



**Solidarity
Research Institute**

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Racism, hate speech and double standards:



Not a simple
black and white matter



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Introduction

Racism is a worldwide phenomenon and challenge and certainly not unique to South Africa. No country on earth is untouched by this ugly scourge and it has often led to bloodletting, wars and pogroms around the world. In multi-ethnic societies mutual respect, fairness and tolerance are of paramount importance for sociopolitical stability and sound race relations. Extremism and forced assimilation, on the other hand, provide the sparks that could ignite a racial powder keg and turn simmering tensions into a full-blown conflagration. Nobody wins in such situations, except maybe the extremists and their malignant agenda.

South Africa does have a fairly unique and well-documented political history. After the demise of apartheid, a new constitution was adopted and new, democratic institutions were created to usher in, and of course buttress, the democratic era. Considering our history, race relations have been relatively good over the past 23 years. People of all cultures and ethnicities work, eat, worship and shop in common spaces. A recent study by the South African Institute of Race Relations (SAIRR) among all racial groups showed that a mere 3% of South Africans regard racism as a serious unresolved problem, and that in fact it pales in comparison with issues such as joblessness and crime. They also found in a 2015 study that a solid 55% of all respondents thought race relations had improved since 1994. Only some 20% thought it had deteriorated.

But amidst this relative goodwill, there are warning signs that need some heeding lest they spiral out of control and cause the hard-fought gains to come crashing down. Enabled by the soapbox that social media offers, racists of all colours and stripes stereotype and abuse people of other races. Some even go much further and incite hatred and violence towards others, especially minorities. What is even more significant is how racism is being dealt with in South Africa, bearing mind the damage it could inflict on certain people, but also on society as a whole.

This report firstly takes a brief look at various cases – divided into white and black groups – of hate speech and racism that garnered various amounts of media attention over the last two years and that encompass these behaviours to various degrees. The profiles of the perpetrators, the contexts in which these comments are made, as well as the outcry, aftermath and punishment that followed these utterances are delineated and parsed. The case studies are by no means exhaustive and for the sake of space and relevance this section had to be delimited.

An analysis of the coverage and responses to these case studies have also been conducted. We are trying to answer the question whether racism is dealt with selectively in South Africa.

The white group

Penny Sparrow

Early in January 2016 little-known KwaZulu-Natal estate agent Penny Sparrow posted the following on Facebook:

These monkeys that are allowed to be released on New Year's eve and New Year's day on to public beaches towns etc obviously have no education what so ever so to allow them loose is inviting huge dirt and troubles and discomfort to others.

I'm sorry to say that I was amongst the revellers and all I saw were black on black skins what a shame. I do know some wonderful and thoughtful black people. This lot of monkeys just don't want to even try. But think they can voice opinions and get their way oh dear.

From now on I shall address the blacks of South Africa as monkeys as I see the cute little wild monkeys do the same, pick and drop litter.

With this tweet Sparrow brought upon herself the wrath of Twitter, the media and the South African public and gained instant infamy. She later deleted the post and apologised by saying she did not mean it personally, but it was too late and she faced harsh, and perhaps irreparable, consequences and widespread condemnation for her statements.

Firstly, Twitter lit up with criticisms and condemnation. The Mail&Guardian reported on 4 January 2016 that Twitter had erupted after KZN estate agent had called black people "monkeys". ENCA followed suit with a story headlined "#PennySparrowMustFall: Estate agent feels Twitter wrath after racist post" which detailed the righteous outrage on social media. Among many others taking to Twitter to condemn her offensive remarks, was Mike Sharman, who wrote: "Attention all racists, bigots and other broadcasters of hate. Make like a #pennysparrow and migrate elsewhere, indefinitely. Thank you." (City Press, 4 January 2016). Many other publications, such as The Citizen, City Press and Sunday World, reported on the anger Sparrow's comments had elicited on social media.

A Google search for this report, combining "Penny Sparrow" and "monkeys," generated a whopping 27 500 results. A quantitative analysis by the media intelligence firm Meltwater in February 2017 showed that there were 4 501 media reports on the Penny Sparrow story. She was, among others, denounced by the leader of the official opposition, Mmusi Maimane. The incident also prompted

Maimane to deliver a candid speech on racism at the Apartheid Museum in Johannesburg. This shows the magnitude of the fallout from her racist and ill-considered remarks.

However, Sparrow did not only suffer intense opprobrium, but the ANC dragged her to the Equality Court. She was duly convicted of hate speech and ordered to pay R150 000 to the Oliver & Adelaide Tambo Foundation. The court then referred the matter to the National Prosecuting Authority (NPA) for a criminal prosecution. The Scottburgh Magistrate's Court convicted her of *crimen injuria* and fined her R5 000 or 12 months imprisonment.

Moreover, the Minister of Human Settlements, Lindiwe Sisulu, had instructed the Estate Agency Affairs Board (EAAB) to investigate Sparrow and report on steps to be taken against her, if necessary (Politicsweb, 5 January 2016). Sisulu even met with representatives of the EAAB and Jawitz Properties, the property firm Sparrow had worked for at the time of the incident, to discuss Sparrow's comments. Sparrow had also resigned from her post at Jawitz and the latter was considering legal action for bringing their company into disrepute. "You cannot be an Estate Agent by day and in the evening you are posting racist comments and behaving in an unlawful and offensive way, our regulations and code of conduct must provide instruments for people like Penny Sparrow not to operate as Estate Agents, the EAAB must make sure, if it is not there in current regulations, those regulations must be amended to ensure that we root out racism in the sector, it is our responsibility as Government," Sisulu said.

As far as the SAHRC is concerned, serious and almost unprecedented action was taken. An investigation was launched of their own volition and in April 2016 the rights body indicated that due to the volumes of complaints received, it had instituted legal proceedings against Sparrow in the Equality Court (The Citizen, 13 April 2016). In a letter to complainant Gugu Mhlangu, SAHRC KwaZulu-Natal provincial manager, Tanuja Munnoo, stated that "due to the volume of complaints lodged against Ms Sparrow" at its various provincial offices, "the commission has decided to consolidate all the complaints and to institute legal proceedings" in the Equality Court. "Our head of legal services will be providing you with regular updates on the progress of the Equality Court application," Munnoo wrote.

However, in June 2016 it was reported that the case was yet to be finalised – six months after the events had occurred. SAHRC spokesperson Isaac Mangena merely stated that the commission was waiting for "other processes" to be finalised (News24, 17 June 2016). But by that time the Equality Court had already delivered its ruling in the case that the ANC brought before it, and further action (legal or otherwise) by the commission had, in effect, become unnecessary and futile. No further proof could be found of any further investigatory findings or orders by the SAHRC in this matter.

Chris Hart

Former Standard Bank economist Chris Hart landed himself in hot water on 3 January 2016 over the following remark on Twitter:

More than 25 years after Apartheid ended, the victims are increasing along with a sense of entitlement and hatred towards minorities...

An apology swiftly followed in the form of another tweet: "This tweet has caused offence – never intended for which I apologize wholeheartedly. Meant to be read in context of slow growth."

