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Dear Mr Mbeki

Regarding your feedback on the complaint I made on behalf of TLU SA against Cosatu, we would like to understand why you feel the Commission "advises it is not the best placed to assist you".

As far as we understand, the SAHRC's purpose is to protect, promote and monitor the implementation of human rights in South Africa. The SAHRC has a broad mandate to investigate, monitor, and report on human rights issues in South Africa, including violations of the Constitution, international human rights conventions and other South African laws. The SAHRC has the authority to receive and investigate complaints, conduct inquiries, initiate investigations and make recommendations to the government, civil society and other stakeholders. Its work helps to ensure that the rights enshrined in the Constitution are respected, protected and fulfilled. The SAHRC should create an environment where all South Africans are aware of their human rights and can actively participate in achieving the goal of a just and equitable society.

In your response, you mention that the "statement in question is potentially hurtful and offensive but does not constitute an incitement to hatred or harm. It does not constitute hate speech".

We concur that the statement is indeed hurtful and offensive but disagree with your assessment that it does not constitute an incitement to hatred or harm.

Act 4 of 2000 states that hate speech demonstrates a clear intention to be hurtful, harmful, incite, promote or propagate hate.

By your own admission, Cosatu's statements against farmers are hurtful, which according to the law, is hate speech.

Section 16 of the Constitution states that the right to freedom of expression does not extend to propaganda for war; incitement of imminent violence; or advocacy of hatred based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm. Retired judge of the Constitutional Court, Justice Johann van der Westhuizen, said that when speech is not used to communicate but is used as a weapon to injure, humiliate, scare, or intimidate, then it does not deserve the protection that free speech deserves as it is hate speech and does not deserve the protection.

In South Africa, farmers and farmworkers are extremely vulnerable to violent attacks and murder, especially after generalised (and false) public statements about farmers' conduct towards their workers, such as Cosatu did. Statements such as these are the only spark needed for violence in a country filled with tension because of unemployment, crime and biased political showboating.

In November 2022, the SAHRC found that the leader of the EFF, Julius Malema, and his supporters' posters during a rally in the Western Cape constituted hate speech because it incited violence. Why do these actions constitute hate speech, but calling farmers exploiters, abusers, rapists, and murderers does not?

TLU SA implores you to re-assess your finding on our complaint.

Kind regards,

Bennie van Zyl