

RACIAL DISCRIMINATION AND HATE SPEECH AGAINST MINORITIES IN SOUTH AFRICA SINCE 2020

A report by AfriForum

Submitted to the Committee on the
Elimination of Racial Discrimination (CERD)



AfriForum

AfriForum is a not-for-profit South African civil rights organisation. With more than 300 000 active members, AfriForum is the largest civil rights organisation in the Southern Hemisphere. AfriForum focuses on the rights of minorities such as Afrikaners and Afrikaans-speaking people on the one hand, while on the other also working continuously to protect the constitutional and civil rights of South Africans. AfriForum has been a member of the United Nations Economic and Social Council (ECOSOC) since 2020.

A report by Ernst van Zyl

Campaigns Officer: Strategy and content – AfriForum

Abbreviations used in this report

ANC	African National Congress
B-BBEE	broad-based black economic empowerment
BEE	black economic empowerment
DA	Democratic Alliance
EFF	Economic Freedom Fighters
SAHRC	South African Human Rights Commission
SCA	Supreme Court of Appeals

Content

Introduction and summary	1
Racially discriminatory laws and policies in the time of Covid-19 and beyond	1
Senekal and the “Kill the Boer” trial of Julius Malema/EFF	5
Conclusion	9

Introduction and summary

The world went into a strict Covid-19 lockdown in 2020. Travel was significantly restricted and, in some countries, banned altogether. Globally, the response of every country to the pandemic included a laundry list of new policies and legislation. Since 2020 South Africa has seen its fair share of new policies and legislation. However, many of these were tainted by the ruling African National Congress (ANC) party's racial agenda and their ideology of the so-called national democratic revolution.

This report seeks to document all the new discriminatory legislation, incidents and policies in South Africa that have been implemented or proposed, or have occurred since 2020. The report will also document some of the most prominent incidents of hate speech and incitement of violence against minorities by high profile figures in that same timeframe. References to and more details on every story, policy and incident documented in this report can be found in the footnotes.

AfriForum, which is an ECOSOC-registered NGO, wrote this report to provide CERD members with a more comprehensive description of the state of human rights in South Africa, particularly how minority communities are targeted through hate speech, incitement to violence and discriminatory legislation.

Racially discriminatory laws and policies in the time of Covid-19 and beyond

The South African government launched the R200 million Tourism Relief Fund in 2020 to provide support to small, micro- and medium-sized enterprises through grants. The fund aimed to assist tourism establishments such as resort properties, lodges and backpacker venues, bed and breakfasts, guest houses, restaurants (not attached to hotels), conference venues (not attached to hotels), car rental companies, tour operators and travel agents.¹ Notably, it was announced that this relief fund would be guided by broad-based black economic empowerment (B-BBEE) legislation, meaning the racial make-up of the ownership of these businesses determined whether their owners qualified to receive relief from the fund.² Mmamoloko Kubayi-Ngubane, the Minister of Tourism, justified the racial criteria for the fund and stated that it was “perfectly rational” to use B-BBEE compliance levels (racially discriminatory legislation) as part of the process to distribute the R200 million Tourism Relief Fund.³ Even during a pandemic – when businesses that are owned and operated by people of all races suffered and/or had to close their doors permanently – the ANC government still prioritised its racial agenda.

Many civil society organisations and political parties heavily criticised the race-based criteria of the Tourism Relief Fund. The Institute of Race Relations argued that the Minister of Tourism's stated

¹ Moodley, J. 2020. *Questions around fairness of business relief fund*. IOL, 17 April. Available at <https://www.iol.co.za/the-post/news/questions-around-fairness-of-business-relief-fund-46824585>. Accessed on 29 March 2022.

² Phakathi, B. 2020. Support for ailing tourism sector will be guided by BEE, says minister. *BusinessDay*, 7 April. Available at <https://www.businesslive.co.za/bd/national/2020-04-07-support-for-ailing-tourism-sector-will-be-guided-by-bee-says-minister/>. Accessed on 29 March 2022.

³ Ndaba, B. 2020. 'Perfectly rational' to use B-BBEE levels to distribute R200m relief, says tourism minister. IOL, 29 April. Available at https://www.iol.co.za/news/politics/perfectly-rational-to-use-b-bbee-levels-to-distribute-r200m-relief-says-tourism-minister-47324919?utm_source=twitter&utm_medium=social. Accessed on 29 March 2022.

intention to help only some people and not others based on the colour of their skin makes a mockery of South Africa's constitutional democracy.⁴ The Minister challenged the remarks made by the Democratic Alliance (DA) MP Hildegard Boshoff, who accused the Department of playing the “race card”. The Minister argued that her “white compatriots” who were B-BBEE non-compliant had chosen to ignore the laws of South Africa and therefore only had themselves to blame if they were to be excluded from the Tourism Relief Fund.⁵

