



## ZILLEFYING FREE SPEECH IN SOUTH AFRICA

One tweet was all it took for Helen Zille to be accused of abusing her right to freedom of expression, which includes her freedom to receive or impart information or ideas. For daring to exercise her right to freedom of expression, with a few more unrepentant tweets in between, she finds herself having to explain these rights to her party, and the nation, in the hopes we may realise she did not in fact breach these rights and should not be suspended.

On 16 March 2017 at exactly 8:25AM, Zille set Twitter ablaze with these staggering 19 words: “For those claiming legacy of colonialism was only negative think of our independent judiciary, transport infrastructure, piped water etc.” Since then she has continued to share her views on colonialism and South Africans have reciprocated with a volley of views, opinions and insults.

The vilifying of free speech and labelling it as racist or hate speech without testing it against the limits set in our Constitution, presents a particular problem. Freedom of expression is enshrined in the Constitution specifically *because* of the country’s past restrictions on speech as a tool to prevent political criticism.

The right to free speech should enable all of us, including Zille, to discuss, debate, and express ourselves on the socio-political sphere. Free expression could more constructively be used as the key that counters the lingering intolerances plaguing South Africa.

Instead of engaging constructively, we have received those 19 words with anger, shock and offence calling for her resignation and questioning her general morality. If we re-read those 19 words carefully, and ask ourselves if they in any way constitute propaganda for war, the answer is - no.

Did Zille utter anything that could even remotely be construed as incitement of imminent violence? No. Does the tweet advocate hatred on the basis of race, ethnicity, gender or religion and does it constitute incitement to cause harm? No.

So, what exactly is the problem with those 19 words?

Her tweet and stubborn refusal to rescind her words have hurt and offended so many people who hold a different view, and have different experiences of the legacy of colonialism. This is not surprising given the unequal nature of South African society. This is to be expected as we are dealing with ongoing structural racism which democracy did not quite eradicate.

With that big national event looming, where we once again get to exercise our democratic right, her words, given the current climate, are probably giving election polling companies’ sleepless nights and causing campaign managers to rethink their strategies.

In an attempt to gain the moral high-ground, various political parties and the Department of Justice are threatening to make use of the very independent judiciary Zille talks about, to exorcise racism from our beautiful land.



Therefore, the particular problem here is racism and structural inequality, and 2019. In order to ward off the infestation that is threatening our fragile democracy, our good government proposes that we shift the focus from the intent of the expressor to the reaction of the audience, casting aside any guidance that s16 (2)(c) of the Constitution might provide.

Legislation such as the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), was enacted on the premise that we can no longer rely on the very narrow definition of hate speech as new forms of racism take root every day. Especially on social media.

To address that, the Justice Department hastily inserted hate speech provisions into the Prevention and Combatting of Hate Crimes and Hate Speech Bill based on the “increase” in offensive opinions on social media platforms. The temptation to extend the scope of hate speech is understandable given not only past injustices but also the current disappointing reality we call South Africa.

I maintain, it is important to accommodate different views, even the hurtful or offensive, and yes, even the ignorant. We need more especially now, to keep the space for freedom of expression and dialogue open. And despite the changing communications landscape, freedom of expression on social media should be subject to the same limitations set out in the Constitution.

Demonising free speech will serve a narrow and limited purpose. We may derive a sense of satisfaction from seeing Zille punished for her crime of 19 words but I am not convinced that limiting free speech is going to rid South Africa of inequality.

My suggestion would be that we let people talk, we listen, we debate, we argue. Maybe we learn something. Maybe we do not. Failing that, we should ask ourselves what we are doing to actively promote equality. The focus is overwhelmingly on the prevention of unfair discrimination but can we not challenge ourselves to find a balance between the two without sacrificing free speech?

Our failure to promote equality impacts disproportionately on our right to freedom of expression. Today it is Helen Zille. Recently it was [insert name]. Who is next? Whose opinion are we going to vilify next? And then what? An end to racism? Increased equality? Or increased censorship?

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**About the Freedom of Expression Institute (FXI):** The FXI promotes and defends the right to freedom of expression. The FXI envisions a society where everyone enjoys freedom of expression and the right to access and disseminate information and knowledge. We undertake a wide range of activities in support of these objectives that advance the right to free expression. Our activities include; Litigation, legal advice and support, Research and monitoring, and Civic education and advocacy. The Institute also networks and collaborates with, a wide range of local and international organisations. Through the following objectives, we seek to:

- To fight for and defend freedom of expression,



- To oppose censorship,
- To fight for the right of equal access to information and knowledge, and
- To promote access to media and a free press.

### **About Tusi Fokane – Executive Director of the FXI**

Tusi Fokane is a media and policy analyst with a focus on communications regulation. Her experience includes media policy development, research and analysis. Tusi holds a Masters in Management of Public Policy degree from the University of the Witwatersrand. Her particular interests are freedom of expression and human rights.