

PROF JOANNA BOTHA: RESEARCH OUTPUTS

My research focuses on the development of a regulatory framework for hate crimes and hate speech which appreciates that inter-group hostility is linked to social hierarchies and the power dynamics between marginalised communities and those with 'in-group' status. I explore this issue by way of a contextually sensitive and people-orientated approach and with reference to South Africa's constitutional paradigm. My goal is to use engaged research to enhance the capacity of the law to advance meaningful change and development in an inclusive South Africa.

Articles Published in Accredited Journals

- "Reformulation of *Sub Judice* Rule & Prior Restraint of Publications Resolved: A Victory for Media Freedom - *Midi Television (Pty) Ltd v Director of Public Prosecutions (Western Cape)* 2007 9 BCLR 56 (RSA)" 2007 (28) 3 *Obiter*
- "Regulating cases of 'extreme hate speech' in South Africa: A suggested framework for a legislated criminal sanction" 2014 27 (2) *South African Journal of Criminal Justice* 117 (with Avinash Govindjee)
- "The Regulation of Racially Derogatory Speech in the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000" 2016 32 (2) *South African Journal of Human Rights* 293 (with Avinash Govindjee)
- "The State of Parliamentary Free Speech - *Democratic Alliance v Speaker of the National Assembly* 2016 (3) SA 487 (CC)" 2017 38 (3) *Obiter* 193
- "Prohibition through Confusion: Section 12 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000" 2017 28 (2) *Stellenbosch Law Review* 245 (with Avinash Govindjee)
- "Towards a South African 'Free Speech' Model" 2017 134 (4) *SALJ* 778
- "Hate Speech Provisions and Provisos: A Response to Marais and Pretorius and Proposals for Reform" 2017 20 *Potchefstroom Electronic Journal* 1-37 (with Avinash Govindjee) – cited by the Constitutional Court in *Qwelane v South African Human Rights Commission* [2021] ZACC 22
- "Of Semi-Colons and the Interpretation of the Hate Speech Definition in the Equality Act - *South African Human Rights Commission v Qwelane (Freedom of Expression Institute and Another as amici curiae)* [2017] 4 All SA 234 (GJ)" 2018 39 (2) *Obiter* 526
- "The ticking clock of prescription in cases of historical sexual abuse" 2018 (3) *SACJ* 361 (with André Mukheibir and Greg Mitchell)
- "The selection of victim groups in hate crime legislation" 2019 (136) *SALJ* 781
- "The enforceability of district municipality by-laws on local municipalities with reference to solid waste disposal" 2020 (31) 2 *Stell LR* 315 (with Nico de Villiers & Hennie van As)

- “Formulating a new conception of corruption via historical analysis” 2020 (83) *THRHR* 562 (with Cameron Cordell & Hennie van As)
- “‘Swartman’: Racial descriptor or racial slur? *Rustenburg Platinum Mine v SAEWA obo Bester* 2018 (5) SA 78 (CC)” 2020 (10) 1 *Constitutional Court Review X* 353
- “Ocean Governance and the Aporias of ‘Accounting’ and ‘Accountability’” 2021 (38) 2 *Alternation* (with Andrea Hurst, Dave Pittaway and Bernadette Snow)
- “The Constitutionality of the National Health Insurance Bill: The Treatment of Asylum Seekers” (with Priscilla Moyo and Avinash Govindjee) 2022 *PER*

Chapters in Books

- “A hate crime model for the South African context” in Strydom and Botha (eds) *Selected Essays on Governance and Accountability Issues in Public Law* (2020) 33 (co-editor of same book)
- “The Law of Insurance” in Govindjee et al *Commercial Law Fresh Perspectives* 2nd and 3rd editions
- Several chapters (Insurance, Competition Law, Surety & Other Forms of Security, Negotiable Instruments) in Fouche et al *Legal Principles of Contract and Commercial Law* (2012) and (2019)

Other relevant publications

- “Education” in De Feyter, Türkelli and de Moerloose *Encyclopaedia of Law and Development* (Edward Elgar), 2021.
- “Gender equality” in De Feyter, Türkelli and de Moerloose *Encyclopaedia of Law and Development* (Edward Elgar), 2021
- “Why precisely formulated laws governing racist speech are needed” *Business Day*, 10 October 2019
- “When is speech prohibited hate speech? The Constitution versus section 10(1) of the Equality Act – An analysis of the SCA judgment in *Masuku v South African Human Rights Commission obo the South African Jewish Board of Deputies* [2018] ZASCA 180” *e-Mantshi* Issue 149, January 2019
- “A comparison of sections 10 and 12 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the Equality Act) Part 1” *e-Mantshi* Issue 151, March 2019
- “A comparison of sections 10 and 12 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the Equality Act) Part 2” *e-Mantshi* Issue 152, April 2019
- “The EFF tweets no more – An analysis of *Manuel v EFF*” *e-Mantshi* Issue 155, August 2019

