

Pro Bono & Human Rights

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SOUTH AFRICA

Long walk to freedom, and longer still to go



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27 April 2024 marked 30 years of democracy in South Africa. Since the country's first democratic elections in 1994, and the adoption of the final Constitution in 1996, South Africa has undergone a radical transition from an oppressive apartheid regime to the constitutional democracy it now enjoys – one that is committed to the creation of a society based on democratic values, social justice and fundamental human rights.

In just a few days, South Africans will head to the polls once again in what is slated to be the country's most significant election since 1994. With the African National Congress' support steadily declining in recent years, many anticipate that this election could bring a significant shift in the leadership of the country.

The weeks leading up to 29 May have been...eventful, to say the least. From the Constitutional Court ruling that former president, Jacob Zuma, is ineligible and not qualified to be a member of the National Assembly just over a week before voting day, to the current president, Cyril Ramaphosa, assenting to the controversial National Health Insurance Bill mere days before the elections, it goes to show just on what uncertain ground South Africa currently finds itself.

Ahead of these highly anticipated elections, reflect with CDH's Pro Bono and Human Rights practice (practice) on the constitutional ideals promised, the challenges yet to be overcome, and – when it all starts to feel a bit hopeless – what we **can** do.

The Constitution's (unkept?) promises

In the dawn of the constitutional dispensation, the Constitution promised us that it would "improve the quality of life of all citizens and free the potential of each person". Importantly, it imposed on the state the obligation to "respect, protect, promote and fulfil the rights in the Bill of Rights". But has this been achieved?

Although it is praised as one of the world's most progressive constitutions, its implementation unfortunately lags woefully behind the lofty ideals it aims to meet, and the rights it purports to protect. While South Africa has no shortage of issues to address, this alert highlights only a few: threatened socio-economic rights, the scourge of gender-based violence, and a significant cause of it all – widespread corruption.

Socio-economic (in)equality

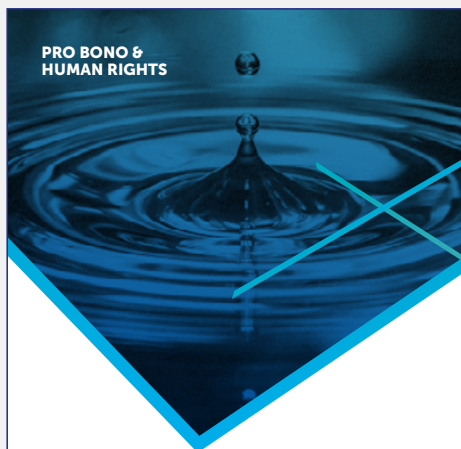
Aside from affirming the democratic values of human dignity, equality and freedom, the Bill of Rights guarantees everyone the right to access adequate housing, healthcare services, sufficient food and water, and social security. The Constitution's inclusion of socio-economic rights in the Bill of Rights is one of its distinguishing features.

Since the dawn of our constitutional dispensation, there have been several landmark judgments that have demonstrated the Constitutional Court's concern with upholding socio-economic rights: *The Government of the Republic of South Africa and others v Grootboom and others* [2000] JOL 7524 (CC), *Minister of Health &*

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DEDICATED TO MAKING AN IMPACT

Whilst it's always rewarding to receive recognition, the greatest reward is knowing we are making a difference in the lives of many.

CDH Pro Bono & Human Rights Practice, ProBono.Org Awards 2021 winner of the highest number of pro bono hours in 2020, the Large Firm award for 2020 and a Special Mention for the many years of work on the Jose Brothers case.

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others v Treatment Action Campaign & others [2002] JOL 9935 (CC), *Mazibuko and Others v City of Johannesburg and Others* 2010 (4) SA 1 (CC), *Khosa and Others v Minister of Social Development and Others*, *Mahlaule and Another v Minister of Social Development* 2004 (6) SA 505 (CC), *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* 2008 (3) SA 208 (CC), and *Joseph and Others v City of Johannesburg and Others* 2010 (3) BCLR 212 (CC) all exemplify the court's commitment to upholding the right to access adequate housing, healthcare, sufficient water, social security, protection from arbitrary/unlawful eviction and even the right to electricity, all while continuously emphasising the state's obligation to take reasonable measures in the progressive realisation of these rights. The significance of this litigation is that it has not only provided relief to the affected parties, but it has shaped government policies in balancing state resources alongside the obligation to protect and fulfil these fundamental rights.

However, despite the Constitution promising everyone access to such rights, socio-economic inequalities continue to persist despite efforts (from both state and private institutions) to address poverty and unemployment in the country. The Johannesburg practice has taken on a variety of cases involving access to housing and healthcare in an effort to address this pervasive issue and continues to build an increased focus on issues impacting children and access to quality education.

Our GBV epidemic

There is no question that gender-based violence (GBV) continues to be a pervasive and increasing threat to the lives and livelihoods of women and girl children in South Africa, undermining their Constitutionally enshrined rights to dignity and bodily integrity.

With South Africa being named as the rape capital of the world in 2020, it is difficult to consider even the introduction in 2021 of three bills to strengthen the legislative response to GBV as a cause for celebration in the face of such harrowing statistics. The Criminal Law (Sexual Offences and Related Matters) Amendment Bill, the Criminal and Related Matters Amendment Bill, and the Domestic Violence Amendment Bill – which were signed into law in 2022 and 2023 – aim to improve upon the existing legal framework and to provide increased support for survivors of GBV. The impact of such legislation, young as it is, remains to be seen.

Meanwhile, the Cape Town practice continues to be deeply concerned with matters involving the abuse of women and children and has taken on a variety of matters concerning grooming and sexual abuse of children, domestic violence and state institutions' failures in effectively protecting, preventing and prosecuting cases of this nature.



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Failures: Service delivery and corruption

To quote Karam Singh (Corruption Watch's executive director), *"The fight against corruption and the realisation of rights have a symbiotic relationship."*

The failures in providing basic services that we all are entitled to – housing, water and electricity – are attributable, at least in part, to the widespread corruption the country has come to know and, heartbreakingly, expect. The plethora of corruption scandals, governance issues and state capture has meant that many South Africans' rights have gone unfulfilled, and public trust in the state's ability to protect and enforce such rights has been eroded.

The disinterested and apathetic approach towards the upcoming elections by some, particularly the youth – indicated by the low percentage of registered voters in the age group 18 to 29 – is perhaps most indicative of this fact. Notwithstanding that youth issues remain front and centre this election cycle – with access to quality education remaining a perennial problem and youth unemployment continually on the rise – young voters appear sceptical of the process, and perhaps are unaware of the significant power they hold as a voting bloc to bring about change in the governance of our country.

So, what do we do now?

South Africa is not wanting for important causes or difficult issues that desperately require addressing – all one has to do is read any news outlet, which never seem to run out of shortcomings by our state officials to report on, to see that our democracy continues to face many challenges 30 years later.

But it is not all bad news: while the country faces a plethora of complex, interconnected issues, there are simple things that the practice and other organisations can and continue to do to alleviate the strain these persistent issues place on our society. These include conducting community outreach programmes, running information sessions and training workshops, and donating to organisations dedicated to upholding the Constitution's founding principles: human dignity, the achievement of equality and the advancement of human rights and freedoms.

Join our firm and practice, as we continue to walk the long road ahead – toward these general elections and beyond – in the pursuit of fulfilling the Constitution's promises, and in supporting the organisations that keep our state entities accountable, who promote the rights of the country's most vulnerable, and who effect change for the betterment and benefit of South Africa and all who live in it.

Brigitta Mangale and Lara Sneddon



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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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