The outcry was loud and harsh and the consequences dire. A Meltwater search showed that the particular incident was reported on by the media 1 155 times in 2016 alone. A Google search combining "Chris Hart" with the words "entitlement" and "minorities" delivered close to 6 000 results. Standard Bank suspended Hart on 4 January, the very day that Sparrow made her disgraceful remarks, pending an inquiry into the events of his commentary (Fin24, 4 January 2016). The tweet drew wide criticism on social media with various people calling for Hart to be fired due to the "racist undertones" in his tweet (Mail & Guardian, 15 March 2016). A few days after the incident Sim Tshabalala, CEO of Standard Bank, wrote a heartfelt and forthright internal memo to his staff addressing the issues of racism, privilege and transformation. Whilst not naming Hart, it was an obvious attempt to defuse the crisis that ensued from the economist's tweet.

Soon after the incident the SAHRC said it was investigating Hart's comments, alongside Sparrow's, and noted its concern with the flurry of racist comments. At the time of writing, it was still not clear what the outcome of the Hart probe entailed. The ANC Youth League held a march to Standard Bank's headquarters on 7 January 2016 and threatened to boycott the bank if Hart was not fired. "We want him to get fired, because if they don't fire him, we are going to advise on an economic boycott. We are going to advise all Africans, in particular black people, that they must close their accounts with that bank because it is harbouring racists," ANCYL Gauteng chairperson Matome Chiloane said at the march (News24, 7 January 2016). The ANCYL handed a memorandum to Standard Bank's executive head in Gauteng, Joshua Zwane, during the march. Zwane told the crowd that the bank "as a good corporate citizen of this country" had distanced itself from Hart's tweet and immediately suspended him.

However, Hart was never fired by Standard Bank and two months later he resigned from his job and outlined his reasons for doing so as follows (BusinessTech, 15 March 2016):

I voluntarily resigned from Standard Bank in the wake of an unfortunate social media event at the start of the year. Although I have not been found guilty of any wrongdoing after extensive consultation, it is my preference to pursue alternative opportunities.

One of these opportunities includes the establishment of an impact investment fund aimed at job creation, while at the same time providing enhanced returns at lower risk for investors.

Another opportunity is in consulting and speaking where some of the challenges facing the South African economy and business community can be fully studied and analysed.

I am convinced that South Africa remains a high potential country if its socio-economic challenges are successfully addressed through appropriate public policy.

In addition, I hope to work with CPG and their South Africa Day project, which is aimed at nation building through grassroots community building and upliftment.

I strongly believe that a key cause of socio-economic problems is massive unemployment, and that job creation should be at the pinnacle of policy formulation.

South Africa's challenges are not insurmountable as long as our Constitution remains intact with the rights and freedoms embodied in it for the protection and benefit of all South Africans.

My engagement on Twitter is always intended to generate healthy and robust debate. It is also intended that we gain a greater understanding of issues and each other. There is no monopoly on right and being offensive is regrettable and not intended.

Justin van Vuuren

This Durban resident, who owns a mobile gym business, launched a profanity-laced tirade on Facebook shortly after the new year had commenced in 2016. In it, he called beachgoers "animals" and the "scum of the nation". "Go back to where you came from and take your 13 kids with you!" he wrote on his page. He offered an apology on the same day, but the damage had already been done despite him not specifying a race of people in this hate-filled diatribe.

This incident, together with the ones caused by Sparrow and Hart, had a snowball effect and dominated the media space for several days for days on end. A Meltwater

survey showed that the incident had been reported on 251 times in 2016. Soon after the incident, the ANC indicated their intention to lay charges of *crimen injuria* against Van Vuuren, Sparrow and Hart, in addition to laying formal complaints at the South African Human Rights Commission (SAHRC) (*Mail&Guardian*, 5 January 2016). The rights body then said in response that it noted with “serious concern” the alleged racist comments attributed to some people on social media. “The posts went viral sparking outrage in most South Africans who are committed to a country without discrimination and to overcoming the divisions entrenched by decades of inequality and oppression,” SAHRC spokesperson Isaac Mangena said (*The Citizen*, 5 January 2016). He added that the SAHRC was probing the comments and further legal steps may follow.

However, apart from the proliferation of promises by the SAHRC to probe the matter alongside other similar ones, no proof could be found that it did in fact conclude such an investigation and had delivered a ruling.

Van Vuuren also suffered commercial losses as sports and nutritional food company FutureLife decided to cease their sponsorship of Van Vuuren’s company, “dissociated” themselves from him and condemned his utterances (*SowetanLive*, 5 January 2016).

Mabel Jansen

In May 2016, High Court judge Mabel Jansen’s crude and disparaging generalisations about black culture were revealed when social activist Gillian Schutte posted some of their exchanges on Facebook. “In their culture a woman is there to pleasure them. Period. It is seen as an absolute right and a woman’s consent is not required,” one of the messages read. “Gang rapes of babies, daughters, and mothers [were] a pleasurable pass [sic] time,” read another. Schutte said she had decided to make the disclosures due to the fact that Jansen held such a high position and held people’s futures in her grasp (*IOL*, 10 May 2016). Jansen said she referred to specific cases and did not mean to generalise about black people as a group.

A wave of criticism and wrathful anger ensued and calls for her removal as judge quickly gathered pace. A petition calling for her removal gained traction on Facebook (*News24*, 9 May 2017). The petition on Amandla.mobi called on the Judicial Services Commission (JSC) and the department of Justice to remove her and gathered 1 400 signatures within a single day. A Meltwater search showed that the incident garnered 840 media reports. A Google search with the combination of the terms “Mabel Jansen” and “absolute right” delivered more than 3 500 results.

She was calumniated by the ANC Women’s League, the ANC called for her to be banned by all courts, the DA reported her to the South African Human Rights Commission (SAHRC) and Judicial Services Commission (JSC) and the Black

Lawyers' Association (BLA) called for her to step down or be removed (*IOL*, 10 May 2016). A complaint was also received from a Johannesburg advocate, Vuyani Ngalwana SC, said JSC spokesperson, Advocate Dumisa Ntsebeza. "The judge's comments that rape is part of black culture is not only hurtful and demeaning, but violates the Constitution," said the DA's MP Glynnis Breytenbach, a former prosecutor at the National Prosecuting Authority.

Almost immediately after these revelations Jansen went on special leave. Moreover, the JSC indicated that it would investigate Jansen's comments. She only appeared before the Judicial Conduct Committee (JCC) in January 2017 and it was decided that her racial remarks constituted a prima facie case of "gross incompetence" (*EWN*, 15 February 2017). The JCC recommended that the complaints be investigated and reported on by the Judicial Conduct Tribunal. The committee was concerned that, potentially at least, she could not be impartial when adjudicating cases involving a certain sector of society.

Notwithstanding an online petition in 2016 inviting complaints to the SAHRC, no evidence could be found of the SAHRC officially probing the matter, making any findings or issuing orders. Even a search containing her name on the SAHRC's website has delivered no results.

