



***Campaign for Free Expression***

**Public Hearings on the  
Combating and  
Prevention of Hate  
Crime and Hate Speech  
Bill**

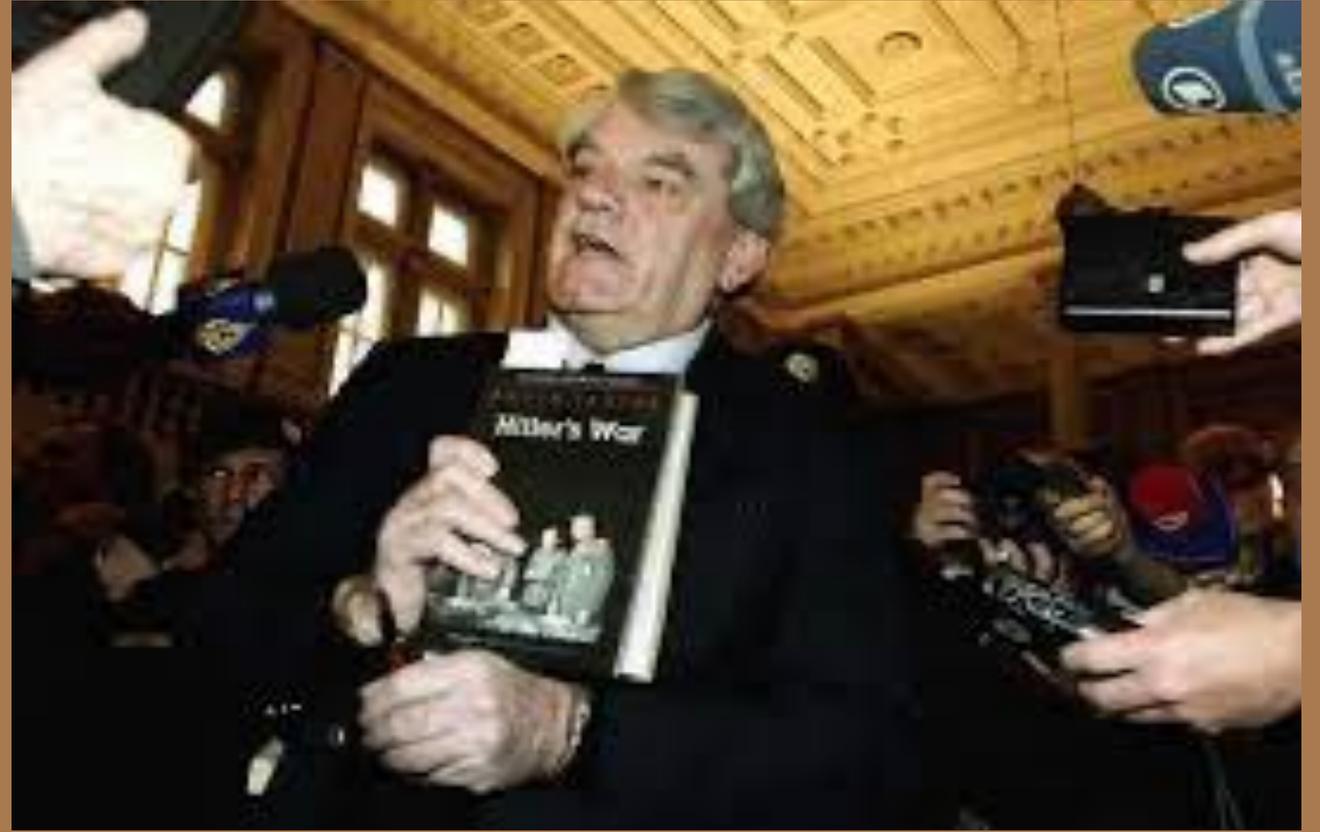
***18 May 2022***

**CFE is a registered PBO, a non-profit body dedicated to defending and expanding the right to free expression for all in Southern Africa. We are independent and fiercely non-partisan.**

(Par 3-5 of our submission)

PROTECTING AND EXPANDING  
THE RIGHT TO FREEDOM OF  
EXPRESSION FOR ALL

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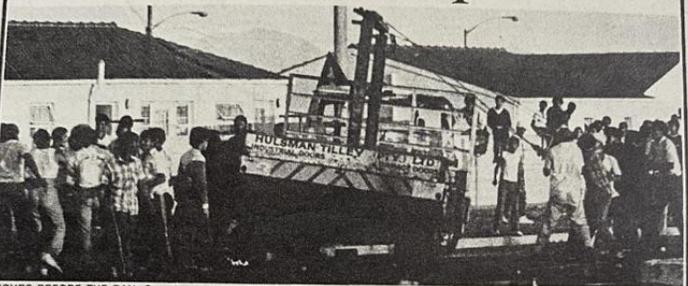
David Irving  
Anti-Semite and Holocaust denier  
(Par 37)

PROTECTING AND EXPANDING  
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EXPRESSION FOR ALL

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The Jo'burg joller's guide to the top clubs in town

The last unrest pictures



HOURS BEFORE THE BAN: Crowds overturn a truck in Mitchell's Plain. This may still be happening ... but you may never know

from the last moments



HOURS BEFORE THE BAN: A routine police road block in Kraaifontein last Friday. But it depicts policemen in action and would be illegal if it were taken today

before the blackout ...

