

Human Rights

Report Card 2017

The Respect,
Protection,
Promotion and
Fulfilment of Rights
in the Bill of Rights
during 2016



Centre for
CONSTITUTIONAL
RIGHTS

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While the Centre for Constitutional Rights (CFCR) strives to provide complete and accurate information, the Centre does not assume any liability whatsoever for the accuracy and completeness of the information contained herein. To the best of the CFR's knowledge, the information contained herein is accurate and reliable as of date of publication.

Methodology

THE CENTRE for Constitutional Rights (CFCR) has for the past eight years, annually presented a Human Rights Report Card in terms of which, realisation of human rights in South Africa is measured. The Report awards grades on a scale of A to E - A representing excellent, and E representing poor. The Report assesses decisions by Courts, legislation, repeated incident occurrences or an incident which shocks the conscience of nation, such as the Marikana killings, as well the reports compiled by well-established, trustworthy and competent bodies such as Transparency International, the United Nations (UN) and the Human Sciences Research Council (HSRC). Thereafter, the CFRC's Panel of Advisors (made up of eminent individuals who have distinguished themselves in the fields of law and/or politics) grade the various sections, whereupon the Centre aggregates the grades to reach a final grade. The Report further serves as a baseline from which future trends in human rights violations may be identified. The Report is a snapshot in time - 2016 - and is the result of engagement with South Africa's current affairs on a continuous basis.



Report Card 2017 Grades

We have once again awarded the following grades to reflect realisation of human rights in South Africa during 2016:

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 **C =**

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 **B =**

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

Labour Relations **C =**

Environment **C -**

Property **D -**

Housing **B -**

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

Children **C =**

Education **E =**

Language and Culture **D =**

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

Access to Information **D -**

Just Administrative Action **C =**

Access to Courts **B =**

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

Introduction

SECTION 8 of the Constitution subjects all legislation to the provisions of the Bill of Rights. Section 8 binds not only the State, but also, to some limited extent, natural and juristic persons. Section 1 of the Constitution underpins South Africa's values as 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.

South Africa continues to be a functioning multi-party constitutional democracy. The largely peaceful handover of power following the 2016 Local Government Elections attests to this fact. However, the seemingly endemic levels of corruption and lack of institutional capacity for many government departments and state-owned enterprises affect the extent to which rights can be realised. At the time of writing, the South Africa Social Security Agency (SASSA) appears to have made no alternative plans for the disbursement of social grants after its current contract with Cash Payment Services (CPS) was declared as invalid by the Constitutional Court in 2014. Despite the Constitutional Court granting SASSA two years - the end of which expires on 31 March 2017 - to rectify the process, SASSA has failed to do so. This will affect the livelihood of some 17 million South Africans. This is not the only government department which appears to be failing to abide by court orders. The Supreme Court of Appeal (SCA) ordered in 2015 that the Department of Home Affairs (DHA) reopen the Port Elizabeth Refugee Reception Office, yet to date this has not happened. This affects the rights of asylum-seekers in that region as they are without access to adequate legal rights or services.

2016 saw sporadic xenophobic attacks, although not on the scale seen in 2015. Early 2017 saw an anti-immigrant march in Pretoria turn violent, although the State refuses to call the attacks xenophobic but rather refers to them as criminal activity. This, despite the fact that the individuals targeted by the attacks are largely from African states such as Mozambique, Nigeria and the Democratic Republic of Congo (DRC). Despite interventions in 2015 by bodies such as the South African Human Rights Commission (SAHRC), there does not seem to have been much discernable difference regarding the

“... the seemingly endemic levels of corruption and lack of institutional capacity for many government departments and state-owned enterprises affect the extent to which rights can be realised.”



treatment of African foreigners in certain communities.

There also appears to be growing securitisation of the State, such as the deployment of 441 members of the South African National Defence Force (SANDF) to the precincts of Parliament in the week the President was due to deliver the State of the Nation Address (SONA). Such show of force undermines South Africa's constitutional scheme, which is intended to ensure that all branches of government are unhindered in discharging their constitutional obligations.

South Africa's foreign policy appears to have taken an about turn, as evidenced by the nation's attempt to withdraw from the International Criminal Court (ICC) after its own courts issued a warrant of arrest for President al-Bashir of Sudan - wanted by the ICC for crimes against humanity, war crimes and genocide. In addition, South Africa's voting record at the UN is increasingly under the spotlight. South Africa has previously voted to block condemnation of human rights abuses in countries like Burma, Zimbabwe and North Korea. South Africa also failed to support a resolution calling for the establishment of a UN Special Rapporteur on Privacy, raising concerns about the State's commitment to protecting the privacy rights of its citizens.

Poor performance, and unauthorised and irregular expenditure, continue to plague many state-owned enterprises, including the South African Broadcasting Corporation (SABC), Eskom, Denel, SASSA, PetroSA, the Passenger Rail Agency of South Africa (PRASA), and South African Airways (SAA). Often the applicable constitutional basic values and principles governing public administration are flouted with seeming impunity.

According to the Transparency International *Corruption Perceptions Index*, South Africa's rank and score indicates significant levels of public sector corruption, including schools, where school procurement policies are abused in the absence of proper mechanisms for transparent processes. The refugee and asylum-seeking process involving officials from the DHA is also said to be rife with reported instances of corruption.

Institutions of higher learning across the country were also the sites of - at times - violent protests driven by demands for free higher education. The Commission of Inquiry into Higher Education and Training (The Fees Commission) was established in the course of 2016 to assess the feasibility of fee-free higher education and training. At present the Commission is hearing the last set of public submissions. A remaining concern in the right to education debate is the little to no attention that is paid to both early childhood development, as well as Technical and Vocational Education and Training colleges.

