

HUMAN RIGHTS DAY 2017: THE CONSTITUTION UNDER PRESSURE

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Human Rights Day on 21 March is set aside to both celebrate, as well as reemphasise the nation's commitment to the Bill of Rights enshrined in the Constitution. The Constitution acts as a bulwark against the might of the State, while simultaneously obliging the State to respect, protect, promote and fulfil human rights.

21 years into the adoption of the final Constitution, South Africa is a functioning constitutional democracy - the relatively peaceful handover of power in the 2016 local government elections largely attests to this fact. However, endemic levels of corruption in many government departments and other organs of state hamper the extent to which rights can be enjoyed. The recent intervention by the Constitutional Court, which saw the Court order the extension of an otherwise unlawful contract between the South African Social Security Agency (SASSA) and Cash Paymaster Services (CPS), to avert a social security grant crisis, is but one example. Similarly, state-owned entities such as the South African Broadcasting Corporation (SABC), Passenger Rail Services (PRASA) and the Petroleum Oil and Gas Corporation of South Africa (PETRO SA) are all plagued by leadership woes, financial and legal challenges. The same is true for crime-fighting organisations such as the National Prosecuting Authority (NPA) and the South African Police Service (SAPS). This impacts their ability to deliver on their mandates, which in turn affects the State's ability to deliver on its constitutional mandate.

South African press to a large degree is free - and many large-scale rights abuses, such as the Marikana killings and Esidimeni deaths, were first reported in the press - which bodes well for holding the State accountable. South Africa's Judiciary continues to play an important role in ensuring State compliance with the Constitution, through the striking down of conduct and or laws which are unconstitutional. The real challenge for the nation however, is the failure of the State in a few notable instances to abide by decisions of the Courts.

Xenophobia once again was in the spotlight, as too were the reported incidents of lesbian, gay, bisexual, transgender, queer and intersex (LGBTI) South Africans being attacked or even killed. In that sense, the rights to equality and dignity are under severe pressure.

In general, South Africans appear to enjoy civil and political rights to a larger degree than socio-economic rights. The freedom of assembly, demonstration, picket and petition, for example, is well enjoyed, as witnessed by the number of so-called service delivery protests.

Education remains highly contested as seen by the #FeesMustFall protests, which dominated the headlines for much of the year. On property rights, despite the renewed sense of urgency which has dominated public discourse, land reform has largely failed to deliver on its premise of ensuring equitable access to natural resources for many South Africans. Language and cultural rights are largely enjoyed, but the perennial deaths of many young men at initiation schools draws the spotlight on harmful cultural practices. The issue of language at institutions of higher education remains unsolved, with Afrikaans largely being phased out as a medium of instruction at institutions of higher learning.

What is evident though is that South Africa remains a largely unequal society, which in turn has implications for how various rights and freedoms are accessed. Such examples are found in rights such as the right to access justice, healthcare and housing, where one's experience with those rights is informed by one's income.

21 years after the adoption of the final Constitution, South Africa is indeed a convincing constitutional democracy. However, the highlighted failures in certain instances, to protect and promote the Bill of Rights, means that the Constitution is under tremendous pressure.

This statement is a synopsis of the CFCR's annual Human Rights Report Card in which the State's constitutional obligations to respect, protect, promote and fulfil the Bill of Rights are assessed. The full report may be accessed on: <http://www.cfc.org.za/index.php/document-library/human-rights-report-cards>