AfriForum and the labour union Solidarity challenged the racially discriminatory relief fund in the Northern Gauteng High Court.⁶ In April 2020 the High Court ruled in favour of the Department of Tourism’s use of race as criterion when providing Covid-19-related relief to businesses in the tourism sector. AfriForum and Solidarity appealed the ruling.^{7, 8} In September 2021 the Supreme Court of Appeal (SCA) ruled in favour of AfriForum and Solidarity regarding the race criterion for payment in terms of the government’s Tourism Relief Fund, and declared it unconstitutional.⁹ The Department of Tourism announced that it would appeal the ruling, while AfriForum and Solidarity responded that the two organisations were ready to defend the ruling – namely that the Department’s Tourism Relief Fund is illegal – in the Constitutional Court.¹⁰ The Department of Tourism filed a notice of appeal in the Constitutional Court in late 2021. The Department of Tourism’s appeal case was heard in the Constitutional Court in 2022. The Department appealed the 2021 ruling by the Supreme Court of Appeals in Bloemfontein, which ruled in favour of AfriForum and Solidarity that the use of black economic empowerment (BEE) as criteria for the tourism fund is illegal. Judgment was reserved.¹¹

Also in 2020, AfriForum and Solidarity instructed their legal teams to bring an urgent application for review against Khumbudzo Ntshavheni, the Minister of Small Business Development, and her department over the use of BEE racial requirements in the provision of relief to small businesses that had applied for relief due to hardships brought on by the Covid-19 pandemic. This followed the statement by Ntshavheni in a parliamentary meeting that BEE requirements would apply when applications for relief were considered.¹² AfriForum and Solidarity obtained an interim interdict and are proceeding with the review application. The case is ongoing.

-
- ⁴ African News Agency. 2020. *Tourism minister's BEE plan amid coronavirus crisis mocks democracy, says IRR*. IOL, 12 April. Available at <https://www.iol.co.za/news/tourism-ministers-bee-plan-amid-coronavirus-crisis-mocks-democracy-says-irr-46615744>. Accessed on 29 March 2022.
- ⁵ Daniel, L. 2020. Tourism minister lashes out at BEE critics ahead of ConCourt challenge. *The South African*, 5 May. Available at <https://www.thesouthafrican.com/news/tourism-relief-fund-bee-codes-constitutional-court-challenge/>. Accessed on 29 March 2022.
- ⁶ AfriForum. 2021. *AfriForum and Solidarity approaches court over Department of Tourism's racist fund*. Available at <https://afriforum.co.za/en/afriforum-and-solidarity-approaches-court-over-department-of-tourisms-racist-fund/>. Accessed on 29 March 2022.
- ⁷ Khumalo, J. 2020. High Court in favour of tourism department using race as a criterion when providing Covid-19 relief. *City Press*, 30 April. Available at <https://www.news24.com/citypress/News/high-court-in-favour-of-tourism-department-using-race-as-a-criterion-when-providing-covid-19-relief-20200430>. Accessed on 29 March 2022.
- ⁸ AfriForum. 2020. *AfriForum to appeal against ruling that Department of Tourism is allowed to use race as criterion when allocating relief*. Available at <https://afriforum.co.za/en/afriforum-to-appeal-against-ruling-that-department-of-tourism-is-allowed-to-use-race-as-criterion-when-allocating-relief/>. Accessed on 29 March 2022.
- ⁹ Smith, C. 2021. *Use of BEE criteria for govt's R200m Covid-19 tourism relief is unlawful, SCA finds*. News24, 22 September. Available at <https://www.news24.com/fin24/companies/use-of-bee-criteria-for-govts-r200m-covid-19-tourism-relief-is-unlawful-sca-finds-20210922>. Accessed on 29 March 2022.
- ¹⁰ AfriForum. 2021. *AfriForum and Solidarity in Constitutional Court about illegal racial tourism fund*. Available at <https://afriforum.co.za/en/afriforum-and-solidarity-in-constitutional-court-about-illegal-racial-tourism-fund/>. Accessed on 29 March 2022.
- ¹¹ AfriForum. 2022. *AfriForum and Solidarity in court to oppose government's appeal in the discriminatory tourism fund case*. Available at <https://afriforum.co.za/en/afriforum-and-solidarity-in-court-to-oppose-governments-appeal-in-the-discriminatory-tourism-fund-case/>. Accessed on 16 November 2022.
- ¹² Dhlamini, S. 2020. *AfriForum and Solidarity seek legal application against Small Business Minister over Covid-19 relief funding*. Polity, 29 April. Available at <https://www.polity.org.za/article/afriforum-and-solidarity-seek-legal-application-against-small-business-minister-over-covid-19-relief-funding-2020-04-29>. Accessed on 29 March 2022.

