

Human Rights

Report Card 2016

The Respect,
Protection,
Promotion and
Fulfilment of Rights
in the Bill of Rights
during 2015



Centre for
CONSTITUTIONAL
RIGHTS

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Report Card 2016 Grades

We have once again awarded the following grades to reflect realisation of human rights in South Africa during 2015:

A = Excellent; B = Good; C = Average; D = Poor; and E = Very Poor.

At the same time, the +, = and - signs are used to indicate whether a tendency to realise relevant rights is improving, deteriorating or remaining the same.

Equality **E =**

Human Dignity **D -**

Life **E =**

Freedom and Security of the Person **C =**

Slavery, Servitude and Forced Labour **B =**

Privacy **B =**

Freedom of Religion, Belief and Opinion **A +**

Freedom of Expression **C =**

Freedom of Assembly, Demonstration, Picket and Petition **B +**

Freedom of Association **A =**

Political Rights **B =**

Citizenship **A =**

Freedom of Movement and Residence **A =**

Freedom of Trade, Occupation and Profession **D =**

Labour Relations **B =**

Environment **C +**

Property **D -**

Housing **B =**

Healthcare, Food, Water and Social Security **C =**

Children **D +**

Education **E =**

Language and Culture **C -**

Cultural, Religious and Linguistic Communities **B -**

Access to Information **C -**

Just Administrative Action **B =**

Access to Courts **B =**

Arrested, Detained and Accused Persons **D =**



Introduction

THE CONSTITUTION AT section 7(2) provides that the state must respect, protect, promote and fulfil the rights in the Bill of Rights. As a constitutional democracy, South Africa's values are underpinned by considerations of human dignity, the achievement of equality, and the advancement of human rights and freedoms; non-racialism and non-sexism, supremacy of the Constitution and the rule of law; and a multi-party democracy to ensure a government that is accountable, responsive and transparent. Further, the Bill of Rights binds the Legislature, the Executive, the Judiciary and all organs of state. The Bill of Rights is not limited to protecting individuals against the state, but also provides in some circumstances, direct protection of individuals against rights abuses by other individuals.

While South Africans in general appear to enjoy most rights and freedoms in the Bill of Rights, this is only particularly true for political and civil rights, while socio-economic rights are not enjoyed to the same extent. In any event, the interrelated, interdependent and indivisible nature of human rights means that the failure to protect or fulfill one right affects the realisation of other rights. This was seen in the Constitutional Court's decision in *Kham and Others v Electoral Commission and Another* where election results in Tlokwe (Potchefstroom) Local Municipality were set aside after the Independent Electoral Commission (IEC) failed to obtain sufficient particularity of voter's addresses to enable it to ensure that the voter was at the time, ordinarily resident in that voting district. The *Electoral Act* demands that the voter's roll include addresses of the voters. Some of the irregular address were those of voters dwelling in informal settlements. This proves the link between the right to access adequate housing, a socio-economic right, on the one hand, and the right to free, fair and regular elections on the other hand, which is a political right. Evidence of the interrelatedness of rights is also seen through the implementation of various school feeding schemes, which, while realising the right to sufficient food on the one hand, also assists in realising the right to basic education.

In recognition of its place within the global village, the government ratified, in January 2015, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). This signifies the government's intention to give socio-economic rights greater force nationally. Still on matters with international perspective, the Supreme Court of Appeal, in *Minister of Justice and Constitutional Development and Others v Southern African Litigation Centre and Others*, underscored the supremacy of the Constitution and emphasised the government's obligation to abide by the law. This followed the 2014 decision of the Constitutional Court in *National Commissioner of the SAPS v Southern African Litigation Centre and Others* in which the Constitutional Court enunciated the government's obligations under international criminal law, as well the Constitution. South Africa in 2015 submitted a report to the United Nations Human Rights Committee, which was the first such report submitted since the *International Covenant on Civil and Political Rights* was ratified in 1998. The government had been in breach of the treaty's obligation to submit a report every four years. The report nonetheless has been criticised for lacking sufficient detail, particularly on issues such as the Marikana killings or the state's relationship with Chapter 9 institutions, particularly the Public Protector's office.

Crime and violent crime figures are persistently high and even if the annual statistics presented by the South African Police Service (SAPS) may show a decrease in the incidences of violent crime, the figures are still unacceptably high. Some groups, particularly children, women, foreigners and lesbian, gay, bisexual, transsexual and intersex (LGBTI) are more vulnerable to violent attacks. At policy level, there is recognition of their particular vulnerability, but it remains to be seen how the government can guarantee their safety and security. All of this happening at a time when the National Prosecuting Authority (NPA) appears to be saddled with infighting and settling political scores, rather than adhering to its core mandate to fight crime in the nation. Allegations of state capture - a kind of systemic political corruption which sees private interests significantly influence a state's decision-making processes to their own advantage outside of legal channels - loom large in the public discourse and it remains to be seen what steps will be taken to address this.

South Africans will once again elect councillors in the 2016 Municipal Elections. The Constitution places local government at the epicenter of the service delivery system, including the realisation of socio-economic rights. Yet poor local governance is often the source of service delivery protests - some municipalities fail to provide such basic services such as water or electricity, and others still use the bucket system - and many are plagued by rampant corruption.

Land reform and the protection of property rights remain on the agenda, with the National Assembly adopting the widely criticised *Expropriation Bill*. Most recently, the Minister of

“While South Africans in general appear to enjoy most rights and freedoms in the Bill of Rights, this is only particularly true for political and civil rights...”

Rural Development and Land Reform stated that pre-1913 land claims would be included in the restitution process. The *Restitution of Land Rights Amendment Act* came into effect in 2014 in order to allow the further lodgement for restitution claims until 30 June 2019. This despite 25.9% of the total land claims registered with the Department not yet being finalised. Also, close to 50% of the land already acquired for restitution has still not been transferred to the beneficiaries. It is unclear how the Department will address the articulated concerns. The Department of Rural Development and Land Reform estimates that 379 000 new claims would be lodged between 2014 and 2019. According to the Land Claims Commission's track record, it would take 144 years to resolve all the claims.

The Constitutional Court, for the first time ever, overturned a ruling of the Electoral Court the *Kham and Others v Electoral Commission and Another* in matter where the Court found that the by-elections held in Tlokwe in 2013 were not free and fair, after opposition parties alleged irregularities on the voters roll. At the time of writing, the issue was yet to be resolved as the IEC does not have a means of capturing the addresses of South Africans living in informal settlements and in rural communities without fixed permanent street addresses.

The issues of language and access to education dominated the public discourse in 2015, with legal action being taken against institutions such as the University of Stellenbosch and the Free State University over their language policies. Increasingly, institutions (and at times schools) which offer Afrikaans as the language of instruction are under pressure to adopt English as the main language of instruction, to the detriment of other languages. It remains to be seen how the competing interests of section 29(2) of the Constitution, which provides that *"Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable..."* can be practicability implemented.

Disappointingly, racial discrimination and renewed acts of racism continue to be a major dividing factor in South Africa with many instances of such occurrences being reported in the media. Furthermore, Equality Courts, as established by the *Promotion of Equality and the Prevention of Unfair Discrimination Act* (PEPUDA) report that the vast complaints dealt with are race-related.

FUTURE TRENDS

The South African Judiciary's important role in safeguarding and protecting the Constitution and its values continues, as does its role in ensuring the consolidation of democracy through holding the legislative and parliamentary branches of government accountable. However, the lower courts are persistently criticised for infringing on the right of access to courts due to undue delays in deciding cases and settling matters.

In general, Parliament's failure to hold the Executive accountable in notable instances has led to the disputing parties approaching the courts for a resolution - placing pressure on the Judiciary to resolve what are at heart, political issues.

The apparent politicisation of the criminal justice system and the security services remains a concern. Despite the appointment of a new National Director of Public Prosecution, allegations of 'political hit squads' and targeted prosecutions remain. This negatively affects the NPA's ability to abide by its core mandate - that of instituting and conducting criminal proceedings on behalf of the state. It is worth noting that no head of the prosecuting authority, since the inception of the body in 1998, has completed a full term at the helm. Of particular concern is the failure of Parliament to nominate a candidate for the Inspector-General of Intelligence. The position has been vacant since 31 March 2015, which means that there is little oversight into the intelligence and counter-intelligence activities of the South African Intelligence Services to determine their compliance with the legislative framework. The Inspector-General's role is to ensure that the Rule of Law is upheld and that the rights of South Africans are protected.