Matthew Theunissen

The 26-year-old jobless Capetonian inveighed on Facebook against sports ministers Fikile Mbalula's proposed ban on certain sporting tournaments due to a lack of transformation. Unfortunately, he completely defiled his valid criticism of a contestable decision with a string of crude racial epithets. "So no more sporting events for South Africa. I've never been more proud than to say our government is a bunch of K****s. Yes I said it so go f*** yourselves you black f***** c****".

His comments started trending heavily on social media, caused a massive uproar, and drew wide and high-profile condemnation. The search word, "Matthew Theunissen," combined with "racist" produced 3 250 Google results at the time of writing. The incident was reported on 553 times in 2016, according to data provided by news service Meltwater. Cape Town mayor, Patricia de Lille, instructed her office to investigate the incident (*Mail&Guardian*, 3 May 2016) and immediately reported him to the South African Human Rights Commission (SAHRC) (*News24*, 3 May 2016). Mbalula also weighed in on the matter and offered trenchant criticism of Theunissen's behaviour. He said people like Theunissen have no place in South African society and must be isolated (*Sport24*, 4 May 2016). "We owe no explanation to people like Matthew who have no national interest at heart but are blinded by

privilege thinking that some of our sporting codes are an exclusive property of a certain race in our society . . . Racists are but a small fascist minority to which we refuse to be distracted by their words and deeds in fulfilling our historic mission of building a non-racial, non-sexist, democratic and prosperous society,” Mbalula said in a statement issued by his department.

Theunissen swiftly apologised for his rantings and said on CapeTalk that it was “the biggest mistake I’ve made in my life” (*Sowetan*, 3 May 2016). “I have no excuse at all. I just wanted to apologise. I am truly sorry for using hurtful language,” he said. He said he made the post in anger. “I didn’t intend to say those words and I will regret it for the rest of my life.” Responding to Theunissen’s apology, a more magnanimous and conciliatory Mbalula replied that “the fact of the matter is that for anyone who spews racism, there must be consequences in this country ... black and white.” (*Sport24*, 6 May 2016).

Furthermore, the SAHRC meted out harsh punishment to Theunissen after he had voluntarily submitted himself to their investigation. The Commission ordered him to undergo rigorous remedial action and issue an unconditional apology (*The Citizen*, 11 June 2016). He was to perform community service of six months in a poor and disadvantaged area in Cape Town in the area of development in sports.

Furthermore, he had to conduct research on anti-racism, diversity, transformation and tolerance in the sports sphere – totally voluntary but at his own cost. He further had to undergo anger management therapy and refrain from using social media for 12 months whilst undergoing rehabilitation.

Vicky Momberg

Durban estate agent Vicky Momberg was caught on camera racially abusing black Johannesburg police officers in February 2016 after she had been smashed-and-grabbed in Northriding, Randburg. She used the k-word repeatedly, and called the officers arrogant, useless and clueless and threatened to run them over (eNCA, 18 June 2016). She said afterwards that she had been traumatised by the event and declined to comment further, but issued a belated apology.

The incident produced a fair amount of media buzz and all the prominent mainstream English media – such as *The Sowetan*, eNCA, EWN and *The Citizen* – repeatedly reported on it. A Google search with the terms and words “Vicky Momberg”, “black” and “officers” generated close to 800 results. The case was followed closely by the mainstream media. A Meltwater search revealed that the incident was reported on 419 times in 2016 alone.

The police retaliated by laying a charge of *crimen injuria* against Momberg. “We cannot have this type of thing in a democratic society,” acting National Police Commissioner Khomotso Phahlane said. National Police Service spokesperson Mashadi Selepe said it is sad that the country is still faced with this level of racist attacks (EWN, 18 June 2016). Even Arts and Culture Minister Nathi Mthethwa

weighed in and called Momberg's behaviour "appalling" and a disregard of the laws of the country. (EWN, n.d.) "All South Africans must reject them but also isolate those who display those racist tendencies amongst us because they should be social outcasts and this should be whether you are black or white," he said.

A short while after the first charge was laid by the police, the state decided to turn on the screws and added seven more charges of *crimen injuria* (SowetanLive, 1 August 2016). The case was still ongoing at the time of writing.

The SAHRC dawdled on this one after being approached by one of the police officers in February, but in June 2016 the rights body initiated a preliminary probe into the incident and announced it is taking Momberg to the Equality Court over her racist rant. "I can confirm that the case is before the court, but cannot divulge further information as the case is *sud-judice* (sic)," Gail Smith of the SAHRC said (eNCA, 23 June 2016). No further information on the progress in this case could be found. It has to be noted, however, that soon after the SAHRC indicated its intention to drag Momberg to court her charge sheet was augmented with the seven additional charges of *crimen injuria*. As in the case of Penny Sparrow, it became unnecessary to pursue the case further due to other parties taking much more stringent legal action.

The black group

Jacob Zuma

The president is arguably the most recognisable person in the country – and one of the most notorious too. Besieged by mounting corruption charges and declining popularity among large segments of the public, Zuma has resorted to divisive race rhetoric and generalisations on many occasions over the past few years in order to mobilise support on ethnic grounds.

For instance, during the ANC's 103rd birthday event in Cape Town in 2015, Zuma said Jan van Riebeeck's arrival in South Africa was the beginning of all South Africa's problems (City Press, 17 June 2016). "How can you say we told the Afrikaners to go? No, I said the problem began when Jan van Riebeeck came here," he said. According to him, Van Riebeeck's arrival paved the way for racial discrimination.

The president of a country, and especially Mr Zuma, is invariably under the spotlight and his comments drew great media attention and discussion. A Google search combining the terms "Jacob Zuma" and "Jan van Riebeeck" generated more than 22

000 results. A Meltwater search showed that the incident was reported on 117 times in 2016 alone whilst it took place in January 2015.

Several complaints about the incident were quickly lodged with SAHRC due to Zuma's extremely high profile and the extensive executive influence he wields as head of state. The rights body confirmed in February 2015 that it was indeed examining complaints of hate speech against Mr Zuma (News24, 18 February 2015). "We have accepted these complaints and have started with the investigation," SAHRC spokesperson Isaac Mangena said. The ANC's response this, via Keith Khoza, read as follows: "We believe that the president, whatever remarks he made, would be vindicated." A thorough Internet search showed no proof that the ANC ever denounced the president for those remarks or took special punitive measures against him. No evidence could also be found of any other political party, except the Freedom Front Plus who laid one of the charges at the SAHRC, condemning the remarks.

Zelda la Grange, former president Nelson Mandela's aide, was one of a handful of famous people to take aim at Zuma's remarks. In a response on her personal Twitter account she tweeted the following: "It's very clear from Jacob Zuma [that] whites are not wanted or needed in South Africa". However, she put herself in the firing line and copped a significant quota of criticism for it (EWN, 2015). Home Affairs Minister Malusi Gigaba's spokesperson, Mayihlome Tshwete, even directly accused her of racism, but offered no criticism of Zuma's own comments (Politicsweb, 18 January 2015). One of his tweets even intimated that the news service News24 is likely to report on it in a racially offensive way: "New24 (sic) Headlines be like: Poor Little Zelda Gets Attacked By Savages Who Don't Understand That They Are K*****." She was also attacked by such celebrities as 702 Talk Radio host Redi Tlhabi, and Kay Sexwale stated on Twitter that: "Zelda doesn't know her place. It's that simple."