In March 2021 AfriForum submitted commentary regarding the proposed amendments to the legal practitioner's B-BBEE legal sector code. In its commentary AfriForum expressed concern over the fact that it was becoming increasingly difficult for white legal practitioners to compete, because various major role-players in the industry (such as the Road Accident Fund) prefer to use black legal practitioners simply because of their race. AfriForum therefore criticised the new codes as racist, discriminatory and immoral.¹³

In January 2021 Solidarity wrote to the World Health Organization about concerns over the South African government's plans to apply BEE policies and criteria to the rollout of vaccines. This came after *Rapport*¹⁴ reported that President Cyril Ramaphosa informed a high-level ANC meeting that the rollout of vaccines would provide an opportunity to push BEE policies. Solidarity took the stance that the pandemic was threatening people's lives and that regulations should make it as easy as possible to acquire vaccines. Race-based barriers should not be part of this process.¹⁵

AfriForum also instructed its legal team to direct an attorney's letter to President Ramaphosa in which it requested written confirmation whether government intended to apply BEE measures and requirements to the procurement, distribution and administering of Covid-19 vaccines, as had been reported.¹⁶ In May 2021 AfriForum's application to halt any BEE requirements in the Covid-19 vaccine rollout was heard in the Northern Gauteng High Court. AfriForum requested the Court to compel Tito Mboweni, the Minister of Finance at the time, to use his discretion in terms of Section 3 of the Framework for Preferential Procurement Policy Act 5 of 2000, to exempt all state organs from applying BEE requirements (i.e., racial criteria) for vaccine procurement.¹⁷

In 2022 AfriForum lodged a formal complaint for unfair racial discrimination perpetrated by the Government's Gender-Based Violence and Femicide Response Fund and Tshikululu Social Investments, due to their discrimination against the TEARS foundation through their funding criteria. AfriForum acted on behalf of the TEARS foundation, a non-profit organisation that has been at the forefront of South Africa's response to sexual and gender-based violence since 2012. In their application process for funding from the organisations mentioned, TEARS was requested to identify the population group or racial identity of the directors and to submit a B-BBEE certificate or affidavit. The application process exclusively makes provision for the following population group categories: *African, Coloured, Foreign national and Other*. These stringent racial categories served as a clear barrier for TEARS to seek funding.¹⁸

The extent of race obsession in South Africa is demonstrated in this case, where an organisation that fights gender-based violence is barred from receiving funding because they do not meet BEE

¹³ AfriForum. 2021. *AfriForum to fight against new BEE codes for legal sector*. Available at <https://afriforum.co.za/en/afriforum-to-fight-against-new-bee-codes-for-legal-sector/>. Accessed on 29 March 2022.

¹⁴ De Lange, J. 2021. *Swart sakelui moet baat by entstof, sê Cyril*. Netwerk24, 24 January. Available at <https://www.netwerk24.com/netwerk24/Nuus/Politiek/swart-sakelui-moet-baat-by-entstof-se-cyril-20210124>. Accessed on 29 March 2022.

¹⁵ BusinessTech. 2021. *Warning over plan to use South Africa's Covid-19 vaccines for BEE*. 27 January. Available at <https://businesstech.co.za/news/trending/463564/warning-over-plan-to-use-south-africas-covid-19-vaccines-for-bee/>. Accessed on 29 March 2022.

¹⁶ AfriForum. 2021. *AfriForum writes attorney's letter to Ramaphosa requesting copy of proposed BEE vaccine policy*. Available at <https://afriforum.co.za/en/afriforum-writes-attorneys-letter-to-ramaphosa-requesting-copy-of-proposed-bee-vaccine-policy/>. Accessed on 29 March 2022.

¹⁷ Qukula, Q. 2021. *Court hears AfriForum's bid to block BEE vaccine policy*. CapeTalk, 20 May. Available at <https://www.capetalk.co.za/articles/416952/court-hears-afriforum-s-bid-to-block-bee-vaccine-policy>. Accessed on 29 March 2022.

¹⁸ AfriForum. 2022. *AfriForum lodges formal complaint at the Equality Court for illegal racial discrimination against TEARS Foundation*. Available at <https://afriforum.co.za/en/afriforum-lodges-formal-complaint-at-the-equality-court-for-illegal-racial-discrimination-against-tears-foundation/>. Accessed on 29 March 2022.

requirements. This case is further indicative of the racially discriminatory environment which the ANC has excused, fostered and encouraged through its racial agenda and policies in South Africa.