The SAPS revealed through an audit of their officers that 1 448 serving police officers were convicted criminals. As at the time of writing, they remained on duty thanks to the SAPS union, POPOCRU's successful challenge to attempts by the Minister of Police to rid the SAPS of the convicted officers. Given the nation's unacceptably high crime rates, it is cause for concern when convicted criminals are in the ranks of a body whose constitutional mandate is to *"prevent, combat, and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to enforce the law"*.

Gender equality is in principle enjoyed, as seen by South Africa's position in global

“The issues of language and access to education dominated the public discourse in 2015...”

rankings on women holding legislative office, as well as the fact that statistics show that nearly all of South Africa's girls are receiving basic education. At tertiary institutions, the number of women receiving higher education outnumbers that of men. However, violence against women is still a great concern. Despite the Department of Justice and Correctional Service's establishment of specialised courts dedicated to sexual offences, the conviction rate remains low.

While more South Africans than ever before have access to education, it is telling that statistics suggest that only half of the learners who started their first grade in 2004 wrote the National Senior Certificate exams in 2015. Other statistics show that of the 19.7 million working-age youth (15 to 34 years), 9.8 million were not economically active and a further 3.6 million were unemployed. The 'not economically active' includes discouraged work-seekers, full-time students, and homemakers.

Land reform remains on the agenda. While it is a constitutional imperative, of concern is the implementation of various legislation including the Restitution of Land Rights Amendment Act, which reopened the land claims process despite the backlog of land claims facing the Commission on Restitution of Land Rights. Government has also announced the intention to allow pre-1913 land dispossessions despite the Constitution's provision that only land dispossessed after 19 June 1913 can be included in the restitution process. In addition, plans to effectively hand over 50% ownership of farms to farm labourers are said to be underway despite the lack of detail on aspects such as compensation for expropriation.

The National Development Plan (NDP) enjoys broad support across the political spectrum and civil society, despite some misgivings from some within the governing party and its alliance partners. Should it be successfully implemented, South Africa can look forward to improved living standards, the elimination of poverty, as well as reduced levels of inequality.

KEY DRIVERS

Some of the factors and drivers that can be expected to affect human rights in 2016 include:

- The effectiveness, independence and integrity of Chapter 9 institutions including the Public Protector, the Human Rights Commission (SAHRC) and the IEC, particularly in light of the end of the current Public Protector's term of office in October 2016;
- In the wake of slow economic growth, the weakening of the South African Rand, and a possible credit downgrade by international ratings agencies; the impact of an economic meltdown;
- The impact of poorly performing public enterprises and an energy crises on the economy and other socio-economic rights;
- The ability of the Judicial Services Commission (JSC) to fill vacant judicial positions with fit, proper and impartial candidates;
- The impact of political interference on key state institutions including the NPA, SARS and SAPS, as well as the ability of the NPA to act without fear of favour;
- The impact of police brutality in the absence of firm leadership and an entrenched culture of human rights;
- The impact of crime on a variety of human rights, society and the economy;
- The impact of new legislation and policies with the potential to weaken property rights;
- The impact of the drought on food security and access to water and sanitation;
- The municipal elections and the ability of the IEC's ability to promote and safeguard representative democracy;
- The independence, effectiveness and integrity of the Courts, particularly the Constitutional Court;
- The presence of a robust civil society and the continued engagement in the democratic processes including legislative processes and public discourse;
- The impact of the #FeesMustFall protests on the government's ability to make progressively available, the right to further education.

“The National Development Plan (NDP) enjoys broad support across the political spectrum and civil society...”

Ms Phephelaphi Dube, Legal Officer

2015 Grade E -

2016 Grade E =

Although equality is one of the foundational values, South Africa still remains one of the most unequal societies in the world - as is evidenced by the Gini coefficient (which measures inequality and income distribution), which remains above 0.60 - indicative of a highly unequal society. Equality has legal, social and economic dimensions.

FREEDOM FROM UNFAIR DISCRIMINATION

Equality in South Africa remains deeply contested. While there may be, from a moral perspective, an understanding that all persons are equal, there exists however, much disagreement on what can be claimed under the notion of equality. Much of the protests seen in 2015 were premised on the idea of equality - whether in access to higher education or to basic services.

- Solidarity Trade Union in *Solidarity v Minister of Safety and Security and Others* successfully challenged the SAPS employment equity plan on the basis that employment equity measures amounted to quotas in contravention of the *Employment Equity Act*, which specifically prohibits the use of quotas in the achievement of employment equity goals. This is following the Constitutional Court's remarks in the *South African Police Service v Solidarity obo Barnard* 2014 case, which held that all employment equity plans should fulfil all three legs of the test set out in the *Minister of Finance and Others v Van Heerden* case. Considerations of fairness and reasonableness must be had when applying employment equity measures.
- According to the *Amnesty International Report 2015/16*, many refugees, asylum-seekers and migrants continue to suffer attacks on their homes and businesses nationwide. Incidents were reported, among others, in Soweto, Durban

and Grahamstown. Media reports say between five and six people lost their lives during the xenophobic attacks in KwaZulu-Natal in 2015.

- *The Draft National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance* (NAP) was amended and finalised in accordance with the recently published *United Nations Practical Guide on Developing National Action Plans against Racial Discrimination* (2014). The NAP was developed in line with the *Durban Declaration and Programme of Action* (DDPA) adopted at the Third World Conference against Racism held in Durban, South Africa in 2001.

GENDER EQUALITY

The year 2015 marked the 20th anniversary of the Fourth World Conference on Women and the landmark *Beijing Declaration and Platform for Action*, signed in September 1995. Considered the most comprehensive blueprint on advancing women's rights, the 1995 Beijing roadmap was adopted by 189 governments. But 20 years on, in South Africa and throughout the world, many commitments made are only partially fulfilled.

- According to the 2015 *Department of Women (DoW) Annual Report*, in the period under review, the Department was allocated 0.03% of the total national fiscal allocation - the lowest allocation for any department, especially considering that R67.6 million of the DoW's budget had to be transferred to the Commission for Gender Equality, a statutory body established in terms of the Constitution.
- South Africa ranks 17/145 on the World Economic Forum's (WEF) *Gender Gap Index 2015*, which is up one place from last year, although three more countries were added to the



list. South Africa was highly ranked in health and politics categories, but dropped to the bottom half when ranked for education and economic opportunities.

- According to the International Parliamentary Union's (IPU) *Women in Politics: 2015 Report*, South Africa is ranked 10th for participation of women in Parliament, up one spot from last year. South Africa has 41.5% women in Parliament, compared to the global average of 22%. In addition, both the speaker in the National Assembly, as well as the chair of the National Council of Provinces (NCOP) are women.

- According to the Institute of Race Relations (IRR) *2016 South Africa Survey*, there has been a steady decrease in the number of female representatives in the legislature. Women accounted for 40.9% of the members in 2014, which has since dropped to 36.7% for 2015. At national level, women constituted 41.8% of the National Assembly, a slight increase from 41.3% in 2014. Membership of the National Council of Provinces (NCOP) dropped from 35.2% in 2014, to 33.3% women for 2015.

- According to the *Amnesty International Annual Report 2015/16*, progress has been made in addressing violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) people, with Provincial Task Teams established to address LGBTI violence in at least five of the nine provinces.

- The *Amnesty International Annual Report 2015/16* also made mention of progress by the Rapid Response Team in resolving previously unsolved cases of violence against LGBTI people. The Rapid Response Team was established on 5 July 2013 by the Working Group of the National Task Team to urgently attend to the pending cases in the criminal justice system where offences have been committed against LGBTI persons.

EQUALITY BEFORE THE LAW

Generally equality before the law is enjoyed. It should be borne in mind that the idea of equality before the law means equality of legal process and equal treatment in the application of the law. It refers to both the substance and content of the law. That said, a recurrent concern is that factors such as poverty and lack of knowledge hinder the extent to which many South Africans can fully enjoy equality before the law.

EQUALITY OF OUTCOMES

- According to estimates from Statistics South Africa (Stats SA), South Africa's economy grew by 1.3% in 2015, down from 1.5% in 2014.

- According to Stats SA's *Quarterly Labour Force Survey*, employment grew by 1.2% (or 190 000) in the fourth quarter of 2015, resulting in a decline in the unemployment rate to 24.5%. The labour absorption rate was 44.2% during the same period.

- 5.2 million people remain unemployed, of which 65.7% are aged 15 to 34, and 57.6% did not complete matric. Unemployed persons are those (aged 15 to 64 years) who were not employed when the research was conducted and actively looked for work or tried to start a business for the period of a year, as well as the discouraged work-seekers.