Ultimately, the media continues to play a vital role in ensuring accountability and creating a transparent State. Many of the State's successes and failures in the realisation of rights have been reported by the media and South Africans are, in turn, able to receive and impart information and ideas freely.

The Judiciary continues to strike down State actions or conduct which is

“... the media continues to play a vital role in ensuring accountability and creating a transparent State.”



unconstitutional and in that regard, South African courts are largely delivering on their constitutional mandate of administering justice. A recurring concern regarding the Lower Courts is the case backlog, which results in long delays in the settlement of disputes, affecting the right to access the courts.

KEY DRIVERS

Some of the factors and drivers that can be expected to affect human rights in 2017 include:

- Slow economic growth and policy uncertainty - the removal of the Finance Minister in December 2015 and the persistent reports that the current Finance Minister may be replaced impact investor confidence in South African markets.
- The *State of Capture Report*, released by the Public Protector's Office, revealed the extent to which state-owned enterprises have placed the interests of influential families ahead of national interests in circumvention of several laws.
- The influence of political interference on key organs of State, including the National Prosecuting Authority (NPA), the South African Revenue Service (SARS) etc.
- Infighting - based on perceived political allegiances - between organs of State, e.g. the Independent Police Investigative Directorate (IPIID) v South African Police Service (SAPS), and Treasury v Finance Department, affects their ability to deliver on their constitutional mandate.
- South Africa's media is relatively free and largely independent, however, the space for free and independent media is shrinking.
- At the time of writing, SASSA appears to have made no alternative plans for the disbursement of social grants after its current contract with CPS was declared as invalid by the Constitutional Court in 2014. Despite the Constitutional Court granting SASSA two years (the end of which expires on 31 March 2017) to rectify the process, SASSA has failed to do so. This will affect the livelihood of some 17 million South Africans.
- Corruption and failure to comply with supply chain management legislation by many municipalities - resulting in fruitless and wasteful expenditure - negatively impacts the ability to deliver some basic services and therefore drives many service delivery protests.
- Both the President and the Minister of Rural Development and Land Reform have repeatedly stated that both the Constitution and the relevant legislation will be amended to allow expropriation of land without compensation for owners, as a means of speeding up land redistribution. While a motion introduced by the Economic Freedom Fighters (EFF) in February 2017 to amend the property clause failed to pass in the National Assembly, the policy uncertainty creates an insecure environment with respect to the protection of property rights.
- A relatively free media is at the forefront of uncovering unlawful State conduct, as well as a robust civil society engaged in the democratic processes and public discourse.

“... persistent reports that the current Finance Minister may be replaced impact investor confidence in South African markets.”

Ms Phephelaphi Dube, Director



2016 Grade E =

2017 Grade E =

EQUALITY REMAINS deeply contested, despite all concepts of equality recognising the moral imperative that each person is equally deserving. There is little consensus on what can be claimed under the umbrella of equality. Oftentimes, the real threat to equality comes from discrimination by private persons. There is also the danger of State institutions adopting a reductionist approach in dealing with instances of racism, creating the impression that some racial groups are incapable of racism.

FREEDOM FROM UNFAIR DISCRIMINATION

Both the State and individuals are prohibited from unfairly discriminating against any person, although some distinctions, in order to achieve greater equality between categories of people, are permitted.



- Consultation and submissions on the draft *National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance* (NAP), drafted by the Department of Justice and Constitutional Development (DoJ&CD), were carried out and concluded in August 2016. The NAP provides the basis for the development of a comprehensive policy framework against racism, racial discrimination, xenophobia and related intolerance. One of these policies came in the form of the contentious *Prevention and Combating of Hate Crimes and Hate Speech Bill*.
- The *Amnesty International Annual Report 2016/17* indicated the occurrence of attacks, abduction, and torture of people with albinism.
- In *Solidarity obo Members v South African Police Service and Others*, trade union Solidarity was granted an urgent interdict by the Labour Court in Johannesburg to temporarily suspend the South African Police Service's (SAPS) new Employment Equity Plan, pending the ruling concerning Solidarity's outcome in a case before the Constitutional Court regarding the use of national racial demographics in setting numerical targets without considering other factors.
- In *Solidarity v The Department of Correctional Services*, Solidarity argued that the numerical targets or goals set out by the Department of Correctional Services' (DCS) Employment Equity Plan were rigid and without flexibility, and consequently quotas. The DCS relied on national racial demographics when making appointments. The Constitutional Court found the reliance by the DCS only on national demographics unlawful, as it did not take into

consideration regional demographics as well. The Court ordered the successful applicants be paid retrospectively to the date on which such appointment ought to have been made.

- Somalis residing in Khayelitsha, Cape Town, appear to be systematically targeted - with 14 deaths reported since January 2017. Furthermore, fresh xenophobic attacks in Pretoria during February 2017, as well as the registration of an explicitly xenophobic political party - South African First - do not bode well for social cohesion.

GENDER EQUALITY

South Africa has a strong legislative and policy framework that seeks to protect and empower women, however gender equality remains elusive - particularly for rural women - in accessing safety, security and healthcare services.