Despite the major failures of and damage caused by BEE and other racially discriminatory policies, the ANC appears determined to not only continue with these, but to intensify them. In June 2021 Thulas Nxesi, the Minister of Employment and Labour, said that the South African government will introduce new, stricter, more aggressive BEE laws to speed up racial transformation.¹⁹ South African business group Sakeliga criticised this move, stating that these new BEE laws would let the Minister “make up rules for himself”.²⁰

In September 2020 the Independent Communications Authority of South Africa announced its plans to introduce new BEE regulations for the information and communications technology sector before the end of the 2020/2021 financial year.^{21, 22} In November 2021 the South African government announced that stricter BEE laws are planned for South Africa in 2022.²³ In March 2022 the Financial Sector Conduct Authority published its draft strategy for promoting stricter racial transformation and BEE rules that are planned for South Africa’s banking and finance sector.²⁴

In February 2022, the organisation Sakeliga achieved victory in its campaign against racially discriminatory policies such as BEE when the Constitutional Court ruled that BEE regulations issued in 2017 by Pravin Gordhan, the former Minister of Finance, were invalid and unconstitutional. These regulations, issued under the Preferential Procurement Policy Framework Act 5 of 2000, allowed state organs to disqualify bidders from a tender if they were not 100% black owned.^{25, 26, 27} Following the Constitutional Court ruling, the National Treasury Director-General Dondo Mogajane issued a circular to government departments, stating that tenders advertised before 16 February 2022 must be finalised in terms of the Procurement Regulations struck down by the Constitutional Court, tenders advertised on or after 16 February 2022 must be held in abeyance, and no new tenders should be advertised. Against this background the ANC government therefore confirmed that its racial agenda is more important than service delivery. Clinic doctors may therefore soon be suffering shortages of essential equipment and firefighters will be without protective gear due to this ‘advisory’.²⁸

¹⁹ *BusinessTech*. 2021. Minister says South Africa will introduce stricter new BEE laws to speed up transformation. 25 June. Available at <https://businesstech.co.za/news/business/501301/minister-says-south-africa-will-introduce-stricter-new-bee-laws-to-speed-up-transformation/>. Accessed on 29 March 2022.

²⁰ *BusinessTech*. 2021. New BEE laws let minister ‘make up rules for himself’: business group. 14 April. Available at <https://businesstech.co.za/news/business/482921/new-bee-laws-let-minister-make-up-rules-for-himself-business-group/>. Accessed on 29 March 2022.

²¹ *BusinessTech*. 2020. New BEE rules planned for South African ICT companies. 8 September. Available at <https://businesstech.co.za/news/technology/432062/new-bee-rules-planned-for-south-african-ict-companies/>. Accessed on 29 March 2022.

²² *MyBroadband*. 2020. *New black ownership rules for South African ISPs and telecoms companies here soon*. 8 September. Available at <https://mybroadband.co.za/news/telecoms/366554-new-black-ownership-rules-for-south-african-isps-and-telecoms-companies-here-soon.html>. Accessed on 29 March 2022.

²³ *BusinessTech*. 2021. Stricter BEE laws planned for South Africa in 2022. 17 November. Available at <https://businesstech.co.za/news/business/538418/stricter-bee-laws-planned-for-south-africa-in-2022/>. Accessed on 29 March 2022.

²⁴ *BusinessTech*. 2022. Stricter transformation and BEE rules planned for South Africa’s banking and finance sector. 1 March. Available at <https://businesstech.co.za/news/banking/563564/stricter-transformation-and-bee-rules-planned-for-south-africas-banking-and-finance-sector/>. Accessed on 30 March 2022.

²⁵ *Minister of Finance v Afribusines NCP CCT 279/20*

²⁶ Sakeliga. 2022. *Sakeliga achieves first significant ConCourt roll-back of BEE*. Available at <https://sakeliga.co.za/en/sakeliga-achieves-first-significant-concourt-roll-back-of-bee/>. Accessed on 30 March 2022.

²⁷ *BizNews*. 2022. BEE abuse – eternal vigilance needed: Anthea Jeffery. 24 February. Available at <https://www.biznews.com/sa-investing/2022/02/24/bee-abuse-vigilance-needed>. Accessed on 30 March 2022.

²⁸ *BizNews*. 2022. When BEE matters more than service delivery. 7 March. Available at <https://www.biznews.com/thought-leaders/2022/03/07/bee-service-delivery>. Accessed on 30 March 2022.