In June 2016, the SAHRC set a new deadline of 4 July 2016 for Mr Zuma to reply to the complaints against him (News24, 17 June 2016). This was after the FF+ as one of the complainants had to bring an application in terms of the Promotion of Access of Information Act (PAIA) to force the SAHRC to provide information on the reason why no progress had been made with the investigation. Zuma also showed blatant disregard for an earlier deadline of 8 May 2015 to provide the SAHRC with a response, with the SAHRC taking no action against him. The SAHRC's response was that the many complaints on the matter had to be consolidated. No further developments a propos the SAHRC's handling of the matter could since be found.

Luvuyo Menziwa

Menziwa is an EFF Student Command senior official and former finance officer of the Student Representative Council (SRC) at the University of Pretoria. In August 2016, he railed against whites in a post laden thick with racial bigotry and an obvious desire to incite hatred and harm:

“F*** white people. Just get me a bazooka or AK-47 so I can do the right thing and kill these demon-possessed humans.”

When the media asked him to elaborate on his post, he offered an explanation that even the most credulous person would find odd and inadequate: “My intention was not to offend or threaten anyone, but to raise my grievances around the racism and lack of transformation. Unfortunately, with the emotions and so forth, I failed to elaborate further to clarify what I meant by bazooka and AK-47,” Menziwa said (IOL, 31 August 2016).

Solidarity spokesperson at Tuks, Jahni Crowley, said these comments should not be taken lightly. “Our members cannot be expected to turn up for work while a self-confessed murderous student is roaming free on campus,” she said. AfriForum Youth laid charges of crimen injuria, incitement to violence and intimidation against him at the police. The issue also garnered a fair amount of media attention. A Google search with Menziwa’s name and the term “bazooka” currently generates 3 600 results. A Meltwater search shows that the incident was reported on 131 times in 2016.

The university subsequently suspended Menziwa from the SRC pending an investigation by the student body (IOL, 31 August 2016). The university temporised with Menziwa’s case and several months later it is still not clear what his fate as a UP student is or whether he will be suspended.

It is unclear whether anyone laid a complaint with the SAHRC about Menziwa’s tirade, but intensive research did not show any signs that the SAHRC was involved in this relatively well-publicised case.

Lulu Xingwana

In response to the disabled athlete and convicted murderer Oscar Pistorius being granted bail after shooting and killing his girlfriend Reeva Steenkamp, the former Minister for Women, Children and People with Disabilities and also of Agriculture and Land Affairs depicted all Afrikaner men as inherently evil and murderous in a TV interview. "Young Afrikaner men are brought up in the Calvinist religion believing that they own a woman, they own a child, they own everything and therefore they can take that life because they own it."

This remark bears many similarities to the Jansen case that was discussed earlier in this document. And not unlike Jansen, she swiftly apologised after the incident. "It has become clear to me that my comments may have offended some members of our community. I would, accordingly, like to retract these remarks and apologise unconditionally to them," she said (News24, 27 February 2013).

A Google search combining "Lulu Xingwana" with "Calvinist" and "Afrikaner men" delivered a fairly meagre 904 results at the time of writing. The outcry was a very one-sided affair with the Afrikaanerbond and AfriForum slamming the remarks and the latter taking the matter to the Equality Court (News24, 27 February 2013). An Afrikaans-speaking Pretoria resident also laid a criminal charge of hate speech and crimen injuria against Xingwana. The Christian Democratic Party also took serious exception to her comments, but only on religious grounds. "Many non-Afrikaners, black and white, are members of Calvinist churches and her latest statement could be considered as religious intolerance," CDP spokesperson Reverend Theunis Botha said. The DA also took umbrage and its leader, Mmusi Maimane, said the following in a statement: "It is utterly unacceptable for Minister Xingwana to suggest that any South African culture is conducive to murder." (Polity.org.za, 27 February 2013).

Apart from that, no proof could be found that the ANC or government reprimanded her in any way or took disciplinary steps against her. The only government response was by former presidential spokesperson Mac Maharaj saying that the matter was being "looked at" (Daily Maverick, 28 February 2013). The DA called on the SAHRC to investigate the matter, and according to the rights body it had received several complaints and it confirmed that it was indeed investigating the matter (Daily Maverick, 28 February 2013). The SAHRC finally met with Xingwana on 14 June 2013 and accepted a feeble apology and the matter was laid to rest (BusinessLive, 18 January 2016).

Julius Malema

The leader of the Economic Freedom Fighters is no stranger to race controversies. AfriForum hauled him to court in 2010 on charges of hate speech after Malema, as ANC Youth League leader and with ANC bigwigs in attendance, led students at the University of Johannesburg in singing the controversial struggle song *Dubul'ibhunu*, meaning "Kill the Boer". Malema lost the case when Judge Colin Lamont ruled that the song constituted hate speech.

Malema was banned from the ANC in 2012 and founded the radical and youthful EFF a year later with the help of other banned people and aggrieved parties. The EFF currently holds 6.25% of the seats in the National Assembly in proportion to the amount of votes they garnered in the 2014 national election. The party also drew roughly 8% of the support in the 2016 local government elections and form part of several coalition councils around the country, including big metros such as Johannesburg and Tshwane. It stands to reason that Malema is one of the most recognisable people in the country and wields a significant amount of influence.

His party has been toying with hate speech ever since its inception and their anti-white rhetoric has become increasingly strident as their political support and clout have grown. But in November 2016 Malema dropped another bomb that caused great rumpus and alarm. "We are not calling for the slaughter of white people, at least for now ... The rightful owners of the land are black people. No white person is a rightful owner of the land here in SA and the whole of the African continent," he said outside the Newcastle Magistrate's Court, where he appeared for calling on people to occupy vacant land around the country. Although equating people to monkeys and calling them scum is completely detestable, even the uninitiated would agree that this statement is qualitatively vastly different from the sins of Sparrow, Hart and Van Vuuren. It is a call for people to murder other people because of their empirical attributes and is a thinly veiled attempt to incite hatred. The "at least for now" qualification at the end of this notorious sentence provides little solace as he leaves the possibility of such incitement open.

Due to his prominence, his words also drew ample media attention. A Google search using the words "Malema", "slaughter" and "white" generated 184 000 results. As Malema intended, the comments caused an obvious stir and drew criticism from certain quarters and silence from others. AfriForum said Malema did not care about the impact his words have, whilst the DA condemned his words and said it had no place in South Africa's constitutional democracy (ENCA, 8 November 2016). Yet the ANC, through their spokesperson, Zizi Kodwa, told eNCA Online that the comments were not something the party would comment on. "He (Malema) was addressing his own party supporters." ANC provincial secretary in KwaZulu-Natal, Super Zuma, merely stated that Malema should answer his case in court. The EFF, too, did not condemn its leader.

The SAHRC received several complaints on the matter, most notably from the DA, AfriForum and also the Congress of the People Youth Movement. SAHRC communications coordinator Gushwell Brooks confirmed the complaints had been received and said: “Because the commission has received complaints from different provincial offices, these complaints are currently being assessed.” (The Citizen, 15 November 2016).