- The IRR's *2016 South Africa Survey* reveals management positions are filled as follows: 38.5% black, 9.5% Coloured, 8.2% Indian and 43.8% white.

- According to the *2015 SA Reconciliation Barometer* compiled by the Institute for Justice and Reconciliation, 67% of South Africans feel that income inequality has either worsened or stayed the same since 1994.

- The Lived Poverty Index (LPI) - a measure developed by the Afrobarometer network that focuses on access to the most basic necessities that are needed to survive - suggests that although South Africa is regarded as a middle-income country, significant proportions of its population still experience intermittent shortages of access to basic necessities such as food, clean water and basic medicines. The LPI mean for all South Africans, on a scale ranging from 1 (no deprivation) to 4 (maximum deprivation), is 0.89. There is, however, significant variance between the scores of Indian (0.25) and white (0.26) respondents at the bottom end of the scale, who registered significantly less than the national mean, and the score for black respondents (1.03), which is markedly higher than the mean.

- The Gini coefficient was recorded at 0.66 which is indicative of a highly unequal society, up from the previous years' 0.596. The actual figure is in contention due to different variables that have been introduced to measure the inequality, the time period and the data set, but regardless of the variable used, South Africa is consistently unequal.



2015 Grade C -

2016 Grade D -

THE RIGHT TO dignity is pre-eminent of all fundamental rights and is the mainstay value of the entire Bill of Rights. All other individual rights rest upon the right to dignity. Poverty, inequality, unemployment, as well as racial, gender and other forms of discrimination in particular erode the extent to which human dignity can be enjoyed. This right is negatively affected by the manner in which individual South Africans continue to engage with each other. In this regard, the number of reported racial incidents and continued acts of individual racism are of great concern.

- According to the *United Nations Development Programme (UNDP) 2014/2015 Report*, increased access to universal primary education, boosting of the rate of youth literacy, and the reduction of gender inequality in areas such as Parliament have aided in the decrease in poverty trends in the country.
- According to the *2015 SA Reconciliation Barometer*, a majority of South Africans (61.4%) feel that race relations since 1994 have either stayed the same or deteriorated since the country's political transition in 1994, and the bulk of respondents have noted income inequality as a major source of social division.
- The same report stated that while there is a desire among

most South Africans to have more contact with people from racial groups other than their own, they are precluded from doing so by the spatial and economic legacies of apartheid. The feeling is fuelled by frustration and disappointment with the social inequality that mars post-apartheid South Africa.

- The South African Human Rights Commission (SAHRC) reported a marked increase in complaints related to racism, compared to the same period last year.
- In the landmark judgment *Stranham-Ford v Minister of Justice and Correctional Services and Others* handed down by the High Court in Pretoria (which concerned the rights of terminal patients), the Court stressed that the right to human dignity encompasses the right to live one's life and to die with dignity and bodily integrity. The case will have far-reaching consequences for both medical practitioners and terminally-ill patients. The Department of Justice and Correctional Services is however appealing the decision.
- A major milestone in the implementation of the Truth and Reconciliation Commission (TRC) has been the finalisation of Basic and Higher Education regulations to assist TRC-identified victims and their beneficiaries to access educational assistance. By the end of the 2014/15 financial year, 463 applicants were confirmed for education assistance.



2015 Grade E -

2016 Grade E =

THE RIGHT TO life, together with the right to dignity, are important underpinnings of all other individual rights in the Bill of Rights. The right to life includes both the duty not to kill, as well as a positive obligation to protect and preserve life.

- According to the SAPS crime statistics for 2014/15, there were 1 537 police officers who were attacked, resulting in 86 murdered officers. In 2013/2014 there were 1 172 attacks on police officers, which resulted in 77 being murdered. Comparatively, this indicates that attacks on police increased by 31% between 2013/2014 and 2014/2015, and police murders by 11.7%.
- There was a reported continued decrease in overall offences against children as the total number of reported charges further decreased by 51.3% when compared to 2013/2014.
- A total of 2 206 000 offences were committed over the period, up marginally - 0.09% - from the 2 204 000 reported in 2014.
- Between April 2013 and March 2014, there were 4 720 reported cases of sexual offences identified by police officers. In the April 2014 to March 2015 period, this jumped 34.3% to 6 340 cases.
- In 2014, 17 023 cases of murder were reported. In 2015, the

number increased to 17 805, indicating an increase of 4.6%.

- In 2014/15, more than 3.1 million people received anti-retroviral (ARV) treatment in South Africa, compared to 2.6 million the previous period.
- The *Amnesty International Annual Report 2015/16* stated that HIV infection continues to be the main cause of maternal deaths, with approximately one-third of pregnant women living with HIV.
- According to the WEF's *Global Gender Gap Report 2015*, South Africa's maternal mortality ratio was 140 per 100 000 live births.



Freedom and Security of the Person

(section 12)

2015 Grade C -

2016 Grade C =

WHILE THIS RIGHT is, in principle, enjoyed, the government has been criticised for failing to prevent further attacks on foreign nationals. In addition, the government was criticised for its conduct during Operation Fiela, which ostensibly began as an attempt to prevent attacks on foreign nationals but ended up with the Lawyers for Human Rights challenging, and winning, the decision to detain foreign nationals without following due process.

- The IRR's *2016 South Africa Survey* reports 727 escapes from police custody during 2014/15.
- The 2014/15 Annual Report of the Independent Police Investigative Directorate (IPID) recorded 5879 cases during the reporting period. Of these, 396 were deaths as a result of police action, 244 deaths in police custody, 34 cases of rape in police custody, 124 cases of rape by a police officer, 145 cases of torture, 940 cases of illegal discharge of an official firearm and 3 711 complaints of assault by police officers.
- The *Human Rights Watch World Report 2015* states that South African police do not have proper equipment and training to control riots, leading to the use of excessive and disproportionate force.
- Residents of Khayelitsha marched to Parliament in August 2015 following police failure to implement the recommendations of the Khayelitsha Commission (Commission of Inquiry into allegations of police inefficiency

in Khayelitsha and a breakdown in relations between the community and police in Khayelitsha), established in 2012 in response to complaints about policing in Khayelitsha. The report was published in 2014. In 2015 Western Cape Premier Helen Zille committed to establish a joint task team with the police to assist with implementation. The Western Cape Police Ombudsman was established in the course of 2015 following the recommendations of the Commission.

- Statistics provided by the IRR's *2016 South Africa Survey* show that during 2014/15, 908 364 new cases were enrolled, of which the National Prosecuting Authority (NPA) finalised only 319 149 cases with a verdict. Of the 1 707 846 crime arrests during 2014/15, only 17% (or 296 108) resulted in a conviction.



Slavery, Servitude and Forced Labour

(section 13)

2015 Grade **B +**

2016 Grade **B =**

WHILE SLAVERY, servitude and forced labour are rare occurrences in South Africa, it is nonetheless worrying that such incidents, however few, are reported.

- According to the *US Trafficking in Persons Report 2015*, South Africa is a destination country for a large percentage of traffickers from countries all over Africa. Reports of Angolan women and children being subjected to domestic servitude and sex slavery within the country are indicative of lax border controls. Children from the Republic of the Congo may transit through the Democratic Republic of Congo *en route* to Angola or South Africa, where they are

also subjected to domestic servitude. Lesotho and Malawi are source countries for women and girls who voluntarily migrate to South Africa to seek job opportunities. For the Basotho, upon arrival, they are often held in prison-like conditions by 'agents' and forced into prostitution. Basotho men migrate voluntarily and often illegally, to South Africa for work in agriculture and mining. Some become victims of forced labour and work for long periods until their employers turn them over to South African authorities for deportation on immigration violations to avoid paying them. There are also trafficking escapees from Cambodia, for example, who come to South Africa seeking refuge.



Privacy

(section 14)

2015 Grade **B -**

2016 Grade **B =**

THE RIGHT TO privacy is, in principle, observed.

- The Right to Know Campaign (R2K) has raised concerns over the alleged involvement of Interception Centres in monitoring citizens, as well as juristic persons, without explicit court approval, in violation of the right to privacy.
- Parliament's failure to approve nominated individuals for

the post of Inspector General of Intelligence is a cause for concern, as the public has little right of recourse in the event of right to privacy violations. The post has been vacant as of 31 March 2015. This suggests that there is limited oversight into the intelligence and counter intelligence activities of the South African Intelligence Services.