- The *Department of Women Annual Report 2015/16* stated that the Department received R189.1 million for the 2015/16 financial year, including R67.7 million earmarked for the Commission for Gender Equality (CGE). In comparison, in the 2014/15 financial year, the Department received R184.7 million.
- While a significant progress on women empowerment has been achieved since 1994, the CGE continues to receive complaints from women pertaining to their unequal enjoyment of socio-economic rights.
- The *Amnesty International Annual Report 2016/17*, reported a continuation of hate crimes and hate speech against LGBTI people. Such attacks were believed to be underreported.
- A 2016 Grant Thornton International Business Report, entitled *Women in Business: Turning Promise into Practice*, saw a 23% plunge in senior roles held by women, while 39% of businesses remained without female representation in senior management roles.
- South Africa ranks 15/144 on the *Gender Gap Index* of the World Economic Forum's (WEF) *Global Gender Gap Report 2016*, up two places from last year. South Africa was highly ranked in health and politics categories, but dropped to the bottom half when ranked for education and economic opportunities.
- The Inter-Parliamentary Union (IPU) - the global organisation of parliaments - as at 1 December 2016, ranks South Africa 9/193 countries for the participation of women in Parliament. This is down one position from its previous



standing. South Africa's Parliament has 42% women, compared to the global average of 23%. In addition, both the Speaker in the National Assembly, as well as the Chair of the National Council of Provinces (NCOP), are women.

- The United Nations Development Programme's *Africa Human Development Report 2016* (UNDP Africa Report) ranks South Africa as a medium development country, with a Human Development Index (HDI) value of 0.666. In addition, the Report gives South Africa a value of 0.948 for its Gender Development Index (GDI), a sex-aggregated HDI. This indicates that in Southern Africa women and men are more equal.
- The *Commission for Employment Equity Annual Report 2015/16* revealed that at senior management level, males remain dominant at 67.6%, with females at 32.4%.
- The UNDP Africa Report states that the use of boardroom quotas has resulted in South Africa becoming the leading African country for female representation on corporate boards.
- The *Human Rights Watch World Report 2017* reported that although annual crime statistics released by the SAPS showed a 3% decrease in sexual offences, many gender activists and human rights groups expressed concern about the continued under-reporting of rape and the failure of the government to introduce a national strategy to combat violence against women.
- The UNDP Africa Report suggests that as many as 30% of children are born as a result of gender-based violence.
- The UNDP Africa Report indicates that South Africa is one of only two countries that provides longer than recommended paid maternity leave - 17 weeks - the remaining 24 countries reviewed provide less than 14 weeks of paid maternity leave.

EQUALITY BEFORE THE LAW

Equality before the law is generally enjoyed if such equality is considered to mean equality of legal process and equal treatment in the application of the law. In practice however, factors such as poverty and lack of awareness will determine the extent to which full equality before the law can be enjoyed.

EQUALITY OF OUTCOMES

- In March 2016, the Department of Social Development (DSD) published the country's first *White Paper on the Rights of Persons with Disabilities*. The document advocates for transforming the health system to be more inclusive of disabled people. Suggestions included reducing costs associated with care and services to persons with disabilities and removing communication barriers that hinder access to healthcare. The overarching recommendation was to establish a centralised database of children living with disabilities to improve service delivery and support to the cohort.
- According to estimates from Statistics South Africa (Stats SA), the South African economy's year-on-year growth in the third quarter of 2016 was 0.7%.
- The *Stats SA Quarterly Labour Force Survey (QLFS)* for the Fourth Quarter (Q4) of 2016, reported a decline of 0.6 of a percentage point in the official unemployment rate (quarter-to-quarter), to 26.5%. Compared to the same period last year, this is still 2.0 percentage points higher.
- Expanded unemployment (including those who wanted to work but did not look for work) per the Stats SA QLFS Q4 declined by 0.7 of a percentage point, to 35.6%. This equates to 8.9 million persons who wanted to work but did



not have employment.

- According to the Stats SA QLFS Q4, 48.6% of the working population (aged 15 to 64) had less than a matric qualification.
- The same Survey shows that 49.5% of the employed white persons and 30.3% of employed Indian/Asian population had a tertiary qualification. During the same period the share of employed black Africans and coloureds with tertiary qualifications was 17% and 13% respectively. Furthermore, more than half of employed black African and coloured populations had an educational level of less than matric.
- The Stats SA QLFS Q4 shows that white and Indian/Asian groups (both men and women) dominate employment in skilled occupations, whilst the majority of black African and coloured men dominated semi-skilled and low-skilled occupations. However, the number of black African and coloured men in low-skilled occupations declined between Q4: 2015 to Q4: 2016, and employment in skilled occupation increased.
- Black African women have larger employment shares in low-skilled occupations and tend to experience more vulnerability in the labour market. Around 43% of black African women were employed in low-skilled occupations in Q4: 2016. During this same period 58.9% of white women were employed in skilled occupations, compared to 18.5% of black African women employed in similar occupations.
- According to the *Stats SA Living Conditions Survey 2014/15* (released February 2017) - the average annual spend by a household headed by a white person is R350 000, whilst for a black-headed household the average was R67 000.
- The same Survey indicated that the wealthiest 10% of earners receive more than 50% of total income, while the poorest 50% of South Africans share only 10% of total income between them.
- According to the *Commission for Employment Equity Annual Report 2015/16*, 68.9% of the top management workforce was white, 14.3% was black, 8.6% was Indian, 4.7% was coloured and 3.5% was foreign. The Stats SA QLFS Q3 showed the working age (15 to 62 years) population included 28.7 million black African, 3.3 million coloured, 3.1 million white, and 977 000 Indian persons.
- The Gini coefficient is a measure of inequality in a society (tracked by the World Bank), with 0 being an equal society and 1 being an extremely unequal society. South Africa is one of the most unequal, with a Gini coefficient range of between 0.66 to 0.70. The top 10% of the country's population accounts for 58% of the country's income, with the bottom 10% accounting for 0.5%.
- An Oxfam SA Briefing Paper entitled *An Economy for the 99%*, found that "the wealth of three South African billionaires is equal to that of the bottom half of the country's population".