Ramaphosa said in May 2022 that BEE policies are a crucial part of economic recovery after the pandemic.²⁹ These policies amount to racial discrimination. He also announced the appointment of a new broad-based black economic empowerment advisory council that will be responsible for advising the government on the “intensified transformation” of the economy.³⁰

AfriForum’s legal team directed a letter to Absa Bank in June 2022, demanding clarity on its use of racial criteria in granting business financing. AfriForum received complaints from members of the public about Absa’s alleged qualifying criteria for loans to small and medium enterprises. To qualify for such a loan, Absa requires applicants – among other requirements – to have at least 51% black ownership. These loans provide access to loan amounts between R50 000 and R1,5 million for new and existing businesses with a minimum of 51% black ownership in all sectors, except agriculture.³¹

In October 2022 an internal memorandum leaked at the second largest retail pharmacy chain, Dis-Chem. In it, CEO Ivan Saltzman had announced a moratorium on the appointment of white people, including external appointments and internal promotions. Their reasoning was that Dis-Chem is a JSE-listed company and that this justified the harsh, discriminatory measures to keep the company profitable and to avoid a potential fine of 10% of its turnover.³² After significant public outrage and the threat of legal action from the trade union Solidarity, Dis-Chem retracted the letter, but stated that it would still apply the discriminatory policy.³³ Solidarity has since undertook to serve its first legal papers on Dis-Chem.³⁴

Senekal and the “Kill the Boer” trial of Julius Malema/EFF

Senekal

In 2020 Brendin Horner, a 21-year-old farm manager, was stabbed, strangled and tied to a pole by his attackers. This brutal murder of a young man on a farm sent shockwaves through the community and inspired thousands to gather in the town of Senekal to protest farm murders.³⁵ Horner’s murder was not an isolated incident, as AfriForum’s extensive 2022 report on farm attacks and murders³⁶ demonstrated. Between 2016 and 2021, 364 verified farm murders took place in South Africa.³⁷ Horner’s murder was simply the last straw for the community concerned.

²⁹ Njilo, N. 2022. BEE is crucial part of economic recovery after pandemic, says Cyril Ramaphosa. *BusinessDay*, 30 May. Available at <https://www.businesslive.co.za/bd/national/2022-05-30-bee-is-crucial-part-of-economic-recovery-after-pandemic-says-cyril-ramaphosa/>. Accessed on 30 May 2022.

³⁰ *BusinessTech*. 2022. Ramaphosa appoints BEE council in big transformation push for South Africa. 1 June. Available at <https://businesstech.co.za/news/business/592462/ramaphosa-appoints-bee-council-in-big-transformation-push-for-south-africa/>. Accessed on 9 June 2022.

³¹ AfriForum. 2022. *AfriForum challenges Absa on racially discriminatory criteria for business financing*. Available at <https://afriforum.co.za/en/afriforum-challenges-absa-on-racially-discriminatory-criteria-for-business-financing/>. Accessed on 17 June 2022.

³² *BusinessTech*. 2022. Dis-Chem responds to outrage and boycott over ‘no whites’ letter. 18 October. Available at <https://businesstech.co.za/news/business/635475/dis-chem-responds-to-outrage-and-boycott-over-no-whites-letter/>. Accessed on 16 November 2022.

³³ Wilson, N. 2022. *Dis-Chem withdraws memo on barring hiring whites, but says intention remains*. *News24*, 17 October. Available at: <https://www.news24.com/fin24/companies/just-in-dis-chem-withdraws-moratorium-on-hiring-of-whites-20221017>. Accessed on 16 November 2022.

³⁴ Venter, Z. 2022. Dis-Chem faces court challenge by Solidarity over controversial ban on employing, promoting white people. *IOL*, 26 October. Available at <https://www.iol.co.za/pretoria-news/news/dis-chem-faces-court-challenge-by-solidarity-over-controversial-ban-on-employing-promoting-white-people-932c825e-2f04-4cc3-8514-623a23e31034>. Accessed on 16 November 2022.

³⁵ Head, T. 2020. Free State farm murder: Two arrested for ‘torturing and killing’ 21-year-old. *The South African*, 4 October. Available at <https://www.thesouthafrican.com/news/free-state-farm-murder-who-killed-brendin-horner-suspects-arrested/>. Accessed on 30 March 2022.

³⁶ AfriForum. 2022. *Trends in farm murders and an analysis of arrests and prosecutions 2016-2021*. Available at <https://afriforum.co.za/wp-content/uploads/2022/03/Trends-in-farm-murders-and-an-analysis-of-arrests-and-prosecutions-2016-2021.pdf>. Accessed on 1 April 2022.

³⁷ AfriForum. 2022. *364 farm murders in six years, only 33% of those arrested convicted*. Available at <https://afriforum.co.za/en/364-farm-murders-in-six-years-only-33-of-those-arrested-convicted/>. Accessed on 1 April 2022.

