

Press Release

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South African Institute of Race Relations
The power of ideas

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Countering the hate propagated by Julius Malema is our collective responsibility – IRR

The South African public needs to be clear about one thing: Julius Malema propagates and encourages hate. It is directed against minorities. It is dangerous. And it must be condemned. The great risk we run is sliding into a debate about the kind of hate he advocates and its technical or legal character. It is hate and that is what should be of concern.

The IRR's understanding of hate speech is that, to qualify, an idea must threaten imminent harm. In our estimation, Malema's remarks did not, and thus do not qualify. But that they were hateful, we are in no doubt. And that is the point.

By no more than coincidence, we are thus in agreement with the SAHRC's conclusion. But so categorically wrong-headed was the SAHRC's logic, in law and principle, it almost makes that point moot.

- First, it is based on a rationale fundamentally at odds with the Constitution. We are all equal before the law, and due equal protection from it. To suggest some are more equal than others is anathema to very purpose of the rule of law.

- Second, although the IRR holds a different view, the SAHRC, from a strictly legal perspective, seems to have misread the law as established in the recent Velaphi Khumalo judgment. That judgment does not require an imminency threshold.

While there is a fight being waged in certain legal quarters to establish a clear set of overarching principles with regard to free speech, after years of confusion and contradiction, the South African public has no clear concept of what free speech means, in principle, in law or in politics.

Competing judgments over time, from institutions like the SAHRC, the Equality Court and the courts themselves, augmented by a political and majoritarian impulse to punish nothing more than offence, to ban and to prosecute ideas and prejudices, have produced a moral morass on the subject.

Certainly, the idea, in its best sense, is fighting for its life today. It has been systematically eroded. The SAHRC's reasoning only does more harm to it.

Regardless, Malema's remarks are hateful, and they are dangerous, and that critical point is all that needs to be said on the matter. To lose sight of that, to fail to properly act against it, or to surrender moral judgment to a legal technicality would be to absolve Julius Malema and the threat his hate represents. It must be countered.

The freedom to speak that underpins every free society is the fundamental bulwark against dangerous ideas. But it requires public, not merely legal, attention. Ideas can be dangerous, but banning ideas always is. It is for this reason that countering the real threat that nurturing hate in our society poses is a responsibility that falls primarily on the South African public.

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