Vuyiswa Bhefile ka Hlazo

Bhefile ka Hlazo is a senior official at the Oudtshoorn municipality who spewed his racial invective on Facebook in 2015 when he said the following:

*“You know I can’t wait for the day the majority of this country would say ‘we have tolerated enough your white s*** racist tendencies. This is our country and I pray my Ancestors must let me leave to experience that day. I will with no mercy cut their tongue out with a machete and I will enjoy to hear them begging for forgiveness and watch them cross the borders with their belongings. We have tolerated enough and I really dream about the coming of such a day and hour my ancestors will spare me to see such a day (sic).”*

The incident garnered very little media attention. This is particularly strange as it constitutes patent incitement to kill and is very serious indeed. A Google search combining the terms “Vuyiswa Bhefile ka Hlazo” and “racist tendencies” garnered all but seven results.

The investigation and subsequent punishment by the Oudtshoorn municipality were equally feeble. Oudtshoorn administrator Kam Chetty initially told *IOL* that they were busy “authenticating” the author post – despite Bhefile ka Hlazo making the statements on his personal account and not the municipality’s. “We view the contents of the comment made seriously and upon authenticating the author of this message we will follow internal disciplinary procedures accordingly,” Chetty said.

The whole affair turned into a damp squib after it was established that it was indeed Bhefile ka Hlazo who made the comments and the matter was further probed. He subsequently apologised, received a written warning and agreed to undergo diversity management counselling (*The Gremlin*, 19 January 2016). “He was issued with a written warning. He was also warned about the seriousness of the matter and that any similar response will lead to stringent disciplinary outcomes such as dismissal,” said municipal spokesperson Ntobeko Mangqwengqwe.

The SAHRC never investigated the matter.

Esethu Hasane

Hasane is the media and communications manager of the Department of Sport and Recreation, of which Fikile Mbalula is currently the minister. As such, Hasane is an extremely prominent and influential person, able to influence the opinions of millions of South Africans. Hasane fired off an inciting, divisive and inflammatory tweet in March 2017, calling for the punishment of white people:

“Only Western Cape still has dry dams. Please God, we have black people there, choose another way of punishing white people.”

A Google search containing the words and phrases “Esethu Hasane”, “punish” and “white people” delivered only 401 results at the time of writing. The DA and AfriForum were vocal in their condemnation of Hasane’s actions and called on Mbalula to condemn his actions and fire him. Much of the media buzz on the incident stemmed from the reactions of these organisations and not initial reporting on the matter.

No such condemnations, however, emanated from the department of sport or its minister, who had six months earlier said in response to the Theunissen incident that all racists – black and white – should face harsh penalties. At the time of writing (some three weeks after the tweet was posted), Mbalula has remained as silent as the grave on the incident and has taken no visible punitive action against Hasane. This, of course, is in stark contrast to how Standard Bank treated Chris Hart or how the JSC handled the Mabel Jansen case.

“The fact that three days have passed and the minister has not fired Hasane, or taken any action for that matter, means that he either shares this racist view or condones it. This would seem to contradict the minister’s previous views on racism and sport. Responding to racist comments made last year, he said that racists “have no place in our society and must be isolated as they take us backwards...,” said the DA’s Darren Bergman in a statement (DA website, 2 March 2017).

No evidence could be found that the case was even considered by the SAHRC.

Velaphi Khumalo

Khumalo is an official, more specifically a sports promotor, at the Gauteng Department of Sport, Arts, Culture and Recreation and a self-professed ANC member. Obviously incensed by the Sparrow incident, Khumalo launched one of the most virulent and inciting online attacks South Africa has ever seen and gained subsequent notoriety. Posing with a pistol in his profile photo, the Facebook post read as follows:

I want to cleans this country of all white people. we must act as Hitler did to the Jews. I don't believe any more that the is a large number of not so racist whit people. I'm starting to be sceptical even of those within our Movement the ANC. I will from today unfriend all white people I have as friends from today u must be put under the same blanket as any other racist white because secretly u all are a bunch of racist fuck heads. as we have already seen [all sic].

He followed it up with an equally controversial post:

U you have the same venom moss. look at Palestine. noo u must be bushed alive and skinned and your off springs used as garden fertiliser.

Khumalo, like many racists on social media, swiftly apologised and said he hoped South Africans could find it in their hearts to forgive him (*SowetanLive*, 8 January 2016). But this apology was directed more at the ANC, his employer and South Africans in general, than at white people in particular.

A Google search containing the words and terms “Velaphi Khumalo” and “Hitler” generated 5 740 results. A Meltwater search showed 137 media reports on the incident in 2016 alone.

His employers subsequently distanced itself from his “barbaric and racist utterances” and commenced an internal disciplinary process against him while suspending him with pay (*News24*, 7 January 2016). “The department of sport, arts, culture and recreation views the hateful post by Velaphi Khumalo in a serious light,” MEC Faith Mazibuko said in a statement. A charge of *crimen injuria* was also laid against him and the Jewish Board of Deputies had also laid a complaint with the SAHRC against him (*News24*, 7 January 2016).

However, Mazibuko’s stern comments did not match the eventual punishment meted out to Khumalo by his employer. The department issued a statement in June 2016 stating that after being charged for serious misconduct for having “conducted himself in an improper, disgraceful and unacceptable manner”, Khumalo pleaded guilty and committed himself to corrective measures, which included counselling. “The

Disciplinary Panel deemed it fit to issue him with a Final Written Warning. Upon accepting the sanction Mr. Khumalo's suspension will duly be lifted and he will be able to carry out his duties as a Sports Promoter, allowing the department to carry out its mission of getting Gauteng active," the statement said.

In June of last year the SAHRC was on the warpath against Khumalo and issued a statement saying that, after receiving a number of complaints, they would be taking him to the Equality Court on a charge of hate speech (*News24*, 7 June 2016). "The SAHRC has consolidated all the individual matters on Velaphi Khumalo and registered a new complaint in the name of the SAHRC at the Equality Court," said commission spokesperson Gail Smith. "We are in the process of preparing for the institution of litigation against the respondent for hate speech," she said. Although the SAHRC has condemned Khumalo's actions numerous times after this statement, no evidence could be found of the conclusion of this case more than a year after it occurred.

Benny Morota

Morota is a law lecturer at the University of South Africa (Unisa) and therefore wields a fair amount of intellectual influence.

On 7 January 2016 he said on Facebook: "I hate white people and must go back wherever they come from or alternatively to hell." (*Netwerk24*, 26 June 2016). Three days later, Harald Sitta, a white person, confronted Morota about other inflammatory remarks he made, to which Morota replied: "i dnt entertain white cockroach like yourself . . . i dnt understand why you interfere in my black business . . . F*ck you pink white murderer . . . Enjoy the blood wealth of our people, your time to pay with your white skin is emment (sic)."

The story elicited very little media attention despite its seriousness. A Google search combining the terms "Benny Morota" and "cockroaches" delivered only 13 results and the mainstream English media steered well clear of it.