At the second gathering of protestors in Senekal in October 2020, the EFF showed up for a “counter protest”. At this “counter protest” EFF leader Julius Malema claimed the following in his speech: “... there is no farm murders in South Africa. There are no white farmers being killed in South Africa.” In addition, he called white South Africans “visitors” to South Africa.³⁸ EFF supporters also chanted the infamous song “Kill the Boer! Kill the farmer!” outside the Magistrate’s Court in Senekal, where the accused murderers of Horner were being tried, and while the family of the victim were inside the court.³⁹ Farm murder denialist Julius Malema was photographed sitting next to Police Minister Bheki Cele in court that day.^{40, 41}

In 2020 the DA laid criminal charges against EFF MP Mbuyiseni Ndlozi for incitement to arson in Senekal on 16 October 2020. Ndlozi sang a song which translated to “call the fire brigade and burn these Boers”.⁴² Four days later, runaway fires destroyed 100 000 hectares of farmland in the same province.⁴³

The AfriForum vs Julius Malema/EFF trial

[In this section all timestamps in the footnotes refer to the two saved livestreams on YouTube of Julius Malema’s testimony. The link to each video can be found in the footnote attached to the title for day 1 and day 2 in this section.]

AfriForum’s hate-speech case against Julius Malema, leader of the EFF, Mbuyiseni Ndlozi and the EFF was heard in the Southern Gauteng High Court in Johannesburg in February 2022. AfriForum lodged its complaint in October 2020 after supporters of the EFF sang “Kill the Boer! Kill the farmer!” outside the Magistrate’s Court in Senekal, where those accused of 21-year-old farm manager Brendin Horner’s murder were being tried.

This case is of particular significance due to how it lays bare the political zeitgeist that is reigning in South Africa, where prominent political leaders and their supporters show no remorse for farm murder victims, often deny that this unique crime exists, and even call for violence and killing of people or an entire race group collectively.

Day 1 of the cross-examination of Julius Malema⁴⁴

During the trial, Malema refused to condemn EFF supporters who sang “Kill the Boer! Kill the farmer!” at Senekal in 2020⁴⁵ after he was shown video evidence of the event.⁴⁴ (at 05:04:52) Malema justified their hate speech by arguing that his supporters “are angry”. It was presented⁴⁴ (at 05:11:33) to the court that Malema denied the occurrence of farm murders in his speech at Senekal.⁴⁶ Malema

³⁸ African Socialists. 2020. *Malema Senekal Full Speech*. [YouTube video]. 16 October. Available at <https://youtu.be/xblZh5TMP88>. Accessed on 30 March 2022.

³⁹ Netwerk24 Video. 2020. *KYK: Boere en EFF van aangesig tot aangesig in Senekal*. [YouTube video]. 16 October. Available at <https://youtu.be/hxpgP8WmwiQ>. Accessed on 30 March 2022.

⁴⁰ Nicolson, G. & Simelane, B. 2020. Street showdown at the Senekal corral as courtroom drama unfolds. *Daily Maverick*, 16 October. Available at <https://www.dailymaverick.co.za/article/2020-10-16-street-showdown-at-the-senekal-corral-as-courtroom-drama-unfolds/>. Accessed on 1 April 2022.

⁴¹ Pelsler, W. [Twitter]. 16 October 2020. Available at <https://twitter.com/waldimar/status/1317029375368437761>. Accessed on 1 April 2022.

⁴² Benghu, C. 2020. Mbuyiseni Ndlozi’s ‘fire brigade’ song scores him a criminal charge from the DA. *TimesLive*, 23 October. Available at <https://www.timeslive.co.za/politics/2020-10-23-watch-mbuyiseni-ndlozis-fire-brigade-song-scores-him-a-criminal-charge-from-the-da/>. Accessed on 1 April 2022.

⁴³ McCain, N. 2020. *Runaway fires destroy 100 000 ha of Free State farmland*. News24, 20 October. Available at <https://www.news24.com/news24/southafrica/news/watch-runaway-fires-destroy-100-000ha-of-free-state-farmland-20201020>. Accessed on 1 April 2022.

⁴⁴ AfriForum. 2022. *Dag 7: AfriForum v Malema*. [YouTube video]. 16 February. Available at <https://youtu.be/X7HzQKOSNgg>. Accessed on 30 March 2022.

⁴⁵ AfriForum. 2022. *AfriForum v Malema*. [YouTube video]. 7 February. Available at <https://www.youtube.com/watch?v=N8w6wB8L-So>. Accessed on 1 April 2022.

