

## **HUMAN RIGHTS DAY 2018: LEADERSHIP FAILURES AFFECTING REALISATION OF HUMAN RIGHTS**

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The Centre for Constitutional Rights (CFCR) annually releases a Human Rights Report Card, in terms of which the State's obligations in the Bill of Rights are assessed. The Report is released to coincide with Human Rights Day on 21 March. The day is celebrated in honour of human rights and to commemorate the Sharpeville massacre.

Undeniably, South Africa is a better place to live in and has made progress in leaps and bounds since then. This is not to suggest that the State has lived up to its constitutional obligations and fulfilled the constitutional imperative to *"improve the quality of life of all citizens and free the potential of each person"*. Although 2017 saw a few improvements in the realisation of some rights, the highly-publicised State failings greatly eroded the enjoyment and fulfilment of certain rights.

22 years into the adoption of the final Constitution, South Africa's constitutional democracy continues to deepen, while the Rule of Law, despite being severely tested, remains intact.

However, inept political leadership, as well as the weakening of state institutions, have negatively affected the realisation of human rights. The Life Esidimeni deaths are a prime example of such leadership ineptitude. At least 144 psychiatric patients died after 1 711 mentally ill people were moved from Life Esidimeni hospital to ill-equipped and underfunded non-governmental organisations (NGOs) in Gauteng in 2016. This was ostensibly to allow the Gauteng Department of Health to save costs. At the time of writing, a Constitutional Court-ordered inquiry is being held to determine whether Bathabile Dlamini, the former Minister of Social Development, should be held personally liable for the costs incurred during the South African Social Security Agency (SASSA) payments crisis. Here, the Constitutional Court was forced to intervene and order the extension of an otherwise invalid extension between SASSA and Cash Paymaster Services, in a bid to avoid non-payment of social security grants.

The allegations of State Capture, which loomed large for much of 2017, to some extent negatively impacted certain rights. The Estina Dairy Farm project saw R180 million of public funds being unlawfully diverted away from the most vulnerable citizens, whose livelihoods stood to have been improved but for the corruption. These are but a few of the numerous incidents in which the State was found wanting in its obligation to respect, protect, promote and fulfil the Bill of Rights.

South Africa's civil society remains vocal and robust, which to some degree ensures greater State accountability. The press enjoys freedom of expression to a large degree. The combined efforts of civil society and the press ensured greater transparency. A judicial commission of inquiry into allegations of State Capture, as detailed in the 2016 Public



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Protector's Report on the State of Capture, has been established in response to the demands of civil society for a responsive State.

Although more South Africans than ever have access to education, however the quality of education offered is of a low standard and South Africa's education standards fare badly when compared to other nations. The endemic and pervasive levels of violent crime mean that the rights to life, as well as freedom and security of the person, are deteriorating in the absence of bold State intervention to prevent the continued erosion of such rights and freedoms. The highly unequal nature of South African society means that rights and freedoms are experienced differently, with the higher likelihood of rights infringements for lower income earners. It is concerning that there appears to be a systematic deterioration of the rights to life, equality and freedom and security of the person.

The Bill of Rights is not self-executing. It depends on a capable State that is mindful of its constitutional obligations and commits itself through accountability, responsiveness and openness as default values.