jury find him not guilty of the offence charged, they may find him guilty of an offence falling within subsection (1)(a) above.

(7) [Repealed]
A. Laws prohibiting discrimination or harassment based on personal characteristics

SCOTLAND

Criminal Law (Consolidation) (Scotland) Act 1995 (as amended by the Crime and Disorder Act 1998)

50A Racially-aggravated harassment

(1) A person is guilty of an offence under this section if he -
   (a) pursues a racially-aggravated course of conduct which amounts to harassment of a person and-
      (i) is intended to amount to harassment of that person; or
      (ii) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment
           of that person; or
   (b) acts in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress.

(2) For the purposes of this section a course of conduct or an action is racially aggravated if -
   (a) immediately before, during or immediately after carrying out the course of conduct or action the offender evinces
       towards the person affected malice and ill-will based on that person’s membership (or presumed membership)
       of a racial group; or
   (b) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards members of a racial
       group based on their membership of that group.

(3) In subsection (2)(a) above-
   “membership”, in relation to a racial group, includes association with members of that group;
   “presumed” means presumed by the offender.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) above whether or not the offender’s malice
    and ill-will is also based, to any extent, on -
    (a) the fact or presumption that any person or group of persons belongs to any religious group; or
    (b) any other factor not mentioned in that paragraph.

(5) A person who is guilty of an offence under this section shall -
    (a) on summary conviction, be liable to a fine not exceeding the statutory maximum, or imprisonment for a period
        not exceeding six months, or both such fine and such imprisonment; and
    (b) on conviction on indictment, be liable to a fine or to imprisonment for a period not exceeding seven years, or both
        such fine and such imprisonment.

(6) In this section -
   “conduct” includes speech;
   “harassment” of a person includes causing the person alarm or distress;
   “racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship)
   or ethnic or national origins,
   and a course of conduct must involve conduct on at least two occasions.
A. Laws prohibiting discrimination or harassment based on personal characteristics cont

Commonwealth Pacific

AUSTRALIA
NEW SOUTH WALES

Crimes (Domestic and Personal Violence) Act 2007

21 Referral of matters to mediation

(1) If an application for an apprehended personal violence order is made to a court, the court:
(a) when considering whether to make the order—is to refer the protected person and the defendant for mediation under the Community Justice Centres Act 1983 unless it is satisfied that there is good reason not to do so, and
(b) at any other time—may refer the protected person and the defendant for mediation under that Act.

(2) Without limiting subsection (1), in determining whether there is good reason not to refer a matter to mediation, the court is to consider whether:
(a) there has been a history of physical violence to the protected person by the defendant, or
(b) the protected person has been subjected to conduct by the defendant amounting to a personal violence offence, or
(c) the protected person has been subjected to conduct by the defendant amounting to an offence under section 13, or
(d) the defendant has engaged in conduct amounting to harassment relating to the protected person’s race, religion, homosexuality, transgender status, HIV/AIDS infection or disability, or
(e) there has been a previous attempt at mediation in relation to the same matter and the attempt was not successful.

(2A) The existence of any one or more of the factors referred to in subsection (2) does not prevent a court from referring a matter to mediation.

53 Discretion to refuse to issue process in apprehended personal violence order matters

(1) An authorised officer or a Registrar may, in accordance with this section, refuse to issue process where an application for an apprehended personal violence order is made unless the application was made by a police officer.

(2) An authorised officer refuses to issue process by deciding not to issue a warrant referred to in section 88.

(3) A Registrar refuses to issue process by deciding not to sign and file an application notice.

(4) An authorised officer or a Registrar may refuse to issue process if satisfied that the application:
(a) is frivolous, vexatious, without substance or has no reasonable prospect of success, or
(b) could be dealt with more appropriately by mediation or other alternative dispute resolution.

(5) Unless satisfied that there are compelling reasons for doing so, an authorised officer or a Registrar is not to refuse to issue process if the application discloses allegations of any of the following:
(a) a personal violence offence,
(b) an offence under section 13,
(c) harassment relating to the protected person’s race, religion, homosexuality, transgender status, HIV/AIDS infection or disability.

(6) In determining whether or not to issue process, the authorised officer or Registrar must take the following matters into account:
(a) the nature of the allegations,
(b) whether the matter is amenable to mediation or other alternative dispute resolution,
(c) whether the parties have previously attempted to resolve the matter by mediation or other means,
(d) the availability and accessibility of mediation or other alternative dispute resolution services,
(e) the willingness and capacity of each party to resolve the matter otherwise than through an application for an apprehended personal violence order,
(f) the relative bargaining powers of the parties,
(g) whether the application is in the nature of a cross application,
(h) any other matters that the authorised officer or Registrar considers relevant.

(7) If the authorised officer or Registrar refuses to issue process under this section, the authorised officer or Registrar must record the reasons for doing so in writing.

(8) If a Registrar refuses to accept an application notice for filing, the question of whether the application notice is to be accepted for filing is to be determined by a Magistrate on the application of the applicant.
A. Laws prohibiting discrimination or harassment based on personal characteristics

Non-Commonwealth Countries

HONG KONG

The Race Discrimination Ordinance 2008

7. Racial harassment

(1) In any circumstances relevant for the purposes of any provision of this Ordinance, a person harasses another person if, on the ground of the race of that other person or a near relative of that other person, the first-mentioned person engages in unwelcome conduct (which may include an oral or a written statement), in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated by that conduct.