Freedom of Religion, Belief and Opinion

(section 15)

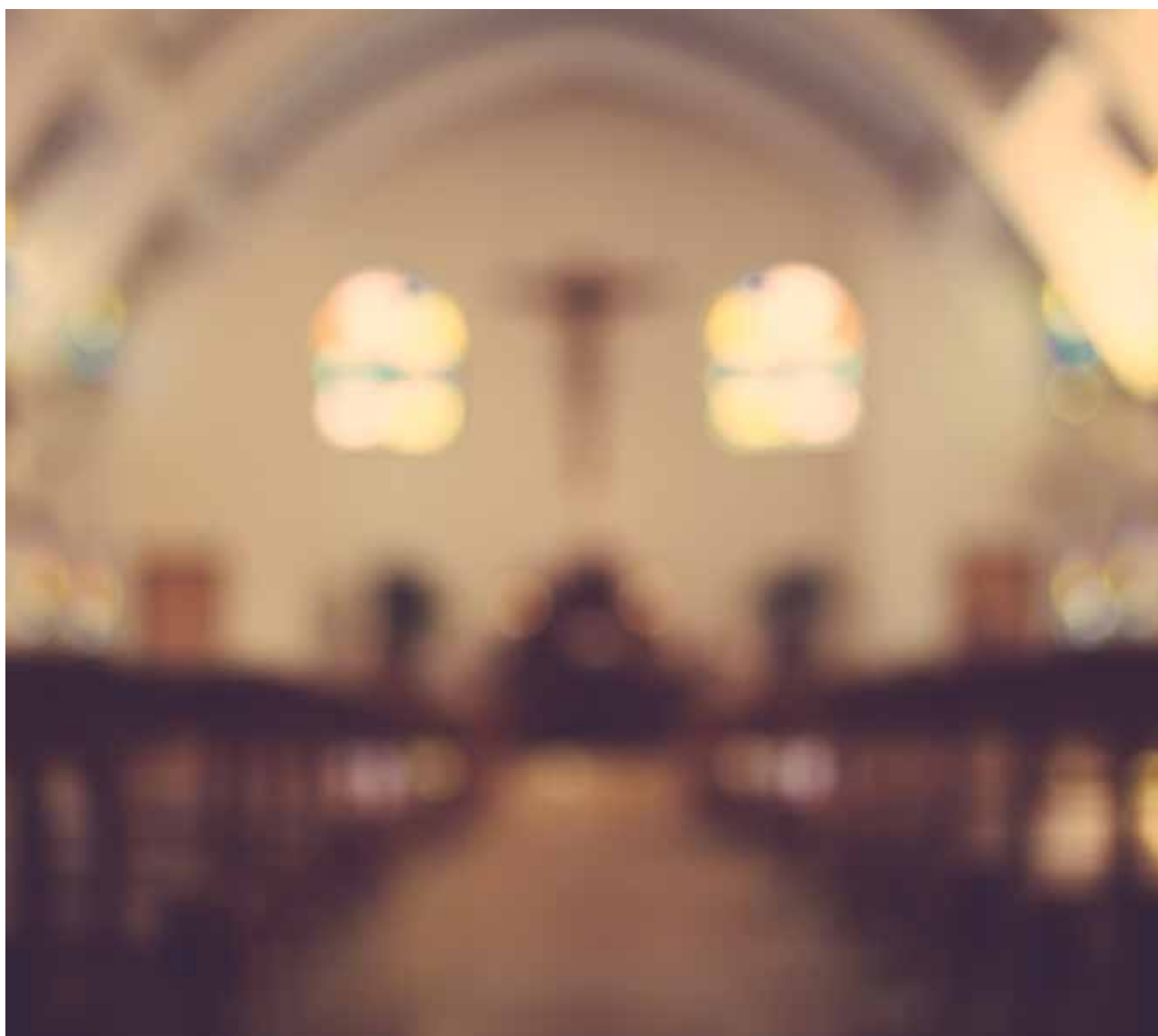
2015 Grade A -

2016 Grade A +

THIS RIGHT IS generally enjoyed.

- On 20 August 2015, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission) launched an investigative study into the commercialisation of religion following an increase in complaints over rights abuses by religious bodies from members of the public. One such case involved Prophet Paseka Motsoeneng of the Incredible Happenings Church, who was reported to the CRL Commission. He appeared before the Commission twice after certain events at his church prompted concern.
- The questionable legal status of Muslim marriages led to the Women's Legal Centre launching an application to have Muslim marriages legally recognised in December 2014; the matter will be heard in May 2016.
- In *Ecclesia de Lange v Presiding Bishop of the Methodist Church of Southern Africa and Another*, the Constitutional

Court handed down a judgment concerning the suspension and discontinuation of Ms De Lange as an active minister of the Methodist Church, following her announcement of her intended marriage to her same-sex partner. Ms De Lange conceded that she was in breach of the Church's rule proscribing ministers from entering into same-sex marriages. She argued, however, that the Church's reliance on the rule contravened her right to equality under the Constitution, which prohibits unfair discrimination based on marital status or sexual orientation. The Court stated that because the issue relates to interpretation of religious doctrine, arbitration would be the appropriate forum to examine the Church's application of its rule against same-sex marriages for ministers. In a concurring judgment, Van der Westhuizen J, contended that this case raises the question of whether there should be a "constitution-free" zone in our constitutional democracy.



2015 Grade C -

2016 Grade C =

In general, South Africans enjoy this freedom to a great degree. However, 2015 saw numerous expressions which constituted hate speech, showing the need to properly balance competing interests. While freedom of speech is central to democracy, it is also understood that it can be subordinate to other interests.

- In the last months of 2015, and first months of 2016, there was an increase in social media posts that could be interpreted as hate speech, or incitement to violence. Various incidents were reported to adjudicative bodies among others, the SAHRC and Equality Courts.
- The *Protection of State Information Bill* is still awaiting assent after being passed by Parliament. Several civil society organisations including the South African National Editors' Forum (SANEF), R2K and the Freedom of Expression Institute (FXI) plan to refer the Bill to the Constitutional Court should it be signed into law in its current form.
- The *Draft National Plan to Combat Racism and Racial Discrimination* launched by the Department of Justice and Constitutional Development is in consultation phase and is aimed at addressing the growing rate of hate speech incidences in society, among other issues.
- Reporters Without Borders ranked South Africa 39 out of 180 countries in their *2015 World Press Freedom Index*, an improvement of three places compared with 2014.
- According to the 2015 Freedom House *Freedom of the Press Report*, South Africa maintains its partly free status with regard to press freedom (a nation is scored between 0 and 100 and the lower the award, the freer the press). South Africa achieved a press freedom score of 37, which takes into account the legal, political and economic environments in the country. This is an increase from 2014, where South Africa scored 33. Freedom House cited increased violence against journalists, as well as government encroachments on the rights enjoyed by journalists, and an increasing reliance

on legislation including the *National Key Points Act* to justify government action, as reasons for the shift.

- The *Promotion of Equality and the Prevention of Unfair Discrimination Act* was enacted and came into operation in September 2000. All magistrates' courts are designated to hear matters such as hate speech, harassment and unfair treatment under this Act. According to the Department of Justice and Constitutional Development Annual Report 2014/2015, there was a 38% increase in the number of new matters registered. Hate speech and unfair discrimination constituted most of the complaints in 2014/2015, with 328 and 291 respectively.
- The Minister of Justice and Correctional Services has announced that a law seeking to criminalise hate speech will be tabled before the National Assembly for debate in the course of 2016. A concern is that the definition of 'hate speech' may be so broad as to curtail the extent to which the freedom of expression can be enjoyed, beyond the limitations imposed by the Constitution.
- The degree to which the government has intervened in both public and private media is a cause for concern. The *Broadcasting Amendment Bill*, which was introduced in Parliament in December 2015, has been heavily criticised for giving government effective power over the public broadcaster, SABC, through total control over the appointment of the broadcaster's Board. Similar concerns were raised over the Sekunjalo Independent Media (SIM) Consortium's purchase of Independent News & Media SA (INMSA). INMSA owns the *Cape Times*, the *Cape Argus*, the *Weekend Argus*, the *Daily Voice*, *The Star*, *Pretoria News*, *Saturday Star*, *Sunday Independent*, *Diamond Fields Advertiser*, *Weekend Pretoria News*, *Daily News*, *The Mercury*, *Post*, *Independent on Saturday*, the *Sunday Tribune*, and Zulu daily newspaper *Isolezwe* and its Saturday and Sunday editions. The two INMSA shareholders are SIM (75%) and the Government Employees' Pension Fund acting through the Public Investment Corporation (PIC) with 25%.