After Professor Mandla Makhanya, Unisa's Vice-Chancellor, initially expressed his shock and disappointment at the incident and the university pledged to probe the matter (*Netwerk24*, 26 June 2016), Morota merely received a "serious warning" ten months later (*Netwerk24*, 23 October 2016). "Right now, he has been issued a serious warning and if he transgresses again, the university will not hesitate to take serious steps against him. The university strongly condemns this behaviour," said Martin Ramotshela, Unisa's spokesperson.

There is no evidence of the SAHRC ever acting against Morota.

Steve Naale

In 2016 Steve Naale, spokesperson for the Ngwathe local municipality (Parys), posted the infamous photo of the lynching of Thomas Shipp and Abraham Smith by the Ku Klux Klan in Indiana in the US in 1930 on the Facebook group page Ngwathe Online. He added a caption that read as follows: “Unless we want this under a white man’s rule, AGAIN.”

Seeing that Naale is a spokesperson for a municipality and therefore widely quoted in the media as far as municipal matters are concerned, a Google search for this ignominious utterance was narrowed down and the results were revealing: A Meltwater search revealed that the incident garnered a mere seven media reports – mostly from the Afrikaans media. A Google search containing the terms “Steve Naale” and “white man’s rule” produced an infinitesimal two results.

One of these results, a report by the *Mail&Guardian*, detailed Naale’s transgressions and the subsequent events. According to the *Mail&Guardian* report (14 July 2016) Elsie du Preez, a Western Cape resident, lodged a complaint with the South African Human Rights Commission (SAHRC) and alleged that “a direct insinuation of the picture and the caption was that whites in South Africa should be feared”. She requested that Naale be charged with hate speech and incitement of violence against white people. She claimed that the representation was “untrue and misleading” and uninformed people who believe him could be instigated to harm or hate white people. Naale retorted that he was merely protecting South Africa’s black government against people seeking to undermine the country’s democracy and that the Parys area is racially divided anyway.

The SAHRC found that Naale’s actions did not only discriminate against Du Preez, but against all South African whites and that his actions had impugned their dignity (Netwerk24, 21 September 2016). However, it ruled that it did not amount to hate speech. Naale was ordered to issue an apology to white South Africans, but it did not give any specifics as to the duration or nature of the apology. Two months after the ruling, his apology was posted on Ngwathe Online and then swiftly removed (Netwerk24, 3 October 2016). There is no indication that Naale’s employer took any punitive steps against him and he is currently still working as Ngwathe’s spokesperson.

A somewhat bizarre and confounding twist in this tale is that Du Preez as the complainant in the matter was also ordered by the SAHRC to undergo a human rights programme on race relations along with Naale (Netwerk24, 3 October 2016). Neither of them attended and Naale’s justified his absence on account of Du Preez not attending the programme.

Jonathan Jansen

The former vice-chancellor and rector of the University of the Free State stirred controversy after allegedly stating at a senate meeting of the university that something is seriously amiss with the education of Afrikaner men (*Network24*, 24 August 2016). He further maintained that white students in Afrikaans classes were given an unfair advantage and told *Beeld* newspaper that this is why Afrikaans should be abolished as a language of instruction. He later told the newspaper that he was not accurately quoted on his statements that the education of Afrikaner men education left much to be desired, but he did not deny saying it. He stated that the issues under discussion in the meeting “were confidential” and could not be discussed with the media.

Despite Jansen’s unabashed racism and baseless accusations and conclusions on white students and Afrikaans, the incident garnered very little media attention apart from the Afrikaans media’s coverage of it. A Meltwater search showed a paltry five English media reports and five Afrikaans media reports on the story. Virtually all of them revolved around criticism emanating from within the Solidarity Movement.

Lesser white racists, or even white people who have been wrongly suspected of such racism, have been crucified by the media, government, the South African Human Rights Commission (SAHRC) and the public. There is no evidence to suggest that the SAHRC had even obliquely looked into the matter or that anybody from government levelled any criticism at Jansen. He had already resigned at the time of the incident and left South Africa a week later to take up a position at the Centre for Advanced Studies at Stanford University in the United States.

Tlou Molele

Molele was a young mathematics teacher at the Curro Northern Academy in Polokwane and was therefore entrusted with the schooling of impressionable kids, be they black or white. In October 2016 he posted an extremely virulent and racist opinion on the University of the Witwatersrand’s Facebook page in response to the #FeesMustFall campaign:

*“If it wasn’t for this generic error called mutation, the white f****s would have never existed. You are the original Mother f****s. We would not be in protest and s**t like this if you white f****s went back to your native lands. Do you even have a place of origin...?”*

It was further reported that Molele said he did not object to the burning of white-managed buildings and that white opinions no longer mattered (Polokwane Observer, 27 October 2016).

A Google search containing the word and terms “Tlou Molele”, “Curro” and “mutations” delivered only 12 results. A Meltwater search showed only 17 media reports on the incident in 2016. The mainstream English media did not even touch this rebarbative and patent piece of hate speech and it was left to the local and Afrikaans media to report on it.

Unlike the fate that befalls most black civil servants that commit hate speech, Curro Holdings acted with remarkable efficiency and ferocity against Molele. Soon after the incident, Molele was suspended pending an investigation into the postings. “Curro views the content of the postings and the behaviour of this individual in a most serious light as social media activity, within Curro, is governed by a comprehensive internal policy which states that all persons using social media platforms made available on Curro information systems and its website, shall adhere to the policy,” said Curro Executive Head: Marketing and Communications Mari Lategan (Polokwane Observer, 27 October 2016). Some two weeks later it was reported that Curro had dismissed Molele (Forumnuus, 9 November 2016).

The case was also referred to the SAHRC, who dealt with it fairly swiftly but gave him a mere rap over the knuckles. Molele expressed remorse at the hearing, offered an unconditional apology, agreed to participate in the Commission’s anti-racism advocacy outreach activity in Limpopo and pledged ten hours of his own time to help disadvantaged learners with their maths (SAHRC, 8 November 2016). Seeing that there are very few white people – the target of his vitriol – in Limpopo, it is doubtful that Molele’s outreach activities would teach him about true diversity and force him to come into contact with the very people he so flagrantly maligned. Also, to help disadvantaged kids with their maths is a noble act, but does not bear any real relevance to the said transgression. In the end, as far as the SAHRC is concerned, Molele’s apology, remorse and professed commitment to constitutional values sufficed as his punishment and penitence. The handling of this affair becomes even more ludicrous in comparative terms when it is juxtaposed with the SAHRC’s punishment of Matthew Theunissen’s transgressions, which is largely in agreement with Molele’s.

Analysis

From the case studies it is clear that racial discrimination in South Africa is a problem. For the purposes of this report, we will use the definition of racial discrimination contained in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD):

... any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

ICERD is a convention that was accepted by the UN National Assembly and that is aimed at eliminating all forms of racial discrimination.

The Committee on the Elimination of Racial Discrimination (CERD) is the committee that was tasked with the international implementation of this convention.

The convention was ratified by South Africa. The institution in South Africa that is specifically tasked with ensuring that the convention is honoured by South Africa is the South African Human Rights Commission (HRC).