(2) In any circumstances relevant for the purposes of any provision of this Ordinance, a person (the first-mentioned person) harasses another person (the second-mentioned person) if, on the ground of the race of the second-mentioned person or his or her near relative, the first-mentioned person, alone or together with other persons, engages in conduct (which may include an oral or a written statement) that creates a hostile or intimidating environment for the second-mentioned person.

8. Meaning of race, on the ground of race, racial group and comparison of cases of persons or different racial groups

(1) In this Ordinance and subject to subsections (2) and (3)—

(a) race, in relation to a person, means the race, colour, descent or national or ethnic origin of the person;

(b) a reference to an act done on the ground of the race of a person is a reference to an act done on the ground of the race, colour, descent or national or ethnic origin of the person;

...

9. Act done for racial and other reason

If:

(a) an act is done for 2 or more reasons; and

(b) one of the reasons is the race of a person (whether or not it is the dominant reason or a substantial reason for doing the act),

then, for the purposes of this Ordinance, the act is taken to be done for the reason of the race of the person.

UNITED STATES OF AMERICA

COLORADO

Colorado Revised Statutes 2018

18-9-111. Harassment - Kiana Arellano’s law

(1) A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:

(a) Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact; or

(b) In a public place directs obscene language or makes an obscene gesture to or at another person; or

(c) Follows a person in or about a public place; or

(d) [repealed]

(e) Directly or indirectly initiates communication with a person or directs language toward another person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, computer system, or other interactive electronic medium in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, computer system, or other interactive electronic medium that is obscene; or

(f) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

(g) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another’s home or private residence or other private property; or
(h) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

(1.5) As used in this section, unless the context otherwise requires, “obscene” means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

(2) Harassment pursuant to subsection (1) of this section is a class 3 misdemeanor; except that harassment is a class 1 misdemeanor if the offender commits harassment pursuant to subsection (1) of this section with the intent to intimidate or harass another person because of that person’s actual or perceived race; color; religion; ancestry; national origin; physical or mental disability… or sexual orientation…

18-9-121. Bias-motivated crimes

(1) The general assembly hereby finds and declares that it is the right of every person, regardless of race, color, ancestry, religion, national origin, physical or mental disability, or sexual orientation to be secure and protected from fear, intimidation, harassment, and physical harm caused by the activities of individuals and groups. The general assembly further finds that the advocacy of unlawful acts against persons or groups because of a person's or group's race, color, ancestry, religion, national origin, physical or mental disability, or sexual orientation for the purpose of inciting and provoking bodily injury or damage to property poses a threat to public order and safety and should be subject to criminal sanctions.

(2) A person commits a bias-motivated crime if, with the intent to intimidate or harass another person because of that person’s actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation, he or she:
   (a) Knowingly causes bodily injury to another person; or
   (b) By words or conduct, knowingly places another person in fear of imminent lawless action directed at that person or that person’s property and such words or conduct are likely to produce bodily injury to that person or damage to that person's property; or
   (c) Knowingly causes damage to or destruction of the property of another person.

(3) Commission of a bias-motivated crime as described in paragraph (b) or (c) of subsection (2) of this section is a class 1 misdemeanor. Commission of a bias-motivated crime as described in paragraph (a) of subsection (2) of this section is a class 5 felony; except that commission of a bias-motivated crime as described in said paragraph (a) is a class 4 felony if the offender is physically aided or abetted by one or more other persons during the commission of the offense.

(3.5)(a) In determining the sentence for a first-time offender convicted of a bias-motivated crime, the court shall consider the following alternatives, which shall be in addition to and not in lieu of any other sentence received by the offender:
   (I) Sentencing the offender to pay for and complete a period of useful community service intended to benefit the public and enhance the offender’s understanding of the impact of the offense upon the victim;
   (II) At the request of the victim, referring the case to a restorative justice or other suitable alternative dispute resolution program established in the judicial district pursuant to section 13-22-313, C.R.S.

(b) In considering whether to impose the alternatives described in paragraph (a) of this subsection (3.5), the court shall consider the criminal history of the offender, the impact of the offense on the victim, the availability of the alternatives, and the nature of the offense. Nothing in this section shall be construed to require the court to impose the alternatives specified in paragraph (a) of this subsection (3.5).

(4) The criminal penalty provided in this section for commission of a bias-motivated crime does not preclude the victim of such action from seeking any other remedies otherwise available under law.

(5) For purposes of this section:
   (a) “Physical or mental disability” refers to a disability as used in the definition of the term “person with a disability” in section 18-6.5-102 (11).
   (b) “Sexual orientation” means a person’s actual or perceived orientation toward heterosexuality, homosexuality, bisexuality, or transgender status.
B. Aggravated offences including harassment motivated by personal characteristics

Commonwealth Caribbean and Americas

CANADA

FEDERAL LEGISLATION

Criminal Code 1985 (as amended in 2018)

718.2 Other sentencing principles

A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor.