Freedom of Assembly, Demonstration, Picket and Petition

(section 17)

2015 Grade B -

2016 Grade B +

THIS FREEDOM IS largely enjoyed although the manner in which this right is being realised often has a negative effect on other rights - as witnessed when protest action turns violent, or shops and businesses are forced to close.

- The #FeesMustFall, #RhodesMustFall and #OpenStellenbosch movements that were driven by students countrywide are protected under this section. However, as with most rights, a limitation is attached. In the wake of the extensive damage to property and personal injuries sustained, it is necessary to evaluate what the limits of the

freedom of assembly, demonstration, picket and petition are.

- According to Municipal IQ, there was a decrease in service-delivery protests during 2015, with 164 protests recorded, compared with 191 in 2014. The highest number of incidents were reported in the Eastern Cape (20%), KwaZulu-Natal (17%) and Gauteng (15%), with the least reported activity in the Northern Cape (4%). These figures only consider major service delivery protests by a community against a municipality and do not factor in other activity such as the #FeesMustFall protests.



Freedom of Association

(section 18)

2015 Grade A =

2016 Grade A =

THIS FREEDOM IS generally enjoyed.

Political Rights

(section 19)

2015 Grade B -

2016 Grade B =

THIS RIGHT IS, in principle, enjoyed and South African citizens will cast their votes in the 2016 municipal elections, on a date yet to be announced by the President. It is important to remember that political rights are the core guarantees of a democratic state. The right is furthermore dependent upon Parliament's ability to provide effective oversight over the Executive. Additionally, it is important that the Independent Electoral Commission (IEC) be sufficiently independent in order to ensure free and fair elections.

- Disruptions continued in Parliament, particularly during the joint sitting of Parliament and during the State of the Nation Address (SONA) in February 2016. This undermines the effectiveness of Parliament as a national forum for the debate of issues of national importance and its accountability as an institution that acts as a check on the Executive.
- In November 2015, the Constitutional Court handed down judgment in *Kham and Others v Independent Electoral Commission*, a matter concerning eight by-elections held in various wards in the Tlokwe Municipality (Potchefstroom) between August and December 2013. The Court held that

the constitutional right of the independent candidates to participate in the elections was impaired. The outcome of those by-elections was set aside and fresh by-elections are to be held. It was further declared that when registering a voter to vote in a particular voting district after the date of the order, the IEC is obliged to obtain sufficient particularity of the voter's address to enable it to ensure that the voter is at the time of registration ordinarily resident in that voting district.

- In October 2015, President Zuma appointed his former special advisor, Vuma Mashinini, as the new Chairperson of the IEC of South Africa. The decision was criticised by opposition parties and various members of civil society, who view it as a ploy to have commissioners sympathetic to the governing party dominating the electoral commission.
- Municipal elections are scheduled for mid-2016, however, estimates from the IEC as at end February 2016 indicate that approximately nine million South Africans eligible to vote had not yet registered.
- The WEF *Global Competitiveness Report* for 2015-2016 ranks South Africa 98 out of 140 nations for public trust in politicians.



Citizenship

(section 20)

2015 Grade A =

2016 Grade A =

THIS RIGHT IS generally enjoyed and is used within South African law interchangeably with “nationality”.

- The *Kham and Others v Electoral Commission and Another* matter saw the Constitutional Court make important pronouncements regarding the necessity of proof of address for registering voters. The matter highlights the concerning reality that too many South Africans do not possess title deeds, or have access to formal housing to which an address may be attached. The socio-economic plight of such people must not usurp their right to vote. The Court ordered the IEC to go above and beyond to ensure that voters have addresses, thus allowing for a fair electoral process.



Freedom of Movement and Residence

(section 21)

2015 Grade A =

2016 Grade A =

THIS FREEDOM IS enjoyed to a large extent and is there to facilitate the free movement of persons, goods and services. The government may not arbitrarily interfere with the right to freedom of movement and residence.

- The freedom of movement of South Africans was negatively affected by onerous requirements that minors travelling overseas must be in possession of unabridged birth certificates, in addition to passports. Unreasonable and excessive delays by the Department of Home Affairs in issuing such certificates have, in practice, placed limitations

on the freedom of movement of the citizens involved. New visa regulations have since been introduced to address concerns raised by tourists, South African travellers and stakeholders in the tourism sector regarding revisions to the regulations introduced in 2015.

- Operation Fiela, carried out in late 2015 and allegedly aimed at the reduction of crime, saw many foreign nationals arrested, detained and some deported. Various organisations expressed concern at the violation of human rights under the Operation Fiela.

Freedom of Trade, Occupation and Profession

(section 22)

2015 Grade D -

2016 Grade D =

THIS RIGHT IS under threat. However the realisation of other rights, such as equality, education and fair labour practices greatly influences the manner and extent to which this right can be enjoyed. Certain laws and regulations, ostensibly to achieve racial equality in the workplace, are being interpreted by some government departments very restrictively, to the detriment of some population groups. This is evidenced by the remarks in *The South African Restructuring and Insolvency Practitioners Association v The Minister of Justice and Constitutional Development and Others* and *Solidarity and Others v Department of Correctional Services and*

Others, where the courts distinguish between quotas (as proscribed by section 15 of the *Employment Equity Act*) and numerical targets. Quotas are an inflexible set of figures while targets refer to a plan based on designated groups filling specified percentages of the workforce while allowing for deviations. As such, targets do not constitute an absolute bar to the current employment or advancement of people who do not fall within a designated group.

Labour Relations

(section 23)

2015 Grade	B -	2016 Grade	B =
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SOUTH AFRICA ENJOYS robust labour relations but oftentimes pickets and strikes are characterised by violence. The right to fair labour practices applies to workers, employers and their respective organisations.

- South Africa has an overall ranking of 49/140 on the WEF's *Global Competitiveness Report 2015-2016*, with 107/140 for labour market efficiency. Labour market efficiency is affected by hiring and firing practices (ranked at 138/140),

flexibility of wage determination (ranked 137/140) and tensions in the labour-employer relations (SA again ranked last on the index).

- According to the IRR's *2016 South Africa Survey*, 11.8 million man-days were lost to strike action in 2014.
- According to the Department of Mineral Resources, deaths in the mining sector continue to decrease, with 77 fatalities reported in 2015. That is 8% lower than the 84 deaths in 2014.

Environment

(section 24)

2015 Grade	C -	2016 Grade	C +
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THE INCLUSION OF environmental rights as justiciable rights means that environmental concerns should be acknowledged, and accordingly promoted and protected. South Africa's environmental legal landscape is coming into its own with distinctive principles of environmental law. The controversial hydraulic fracturing (fracking) is once again in focus with the government's recent decision to permit exploration for shale gas in the Karoo.

- According to the 2016 *Environmental Performance Index*, South Africa is ranked 81 out of 180 countries, a drop of nine places from the previous year. The Index ranks countries' performance on high priority environmental issues in two areas: protection of human health and protection of ecosystems. The same report noted that South Africa lost 17.2% of its tree cover, making it the largest such loss in Africa.
- According to the Department of Environmental Affairs Annual Report 2014/15, the number of rhinoceros killed has decreased from 1 215 in 2014, to 749 in 2015. Poaching arrests increased from 343 to 386, from 2013 to 2014.
- The North Gauteng High Court dismissed the Department of Environmental Affairs' application for leave to appeal a recent ruling to lift the ban on local rhinoceros horn trade, which means that rhinoceros horn can be traded domestically.
- The capacity of Environmental Management Inspectors (EMIs) has increased by 19.8% from 1 915 in 2013/14, to 2 294 in 2014/15.
- The total number of arrests by EMIs decreased from 1 371 in 2013/14, to 1 259 in 2014/15. The number of criminal dockets handed to the NPA decreased by 33%, from 379 in 2013/14, to 253 in 2014/15. Convictions recorded for environmental offences also decreased by 16.7%, from 78 reported in 2013/14 to 65 in 2014/15.
- The *National Environmental Compliance and Enforcement Report* for 2014/2015 on criminal enforcement of environmental offences, notes that there has been an 8.5% increase (1 861 to 2 019) in the number of criminal dockets registered when compared to 2013/14.
- The largest fine and sentence was handed down in *State*

v Samancor Chrome Ltd for a contravention of section 29(4) of the *Environment Conservation Act*. The accused was found guilty on two counts and sentenced to a fine of R200 000. Additionally, the Court ordered that they pay R1 million to the Department of Environmental Affairs' Inspectorate for the "proper execution of their duties, environmental rehabilitation and enforcement training..." as well as an additional R700 000 to the Department, to be used to develop environmental initiatives with a local primary school.