⁴⁶ AfriForum. 2022. *AfriForum v Malema*. [YouTube video]. 7 February. Available at <https://youtu.be/N8w6wB8L-So?t=61>. Accessed on 30 March 2022.

was presented⁴⁴ (at 05:22:45) with two cases in which anti-white racial hatred can be clearly connected to farm attacks and murders. Malema denied⁴⁴ (at 05:28:28) that racial hatred could play a role in farm murders, even in the cases presented. When Malema was asked whether white people could be victims in South Africa, he answered: “No, not at the current moment. No, no, no, no.”⁴⁴ (at 05:50:56)

*Day 2 of the cross-examination of Julius Malema*⁴⁷

On 8 February 2022, day 2 of the trial, EFF supporters blocked the gate to the court when AfriForum’s team left the building. After being forced by the South African Police Service (SAPS) to disperse, they started chanting “Kill the Boer! Kill the farmer!” directly at the AfriForum team as they passed by⁴⁸ – the very song which the court case was about. When Malema was shown the video footage of this incident, he refused to condemn them and testified as follows: “I can sing it myself.”⁴⁷ (at 00:45:21)

When Malema was presented⁴⁷ (at 01:02:40) with a case where a mother and daughter were tortured to death and the words “Kill the Boer” were written in blood on the wall in their house, he dismissed it by calling it mere “criminality” and testified that he could not say whether racism was a motive in this particular murder.

Referring to past comments of Malema where he said: “We are not calling for the slaughtering of white people ... at least for now”,⁴⁹ Malema was asked whether he would pledge that he would never call for the slaughtering of white people.⁴⁷ (at 01:11:15) Malema responded that he easily would do so. Malema was then requested by advocate Oppenheimer to make such a pledge under oath, which Malema immediately refused. When Malema was asked whether it could be him in future who would indeed make such a call, he testified that he might call for the slaughtering of white people in future; he could not rule out the possibility.⁵⁰ It needs to be reiterated that Julius Malema is the leader of the third largest political party in South Africa and a Member of Parliament.

On day 1 of the cross-examination, when asked about his radical rhetoric,⁴⁴ (at 05:31:06),⁵¹ Malema testified: “I never said I’m someone moderate. I am very radical and very militant.” On day 2 of his cross-examination, Malema again described the EFF as a “very radical and militant” party.⁴⁷ (at 02:02:48) When asked whether he would endorse the use of violence to achieve the EFF’s revolutionary aims, Malema responded: “When the time comes, and the conditions on the ground necessitate that arms must be taken, we will do so without hesitation.” When Malema was asked if he was scared of killing, he responded: “I am not scared of killing. A revolutionary is a walking killing machine.”⁴⁷ (at 02:14:40)

Malema demonstrated his support for the idea of holding racial groups collectively accountable for crimes that they did not personally commit, exclusively based on their race.⁴⁷ (at 01:16:24) When asked whether he still believed that “all white people are criminals and should be treated as such”, as he has stated in the past,⁵² Malema answered: “Yes.”⁴⁷ (at 02:31:35)

⁴⁷ AfriForum. 2022. *Dag 8: AfriForum v Malema*. [YouTube video]. 17 February. Available at <https://youtu.be/ftV5q1NsdmM>. Accessed on 30 March 2022.

⁴⁸ Conscious Caracal. 2022. *EFF sings “Kill the Boer, the farmer” outside South Gauteng High Court in Johannesburg*. [YouTube video]. 9 February. Available at <https://www.youtube.com/watch?v=UE2djyYfvLo>. Accessed on 30 March 2022.

⁴⁹ Solidariteit. 2016. *Malema: We won't kill whites ... at least for now*. Available at <https://youtu.be/FrrlLQFbVOs>. Accessed on 30 March 2022.

⁵⁰ AfriForum. 2022. *Malema testifies that he may call for slaughtering of white people in the future*. Available at https://youtu.be/_D9CFwJJl8k. Accessed on 1 April 2022.

⁵¹ This timestamp refers to day 1 of the cross examination of Julius Malema.

⁵² IOL. 2011. *Malema: White people are criminals*. 8 May. Available at <https://www.iol.co.za/news/politics/malema-white-people-are-criminals-1065708>. Accessed on 30 March 2022.

When asked whether he would stop singing “Kill the Boer” if he saw that there was a risk that singing it would lead to murder,⁴⁷ (at 02:40:20) Malema answered: “No.” Advocate Oppenheimer told Malema:⁴⁷ (at 02:41:45) “The complainant has led evidence of someone whose wife was murdered in front of him, who is now paralyzed. He testified in this court. He said, whenever he hears that song [“Kill the Boer! Kill the farmer!”], it brings back the memory of that day. He broke into tears in this court. That is trauma. That is legitimate trauma. Does that evidence motivate you to stop singing that song?” Malema responded: “No.” Oppenheimer asked: “So that individual case would not move you?” Malema responds: “No, I am not moved.” When Oppenheimer asked Malema about the legitimate pain and trauma of farm attack survivors, Malema responded: “I said I am not moved. I said I am not moved. Let me repeat five times. I’m not moved by that case you brought here. I am not moved! And if that will make me lose this case, let me lose it! I am not moved.”⁴⁷ (at 02:44:30)