Commonwealth Europe

UNITED KINGDOM

ENGLAND & WALES

Criminal Justice Act 2003

145. Increase in sentences for racial or religious aggravation

(1) This section applies where a court is considering the seriousness of an offence other than one under sections 29 to 32 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc).

(2) If the offence was racially or religiously aggravated, the court-

(a) must treat that fact as an aggravating factor, and

(b) must state in open court that the offence was so aggravated.

(3) Section 28 of the Crime and Disorder Act 1998 (meaning of “racially or religiously aggravated”) applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

146. Increase in sentences for aggravation related to disability, sexual orientation or transgender identity

(1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).

(2) Those circumstances are-

(a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on-
B. Aggravated offences including harassment motivated by personal characteristics  cont

(i) the sexual orientation (or presumed sexual orientation) of the victim,
(ii) a disability (or presumed disability) of the victim, or
(iii) the victim being (or being presumed to be) transgender, or

(b) that the offence is motivated (wholly or partly)—
(i) by hostility towards persons who are of a particular sexual orientation,
(ii) by hostility towards persons who have a disability or a particular disability, or
(iii) by hostility towards persons who are transgender.

(3) The court-
(a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and
(b) must state in open court that the offence was committed in such circumstances.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender’s hostility
is also based, to any extent, on any other factor not mentioned in that paragraph.

(5) In this section “disability” means any physical or mental impairment.

(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing
to undergo or having undergone a process or part of a process of gender reassignment.

SCOTLAND


96. Offences racially aggravated

(1) The provisions of this section shall apply where it is -
(a) libelled in an indictment; or
(b) specified in a complaint,
and, in either case, proved that an offence has been racially aggravated.

(2) An offence is racially aggravated for the purposes of this section if -
(a) at the time of committing the offence, or immediately before or after doing so, the offender evinces towards
the victim (if any) of the offence malice and ill-will based on the victim’s membership (or presumed membership)
of a racial group; or
(b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a racial group based
on their membership of that group,
and evidence from a single source shall be sufficient evidence to establish, for the purposes of this subsection,
that an offence is racially aggravated.

(3) In subsection (2)(a) above -
• “membership”, in relation to a racial group, includes association with members of that group;
• “presumed” means presumed by the offender.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) above whether or not the offender’s malice
and ill-will is also based, to any extent, on—
(a) the fact or presumption that any person or group of persons belongs to any religious group; or
(b) any other factor not mentioned in that paragraph.

(5) The court must -
(a) state on conviction that the offence was racially aggravated,
(b) record the conviction in a way that shows that the offence was so aggravated,
(c) take the aggravation into account in determining the appropriate sentence, and
(d) state -
   (i) where the sentence in respect of the offence is different from that which the court would have imposed
   if the offence were not so aggravated, the extent of and the reasons for that difference, or
   (ii) otherwise, the reasons for there being no such difference.

(6) In this section “racial group” means a group of persons defined by reference to race, colour, nationality (including
citizenship) or ethnic or national origins.
2. **Criminal Justice (Scotland) Act 2003**

74. **Offences aggravated by religious prejudice**

(1) This section applies where it is -

(a) libelled in an indictment; or
(b) specified in a complaint,

and, in either case, proved that an offence has been aggravated by religious prejudice.

(2) For the purposes of this section, an offence is aggravated by religious prejudice if -

(a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim’s membership (or presumed membership) of a religious group, or of a social or cultural group with a perceived religious affiliation; or
(b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group.

(2A) It is immaterial whether or not the offender’s malice and ill-will is also based (to any extent) on any other factor.

(3) [repealed]

(4) [repealed]

(4A) The court must -

(a) state on conviction that the offence was aggravated by religious prejudice,
(b) record the conviction in a way that shows that the offence was so aggravated,
(c) take the aggravation into account in determining the appropriate sentence, and
(d) state -

(i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
(ii) otherwise, the reasons for there being no such difference.

(5) For the purposes of this section, evidence from a single source is sufficient to prove that an offence is aggravated by religious prejudice.

(6) In subsection (2)(a) -

“membership” in relation to a group includes association with members of that group; and

“presumed” means presumed by the offender.

(7) In this section, “religious group” means a group of persons defined by reference to their -

(a) religious belief or lack of religious belief;
(b) membership of or adherence to a church or religious organisation;
(c) support for the culture and traditions of a church or religious organisation; or
(d) participation in activities associated with such a culture or such traditions.

3. **Offences (Aggravation by Prejudice) (Scotland) Act 2009**

1. **Prejudice relating to disability**

(1) This subsection applies where it is -

(a) libelled in an indictment, or specified in a complaint, that an offence is aggravated by prejudice relating to disability, and

(b) proved that the offence is so aggravated.

(2) An offence is aggravated by prejudice relating to disability if -

(a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will relating to a disability (or presumed disability) of the victim, or
(b) the offence is motivated (wholly or partly) by malice and ill-will towards persons who have a disability or a particular disability.

(3) It is immaterial whether or not the offender’s malice and ill-will is also based (to any extent) on any other factor.

(4) Evidence from a single source is sufficient to prove that an offence is aggravated by prejudice relating to disability.