- South Africa took part in the United Nations (UN) Conference on Climate Change (COP21) in 2015 in which resolutions on climate change were agreed upon, including climate change, environmental justice and peace, as well as protecting democracy and the public interest from secret trade agreements.
- Government announced in March 2016 that fracking will begin in the next 12 months, ending years of speculation over the project. The possibility of fracking in the Karoo has stirred a controversial debate in South Africa, with proponents highlighting its economic benefits and opponents voicing environmental concerns.



2015 Grade C -

2016 Grade D -

THIS RIGHT IS generally enjoyed. However, the slow pace and bureaucracy of land reform frustrates many claimants, beneficiaries and land owners alike. A slew of legislation with implications for property rights debated before the National Assembly in 2015 was passed or debated in Parliament, or like the *Regulation of Land Holdings Bill*, are yet to be published. Other legislation, like the *Preservation and Development of Agricultural Land Framework Bill*, was introduced, albeit in draft form. Political discourse continues to threaten property rights, creating uncertainty over the future of property rights protection in the country.

- South Africa has a ranking of 24/140 for the protection of property rights on the WEF's *Global Competitiveness Report* 2015-2016.
- The *Property Valuation Act*, which will regulate the valuation of property that has been identified for land reform, as well as property that has been identified for acquisition or disposal by the Department of Rural Development and Land Reform, came into effect on 1 August 2015.
- The *Expropriation Bill* has been passed by the National Assembly and, as at March 2016, was under consideration by the NCOP. The current version includes the expropriation of property in the public interest, thus widening its scope. It also allows for the expropriation of property on behalf of third parties.
- The *Private Security Industry Regulation Amendment Bill*, which will require foreign owners of security firms to

sell 51% of their shares to South Africans, is still awaiting Presidential assent.

- The *Protection of Investment Act* was signed into law on 13 December 2015, but is not yet in effect. This, despite heavy criticism from foreign investors over fears that it fails to give foreign investments adequate levels of protection.
- The Department of Rural Development and Land Reform saw thousands of new land claims lodged. The *Restitution of Land Rights Amendment Act* came into effect in order to allow the further lodgement for restitution claims until 30 June 2019. This despite 25.9% of the total land claims registered with the Department not yet being finalised. Also, close to 50% of the land already acquired for restitution has still not been transferred to the beneficiaries.
- The Poverty, Land and Agrarian Studies organisation (PLAAS) reports that the Department of Rural Development and Land Reform estimated that 379 000 new claims would be lodged between 2014 and 2019. According to the Land Claims Commission's track record, it would take 144 years to resolve all the claims.
- The President referred back to the National Assembly the *Mineral and Petroleum Resources Development Amendment Bill*, on the basis that it did not pass constitutional muster.
- The *Regulation of Land Holdings Bill*, which places a maximum ceiling of 12 000 hectares on agricultural land ownership for both locals and foreigners, will be tabled in Parliament in the course of 2016, according to the Minister of Rural Development and Land Reform.



2015 Grade B =

2016 Grade B =

EVER SINCE THE seminal *Government of the Republic of South Africa and Others v Grootboom and Others* decision on the right to access adequate housing, delivered by the Constitutional Court in 2000, in which the Court emphasised that the shape and content of the right is primarily a matter for the Legislature and the Executive, there has been growing awareness of the role that the government plays in realising this right. The same case also recognised that access to housing could also be achieved if measures were taken to make rural areas sustainable, thus limiting migration to urban areas. Faced with ever increasing populations, urban municipalities are under pressure to realise the right to access adequate housing.

- According to the IRR's 2016 *South Africa Survey*, in 1996 there were 3 432 002 black South African families residing in formal housing but by 2014, that number had increased to 9 432 000, or by 5 990 998 (an increase of 174.6%). The same Survey reported that there were at least 2 319 567 (or 38.7%) households residing in formal dwellings made possible by the State. However, the number of people residing in informal housing increased from 1 386 637 to 1 933 000, or by 546 363 (an increase of 39.4%).
- The SAHRC's 2015 *Report on Hearings into Access to Housing, Local Governance and Service*, concludes that

approaches to housing programmes do not have the desired impact of progressively realising the right to adequate housing, and in some cases, these approaches result in rights violations. In particular:

- there is a disconnect between the legal framework and the ability of local government to deliver access to housing and basic services, and the lack of effective and consistent implementation of policies perpetuates rights violations and the cycle of poverty and inequality;
- housing policies and programmes fail to address the needs of many poor and vulnerable people, including those with informal or irregular employment, and the inefficient implementation results in the ongoing denial of access to basic services;
- there is a further lack of accountability by private contractors for the incomplete provision of services, or for the delivery of poor work, leading to wasteful expenditure while communities continue to bear the greatest burden of continual rights violations;
- evictions are often conducted without due regard for the rights of affected communities, and there is insufficient accountability for damage to property and other rights violations which occur during such processes.



Healthcare, Food, Water and Social Security

(section 27)

2015 Grade C -

2016 Grade C =



HEALTHCARE

Despite healthcare access for all being constitutionally enshrined, considerable inequalities in access remain, largely due to disproportional resource allocation. It remains to be seen how the government's proposed National Health Insurance (NHI) scheme, which is aimed at tackling the divide in health care between the public and the private sectors, will be applied.

- The 2015 budget allocated R157.3 billion to healthcare, an 8% increase from the R146 billion allocation for 2014.
- Life expectancy at birth for 2015 is estimated at 60.6 years for males and 64.3 years for females. This increase has been attributed to expansion of health programmes with regard to HIV/AIDS and a decrease in the infant mortality rate.
- The Department of Health has set 1 April 2017 as the target date for establishing the South African Health Products Regulatory Authority (SAHPRA), to replace the Medicines' Control Council. SAHPRA will see to ensuring that medicines on the market are safe, effective and of high quality.
- According to the Department of Health's Annual Report 2014/15, prevention is the mainstay of efforts to combat HIV and AIDS. Since the HIV Counselling and Testing (HCT) campaign was introduced in 2010, over 35 million people have been tested. For the 2014/15 financial year, 9 566 097 people between the age of 15 and 49 years were tested. The number of people on ARV treatment increased to more than 3.1 million in 2014/15.
- According to the *Amnesty International Annual Report 2015/16*, medical research reports continue to indicate that young women, aged between 15 and 24, bear the burden of new HIV infections. Women in this age group were up to eight times more at risk of HIV infection due to both biological and social factors. Data collated from health districts reflected high pregnancy rates among girls under 18, accounting for "one in 14 deliveries in the country" in 2014-2015.
- South Africa's first national *HIV Stigma Index* has found that 7% of HIV-positive women surveyed reported being

sterilised against their will, and about 40% reported contraception was a pre-requisite of accessing ARVs.

- According to the IRR's *2016 South Africa Survey*, there are 3 182 public clinics and 407 hospitals across South Africa, compared with the 2014/2015 Survey, which reported 3 075 public clinics and 393 public hospitals respectively. This is indicative of a conscious effort to improve healthcare access to those who cannot afford private medical care.

FOOD

South Africa is currently experiencing what experts say is the worst drought in decades, with the South African Weather Service announcing that 2015 was the driest year on record. This has implications for food security in the wake of crop failure and the death of livestock. The Department of Agriculture, Forestry and Fisheries has adopted a Zero Hunger Policy in an effort to eradicate all forms of food insecurity in South Africa by 2030, and it remains to be seen how successful the initiative will be.

- Africa Check, a non-governmental organisation which assesses claims made in the public arena using journalistic skills and evidence drawn from the latest online tools, reports that the drought's effect on agriculture is evident in the Free State, KwaZulu-Natal and the North West. Summer crops, particularly maize, which is an important staple for many South Africans, could not be planted in many areas, or seedlings were severely damaged by heat.
- According to the Agricultural Business Chamber, soya, sorghum, groundnuts and sunflower crops have also been affected, which has negatively impacted South Africa's food security.
- The Agricultural Business Chamber further reports that livestock farmers also have little or no grazing and fodder for their livestock, while drinking water for animals is a problem in many areas in the drought-stricken provinces.
- Africa Check foresees increased food prices in South Africa for 2016.
- The SAHRC reports that South Africa has one of the highest rates of poverty and inequality in the world. Currently there are about 11 million people in South Africa who are food insecure, 70% of which live in rural areas. More than 60% of chronically hungry people are women.



WATER

South Africa is the 30th driest country worldwide, which makes the nation particularly vulnerable to water shortages. Despite the constitutional imperative for everyone to have access to water, questions still remain over the largely poorly maintained water infrastructure and lack of sanitation.