Human Dignity

(section 10)

2016 Grade

D -

2017 Grade

C =

THE RIGHT to dignity imposes a positive duty on the State to provide means through which citizens can ensure that their dignity is not impaired - such measures include the provision of social security, which positively impacts the lives of close to 17 million South Africans, who otherwise would have no other source of income. The right to dignity also demands that individual South Africans afford each other the values enshrined in the Constitution. Arguably, fundamental rights derive from, or are underpinned by, the right to dignity.

- Perhaps the biggest contributor to poverty alleviation in the past decade and a remarkable victory for the poor was the expansion of social grants from 2.6 million beneficiaries in 2004, to approximately 17 million beneficiaries in 2017, with a total annual spend of R129 billion, as per the Minister of Finance's 2016 Budget Speech.
- According to the UNDP Africa Report, 17.1% of South Africa's population is near multidimensional poverty and 1.3% of the population is in severe multidimensional poverty. The UNDP measures multidimensional poverty by identifying multiple deprivations in a household including education, health, and living standards.
- The landmark judgment *Stransham-Ford v Minister of Justice and Correctional Services and Others*, which concerned the rights of terminal patients and emphasised that the right to human dignity encompasses the right to live one's life and to die with dignity and bodily integrity, was overturned by the Supreme Court of Appeal (SCA). In *Minister of Justice and Correctional Services and Others v Estate Late James Stransham-Ford and Others*, the SCA held that the High Court had overstepped and legislated from the bench when it said that a person is entitled to assisted suicide or euthanasia, and this transgressed the principle of the Separation of Powers. The SCA further held that this was a matter to be decided upon by Parliament and that the High Court had decided in haste, with inaccurate medical

information.

- In *South African Revenue Services v Commission for Conciliation, Mediation and Arbitration and Others*, the Constitutional Court addressed a case of an employee calling his superior a k****. A disciplinary hearing was convened and the employee was suspended. The Commissioner of the South African Revenue Service (SARS) was dissatisfied with the sanction and altered it to a dismissal. The employee approached the Commission for Conciliation, Mediation and Arbitration (CCMA) and argued unfair dismissal. The matter eventually found itself before the Constitutional Court, where the bench highlighted the seriousness of the use of the offending word, which it found to be derogatory, humiliating and tantamount to hate speech. The Courts are obliged to act firmly against such speech to contribute to the eradication of racism.
- The South African Human Rights Commission (SAHRC) dealt with and finalised 82% (505) more complaints on racism in the 2015/16 financial year than in the previous financial year.
- Over the course of 2016, there was a proliferation of 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. These incidents prompted the fast-tracking of the *Prevention and Combating of Hate Crimes and Hate Speech Bill*. On the question of the offence of hate speech, a balance needs to be struck between the right to dignity, which the Bill purports to protect, and the right to freedom of expression.
- The South African Institute of Race Relations (IRR), in its January 2017 issue of *Fast Facts*, stated that 72% of South Africans reported no personal experience of racism in their daily lives. 55% of the survey's participants believed race relations had improved since 1994, while 13% thought they had worsened.



2016 Grade

E =

2017 Grade

E +

THE RIGHT to life, alongside the right to dignity, are said to be the key fundamental rights and are the source of all other personal rights. Debate still exists about the core content of the right but arguably, at the least, it involves the State creating an environment conducive to the preservation of life, while ensuring that there is no undue interference with the enjoyment of the right. South Africa's high murder rates point to a society in which the right is not being enjoyed to its fullest extent.

- Stats SA estimated life expectancy for 2016 at 59.7 years for males and 65.1 years for females, compared to 59.3 years for males and 64.7 years for females in 2015.
- According to the WEF's *Global Gender Gap Report 2016*, South Africa's maternal mortality ratio was 138 per 100 000 live births; this is an improvement from 2015's rate of 140 per 100 000 live births.
- According to the *Department of Health Annual Report 2015/16*, the estimated overall HIV prevalence rate is approximately 12.7% of the total South African population. The total number of people living with HIV in 2016 was approximately 7.3 million persons. An estimated 18.9% of the population aged 15 - 49 years is HIV-positive.
- In 2015/16, more than 3.4 million people received anti-retroviral (ARV) treatment in South Africa - which promotes improved quality of life - compared to 3.1 million the previous period.
- The Marikana Commission found that National Police Commissioner, Riah Phiyega, was complicit in the massacre of 34 miners by members of the SAPS at Lonmin Mine in the North West Province, as well as that she failed in her duties as head of the SAPS. Thereafter, President Jacob Zuma established the Claassen Commission of Inquiry to investigate her fitness to hold office. The Claassen Commission found

that Phiyega was unfit to hold office and recommended her immediate dismissal. She is currently challenging the findings of the Commission. Lonmin Mine has yet to fulfil its promises to the families of the victims in terms of housing and assisting the community.

- According to the *South African Police Service Annual Report 2015/16*, a total number of 1 638 466 arrests were made for all crime during 2015/16, compared to 1 707 654 in 2014/15, a decrease of 69 188. Some 1 023 334 arrests were made for serious crime.
 - Between April 2015 and March 2016, there were 51 895 reported cases of sexual offences, a decrease of 3.2% from the previous year. The Report states that this is the lowest level of sexual offences recorded since the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* was implemented in 2007.
- There were 40 689 reported crimes against children and 173 461 reported crimes against women in 2015/16.
 - Rape accounted for 80% of the total sexual offences and sexual assault accounted for 12%.
 - Crimes against women increased by 2.15% in 2015/16 when compared with 2014/15. Murder increased by 8.15%, common assault by 4.03% and assault with grievous bodily harm (GBH) increased 1.64%.
 - Between April 2015 to March 2016, there were 182 933 reported cases of assault with intent to inflict grievous bodily harm.
 - In 2015, 17 905 cases of murder were reported. In 2016, the number increased to 18 673, indicating an increase of 4.9%.
- According to SAPS crime statistics for 2015/16, there were 79 murdered police officers, a decrease from the 86 murdered officers in 2014/15.