1. Level of transgression

In the case studies the persons involved all committed racial discrimination. In a way, each of these cases was aimed at a negative portrayal of all members of a certain race. A more in-depth analysis shows that there are, however, differences in the degree of racial discrimination between the cases.

White

In cases where the transgressor was white, mainly racist abusive words were used (Matthew Theunissen, Penny Sparrow and Justin van Vuuren). In other cases, generalisations were made about an entire race or culture (Mabel Jansen and Chris Hart), which then resulted in a negative opinion being formed on the race or culture in question.

Black

In those cases where the transgressors were black, racist abusive words occur less frequently. Definite pronouncements were made on minorities, but the terminology was mostly neutral. Words such as “whites” or “Afrikaners” were used. Generalisations concerning an entire race or culture were made (Jacob Zuma, Lulu Xingwane and Jonathan Jansen), with a negative opinion being expressed on the race or culture in question. What is added, however, is incitement to violence against minority groups (Julius Malema, Velaphi Khumalo, Vuyiswa Bhefile Ka Hlazo and Luvuyo Menziwa). Apart from this incitement, several transgressors were also of the opinion that South Africa would have been better off without a specific minority group (Jacob Zuma, Esethu Hasane, Steve Naale, Benny Morota and Tlou Molele).

Almost all cases contain elements of racial discrimination, with abusive words and prejudices being expressed. Yet there is a definite element of incitement to violence, and in those cases where the transgressor was black, it was also stated bluntly that minorities should move off. This is worrying, because traditionally minorities are defenceless against racial discrimination. Governments have specific obligations towards minorities, as contained in the Declaration of the Rights of Persons belonging to National, Ethnic, Religious and Language Minorities. This declaration was adopted by the UN General Assembly on 18 December 1992. Article 1 of the declaration reads as follows:

1. *States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.*

2. Reaction of the media

These case studies were selected because all of them received media coverage in one way or the other. In several cases, political leaders and opinion makers reacted to them.

White

In those cases where the transgressor was white, media coverage was relatively extensive. The average number of media reports for the five white case studies was 1 286 per case study. This figure is skewed by the case of Penny Sparrow, which was responsible for 4 501 media reports on its own. Without Ms Sparrow, the average number of media reports is 643,6 per case study.

Case Study	Media reports	Year
Penny Sparrow	4501	2016
Chris Hart	1155	2016
Justin van Vuuren	251	2016
Mabel Jansen	840	2016
Vicki Momberg	419	2016
Matthew Theunissen	553	2016

Black

Black case studies follow a more normal pattern of distribution. Pronouncements by the President of South Africa, Jacob Zuma, as well as the leader of the EFF, Julius Malema, receive much more media coverage than people on lower levels. In 2016, there were 117 and 163 media reports, respectively, on racist pronouncements made by Julius Malema and Jacob Zuma.

If one uses only the case studies that took place in 2016, the average number of media reports for black transgressors is 66,4. If pronouncements by Julius Malema are excluded, the average drops to 50,3.

Case study	Media reports	Year
Jacob Zuma	117	2015
Julius Malema	163	2016
Lulu Xingwane	11	2013
Jonathan Jansen	10	2016
Steve Naale	7	2016
Vuyiswa Bhefile Ka Hlazo	3	2015
Esethu Hasane	40	2017
Velaphi Khumalo	136	2016
Tlou Molele	16	2016
Luvuyo Menziwa	131	2016
Benny Morota	2	2016

From these case studies it is clear that media coverage is overwhelmingly one-sided. In fact, the largest number of media reports for a black transgressor (Julius Malema with 163) is almost 100 reports less than the smallest number for a white transgressor (Justin van Vuuren with 251). What is alarming is that virtually all the black transgressors are deployed in a government position. One would expect the pronouncements made by people in influential positions to receive more media

coverage than those of ordinary members of the public, but this pattern is not followed at all.

The one-sided media coverage on racial discrimination flies in the face of CERD's General Recommendation 35, specifically aimed at combating hate speech. Paragraphs 39 and 40 refer:

Informed, ethical and objective media, including social media and the Internet, have an essential role in promoting responsibility in the dissemination of ideas and opinions. In addition to putting in place appropriate legislation for the media in line with international standards, States parties should encourage the public and private media to adopt codes of professional ethics and press codes that incorporate respect for the principles of the Convention and other fundamental human rights standards.

Media representations of ethnic, indigenous and other groups within the purview of article 1 of the Convention should be based on principles of respect, fairness and the avoidance of stereotyping. Media should avoid referring unnecessarily to race, ethnicity, religion and other group characteristics in a manner that may promote intolerance.

Additional to General Recommendation 35 are the "Concluding observations on the combined fourth to eighth periodic reports of South Africa". Paragraph 12 of this document makes it clear that there is concern, in particular, about the governing party's racist pronouncements. The fact that the media elect to ignore this, contributes to the general racial polarisation in South Africa.

12. The Committee is concerned about the lack of legislation in the State party concerning hate crime and hate speech to effectively prosecute perpetrators and deter further violations. The Committee is also concerned at the rise in hate crime and hate speech in the State party, including physical attacks targeting certain ethnic groups and non-citizens, discriminatory statements by State officials and politicians, and an increase in the use of social media and the Internet to propagate racist hate speech (arts. 2, 4, and 6).

3. Reaction of the South African Human Rights Commission

The institution whose task it is to maintain ICERD in South Africa is the South African Human Rights Commission. As far as racial matters are concerned, the HRC has a major role to play.

CERD's General Recommendation 35 clearly states how its institutions should deal with hate speech and racial discrimination. Paragraph 15 refers:

While article 4 requires that certain forms of conduct be declared offences punishable by law, it does not supply detailed guidance for the qualification of forms of conduct as criminal offences. On the qualification of dissemination and incitement as offences

punishable by law, the Committee considers that the following contextual factors should be taken into account:

- **The content and form of speech:** *whether the speech is provocative and direct, in what form it is constructed and disseminated, and the style in which it is delivered.*
- **The economic, social and political climate** *prevalent at the time the speech was made and disseminated, including the existence of patterns of discrimination against ethnic and other groups, including indigenous peoples. Discourses which in one context are innocuous or neutral may take on a dangerous significance in another: in its indicators on genocide the Committee emphasized the relevance of locality in appraising the meaning and potential effects of racist hate speech.¹⁶*
- **The position or status of the speaker** *in society and the audience to which the speech is directed. The Committee consistently draws attention to the role of politicians and other public opinion-formers in contributing to the creation of a negative climate towards groups protected by the Convention, and has encouraged such persons and bodies to adopt positive approaches directed to the promotion of intercultural understanding and harmony. The Committee is aware of the special importance of freedom of speech in political matters and also that its exercise carries with it special duties and responsibilities.*
- **The reach of the speech,** *including the nature of the audience and the means of transmission: whether the speech was disseminated through mainstream media or the Internet, and the frequency and extent of the communication, in particular when repetition suggests the existence of a deliberate strategy to engender hostility towards ethnic and racial groups.*
- **The objectives of the speech:** *speech protecting or defending the human rights of individuals and groups should not be subject to criminal or other sanctions.*

It is clear that office bearers and opinion makers have a greater responsibility than the general public. The HRC's actions may be judged against this mandate.