(5) Where subsection (1) applies, the court must—
B. Aggravated offences including harassment motivated by personal characteristics cont

(a) state on conviction that the offence is aggravated by prejudice relating to disability,
(b) record the conviction in a way that shows that the offence is so aggravated,
(c) take the aggravation into account in determining the appropriate sentence, and
(d) state -
   (i) where the sentence in respect of the offence is different from that which the court would have imposed
      if the offence were not so aggravated, the extent of and the reasons for that difference, or
   (ii) otherwise, the reasons for there being no such difference.

(6) In subsection (2)(a), “presumed” means presumed by the offender.

(7) In this section, reference to disability is reference to physical or mental impairment of any kind.

(8) For the purpose of subsection (7) (but without prejudice to its generality), a medical condition which has (or may have) a substantial or long-term effect, or is of a progressive nature, is to be regarded as amounting to an impairment.

2. Prejudice relating to sexual orientation or transgender identity

(1) This subsection applies where it is -
   (a) libelled in an indictment, or specified in a complaint, that an offence is aggravated by prejudice relating to sexual orientation or transgender identity, and
   (b) proved that the offence is so aggravated.

(2) An offence is aggravated by prejudice relating to sexual orientation or transgender identity if -
   (a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence male and ill-will relating to -
      (i) the sexual orientation (or presumed sexual orientation) of the victim, or
      (ii) the transgender identity (or presumed transgender identity) of the victim, or
   (b) the offence is motivated (wholly or partly) by male and ill-will towards persons who have -
      (i) a particular sexual orientation, or
      (ii) a transgender identity or a particular transgender identity.

(3) It is immaterial whether or not the offender’s male and ill-will is also based (to any extent) on any other factor.

(4) Evidence from a single source is sufficient to prove that an offence is aggravated by prejudice relating to sexual orientation or transgender identity.

(5) Where subsection (1) applies, the court must—
   (a) state on conviction that the offence is aggravated by prejudice relating to sexual orientation or transgender identity,
   (b) record the conviction in a way that shows that the offence is so aggravated,
   (c) take the aggravation into account in determining the appropriate sentence, and
   (d) state-
      (i) where the sentence in respect of the offence is different from that which the court would have imposed
         if the offence were not so aggravated, the extent of and the reasons for that difference, or
      (ii) otherwise, the reasons for there being no such difference.

(6) In subsection (2)(a), “presumed” means presumed by the offender.

(7) In this section, reference to sexual orientation is reference to sexual orientation towards persons of the same sex or of the opposite sex or towards both.

(8) In this section, reference to transgender identity is reference to -
   (a) transvestism, transsexualism, intersexuality or having, by virtue of the Gender Recognition Act 2004 (c. 7), changed gender, or
   (b) any other gender identity that is not standard male or female gender identity.
C. Laws prohibiting hate speech, hate crimes and inciting violence

Commonwealth Pacific

AUSTRALIA
NEW SOUTH WALES

Crimes Act 1900 (as amended by the Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018)

93Z Offence of publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status

(1) A person who, by a public act, intentionally or recklessly threatens or incites violence towards another person or a group of persons on any of the following grounds is guilty of an offence:
   (a) the race of the other person or one or more of the members of the group,
   (b) that the other person has, or one or more of the members of the group have, a specific religious belief or affiliation,
   (c) the sexual orientation of the other person or one or more of the members of the group,
   (d) the gender identity of the other person or one or more of the members of the group,
   (e) that the other person is, or one or more of the members of the group are, of intersex status,
   (f) that the other person has, or one or more of the members of the group have, HIV or AIDS.

Maximum penalty:
   (a) in the case of an individual—100 penalty units or imprisonment for 3 years (or both), or
   (b) in the case of a corporation—500 penalty units.

(2) In determining whether an alleged offender has committed an offence against this section, it is irrelevant whether the alleged offender’s assumptions or beliefs about an attribute of another person or a member of a group of persons referred to in subsection (1) (a)–(f) were correct or incorrect at the time that the offence is alleged to have been committed.

(3) In determining whether an alleged offender has committed an offence against this section of intentionally or recklessly inciting violence, it is irrelevant whether or not, in response to the alleged offender’s public act, any person formed a state of mind or carried out any act of violence.

(4) A prosecution for an offence against this section is not to be commenced without the approval of the Director of Public Prosecutions.

(5) In this section:

**gender identity** means the gender related identity, appearance or mannerisms or other gender related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person’s designated sex at birth.

**Intersex** status means the status of having physical, hormonal or genetic features that are:
   (a) neither wholly female nor wholly male, or
   (b) a combination of female and male, or
   (c) neither female nor male.

**Public act** includes:
   (a) any form of communication (including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods) to the public, and
   (b) any conduct (including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia) observable by the public, and
   (c) the distribution or dissemination of any matter to the public.

For the avoidance of doubt, an act may be a public act even if it occurs on private land.
C. Laws prohibiting hate speech, hate crimes and inciting violence cont

*Race* includes colour, nationality, descent and ethnic, ethno-religious or national origin.

*Religious belief or affiliation* means holding or not holding a religious belief or view.

*Sexual orientation* means a person’s sexual orientation towards:
(a) persons of the same sex, or
(b) persons of a different sex, or
(c) persons of the same sex and persons of a different sex.

