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TAKING THE FREEDOM OUT OF “FREEDOM OF EXPRESSION”

The Freedom of Expression Institute noted with intrigue the lambasting of Eyewitness News by the ruling party the African National Congress (“ANC”), following the publication of the cartoon titled “Congress of clowns”.

On reflection FXI concurs that use of derogatory terms such as “poephols” was rather careless and uncalled for in the publication and the offence such a term might have caused some readers is appreciated. What one must bear in mind however is the nature of satire, which is premised on the often crude and ridiculing humour to expose and criticize topical issues. Satire as foul and offensive as it may be to the targets of such work is an artistic practice of freedom of expression.

The importance of such artistic expression is the provocation and facilitation of crucial debate that is often ignored or “brushed under the table”, as it inspires engagement on subjects that would otherwise not be spoken widely of yet they are of key public interest. The importance of this to the democratic discourse cannot be emphasized enough.

Pluralism which should underlie a democracy, dictates that based on varying opinions and views, this will at times involve the expression of information or ideas “that offend, shock or even disturb” the next person, or group. In these instances it is tolerance and broadmindedness that should prevail. Without these a democracy would fail.

It is important that the manner in which the Constitution outlines the right to freedom of expression is taken into account in these instances. The right to freedom of expression, section 16 of the Constitution has as part of it, limitations of the extent to which one can express themselves. These limitations should not be overstepped, however if so is done then should be reasonable and justifiable in an open and democratic society based on section 36 of the Constitution.

Worth noting however on the point of an expression being labelled as being racist, is that the constitution does not take issue with mere making of a racial statement, but rather with whether the racial statement “advocates for hatred of the said race” this calls for the distinguishing of what is *harmful* rather than merely *hurtful*. Harmful being the standard to meet in order to rule out an expression as one that falls in the category of limited expression. It does not therefore serve our democracy to cry foul every time a view contrary to ours is expressed in the public domain, rather careful scrutiny whether indeed such expressions breach constitutional demarcation is required. Furthermore, the ANC’s accusation that the cartoon is racist is based on the fact that the cartoon lampoons what the ANC terms an “all-black government”. Firstly it is erroneous to call the current government an ‘all-black government’ because that may suggest that any criticism of the government from any person would be regarded as racist. That is untenable. The current democratic government is a multi-racial government no matter how dominant one race is.

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The makings of a strong democracy require a broad extent of tolerance to each other's views and opinions regardless of how unsavoury they may come across. Instances such as this one further call for freedom of expression to be acknowledged for its role as a key element of holding any government to account, through discourse it influences the manner in which the government affects the will of the people over which it governs.

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