- The Department of Water and Sanitation launched their “War on Leaks” project in August 2015, to curb water wastage
 - The project aims to train 15 000 young people as artisans.
 - Phase 1, to be completed in the 2015/16 financial year, will train 3 000 artisans, plumbers and water agents (a water agent educates the public on how to use water wisely and manage water resources).
 - An additional 5 000 people will begin training in the 2016/17 financial year (Phase 2), and 7 000 will begin training in 2017/18 (Phase 3).
 - As of 25 January 2016, 2 897 people were receiving training. This included 1 573 artisans, 243 plumbers and 1 081 water agents.
 - The artisans and plumbers need three years of training before they will be able to start working, while the water agents can begin work after 10 months of training.
- According to the South African Weather Service, South Africa received the lowest rainfall between January and December 2015 since the recording of rainfall began in 1904. As such, five provinces have been declared drought

disaster areas, namely: Mpumalanga, Limpopo, KwaZulu-Natal, North West and the Free State. Some parts of the Eastern Cape, Northern Cape, and Western Cape are also severely affected by the drought’s effects.

SOCIAL SECURITY

Social security is intended to prevent deprivation and vulnerability. As such social assistance, which includes old age pensions, disability grants and child support grants is made available to people who cannot support themselves and their dependents.

- According to the Department of Social Development’s 2015 Annual Report, more than 16.5 million South Africans are receiving some kind of social grant, the majority being children and older persons.
- The World Bank’s 2014 *The State of Social Safety Nets* report, ranks the child support grant among the top five programmes of its kind in the world, and the largest in Africa.
- More than 11.7 million children benefited from the child support grant, while about 2.9 million older persons were recipients of the old age grant.
- The South African Social Security Agency (SASSA), registered 140 000 children as first-time child support grant recipients.
- The old age grant is available after a means test, to persons older than 60 years. Threshold was increased to benefit more elderly people, resulting in a further 80 000 recipients in the 2014/2015 year.



2015 Grade D =

2016 Grade D +

On account of children's vulnerability to violations of their human rights, the Constitution sets out safeguards against violations which may arise out of inadequate social conditions, including armed conflict and exploitative labour practices. While South Africa may have reduced its under-five mortality rate to 45.1 deaths per 1 000 live births by 2015, the number of child deaths reported in South Africa each year is still unacceptably high.

- According to SASSA, 11 956 549 child support grants were received in 2015, whilst 427 928 children received foster child grants.
- The rollout of social grants has probably contributed to preventing child deaths. Social grant beneficiaries as a percentage of the total national population increased from 9% in 2001, to 30% in 2015.
- Significant progress for adolescent sexual and reproductive rights was ensured with the passing of the *Sexual Offences Amendment Act*, which gave effect to the Constitutional Court's judgment in the case of *Teddy Bear Clinic for Abused Children v the Minister of Justice and Constitutional Development and Others (2013)* to protect the rights to dignity and privacy and the 'best interests of the child principle'. The revised Act decriminalised consensual sexual activity between adolescents aged 12 to 16.
- According to the SAPS Annual Report, 41 402 offences against children were reported in the 2014/15 period.

- The *KidsRights Index* is the annual global index which ranks how countries adhere to and are equipped to improve children's rights. It comprises a ranking for all UN member states that have ratified the *UN Convention on the Rights of the Child* and for which sufficient data is available (a total of 165 countries). South Africa ranked 86 on the index. The index considers five categories, namely: the right to life, the right to health, the right to education, the right to protection, as well as an enabling environment for child rights.
- The IRR has identified a marked decrease in child mortality rates in South Africa and says this is indicative of improved child health in the country. The IRR made this finding in its *2016 South Africa Survey*. The IRR found that the under-five mortality rate had declined from 77.2 deaths per 1 000 live births in 2002, to 45.1 deaths in 2015. The IRR also found that deaths of infants under one year of age declined from 51.2 deaths per 1 000 live births in 2002, to 34.4 deaths in 2015. According to the IRR, poor access to healthcare services (especially immunisation programmes), malnutrition, and poor living conditions were three of the leading contributors to child deaths. It found that immunisation rates have steadily increased in South Africa. In 2001, 67% of children under one year of age were immunised. This increased to 89.8% in 2014.
- From 2001 to 2014, severe malnutrition rates dropped from 12.5 per 1 000 children to 4.5 per 1 000 children among under-fives.



2015 Grade E -

2016 Grade E =

THE RIGHT TO education is under threat. The threats arising from violent protests over language requirements, affordability of school fees at institutions of higher learning, to poor conditions of infrastructure, quality of teaching, availability of resources (including textbooks), the impact of trade unions on the performance of teachers and schools, and access to schools due to location of schools, are some of the key concerns impacting negatively on this right being realised. Despite the introduction of *Legally Binding Norms and Standards for School Infrastructure* in 2013, there are still reports of schools, particularly in the Eastern Cape and Limpopo provinces, that fail to meet the minimum requirements.

- 2015 saw multiple protests on university campuses across South Africa. The most widely-reported being the #FeesMustFall movement, where students demanded accessible tertiary education. The protests, which started towards the end of 2015, spilled over into 2016. As a result of the protests, the Minister of Higher Education issued a directive staying fee increases for 2016. This enabled many students to register for the 2016 academic year without paying registration fees.
- As at March 2016, the *Higher Education Amendment Bill* was with Parliament's Portfolio Committee on Higher Education and Training. There are concerns that the Bill could compromise institutional autonomy due to its overly broad transformation provisions.
- The National Student Financial Aid Scheme (NSFAS), struggled to carry out its mandate to assist students in need with the payment of fees. This has led to assurances from the Department of Higher Education and Training that a new

payment structure will be put in place to make NSFAS more effective.

- The national pass rate of the National Senior Certificate (NSC) examinations - with the inclusion of the results of the 2015 supplementary examinations - stands at 77.1%, an increase of 1.3% from the 75.8% achieved in the 2014 NSC examination.
- The number of candidates that obtained admission to Bachelor studies also increased from the 150 752 announced in January 2015, to 152 018 for 2016.
- According to the Department of Basic Education, the Class of 2015 had the highest enrolment of Grade 12 learners in the history of the nation's basic education system. 799 306 candidates registered for the November 2015 NSC examinations - 110 000 candidates more than 2014.
- 87.2% of five-year-olds are attending educational institutions at Grade R.
- 90.7% of 14 to 18-year-olds attend educational institutions.
- 9.2 million learners nationwide benefit from the National School Nutrition Programme.
- The WEF's *Global Competitiveness Report 2015-2016* ranks the quality of SA's education system at 138/140, while mathematics and science education remain last at 140/140.
- Higher education and training in South Africa is ranked at 83/140 by the WEF's *Global Competitiveness Report 2015-2016*.
- A task team established by the Minister of Basic Education concluded with a report which found that the SA Democratic Teachers Union (SADTU) was allegedly selling teachers' posts and further that SADTU appeared to exert great control over the implementation of education policies in certain provinces.



2015 Grade B =

2016 Grade C -

IN PRINCIPLE, the right to language and culture is largely enjoyed. Although South African courts are yet to make a pronouncement on the right to participate in a cultural life, it is generally understood to mean that the right protects the collective strength of those whose choices might otherwise be in jeopardy at the hand of the majority.

- The *Use of Official Languages Act* was promulgated to regulate the use of languages by national government. The official deadline for the adoption of national language policies was 2 November 2014. In terms of section 6(3)(a) of the Constitution, national and provincial government “*must use at least two official languages*”, regardless of any ground for exception as provided for in the same section.

- In terms of section 4(2) of the *Use of Official Languages Act*, “A language policy adopted...*must (a) comply with the provisions of section 6(3)(a) of the Constitution; (b) identify at least three official languages that the national department, national public entity or national public enterprise will use for government purposes*”.

- However, as at 20 May 2015, very few government

departments, including the Department of Home Affairs, the Department of Public Works and the Department of Rural Development and Land Reform, had complied with the letter and spirit of the *Use of Official Languages Act*.

- Language rights have been contentious following allegations of exclusion at university campuses. University campuses including Pretoria, Stellenbosch and Free State saw violent student protests over their respective language policies. On the other hand, Afrikaans organisations have complained about a seemingly systematic drive to infringe upon the constitutional right to education in the language of preference (sec 29(2)).

- In January 2016, the Minister of Arts and Culture, Nathi Mthethwa, dissolved the entire Board of the Pan South African Language Board (PanSALB), led by Professor Mbulungeni Madiba, following a poor report by the Auditor-General. The Board’s administrative expenditure increased in the 2014/15 financial year, to R11 million (from R8 million), while expenditure on its core functions dropped to R17 million from R23 million. Irregular expenditure was reported at R28 million.