*Violence* includes violent conduct and *violence towards a person or a group of persons* includes violence towards property of the person or a member of the group, respectively.

Commonwealth Africa

SOUTH AFRICA


16. Freedom of Expression

(1) Everyone has the right to freedom of expression, which includes –
(a) freedom of the press and other media;
(b) freedom to receive or impart information or ideas;
(c) freedom of artistic creativity; and
(d) academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to –
(a) propaganda for war;
(b) incitement of imminent violence; or
(c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.


1. Definitions

“Prohibited grounds” are –
(a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or
(b) any other ground where discrimination based on that other ground –
(i) causes or perpetuates systemic disadvantage;
(ii) undermines human dignity; or
(iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a).

10. Prohibition of hate speech

(1) Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to –
(a) be hurtful;
(b) be harmful or to incite harm; or
(c) to promote or propagate hatred.
C. Laws prohibiting hate speech, hate crimes and inciting violence

(2) Without prejudice to any remedies of a civil nature under this Act, the court may, in accordance with section 21(2)(n) and where appropriate, refer any case dealing with the publication, advocacy, propagation or communication of hate speech as contemplated in subsection (1), to the Director of Public Prosecutions having jurisdiction for the institution of criminal proceedings in terms of the common law or relevant legislation.

... 12. Prohibition of dissemination and publication of information that unfairly discriminates
No person may –
(a) disseminate or broadcast any information;
(b) publish or display any advertisement or notice,
that could reasonably be construed or reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person: Provided that bono fide engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.

3. Prevention and Combating of Hate Crimes and Hate Speech Act 2018
... 4. Offence of hate speech
(1)(a) Any person who intentionally publishes, propagates or advocates anything or communicates to one or more persons in a manner that could reasonably be construed to demonstrate a clear intention to -
(i) be harmful or to incite harm; or
(ii) promote or propagate hatred, based on one or more of the following grounds:
(aa) age;
(bb) albinism;
(cc) birth;
(dd) colour;
(ee) culture;
(ff) disability;
(gg) ethnic or social origin;
(hh) gender or gender identity;
(ii) HIV status;
(ii) language;
(kk) nationality, migrant or refugee status;
(ll) race;
(mm) religion;
(nn) sex, which includes intersex; or
(oo) sexual orientation,
is guilty of an offence of hate speech.
(b) Any person who intentionally distributes or makes available an electronic communication which that person knows 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 that person knows 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) The provisions of subsection (1) do not apply in respect of anything done as contemplated in subsection (1) if it is done in good faith in the course of engagement in -
(a) any bona fide artistic creativity, performance or other form of expression, to the extent that such creativity, performance or expression does not advocate hatred that constitutes incitement to cause harm, based on one or more of the grounds referred to in subsection (1)(a);
(b) any academic or scientific inquiry;
(c) fair and accurate reporting or commentary in the public interest or in the publication of any information, commentary, advertisement or notice, in accordance with section 16(1) of the Constitution of the Republic of South Africa, 1996; or
C. Laws prohibiting hate speech, hate crimes and inciting violence cont

(d) the bona fide interpretation and proselytising or espousing of any religious tenet, belief, teaching, doctrine or writings, to the extent that such interpretation and proselytisation does not advocate hatred that constitutes incitement to cause harm, based on one or more of the grounds referred to in subsection (1)(a).

(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.

6. Penalties or orders

(1) Subject to subsection (2), any person who is convicted of an offence referred to in section 3 is liable, on conviction, to any of the following forms of penalties which the court sentencing the person considers appropriate and which is within that court’s penal jurisdiction:

(a) imprisonment, periodical imprisonment, declaration as an habitual criminal, committal to any institution established by law, a fine, correctional supervision or imprisonment from which a person may be placed under correction supervision, as contemplated in section 276 of the Criminal Procedure Act; or

(b) postponement or suspension of the sentence or a caution or reprimand, as contemplated in section 297 of the Criminal Procedure Act.

(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 a fine and such imprisonment; and

(b) any subsequent conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

Commonwealth Europe

UNITED KINGDOM
ENGLAND & WALES

Public Order Act 1986 [as amended in 2006]
Part III – Racial Hatred

17. Meaning of “racial hatred”

In this Part “racial hatred” means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

18. Use of words or behaviour or display of written material.

(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if-

(a) he intends thereby to stir up racial hatred, or

(b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.
C. Laws prohibiting hate speech, hate crimes and inciting violence

[3] [Repealed]

[4] In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

[5] A person who is not shown to have intended to stir up racial hatred is not guilty of an offence under this section if he did not intend his words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.

[6] This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

19. Publishing or distributing written material.

(1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if—
   (a) he intends thereby to stir up racial hatred, or
   (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

(2) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(3) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

27. Procedure and punishment.

(1) No proceedings for an offence under this Part may be instituted in England and Wales except by or with the consent of the Attorney General.

(2) For the purposes of the rules in England and Wales against charging more than one offence in the same count or information, each of sections 18 to 23 creates one offence.

(3) A person guilty of an offence under this Part is liable—
   (a) on conviction on indictment to imprisonment for a term not exceeding seven years or a fine or both;
   (b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

Part 3A – Hatred against persons on religious grounds or grounds of sexual orientation

29A. Meaning of “religious hatred”

In this Part “religious hatred” means hatred against a group of persons defined by reference to religious belief or lack of religious belief.