Freedom and Security of the Person (section 12)

2016 Grade C =

2017 Grade C -

THIS GUARANTEES the right that all persons are free from all forms of violence, whether the source of the violence is the State or is from a private source. However, weak institutional capacity affects the extent to which the State can adequately protect and fulfil this right, as is evidenced by the high rates of reported violence.

- The *Department of Justice and Constitutional Development Annual Report 2015/16* states that new applications for protection orders against domestic violence increased by 4.3%, from 264 051 in 2014/15, to 275 536 in 2015/16.

- The Civilian Secretariat for Police tabled a report in Parliament in 2016 over the failure of the SAPS to implement the *Domestic Violence Act*, following visits to 187 police stations, which revealed 58 officers facing charges of domestic violence.

- The Independent Police Investigative Directorate (IPID) is responsible for investigating complaints against the South African Police Service and municipal police services. The *Independent Police Investigative Directorate Annual Report 2015/16* recorded 5 519 cases during the reporting period. Of these, 366 were deaths as a result of police action, 216 were deaths in police custody, 23 were cases of rape in police custody, 112 were cases of rape by police officers, 145 were cases of torture, 865 were cases of illegal discharge of an official firearm, and 112 cases of corruption were filed.

- The *Department of Correctional Services Annual Report 2015/16* says 71 inmates escaped from incarceration, of which 57 were rearrested. This is an increase from last year, with 49 escapes from police custody recorded, of which 30 were rearrested.

- According to the *SAPS 2015/16 Annual Report*, 949 persons escaped from police custody in 2015/16. The 949 escapees represent 0.061% of the 1 556 79418 persons arrested and charged during 2015/16.

- According to the *PricewaterhouseCoopers Global Economic Crime Survey 2016*, 70% of South Africans view local government law enforcement as not adequately resourced and trained.

- Following the establishment of the Western Cape Police Ombudsman in 2015, in line with the recommendations of the Khayelitsha Commission of Inquiry, non-governmental organisations the Social Justice Coalition and Equal Education have approached the courts over the alleged inequitable and discriminatory distribution of police members and resources. This is against the backdrop of high crime rates in townships, as well as gang violence in greater Cape Town.

- According to the *Amnesty International Annual Report 2016/17*, rape and torture of people in police custody continued to be reported in 2016. Additionally, the trial of 27 police officers from the now disbanded Durban Organised Crime Unit, charged with 28 counts of murder, was further delayed until 31 January 2017 - as of the end of February 2017 the trial has yet to commence.

- According to the same Report, the Public Protector issued a report into the violence at Durban's Glebelands Hostel, which found that over 60 people had been targeted and killed. The report found that the municipality had failed to take responsibility for rental accommodation at the hostel. Additionally, the report found that police failed to protect residents and investigate crime that was reported; at least



three residents were detained and tortured by police. In April 2016, Glebelands residents submitted an urgent appeal to the UN High Commissioner for Human Rights, calling for the UN Human Rights Council to intervene regarding the killings.

- According to the *Annual Report of the National Director of Public Prosecutions 2015/16*, the total number of cases finalised was 2 340, with an average conviction rate of 71.8%.

- The Report revealed that the number of cases finalised with a verdict decreased by 11.4% since 2010. This, in turn, saw the number of "backlog cases" (matters that range from older than six months in the district courts, to older than a year in the high courts) increase by 18.7%.

- The National Prosecution Authority (NPA), through the National Prosecutions Service (NPS), reported a total number of 289 245 guilty verdicts obtained in all courts, with an overall conviction rate of 93% of all cases prosecuted.

- In December 2016, the South African Reconciliation Barometer at the Institute for Justice Reconciliation (IJR) presented a Special Briefing Paper, *20 Years of the SA Constitution - People, Institutions and Rights: Sometimes Hope gets quite tired*. Research indicated that 4/10 respondents (39.6%) strongly disagreed with the statement that police are sometimes justified in using deadly force, and 1/4 respondents (25.4%) strongly agreed with the statement. When the "strongly agree" and "agree", and the "strongly disagree" and "disagree" categories are combined, it becomes clear that the general sentiment is that deadly force should be limited to an absolute minimum.

- A study by Mexico's Citizens' Council for Public Security and Criminal Justice ranks Cape Town as South Africa's most violent city - and the 9th most violent city in the world.

Slavery, Servitude and Forced Labour

(section 13)

2016 Grade B =

2017 Grade B -

THE *PREVENTION and Combating of Trafficking of Persons Act* is now operational, as are its regulations, which are meant to assist the State to respond effectively to victims of trafficking and other related offences. The right is enjoyed to a large extent, however, there are increasing reports of slavery, servitude and forced labour, involving both local and international criminal syndicates.

- The US Department of State's *Trafficking in Persons Report 2016* states that South Africans make up the bulk of victims within the country. Children are recruited from poorer rural areas to urban centres, such as Johannesburg, Cape Town, Durban, and Bloemfontein. Girls are reportedly subjected to sex trafficking and domestic servitude, while boys are forced to work in street vending, food service, begging, criminal activities, and agriculture.
- The same Report states that Eastern European criminal syndicates operate in the Cape Town sex trade, while Chinese nationals organise the sex trafficking of Asian men and women. Nigerian syndicates reportedly dominate the commercial sex trade in several provinces. To a lesser extent, South African women are recruited to Europe and Asia, where some are forced into sex work, domestic service, or drug smuggling.
- The Report further reports a new trend of Central African women in forced labour in hair salons. Foreign and South African LGBTI persons are subjected to sex trafficking.

