*BDS tactics and the IHRA definition of anti-Semitism*

The cornerstone of any democratic society and rule of law is to enjoy unhindered freedoms that are protected by the law. Of course, this comes with the responsibility not to infringe on the freedom of others. The question then arises, when are other people allowed to infringe on the freedoms of others for what they perceive as a ‘just cause’? This usually arises when people embrace their freedoms of expression and association on issues that are of societal concern. People tend to overstep their bounds when expressing themselves, which result on a legal dilemma of infringing on the rights of others.

The case of the BDS movement internationally, especially in South Africa, is one scenario in which the right or freedom of expression may be used to infringe on the freedoms of others. The BDS movement claims to represent the aspirations of the Palestinian people and promote Boycott of the state of Israel. This is not wrong because people have the rights to mobilize themselves and champion any course they may deem fit, it is permissible under any democratic legal system especially that of South Africa which protects freedom of expression under section 16 of the Constitution.

However the problem begins when they use their right of expression to spread hatred for the Jewish communities that view Israel as their religious homeland.

The situation in South Africa and internationally which usually plays itself in institutions of higher learning such as student unions and political parties, is that the BDS movement has degenerated into spreading hatred for Jewish people. What makes it worse is that they actively recruit people into joining their hatred spree, which has predominantly degenerated into a form of anti-Semitism. Today, the internationally accepted definition of antisemitism is the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism. The IHRA definition incorporates both old, "classic" forms of antisemitism and new, "contemporary" antisemitism directed at the Jewish State. This recognition is based on the notion that manifestations of antisemitism can also include the targeting of the State of Israel, conceived as "a Jewish collectivity”. The IHRA definition includes tactics often employed by the BDS such as denying the Jewish people their right to self-determination by claiming that the existence of a State of Israel is a racist country; applying extreme standards to the state of Israel which are not applied to any other democratic state and comparing Israeli policies to that of the Nazis. This non-legally binding working definition of antisemitism was formulated and unanimously approved in 2016 by 31 countries and has since been formally adopted by 15 countries, including the United Kingdom, France, Canada and the European Union. South Africa is yet to take this important step towards protecting a minority group from racist speech and actions, which goes against the very core values of freedom, equality and dignity as entrenched in the South African Constitution.

The BDS movement’s campaigns have made it virtually impossible for one to express themselves fully as a Jewish person because of fear of being isolated and purged for the mere reason of being a Jewish person. BDS in South Africa, now under the guise of Africa for Palestine, has indicated clearly that it is not willing to engage in constructive dialogue, or debate on the Israel-Palestine question. Rather, it has consistently resorted to threats, intimidation, violent disruptions, blackmail and incitement to violence and hatred in order to discredit, silence or marginalise its opponents. It has also been guilty of propagating shameless falsehoods regarding its campaigns and its opponents. This is in addition to the propaganda and distorted statements it makes about Israel.

Although the BDS would refuse to admit it, often BDS tactics involve inciting hatred and violence against the South African Jewish population by its supporters and this descends into clearly antisemitic attacks such as placing a pig’s head in what was thought to be the kosher meat section of a Woolworths store in the mainly Jewish suburb of Seapoint in Cape Town, in support of the BDS boycott of Woolworths. In another example, protestors supporting BDS shouted “Shoot the Jew” at a protest against a concert by Israeli jazz musicians at one of the top universities in the country, the University of the Witwatersrand.

The central legal dilemma is how then do we guarantee that Jewish students and activists in South Africa enjoy their freedoms under law?

BDS propaganda and hatred continue to find expression in the mainstream political and civil society discourse. The way in which it is conducted constitute an infringement of law and denial of other people the freedom they deserve. Firstly, the South African legislature should adopt the IHRA definition of antisemitism which clearly delineates what is defined as antisemitic tacts. Secondly, tt would be prudent for any court of law to start criminalising some of the facets that define the modus operandi of the BDS movement because it spreads more hate and encourage the denial of Jewish students and activists’ freedoms, which are theoretically guaranteed by the laws of the republic and any democratic society.

Finally, one would view the guarantee of freedom of expression as the main thrust of any democratic society that respects the common rule of law, however this has limitations where it impacts on other’s rights to equality and dignity under the Constitution.. What the BDS movement has done is to shred into pieces the fabric of the rule of law, and the founding constitutional values of dignity and equality in South Africa. This needs to be dealt with legally and urgently because the Jewish people will continue to live in fear of unfair discrimination for the mere fact of being Jewish.