29AB. Meaning of “hatred on the grounds of sexual orientation”

In this Part “hatred on the grounds of sexual orientation” means hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both).

29B. Use of words or behaviour or display of written material

(1) A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred or hatred on the grounds of sexual orientation.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

(3) [Repealed]
C. Laws prohibiting hate speech, hate crimes and inciting violence

(4) In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

(5) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

29C. Publishing or distributing written material

(1) A person who publishes or distributes written material which is threatening is guilty of an offence if he intends thereby to stir up religious hatred or hatred on the grounds of sexual orientation.

(2) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

...  

29J. Protection of freedom of expression

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

29JA. Protection of freedom of expression (sexual orientation)

(1) In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.

(2) In this Part, for the avoidance of doubt, any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred.

...  

29L. Procedure and punishment

(1) No proceedings for an offence under this Part may be instituted except by or with the consent of the Attorney General.

(2) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 29B to 29G creates one offence.

(3) A person guilty of an offence under this Part is liable—
   (a) on conviction on indictment to imprisonment for a term not exceeding seven years or a fine or both;
   (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both...
D. International and Regional Conventions prohibiting discrimination

International Convention on Civil and Political Rights 1966

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   a. For respect of the rights or reputations of others;
   b. For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

UN Human Rights Committee Concluding Observations on Namibia 2016 (excerpts)

Non-discrimination

9. While noting the measures taken to eliminate discrimination, the Committee is concerned that protection against discrimination is insufficient. It is particularly concerned about:

   a. The prevalence of de facto racial discrimination, and discrimination against the indigenous peoples, as well as the significant number of laws remaining from the apartheid era, which discriminate on the basis of race, such as the rules on intestate succession according to the Native Administration Proclamation 15 of 1928;
   b. Discrimination, harassment and violence against LGBT persons, including cases of so-called “corrective rape” against lesbian women;
   c. Discrimination on the basis of sexual orientation not being explicitly prohibited, exclusion of sexual orientation as a prohibited ground for discrimination from the Labour Act No.11 of 2007, the maintenance of the common law crime of sodomy, the exclusion of same-sex partnerships from the Combating of Domestic Violence Act 4 of 2003 and the; and
   d. The continuing discrimination against persons with disabilities, as well as against persons who are HIV-positive, including in employment (arts. 2, 3, 7 and 26).

10. The State party should conduct extensive education and awareness-raising campaigns, involving and targeting traditional leaders and the general public, and targeting both children and adults to eliminate all forms of discrimination. It should:

   a. Repeal all laws that discriminate on the basis of race and finalise and adopt legislation on intestate succession so as to apply the same rules to all persons without discrimination;
   b. Adopt legislation explicitly prohibiting discrimination based on sexual orientation, including in the Labour Act No. 11 of 2007, as well as adopt hate crime legislation punishing homophobic and transphobic violence and vigorously enforce it; and same-sex partners; and
   d. Intensify efforts to combat discrimination against persons with disabilities and against persons who are HIV-positive, and ensure their full integration into all spheres of public life.

D. International and Regional Conventions prohibiting discrimination  cont

Namibia’s response to the UN Human Rights Committee (excerpts)  

Non-Discrimination

2. 10(b): The State party reiterate[s] that Namibian law do[es] not discriminate against any person. It is our submission that Article 10 of the Constitution guarantees equality and freedom from discrimination and prohibits discrimination on the grounds of sex, race, ethnic origin, religion, creed or social or economic status. In addition to the constitutional provisions, the Government has enacted legislation to address racial discrimination and promote equality, notably the Racial Discrimination Prohibition Act No. 26 of 1991, Affirmative Action (Employment) Act No. 29 of 1998 read in conjunction of the Labour Act No. 11 of 2007. Therefore, in terms of our laws it is very clear that the LGBT people are not discriminated or rejected by the Government because of their sexual preferences.

3. Furthermore, the Government adopted its first National Human Rights Action Plan (NHRAP) for the period 2015 to 2019 and mandated the Ombudsman to oversee and monitor the implementation of this Plan. The specific objectives under this Plan include enhancing affirmation of the rights of people with disabilities, indigenous peoples, women and LGBTIs; having information on the extent to which human rights of people with disabilities, indigenous peoples, women and LGBTIs were infringed upon; intensifying education and raising awareness; and implementation of legal and regulatory reforms that will give effect to non-discriminatory provisions in various international and regional instruments.

International Convention on the Elimination of all Forms of Racial Discrimination 1966

Article 2

1. State parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
   (a) each State party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
   (b) each State party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
   (c) each State party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
   (d) each State party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
   (e) each State party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. State parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

State parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.
**Article 4**

State parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

---

**Report of the Committee on the Elimination of Racial Discrimination on Namibia’s report during 2008**

**Recommendation No. 14**

29. The Committee is concerned that the 1998 Racial Discrimination Prohibition Amendment Act restricts the scope of the original law regarding the prohibition of hate speech by limiting the possibility to prosecute such acts only as crimen injuria. It regrets that it did not receive any information on concrete measures taken to ensure that verbal attacks on minority groups by Government officials or other actors are subject to sanctions. (Art. 4.)