Foreign male forced labour victims were discovered aboard fishing vessels in South Africa's territorial waters; NGOs estimated 10 to 15 victims of labour trafficking each month disembarked in Cape Town.

- According to the *Trafficking in Persons Report 2016*, the SA Government does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.
- In collaboration with the United Nations Office on Drugs and Crime (UNODC), the government hosted workshops on human trafficking and the *Prevention and Combating of Trafficking in Persons Act* (PACOTIP), and trained 376 law enforcement and social services officials, including from the SANDF, the SAPS, SARS, the Department of Health (DoH), the Department of Agriculture, Forestry and Fisheries (DAFF) and Airports Company South Africa (ACSA). The Department of Home Affairs (DHA) and Department of Labour (DoL) continued to include trainings developed by an international organisation within their academy trainings for new staff.
- The SAPS, DSD, NPA, DHA, and Department of Justice (DoJ) developed uniform formal procedures to identify and refer trafficking victims to care, in accordance with PACOTIP.
- The government allocated R2.7 million rand to anti-trafficking training and awareness raising during the 2014-2015 fiscal years.
- The DSD assisted 103 victims of trafficking through victim shelters, an increase of 62 compared to previous year.



2016 Grade **B =**

2017 Grade **B =**

THE RIGHT to privacy is popularly characterised as existing on a continuum where the more a person interrelates with the world, the more the right becomes weakened. As such, in an age of social media, it is vital that the regulatory framework is developed to adequately protect the right, while allowing the free flow of information.

- In July 2016, South Africa voted - alongside nations including China and Russia - against a UN Resolution entitled *The promotion, protection and enjoyment of human rights on the Internet*, which sought to protect human rights online, including freedom of expression and privacy. The Resolution further seeks to ensure the release of those imprisoned for legitimate freedom of expression online. Other key points of the Resolution include investigating attacks against bloggers or other internet users, and refraining from preventing access to information online by, for example, shutting down the internet during key times such as elections or terror attacks.
- The *Protection of Personal Information Act* (POPI) was signed into law in November 2013, after being introduced in the National Assembly during 2009. The President signed a proclamation which was gazetted on 11 April 2014, where the effective date of certain sections, including the appointment of the Information Regulator, was proclaimed as 11 April 2014. The National Assembly approved the appointment of members to the Information Regulator on 7 September 2016. The Information Regulator will be responsible for education, monitoring, enforce compliance, handle complaints, perform research and facilitate cross-border cooperation. This will have an impact on the right to privacy and the free flow of information, from both private and public actors, to counteract terrorism and cyber-attacks. A delicate balance must be struck by the Regulator so as not to unreasonably restrict the free flow of information and foster a culture of openness and transparency.
- Judge Yvonne Mokgoro tabled a report to Parliament's Joint Standing Committee on Intelligence (JSCI) in December 2016. Her report revealed government's growing interception of private communication - almost double in three years. During the 2013/14 financial year, the SAPS and State Security Agency (SSA) lodged a total of 616 applications to



intercept private electronic information. By August 2015, during the 2015/16 financial year, and seven months before the end of the reporting year, it had already lodged 1 030 applications.

- According to the *PricewaterhouseCoopers Global Economic Crime Survey 2016*, almost 32% of organisations have experienced cyber crimes.
- Parliament has not yet filled the post of Inspector-General of Intelligence. The position has been vacant for almost 18 months.



Freedom of Religion, Belief and Opinion

(section 15)

2016 Grade A +

2017 Grade A =

SOUTH AFRICANS robustly enjoy this right. It is however concerning that there appears to be growing incidents of ministers of religion promoting harmful practices among congregants, including the ingesting of fuel, and live snakes.

- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission) concluded its investigative study into the commercialisation of religion, following an increase in complaints over rights abuses by religious bodies from members of the public. The preliminary report found that there was indeed commercialisation of religion, as well as a lack of proper governance and financial management in certain churches. The Commission proposed the establishment of a peer review mechanism, as well as the licencing of Pastors. The religious community was given until November 2016 to make its submissions on the report but it requested an extension. The report of the Commission will be taken to Parliament to recommend the amendment of the *CRL Act*.

- 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 was set to be heard in May 2016, however the application has been postponed to March 2017. The Court ruled that it could not proceed without the involvement of crucial Chapter 9 institutions. The Women’s Legal Centre has been ordered to serve the application on the SAHRC and



the CRL Rights Commission.

- Dagga Party leader, Jeremy Acton, and Rastafarian lawyer, Garreth Prince - on behalf of themselves and 18 other plaintiffs who face prosecution and criminal records for dagga-related charges - want the Court to declare some sections of the *Criminal Prohibition of Dagga Act* (sections 4b and 5c), read with certain sections of Part III of Schedule 2 of the *Drugs and Drug Trafficking Act*, unconstitutional. They believe they should be allowed to choose to use the herb and its extracts for “a range of applications including social, medicinal, spiritual and commercial”.



2016 Grade C =

2017 Grade C -

THE *PREVENTION and Combatting of Hate Crimes and Hate Speech Bill*, promulgated in late 2016, which seeks to prevent hate crimes and hate speech, is drafted very broadly and its present reading may serve to stifle freedom of expression.