- “[Not] flying the flag: A saga of two cases– An analysis of Nelson Mandela Foundation Trust v Afriforum NPC (EQ02/2018) [2019] ZAEQC 2” *e-Mantshi* Issue 157, September 2019

Comments on Draft Legislation

- Comments on The Draft National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance 2016 – 2021: Submitted to DoJ & CD, Republic of South Africa, August 2016
- Comments on the Prevention and Combating of Hate Crimes and Hate Speech Bill: Submitted to DoJ & CD, Republic of South Africa, January 2017
- Comments on the Promotion of Equality and Prevention of Unfair Discrimination Amendment Bill, B-2021: Submitted to DoJ & CD, Republic of South Africa, May 2021 (with Rachel Chasakara and Dan Danisa)
- Comments on the Prevention and Combating of Hate Crimes and Hate Speech Bill: Submitted to DoJ & CD, Republic of South Africa, October 2021

Papers presented at International Conferences

- “The Definition of the Offence of Hate Speech in South Africa’s Prevention & Combating of Hate Crimes & Hate Speech Bill: A Developing Country Legal Perspective”, *Interdisciplinary Conference on Hate Speech: Definitions, Interpretations & Practices* (IHDIP), University of Cyprus, 9-11 June 2017
- “The Inter-Connection between Race and Law: Criminalising Racism in South Africa”, Workshop hosted by the Centre for Socio-Legal Studies and the *International Journal for Law in Context*, 12-13 June 2017 – one of ten submissions accepted internationally
- “Legislating Against Hate: A South African Perspective”, *International Hate Studies: Contexts and Consequences of Hate*, INHS Biennial Conference, May 29-31 2018, Oshawa, Canada
- “Democracy, Digitization and Hate Speech”, *The Future of Democracy – the Democracy of the Future: Digitisation and Democracy*, 4th bi-annual German – South African Dialogue on Democracy, 13 July 2018, Universität Mannheim, Germany
- “Poverty, Inequality and Transformative Constitutionalism in the South African context” LDRN 4th Annual Conference, *The Plurality of Law and Development*, Humboldt University, Berlin, September 2019
- “‘Go back to Europe’ – The Battle of Senekal”, *INHS Biennial Conference*, December 2020, virtual conference hosted by the University of Plymouth
- “Transformative constitutionalism: history in the making”, *6th Biennial Conference of the European Society for Comparative Legal History*, Lisbon, 22-24 June 2022 (with A Mukheibir)

- “Regulating freedom of expression on campus: the limits of academic freedom”, *World Congress of Constitutional Law*, Johannesburg, December 2022

Papers Presented at National Conferences

- “Criminal Liability for Cartel Directors: Taming the Tiger Within”, 2010 Private Law and Social Justice Conference
- “How Secret Should We Be? Freedom of Expression Threatened (Yet Again)”, 2011 Private Law and Social Justice Conference
- “Hatred, secrecy and prior restraint – is freedom of expression at risk?”, 2012 8th Annual Eastern and Western Cape Conference
- “Hate speech as a limitation to freedom of expression: Sticks and stones will break my bones, but hate speech may destroy me”, 2013 Private Law and Social Justice Conference
- “Does South Africa need a legislated hate speech crime?”, 2014 Private Law and Social Justice Conference
- “The Regulation of Racially Derogatory Speech in terms of PEPUDA”, 2016 Emerging Legal Scholarship Conference
- “In Pursuit of Effective Remedies for Hate Speech. A Public or Private Wrong?”, 2016 Private Law and Social Justice Conference
- “Remedies for Hate Speech: Common Law & Statutory Law – purposes and cross-purposes”, 2018 Private Law & Social Justice Conference (with André Mukheibir)
- “An Analysis of Section 4 of the Hate Bill”, 2019 Hate Bill Seminar, Joint Collaboration between Public Law, Nelson Mandela University & the UNESCO Chair for Human Rights and Public Authorities of the UPV/EHU of the Basque Country, Spain
- “‘Swartman’: Racial Descriptor or Racial Slur? Rustenburg Platinum Mine v SAEWA obo Bester [2018] ZACC 13; 2018 (5) SA 78 (CC)” – *Constitutional Court Review Conference*, Johannesburg, August 2019
- “Labelling Hate: Emotion, Morality & the Law”, 2021 Private Law & Social Justice Conference
- “Combatting gender-based violence through the private law of delict: developing a new standard for police liability”, 2022 Private Law & Social Justice Conference (with André Mukheibir)
- “The horizontal application of the environmental right”, 2022 Oceans, Justice and Human Rights Conference, hosted by Nelson Mandela University, November 2022