The Committee recommends that the State party review its laws in order to prevent, combat and punish hate speech with a view to upholding the provisions of article 4 of the Convention. Recalling its general recommendation No. 15 (1993) on article 4 of the Convention, the Committee reminds the State party that the exercise of the right to freedom of opinion and expression carries special duties and responsibilities, and that the prohibition of the dissemination of ideas based on racial superiority or racial hatred is compatible with the right to freedom of opinion and expression. The State party is urged to take firm action to counter any tendency to target, stigmatize, stereotype or profile persons and communities on the basis of race, colour, descent, or national or ethnic origin, especially by politicians.

**Namibia’s response to the Report on the Committee on the Elimination of Racial Discrimination (excerpts)**

... 30. Namibia has taken note of the Committee’s concern and is in the process of reviewing the relevant legislation in a view to prevent, combat and punish hate speech.

31. The issue of racial comments came before our courts in 1995, Kauesa v. Minister of Home Affairs 1995 NR 102 (HC). In this case, Kauesa, a junior police officer appeared on national television and made racial comments against white police officers. The High Court stated that freedom of speech can be limited by the fundamental rights relating to dignity, equality and non-discrimination and legislation enacted in accordance with the Namibian Constitution, namely the Racial Discrimination Prohibition Act of 1991 and that a corollary to these was a prohibition on hate or racist speech, which the court defined as speech inciting hatred and prejudice on the grounds of race, colour, ethnic origin, creed or religion. The Court gave a number of compelling reasons why hate speech was not protected under the mantle of the freedom of speech and expression.
D. International and Regional Conventions prohibiting discrimination

Additional Protocol to the Convention on Cybercrime, concerning criminalisation of acts of a racist and xenophobic nature committed through computer systems 2003

Chapter I – Common provisions

Article 1 – Purpose
The purpose of this Protocol is to supplement, as between the Parties to the Protocol, the provisions of the Convention on Cybercrime, opened for signature in Budapest on 23 November 2001 (hereinafter referred to as “the Convention”), as regards the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Article 2 – Definition
1. For the purposes of this Protocol:
   “racist and xenophobic material” means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.
2. The terms and expressions used in this Protocol shall be interpreted in the same manner as they are interpreted under the Convention.

Chapter II – Measures to be taken at national level

Article 3 – Dissemination of racist and xenophobic material through computer systems
1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right the following conduct: distributing, or otherwise making available, racist and xenophobic material to the public through a computer system.
2. A Party may reserve the right not to attach criminal liability to conduct as defined by paragraph 1 of this article, where the material, as defined in Article 2, paragraph 1, advocates, promotes or incites discrimination that is not associated with hatred or violence, provided that other effective remedies are available.
3. Notwithstanding paragraph 2 of this article, a Party may reserve the right not to apply paragraph 1 to those cases of discrimination for which, due to established principles in its national legal system concerning freedom of expression, it cannot provide for effective remedies as referred to in the said paragraph 2.

Article 4 – Racist and xenophobic motivated threat
1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.

Article 5 – Racist and xenophobic motivated insult
1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics.
2. A Party may either:
   (a) require that the offence referred to in paragraph 1 of this article has the effect that the person or group of persons referred to in paragraph 1 is exposed to hatred, contempt or ridicule; or
   (b) reserve the right not to apply, in whole or in part, paragraph 1 of this article.
Article 6 – Denial, gross minimisation, approval or justification of genocide or crimes against humanity

1. Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right: distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party.

2. A Party may either
   (a) require that the denial or the gross minimisation referred to in paragraph 1 of this article is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise
   (b) reserve the right not to apply, in whole or in part, paragraph 1 of this article.

Article 7 – Aiding and abetting

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, aiding or abetting the commission of any of the offences established in accordance with this Protocol, with intent that such offence be committed.

African Union Convention on Cybersecurity and Personal Data Protection 2014

Article 1. Definitions

... 

Racism and xenophobia in information and telecommunication technologies means any written material, picture or any other representation of ideas or theories which advocates or encourages or incites hatred, discrimination or violence against any person or group of persons for reasons based on race, colour, ancestry, national or ethnic origin or religion...

Article 29. Offences specific to information and Communications Technologies

... 

3. Content related offences

1. State Parties shall take the necessary legislative and / or regulatory measures to make it a criminal offence to:

   ... 

   (e) Create, download, disseminate or make available in any form writings, messages, photographs, drawings or any other presentation of ideas or theories of racist or xenophobic nature through a computer system;

   (f) Threaten, through a computer system, to commit a criminal offence against a person for the reason that they belong to a group distinguished by race, colour, descent, national or ethnic origin or religion where such membership serves as a pretext for any of these factors, or against a group of persons which is distinguished by any of these characteristics;

   (g) Insult, through a computer system, persons for the reason that they belong to a group distinguished by race, colour, descent, national or ethnic origin, or religion or political opinion, if used as a pretext for any of these factors, or against a group of persons distinguished by any of these characteristics;

   (h) Deliberately deny, approve or justify acts constituting genocide or crimes against humanity through a computer system.
SADC Model Law on Computer Crime and Cybercrime 2013

3. Definitions

(18) Racist and xenophobic material means any material, including but not limited to any image, video audio recording or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

17. Racist and Xenophobic Motivated Insult

A person who, intentionally without lawful excuse or justification or in excess of a lawful excuse or justification insults publicly, through a computer system,

(a) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or

(b) a group of persons which is distinguished by any of these characteristics commits an offence punishable, on conviction, by imprisonment for a period not exceeding [period], or a fine not exceeding [amount], or both.