- Under the *Promotion of Equality and the Prevention of Unfair Discrimination Act* (PEPUDA), Equality Courts are designated to hear matters such as hate speech, harassment and unfair treatment. According to the *Department of Justice and Constitutional Development Annual Report 2015/16*, the Equality Court experienced a decline in matters that were registered period on period. In the 2014/15 year, the Court heard 844 cases, compared to the 2015/16 period where it heard 558 matters. This was a 33.89% decrease. Hate speech and unfair discrimination constituted most of the complaints in 2015/16, with 277 and 179 respectively.
- Reporters Without Borders ranked South Africa 39 out of 180 countries in their *2016 World Press Freedom Index*, the same ranking as in 2015.
- In the *Freedom House Freedom of the Press 2016 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 36, which takes into account the legal, political and economic environments in the country. This is an improvement on 2015, when South Africa scored 37.
- On 29 September 2016, the SCA in *Primedia Broadcasting v Speaker*, held that the State Security Agency’s blocking of mobile phone signals during the 2016 State of the Nation Address (SONA) was unlawful. The SCA said Houses of Parliament must be conducted in an open manner and that the public and media have the right of access, subject to reasonable measures regulating that right. Not all members of the public are able to attend sittings of Parliament and the media makes it possible for them to know what is happening in Parliament, especially at significant events. Parliament’s provisions for disruptions resulted in the public being barred from witnessing events taking place in Parliament via television feed and other means. The appellants argued that these provisions were unconstitutional. Furthermore, the employ of security services to remove Economic Freedom Fighters (EFF) Members of Parliament (MPs) forcibly from the National Assembly whilst the video feed was focused solely on the Speaker of the House, was also put forward as being unconstitutional. The appellants accepted that the right to an open Parliament is not unlimited but argued that the restrictions imposed by the disruption clauses were unreasonable. The SCA found in favour of the



appellants and said that the restrictions were unreasonable. The limitation of the television broadcast was ineffective because journalists informed the public about the events. This resulted in inaccurate reporting where the public has a right to accurate reports. The SCA also held that the disruption provisions were not clear and had to be interpreted by the Director as and when incidents of disruption occurred. The Court thus held that these provisions were unconstitutional and unlawful.

- In *South African Airways Soc v BDFM Publishers (Pty) Ltd and Others*, the South Gauteng High Court ruling nullified an interdict that barred media organisations from publishing legally privileged information about South Africa’s state-owned airline. Four publications had published various stories which arose from a leaked South African Airways (SAA) memorandum. They were ordered to stop publication and remove any mention or reference to the memorandum. The Court found that the interdict should not have been granted because insufficient notice was given and there was no signed affidavit served prior to the application being heard. Furthermore, the information contained in the document was already in the public domain, such as on cloud servers, and the document did not constitute independent legal advice as required in order to assert this privilege.

- ANN7 fired five journalists for taking part in protests and other demonstrations in solidarity with eight journalists who were fired from the SABC for speaking about alleged abuses of power by the erstwhile SABC Chief of Operations, Hlaudi Motsoeneng.

- In October 2016, the DoJ&CD released the draft *Prevention and Combatting of Hate Crimes and Hate Speech Bill* [B-2016] for comment to the public. The Bill provides for the offence of hate crimes and hate speech and the prosecution of persons who commit those crimes. Civil society organisations are in fierce opposition to the inclusion of the vaguely-defined offence of hate speech, which carries a conviction of three-year imprisonment on first conviction. The constitutionality of the limitation on the right to freedom of expression is also under scrutiny. The vague and far-reaching offence of hate speech extends much further than the narrowly internationally-aligned concept of hate speech in terms of section 16(2) of the Constitution. Many civil society organisations doubt it will muster constitutional scrutiny in terms of section 36 of the Constitution. In its current version, it is possible that a satirical cartoon directed at an MP could be considered hate speech. With no statutory exceptions or defences provided for, the right to freedom of religion, belief and opinion is also under threat. There has been a call from civil society organisations to strengthen civil remedies already provided for in terms of the PEPUDA before resorting to the creation of vaguely-defined statutory criminal offences.

- According to Round 6 of *Afrobarometer’s Freedom of Association Survey*, held in December 2016, 61% of participants in South Africa believe they enjoy complete freedom of speech.

- 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), the Right2Know Campaign (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.

Freedom of Assembly, Demonstration, Picket and Petition

(section 17)

2016 Grade B +

2017 Grade B =

SOUTH AFRICANS enjoy the right to gather and show opposition to, or support for, lawful demands, as well as to present demands to authorities. The right is limited to the extent that it is exercised peacefully and without bearing weapons. However, the exercise of the right is often accompanied by violence.

- According to research conducted by Municipal IQ, there was a decrease in service delivery protests during 2016, with 137 protests recorded, compared with 164 in 2015. The highest number of incidents were reported in Gauteng (28%), the Eastern Cape (22%) and KwaZulu-Natal (17%), with the least reported activity in the Free State (1%). 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. The same Report found that service delivery protests in 2016 were lower than any year since 2011, which is also the last year in which local government elections were held. However, the protests of 2016 stood out because of the higher levels of violence reported during the protests. Violent protests increased - from representing 75% of all service delivery protests between 2004 and 2016 - to 86% in 2016.

- According to the *Civic Protests Barometer 2007 - 2016*, the number of protests directed specifically at local government has decreased drastically. In 2009, South Africa experienced a total of 204 civic protests, whereas in 2015 they decreased to 126. However, many civic protests cover wide areas and last a long time. Gauteng is the most protest-prone province in South Africa. More than half of all protests took place in metropolitan municipalities, and more than 90% of civic protests are associated with violence and intimidation.

- Following the violent protests over unpopular municipal demarcation that disrupted schooling in Vuwani in Limpopo during 2016, approximately 2 500 matric pupils did not write mid-year examinations with the rest of the country. More than 20 schools were torched, and some burnt to the ground. The burning of schools affected about 10 000 pupils in Vuwani and the surrounding areas. Basic Education Minister Angie Motshekga set the estimated cost of the damage to the affected schools as R320 million.