White

The HRC took steps against Penny Sparrow and Matthew Theunissen on its own initiative. The Commission is investigating Chris Hart, Mabel Jansen and Justin van Vuuren. Judging by CERD's criteria for reacting to hate speech, the case for own initiatives in these instances is shaky.

The content of the message in these cases was unacceptable, but the way in which it was conveyed was neither direct nor provoking. It was posted on the users' own social media, without any aim of reaching the target of the remark. Mabel Jansen's remarks were made in a private conversation on social media.

The political and social climate in South Africa indeed was not favourable to the remarks. In the powder keg of South African racial politics, the remarks were not useful. Given the levels of tension, it is understandable that the HRC acted.

Hardly any of the high-profile white case studies were government office bearers. Mabel Jansen was a judge at the time of the incident, and Chris Hart was a senior economist. The other case studies did not have any particular influence. It is indeed a good question why action was taken against a retired estate agent, a master's student and a small business owner.

The initial remarks reached a small audience, realistically the transgressors' immediate social media circles. Once the media got hold of the cases, it became national news. Penny Sparrow in particular received incredible coverage, and the HRC was obliged to act.

Remarks by the white case studies contained no call for action. Taking into account the purpose behind the remarks, the most likely motivation was that it was frustration that had to be vented. Penny Sparrow, Justin van Vuuren and Matthew Theunissen reacted to situations where the target of their outbursts had caused them frustration. Chris Hart as an economist and Mabel Jansen as a judge had experienced frustration in their occupations regarding the targets of their outbursts. Frustration cannot serve as an excuse, but judging the purpose behind the remarks, this is the best explanation. There was no call for action or threatening ultimatums.

Black

The content of these cases was considerably worse than that of the white case studies. Julius Malema's direct statement that white people should not yet be slaughtered was an indication of genocide. Benny Morota, who called all white people cockroaches, reminds one of language usage in Rwanda prior to the Tutsi genocide. Luvuyo Menziwa stated bluntly he wanted to be armed and eliminate the target of his outburst. These messages mostly were also shared on social media, but were uttered in the mainstream media by the more prominent cases (Julius Malema, Jacob Zuma, Jonathan Jansen, Lulu Xingwane). Jonathan Jansen made his remark at a meeting filled with Afrikaner men – it was definitely provocative.

The transgressors in both groups of case studies made their remarks in the same socio-political climate. What is noteworthy is that Jacob Zuma's remark was made a year before that of Penny Sparrow. Lulu Xingwane made her remarks regarding Afrikaner men in 2013.

Among the black case studies there is a wide spread of office bearers and opinion makers. We find that the case studies ranged from the highest level of government to the lowest office bearers. Jacob Zuma is the most influential of the transgressors as President of South Africa. Lulu Xingwane was a cabinet minister at the time of her outburst. Julius Malema is leader of the third biggest political party, with more than a million voters. Jonathan Jansen was rector of the University of the Free State. Steve Naale is the spokesperson of the Ngwathe Municipality. Esetu Hasane is the spokesperson of Fikile Mbalula, the Minister of Sport and Recreation. Vuyiswa Bhefile Ka Hlazo was a public servant in Oudtshoorn. Velaphi Khumalo is a government official in the Gauteng Department of Sport, Arts and Culture. Luvuyo Menziwa was an elected student leader. Only Tlou Molele and Benny Morota were employed in the private sector.

The pronouncements' reach more or less followed the influence of the persons who made them. The pronouncements made by high-ranking persons reached more

people than those of Tlou Molele or Benny Morota. Yet, none of these pronouncements received even remotely as much coverage as remarks made by white people.

A considerable proportion of the pronouncements could be due to frustration. Benny Morota, Tlou Molele and Jonathan Jansen were frustrated by the target of their outbursts. There are indeed a few that may be explained only by hatred towards a minority. The pronouncements by Jacob Zuma, Julius Malema and Lulu Xingwane were made from positions of power. Lulu Xingwane in particular did not have any reason to attack a minority during the murder trial of an individual.

HRC's conduct

Bearing in mind the CERD's guidelines regarding hate speech, one would expect the HRC to act against all cases. Action against opinion leaders should also be stronger than action against general members of the public. Because of own initiatives against white transgressors with a smaller audience (Penny Sparrow, Matthew Theunissen), one would expect there would be own initiatives against virtually all black case studies as well. Unfortunately, this does not appear to be the case.

Case Study	Own Investigation
Penny Sparrow	Yes
Chris Hart	Yes
Justin van Vuuren	Yes
Mabel Jansen	No
Vicki Momberg	Yes
Matthew Theunissen	Yes
Jacob Zuma	No
Julius Malema	No
Lulu Xingwane	No
Jonathan Jansen	No
Steve Naale	No
Vuyiswa Bhefile Ka Hlazo	No
Esethu Hasane	No
Velaphi Khumalo	No
Tlou Molele	Yes
Luvuyo Menziwa	No
Benny Morota	No

In addition, the HRC's complaint against Jacob Zuma of January 2015 has still not been finalised, while the complaint against Penny Sparrow was determined within a year.

The HRC made a finding against Tlou Molele as well as Matthew Theunissen. Both had to apologise. Both were convicted to community service. The only difference was that Tlou Molele had to perform 10 hours of community service and Matthew Theunissen six months.

The way the HRC deals with hate speech and racial discrimination is in direct contradiction with the CERD guidelines.

Summary

From the case studies we see that there is widespread racial discrimination against minorities taking place at all levels of government. This systemic racial discrimination against white people is creating a climate where it is becoming dangerously common to apply racial discrimination against minorities. It inevitably results in more polarisation and racial separation. Article 2, subsection E, of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) clearly states:

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

Media coverage so widely different based on the race of the transgressor contributes even more to the creation of a climate where minorities are targeted. Ethical, objective journalism is not often found in reporting on matters of race. Indeed, even normal conflict situations are turned into racial matters by the South African media. The fact that open incitement to slaughtering white people did not remotely receive the same coverage as a racially driven description of black people, speaks volumes.

As watchdog over race relations in South Africa, the HRC appears to be asleep. From its own initiatives and reactions it appears that the HRC is allowing the media and politicians to dictate to it what racial discrimination is.

When the HRC does act, such action appears to be one-sided and unbalanced. Own initiatives are hardly ever launched against opinion makers, in direct contradiction of General Recommendation 35 of CERD.

Low-level white racists are made examples of, while the vertical influence of racist black opinion makers is not addressed. We see the result of this in the social media reactions of white and black becoming ever more scathing.

The silence of the HRC means that the water level in South African race relations keeps rising. Racial polarisation is at unprecedented levels, and a powder keg atmosphere is being created. A belief is being created that the dam wall has to give way sooner or later.

Despite the fact that the HRC should be trying to defuse racial tension and calm the stormy waters, the HRC is indeed contributing to aggravating the situation by cracking down on white nobodies while allowing black somebodies to go scot-free.

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