THESE are the last lawfully photographed unrest pictures. They were taken in both Cape Town and Johannesburg, just hours before the government imposed the new press curbs last weekend.

Chances are they'll be the last such pictures we'll see. Which should not lead us to imagine that what we no longer see no longer happens.

The government has said that the new restrictions were intended to curb alleged abuses by foreign correspondents.

We don't believe them. We believe they are trying to hide from



THE CLAMP BEGINS: Colonel Fred Bull turns back pressmen covering a bomb blast last Friday.

the outside world — and from white South Africans — the events that are taking place in our townships.

We won't let them.

Despite all the restrictions, we will continue to tell you as much as we can about events in the townships and to penetrate the barriers the authorities are trying to erect around these areas.

They have stopped us from using pictures. They have not stopped us from using words. We can still find new ways to tell you what is happening in our country.

And we will.

WE'RE BACK ON THE STREETS! The paper that was seized last week will be on sale as usual from today

THE PAPER FOR A CHANGING SOUTH AFRICA

The EPG report: An extraordinary document made ordinary by our extraordinary times 8

A leaf-munching plan to beat malnutrition 7

FRONT PAGE COMMENT

Our lawyers tell us we can say almost nothing critical about the Emergency

But we'll try:

PIK BOTHA, the Minister of Foreign Affairs, told US television audiences this week that the South African press remained free. We hope that [redacted] was listening.

- They considered our publication subversive.
- If it is subversive to speak out against [redacted], we plead guilty.
- If it is subversive to express concern about [redacted], we plead guilty.
- If it is subversive to believe that there are better routes to peace than the [redacted], we plead guilty.

● To PAGE 2

RESTRICTED (Reports of these pages have been censored to comply with Emergency regulations)

The Weekly Mail Banned, prosecuted 1989 (Par 36)

PROTECTING AND EXPANDING THE RIGHT TO FREEDOM OF EXPRESSION FOR ALL

Campaign for Free Expression

**CFE abhors hate speech and welcomes  
appropriate measures to prevent and  
counter it**

**BUT**

**We do not believe it is productive or  
effective to criminalise hate speech**

PROTECTING AND EXPANDING  
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# Why we shouldn't criminalise hate speech

- The apartheid regime was infamous for criminalising speech – and it had the opposite effect of what they intended. (Par 36)
- Experience around the world – such as the banning of Nazi propaganda in German – shows that criminalisation often gives those who are prosecuted fame, attention and celebrity status. (Par 37)
- Criminalising speech will force it underground and encourage it spreading illegally.



# Why we shouldn't criminalise hate speech - cont

- There are already less restrictive means to deal effectively with hate speech in our law:
  - Equality Act (Qwelane case)
  - Crimen injuria (Penny Sparrow case; S vs Pistorius; etc)
  - Incitement (EFF case)
  - Assault  
(Pars 38-51)
- These existing laws will be bolstered by clause 3 of the Bill, which will deem such crimes and their punishment as more serious if they are motivated by hate – a move which we support.  
(Pars 52-52)



We therefore argue that the offences in clause 4 are not necessary to curb hate speech and should be scrapped.

But if not scrapped, then they should target only the *most* extreme expressions of hate speech, namely those the Constitution deems unworthy of protection.



## Other serious flaws in the Bill

- The criminal prohibitions target such a wide spectrum of speech that they would not stand constitutional scrutiny. This may be appropriate in the Equality Act, which is geared towards restorative justice, but not in a law that threatens prison.  
(Pars 57-61)
- The Bill imposes liability for hate speech without the accused having a guilty mind. Clause 4(2)(c) appears to require intention to publish, but not intention to cause harm. This goes against core principles of our criminal law.  
(Pars 62-71)



## Other serious flaws in the Bill

- The offence for sharing [4(1)(c)] and distributing [4(1)(c)] is too broad. One can be prosecuted even if one shares hate speech in order to expose it (as in the Penny Sparrow and Adam Catzavelos cases, both of whom were exposed by others who shared their racist material).

(Pars 76-83))

- S4(2)(c) makes an exception for the publication of any information, commentary , advertisement or notice “in accordance with Section 16 (1) of the Constitution. This is circular: it is in accordance with the Constitution if it is in accordance with the Constitution.

(Pars 84-87)



## Conclusion

We welcome clause 3 of the Bill, which makes hatred an aggravating factor for any crime.

We submit that clause 4 is already adequately dealt with in other civil and criminal laws.

For all these reasons, we believe the Bill in its present form will not pass the constitutional test.



Thank you.

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