In August 2022 the Equality Court ruled that the chant “Kill the Boer” does not constitute hate speech.⁵³ After this verdict, EFF supporters proceeded to chant “Kill the boer, the farmer!” outside the South Gauteng High Court in the direction of AfriForum’s legal team.⁵⁴ In October 2022 the Equality Court granted leave to appeal in AfriForum’s “Kill the Boer” hate speech case against the EFF, Julius Malema and Mbuyiseni Ndlozi.⁵⁵

Further hate speech and incitement of violence by Julius Malema and the EFF since the 2022 “Kill the Boer” judgment

During a speech at the EFF’s Provincial People’s Assembly in the Western Cape in October 2022, EFF leader Julius Malema said, among other things, the following:⁵⁶

- In reference to an incident at Brackenfell High School in 2021 and footage of a white person “beating up” an EFF member, Malema questioned why the (white) person had not been located and taken to “an isolated space and attend to the guy properly” by EFF members, followed by Malema telling the audience of EFF members that: “You must never be scared to kill, a revolution demands that at some point there must be killing, because the killing is part of a revolutionary act.”⁵⁶ at 01:16-2:36
- “Why did Mandela take up a gun, he was the first soldier of uMkhonto we Sizwe to distribute roses? He took up a gun because the revolution had reached a point where there is no longer an alternative but to kill.”⁵⁶ at 02:38
- “Anything that stands in the way of the revolution must be eliminated.”⁵⁶ at 03:10
- “Revolutionaries when confronted by that situation will not think twice.”⁵⁶ at 03:35
- “The EFF must be known that it is not a playground for racists, that any racists that plays [sic] next to the EFF and threatens and beat up the membership and the leadership of the EFF, that is the application to meet your maker with immediate effect.”⁵⁶ at 03:49
- “Violence can only be ended with violence not any other necessary means.”⁵⁶ at 05:00

⁵³ AfriForum. 2022. *AfriForum to appeal ruling in Malema and EFF “Kill the Boer” case*. Available at <https://afriforum.co.za/en/afriforum-to-appeal-ruling-in-malema-and-eff-kill-the-boer-case/>. Accessed on 16 November 2022.

⁵⁴ Conscious Caracal. 2022. *EFF supporters chanting “Kill the boer, the farmer!” outside South Gauteng High Court (25/08/2022)*. [YouTube video]. 25 August. Available at <https://youtu.be/cE8wtaNOIko>. Accessed on 17 November 2022.

⁵⁵ AfriForum. 2022. *AfriForum granted leave to appeal against kill the Boer hate speech case ruling*. Available at: <https://afriforum.co.za/en/afriforum-granted-leave-to-appeal-against-kill-the-boer-hate-speech-case-ruling/>. Accessed on 16 November 2022.

⁵⁶ Economic Freedom Fighters. 2022. *CIC #JuliusMalema on the #EFF response to racism. Violence must be responded to with violence*. [YouTube video]. 16 October. Available at <https://youtu.be/pFUKWJjnEDc>. Accessed on 17 November 2022.

After a video of these comments was released, the South African Human Rights Commission (SAHRC) was inundated with complaints from public and civil society organisations. The SAHRC announced in November 2022 that they are of the opinion that certain parts of Malema’s speech individually and collectively constitute incitement to violence, hate speech and possibly other transgressions of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. The SAHRC also announced that it had sent Malema and the EFF a written notice that if they failed to “appropriately retract and apologise for the prima facie unlawful statements in question and give appropriate undertakings to desist from further promotion of hatred and violence on any ground” within ten days, the Commission would take the matter to the Equality Court.⁵⁷ In response to these demands, the EFF attacked the SAHRC in a media statement and stated that it would neither retract their statements, nor apologise.⁵⁸

Conclusion

AfriForum’s main aim with this report to CERD is to document in detail the continued discrimination and hate speech against minority communities in South Africa, as it pertains to the mandate of CERD. Hate speech, incitement of violence and discriminatory legislation against minorities in South Africa are growing issues and constitute an injustice that must be addressed. AfriForum hopes to play a key role in helping CERD to obtain a more complete understanding of racial discrimination in South Africa.

⁵⁷ SAHRC. 2022. *Media advisory: Complaints received against Mr Julius Malema and the EFF in respect of statements made during the October EFF Provincial People’s Assembly in the Western Cape*. 9 November. Available at <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/3348-media-advisory-complaints-received-against-mr-julius-malema-and-the-eff-in-respect-of-statements-made-during-the-october-eff-provincial-people-s-assembly-in-the-western-cape>. Accessed on 17 November 2022.

⁵⁸ EFF. 2022. *EFF refutes SAHRC’s statement on Malema’s kill comments*. 9 November. Available at <https://www.politicsweb.co.za/documents/sahrc-fails-to-appreciate-political-commentary-as->. Accessed on 17 November 2022.