18. Denial of Genocide and Crimes Against Humanity

A person who, intentionally without lawful excuse or justification or in excess of a lawful excuse or justification distributes or otherwise makes available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, commits an offence punishable, on conviction, by imprisonment for a period not exceeding [period], or a fine not exceeding [amount], or both.

Durban Declaration and Programme of Action 2001

Author’s Note At the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, the international community adopted the Durban Declaration and Programme of Action. This document is a comprehensive and unequivocal statement against racism, racial discrimination, xenophobia and related intolerance. The participants approved a programme of action calling on governments to draw up their own plans of action to implement the recommendations of the Durban World Conference. The recommendations are non-binding, but they were supported by the Member States of the United Nations, including Namibia, and praised by Namibia. Amongst many measures aimed at discrimination and intolerance, the Programme of Action includes the following provisions which are particularly relevant to this discussion. Excerpts of Programme of Action are set out below.

Programme of Action Recognizing the urgent need to translate the objectives of the Declaration into a practical and workable Programme of Action, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance 2001

84. Urges States to adopt effective measures to combat criminal acts motivated by racism, racial discrimination, xenophobia and related intolerance, to take measures so that such motivations are considered an aggravating factor for the purposes of sentencing, to prevent these crimes from going unpunished and to ensure the rule of law;

89. Urges States to carry out comprehensive, exhaustive, timely and impartial investigations of all unlawful acts of racism and racial discrimination, to prosecute criminal offences ex officio, as appropriate, or initiate or facilitate all appropriate actions arising from offences of a racist or xenophobic nature, to ensure that criminal and civil investigations and prosecutions of offences of a racist or xenophobic nature are given high priority and are actively and consistently undertaken, and to ensure the right to equal treatment before the tribunals and all other organs administering justice.

123. Urges States:

(f) To support efforts to ensure safe school environments, free from violence and harassment motivated by racism, racial discrimination, xenophobia or related intolerance;

143. Expresses concern at the material progression of racism, racial discrimination, xenophobia and related intolerance, including their contemporary forms and manifestations, such as the use of the new information and communications technologies, including the Internet, to disseminate ideas of racial superiority;

147. Calls upon States to consider the following, taking fully into account existing international and regional standards on freedom of expression, while taking all necessary measures to guarantee the right to freedom of opinion and expression:

(a) Encouraging Internet service providers to establish and disseminate specific voluntary codes of conduct and self-regulatory measures against the dissemination of racist messages and those that result in racial discrimination, xenophobia or any form of intolerance and discrimination; to that end, Internet providers are encouraged to set up mediating bodies at national and international levels, involving relevant civil society institutions;

(b) Adopting and applying, to the extent possible, appropriate legislation for prosecuting those responsible for incitement to racial hatred or violence through the new information and communications technologies, including the Internet;

(c) Addressing the problem of dissemination of racist material through the new information and communications technologies, including the Internet, inter alia by imparting training to law enforcement authorities;

(d) Denouncing and actively discouraging the transmission of racist and xenophobic messages through all communications media, including new information and communications technologies, such as the Internet;

(e) Considering a prompt and coordinated international response to the rapidly evolving phenomenon of the dissemination of hate speech and racist material through the new information and communications technologies, including the Internet; and in this context strengthening international cooperation;

160. Urges States to take all necessary measures to address, as a matter of urgency, the pressing requirement for justice for the victims of racism, racial discrimination, xenophobia and related intolerance and to ensure that victims have full access to information, support, effective protection and national, administrative and judicial remedies, including the right to seek just and adequate reparation or satisfaction for damage, as well as legal assistance, where required;

161. Urges States to facilitate for victims of racial discrimination, including victims of torture and ill-treatment, access to all appropriate legal procedures and free legal assistance in a manner adapted to their specific needs and vulnerability, including through legal representation;

162. Urges States to ensure the protection against victimization of complainants and witnesses of acts of racism, racial discrimination, xenophobia and related intolerance, and to consider measures such as, where appropriate, making legal assistance, including legal aid, available to complainants seeking a legal remedy and, if possible, affording the possibility for non-governmental organizations to support complainants of racism, with their consent, in legal procedures;

165. Urges States to reinforce protection against racism, racial discrimination, xenophobia and related intolerance by ensuring that all persons have access to effective and adequate remedies and enjoy the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction for any damage as a result of such discrimination. It further underlines the importance of access to the law and to the courts for complainants of racism and racial discrimination and draws attention to the need for judicial and other remedies to be made widely known, easily accessible, expeditious and not unduly complicated; 166. Urges States to adopt the necessary measures, as provided by national law, to ensure the right of victims to seek just and adequate reparation and satisfaction to redress acts of racism, racial discrimination, xenophobia and related intolerance, and to design effective measures to prevent the repetition of such acts;