

Celebrating Human Rights Day

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MARCH EDITION - HUMAN RIGHTS MONTH

Introduction

Human Rights Day in South Africa is historically linked with 21 March 1960, and the events of Sharpeville (Augustyn 2022). Human Rights Day is when we remember the 69 people that died and the 180 wounded as a result of apartheid police firing at a peaceful protest. This was a protest that was firmly against the Pass laws ordered by the apartheid regime (Augustyn 2022). This day marks an affirmation by ordinary people, rising in unison to proclaim their rights. It has become an iconic date in our country's history that today we commemorate as Human Rights Day as a reminder of what our rights and responsibilities are, and the cost paid for our treasured human rights.

Human rights and democracy

The relationship between democracy and human rights is interdependent, intricate, mutually supportive, symbiotic and constitutive. Democracy cannot be defined without human rights (Kirchschlaeger 2014). Human rights can be protected effectively only in a democratic state. Therefore, functional democracy accommodates diversity, promotes equality and protects individual freedoms (Kirchschlaeger 2014). Having a functional democracy is increasingly becoming the best bet against the concentration of power in the hands of a few and the abuse of human rights that inevitably result from it. In turn, the greatest protection of human rights emanates from a sustainable democratic framework grounded in the rule of law.

Human Rights Day is supposed to be a day in which South Africans reflect on their rights, protect their rights and the rights of all people from violation. South Africa has been deemed to have one of the best Constitutions in the world. It is hailed by many and used as an example for many other countries. It is a model for law and constitutional experts. It

seeks to establish a society based on democratic values, social justice and fundamental human rights. However, despite these positive attributes of the constitution, Gender-based violence (GBV) remains one of the biggest scourges in South African society. Every day, women and gender non-conforming people live in fear of being victims and survivors of GBV.

Gender-based violence and human rights

Interestingly, Human Rights Day is celebrated in the same month as International Women's Month. It goes without saying that these commemorative events need to be understood in unison, given South Africa's challenge of GBV. The South African constitution has got legislation that is aimed at strengthening efforts to end GBV. The law and bills are the (GCIS 2022):

- Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill
- Criminal and Related Matters Amendment Bill
- Domestic Violence Bill

These bills were passed in parliament in July 2021 and signed into law in February 2022. However, even with these progressive acts, they do not provide strategies that take into consideration or counter cultural, social and economic factors in which violence against women is embedded. This along with other several other reasons outline the shortcomings of these laws. Despite these laws, women and gender nonconforming people continue to face violence due to the large gap between legislation and implementation. The political will to deal with these GBV matters is not sufficient if the policies are put into place without funding. Shelters that provide help to survivors and victims of GBV are often underfunded and under resourced.

LGBTQIA+ community in South Africa and human rights

Human Rights Day has evolved and transcended to not only be a commemoration of the fallen victims of Sharpeville, but also a day of reflection of all human rights in our democratic country. GBV also affects those of the LGBTQIA+ community. In 1996, the South African constitution made it illegal to discriminate against anyone based on their sexual orientation. Same-sex marriages were legalized in 2006. However, the country is still scarred by the murder of Lerato Tambai Moloji, a lesbian woman who was killed in a violent hate crime in Soweto (Igual 2017). There have been many cases in which South Africa has seen how violence against queer bodies can be extreme and deliberate, especially when it comes to the murdering of trans-black women.

Recently the Centre for Mediation in Africa (CMA) in the Department of Political Sciences (University of Pretoria) hosted a facilitated conversation with Dr Mariel Reiss from the Centre for Conflict Studies (CCS) (University of Marburg). The discussion centered itself around the theme LGBTQIA+ Rights in Multilevel Governance Systems. It looked at role SADC can play in protected the rights of queer bodies. The conversation touched on how discrimination faced by the queer community and women emanates from primarily colonial constructs that have influenced and changed African societies and their social structure.

The exclusion and discrimination of the LGBTQ+ community is therefore a consequence of colonialism on Africa's social and cultural fabric. Some argue that the LGBTQ+ rights campaigns are influenced by external actors that seek to enforce their foreign concepts and agendas on African countries and the people. Additionally, the LGBTQ+ question is also a human rights question. The perception of homosexuality and the queer community as being non-African, demands an inquiry on what it means to be African? Who is African? What would a decolonial approach to LGBTQ+ rights look like?

Where to from here?

- It is important to recognize that nothing happens in a vacuum – actors do not act in isolation. There is always a driving force and factors of influence that agitate for change. We need to ask ourselves, what are the cultural norms, laws, values, principles and politics necessary to influence movement in the right direction?
- Deepening the understanding of a rights-based approach to democracy – democracy is a complicated and time-consuming system. Nevertheless, its description as the 'least bad' form of government is just another version of the phrase 'best but challenging and uneasy'. South Africa needs to play her role to bridge the gap between legislation passing and execution of the law to protect the rights of marginalized communities.
- A rights-based democracy needs to be sustainable – a sustainable rights-based democracy requires, among other things, that citizens are knowledgeable about their rights, that public political participation is encouraged through elections and active involvement in local government, and that institutional accountability and transparency are ensured.

References

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