Cultural, Religious and Linguistic Communities

(section 31)

2015 Grade A =

2016 Grade B -

WHILE THE CONSTITUTION recognises the diversity of South Africa's cultural, religious and linguistic communities, a challenge remains on how best to practise such in a manner consistent with other rights in the Constitution. Diversity appears to be largely tolerated, but not promoted.

- The SAHRC hosted a national hearing into the plight of Khoisan communities (including Khoi, San, Nama, Griqua and Koranna) regarding their access to basic services and land.

- The Eastern Cape Provincial Health Department stated that at the close of initiation season in 2015, there were 28 deaths of initiates recorded, nine fewer than the previous season.

- The CRL Commission appears to be fulfilling its mandate of promoting respect for and furthering cultural, religious and linguistic rights, on a limited basis. Its role remains vague as its operations overlap with other agencies and legislation fails to specify its duties. The CRL Commission remains under financial constraints. This limits the extent to which cultural, religious and linguistic minorities can enjoy their rights.



Access to Information

(section 32)

2015 Grade D -

2016 Grade C -

THIS RIGHT IS necessary for open and accountable administration at all levels of government. It is an important constitutional guarantee of an open and democratic society which necessarily needs that public policies be made public. However, the growing tendency to justify withholding of information due to "national security" is a concern.

- According to the Freedom House *Freedom on the Net* report, South Africa is considered "free" with regard to internet freedom status, with a score of 27 (0 being most free, 100 least free).

- The *Freedom on the Net* report also makes mention of the Draft *Online Film and Publications Board Regulation Policy*, introduced in March 2015, that aims to protect children from harmful online content - it proposes to do this by allowing the government to pre-censor or remove existing content that fails to meet the board's new classification requirements.

- The *Protection of State Information Bill* (the Secrecy Bill) was passed by the National Assembly in 2013 but to date has not been signed into law. It seeks to regulate the classification of state information but undermines the right to access information and the rights of whistle-blowers and journalists.

Just Administrative Action

(section 33)

2015 Grade C = 2016 Grade B =

THE RIGHT TO just administrative action allows individuals to challenge government regarding the manner in which they are treated. It empowers courts to review administrative action to ensure that it is reasonable, lawful and procedurally fair.

- The *Minister of Basic Education v Basic Education for All* matter, which was decided in the Supreme Court of Appeal (SCA), set a definitive standard for all organs of state with an administrative function. Organs of state must ensure that when fulfilling obligations that they do so justly and reasonably. In this case, Limpopo was the only province in which the Department's policy was not applied. This constituted a gross violation of the right to education and dignity and was indicative of unfair discrimination. Furthermore, the Department's failures went back as far as

2012, where it failed to meet an order of the High Court. This conduct amounted to unfair discrimination on the part of the Department. The failure to provide sufficient reasons for the lack of textbooks constituted a violation of the right to just administrative action.

- An amendment to the *Immigration Act*, gazetted in December 2015, provides that individuals who overstay their visits to the country, even by 24 hours, can neither re-enter the country nor apply for a residence permit to live in the country. The sanctions do not differentiate between health emergencies, which may lead to overstaying and otherwise wilful decisions to overstay. Overstayers face the possibility of a five-year ban from the country and the appeal process can take up to 18 months. The draconian penalties may fail to meet the fairness standard, as required by the *Promotion of Administrative Justice Act*.

Access to Courts

(section 34)

2015 Grade B = 2016 Grade B =

THIS RIGHT IS, in principle, enjoyed, although factors such as the availability and affordability of legal representation influence the extent to which the right is enjoyed.

- According to the Department of Justice and Constitutional Development Annual Report for 2014/2015, the NPA continued to achieve favourably in most of its performance indicators. The most notable indicator was the improved conviction rate in organised crime, 92.2% against last year's 88.9%.
- The Department embarked on a project to re-establish dedicated Sexual Offences Courts in all provinces of the country to improve the handling of these cases and provide proper support for victims of these offences. For the year under review, 14 more courtrooms were designated, bringing the total number of courtrooms to 33. With regard to prosecutions, the conviction rate in the prosecution of sexual offence matters was 69%. This is a 1.9% improvement on the conviction rate achieved in the previous financial year.
- Funding for the transformation of State Legal Services began in 2014/15, with an injection of R108 million towards revitalisation and capacitation of State Attorney Offices over the next three financial years.
- As part of a broader transformation of the legal profession, the *Legal Practice Act of 2014* will enable the legal sector to develop legal skills that reflect South African demographics. In line with this Act, the National Forum was set up during 2015, to begin consultations with the legal profession.
- Certain Branch Courts in traditionally black townships have been upgraded to full services' courts, bringing the total number of Branch Courts designated as full services' courts to 32 as at the end of the 2014/15 financial year.
- In 2015, 39 new Small Claims Courts were established. As at the end of the financial year 2014/15, there were a total of

331 Small Claims Courts country-wide.

- The Minister of Justice and Correctional Services has announced that the *Traditional Courts Bill* will be reintroduced in the course of 2016. The previous Bill was problematic. It entrenched controversial apartheid boundaries by establishing the court's area of jurisdiction as the same as traditional leaders under the *Traditional Leadership and Governance Framework Act*. The boundaries include groupings of people who claim independent identities or land rights and challenge the imposed boundaries and subsequent authority of the tribal authority. The Bill precluded women from representing themselves - placing women at a serious disadvantage particularly in cases arising from disputes with male relatives or where they have no adult male relatives available to represent them. Presiding officers would be drawn from those of royal blood, and yet in most communities, traditional leaders are men. Should it be passed into law, it will severely impede access to justice for people under its jurisdiction.



Arrested, Detained and Accused Persons

(section 35)

2015 Grade D -

2016 Grade D =

THE PUBLIC INTEREST in ensuring the apprehension and conviction of the guilty needs to be weighed against the public interest in protecting the values of freedom, dignity, and equality from infringement by the state. This section therefore acts as a conduit through which the competing interests are balanced. Concern remains over the number of arrested, detained, and accused persons in comparison to the number of cases finalised by the courts. This suggests that the SAPS may be excessively using their powers of arrest and detention improperly, infringing on the right to freedom and security of the person.

- During 2014/2015, the Department of Correctional Services (DCS) had an annual average of 42 077 unsentenced inmates. Of these inmates, 1 048 were female and 41 029 were male. The unsentenced category consists of remand detainees, state patients and the deportation group. Remand detainees constituted 99% of the unsentenced inmates, of which 41 717 was the annual average.
- The number of children in remand detention decreased



from a baseline of 504 in 2010, to 155 in the 2014/15 year.

- The DCS increased the number of Further Education and Training (FET) full-time correctional centre schools (registered with the Department of Education) from one in 2009, to 14 in 2014.
- 91.5% of offenders participated in the adult education and training programme and more than 83% participated in skills development programmes (Skills Training and FET College Programmes).
- By the end of March 2015, 68.9% (68 624 out of 99 605) of offenders with correctional sentence plans had completed their correctional programmes.
- As at 31 March 2015, South Africa's inmate population reached 159 563.
- The 2015 IPID Annual Report states that during 2014/15 there were:

244 deaths in police custody;

396 deaths as a result of police action;

940 complaints of the discharge of an official firearm;

124 rapes by a police officer;

34 rapes in police custody;

145 cases of torture;

3711 cases of assault;

93 cases of corruption; and

60 cases of non-compliance

with section 29 of the *IPID Act*, which compels police to report alleged crimes to the IPID within 48 hours.

Conclusion

THE SOUTH AFRICAN Constitution is often hailed as among the most progressive ever constructed. However, more than two decades after its inception, thanks to increasing socio-economic inequalities, relentlessly high crime rates and perceived political interference with organs of state (including NPA, SARS and SAPS), the aspirational nature of the Constitution appears to be at odds with the nation's socio-economic realities. It has been frequently said that there is a gap between the Constitution's provisions and the lived realities of many South Africans. Nonetheless, South Africans in general enjoy many other rights and freedoms, including freedom of association, freedom of religion, belief

and opinion, as well as the right to assembly, demonstrate, picket and petition.

This Human Rights Report Card constitutes the eighth such annual Report. The Centre for Constitutional Rights (CFCR) releases this report annually on March 21, which South Africa sets aside as Humans Rights Day. We fittingly release the report on the day as the report is a baseline from which future trends in human rights violations may be identified. The Report is part of the CFCR's mission to promote the values, rights and principles in the Constitution, as well to monitor any developments which might affect the Constitution.



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