- The IJR South African Reconciliation Barometer's



Special Briefing Paper, *20 Years of the SA Constitution - People, Institutions and Rights: Sometimes Hope gets quite tired* research on #FeesMustFall revealed that 33.6% of respondents "strongly agreed" that the protests were justified, while 30.1% "strongly disagreed".

- The IJR Briefing Paper also indicated that 14.5% of respondents believed non-violent protest was the best way to hold political leaders accountable, while 7.1% supported using social media. However, of concern was that 5.4% of respondents regarded using violent protest as the best option.

- SA Municipal Workers Union (SAMWU) members went on a month-long unprotected strike in April 2016, demanding wage increases. Around 4 000 workers affiliated to SAMWU faced disciplinary hearings for ignoring dismissal notices and two court interdicts issued during the strike. The strike ended when an agreement was reached on an undisclosed salary increase between management and the striking employees. A double shift was implemented after the agreement was reached to clear backlog.

- On 1 September 2016, the Constitutional Court, in *Transport and Allied Workers Union of South Africa obo MW Ngedle and 93 Others v Unitrans Fuel and Chemical (Pty) Limited* upheld an appeal by the Transport and Allied Workers union of South Africa (TAWUSA) and 94 of its members against a judgment of the Labour Appeal Court which had dismissed their appeal against an earlier decision of the Labour Court. The dispute was whether the dismissal of TAWUSA's members, by their employer Unitrans Fuel and Chemical (Pty) Limited on 2 November 2010 following a strike, was fair and whether they should be reinstated.

- In a testimony before Parliament's Police Portfolio Committee in 2016, Deputy National Police Commissioner, Fannie Masemola, announced that R598 million is to be spent on public policing over the next three years. More than 600 public order police officers had been deployed to 11 recently-identified unrest hotspots.

- The *Amnesty International Annual Report 2016/17*, indicated a proliferation of police using excessive force against protesters in 2016. This was particularly apparent in #FeesMustFall protests, where rubber bullets were fired at student protestors at close range.



Freedom of Association

(section 18)

2016 Grade A =

2017 Grade A =

FREEDOM OF Association acts as the basis for a democratic society and in general, South Africans are able to freely associate with others.

- According to Round 6 of *Afrobarometer's Freedom of Association Survey*, held in December 2016, 74% of

participants in South Africa believe they enjoy complete freedom of association. 61% believe they enjoy complete freedom of speech and 78% believe they enjoy complete freedom to vote (Afrobarometer is a pan-African, non-partisan research network that conducts public attitude surveys on democracy, governance, the economy, and related issues).



2016 Grade **B =**

2017 Grade **B =**

THIS CLUSTER of rights underpins a constitutional democracy and are the fundamental assurances of a democratic state. Limited to citizens only, the Municipal Elections in 2016 saw the peaceful handover of political power in three key Metropolitan Municipalities. Political killings and low levels of public trust in politicians affect the extent to which political rights are enjoyed and exercised.

- On 18 March 2016, the President assented to the *Municipal Electoral Amendment Act (1 of 2016)*, in order to enhance administrative processes for the management of Municipal Elections.
- In 2015, the Constitutional Court in *Kham and Others v Independent Electoral Commission*, 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 it was further declared that when registering a voter to vote in a particular voting district after the date of the order, the Independent Electoral Commission (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. The IEC returned to Tlokwe and attempted to meet the order issued by the Court, however, less than a third of voters without physical addresses in Tlokwe managed to reregister in time for the Local Government Elections held in August 2016.
- In the run-up to the Local Government Elections in August 2016, the country saw an upsurge in political killings. Particularly in KwaZulu-Natal, political officials were targeted - the provincial government recorded 20 deaths of members of various political parties. In October of 2016, a commission of inquiry was appointed to probe the political killings in KwaZulu-Natal.
- During the period before the Local Government Elections, some parties reported voter intimidation, either in the form of personal visits or the fear instilled by the multiple political killings witnessed in areas such as KwaZulu-Natal.
- According to the IJR South African Reconciliation Barometer's Special Briefing Paper, *20 Years of the SA Constitution - People, Institutions and Rights: Sometimes Hope gets quite tired*, less than 3/10 respondents trust Parliament "a great deal", with approximately 4/10 trusting Parliament to defend the Constitution.
- The IJR Briefing Paper found that 63.1% of respondents identified corruption as the biggest threat from political leaders to our constitutional rights.
- In *Electoral Commission v Aaron Pasela Mhlope and Others*, the Constitutional Court made a definitive ruling regarding the requirement of a national common voters' roll with the addresses of registered voters for the purposes of the August 2016 Local Government Elections. The Court held that the IEC is obliged to record objectively available voters' addresses and failure thereto is inconsistent with the Constitution as it directly affects the right to vote.
- In *National Freedom Party v Electoral Commission and Another*, the Electoral Court denied the National Freedom Party (NFP) leave to appeal its earlier ruling concerning the IEC's decision to disqualify the NFP from participating in the August 2016 Local Government Elections for failure to pay election deposits (as required by law) timeously.

- According to the *Electoral Commission Annual Report 2016* there was a net increase of 480 253 registered voters (1.9%) on the voters' roll between 1 April 2015 and 31 March 2016 (from 25 161 799 to 25 642 052 voters).
- Municipal Elections took place on 3 August 2016. According to the IEC, 26.3 million voters registered to vote, with a voter turnout of 57.97%. The IEC reported that 1.3 million new voters registered across the country in the run-up to the elections.
- Post-election, the IEC commissioned the Human Sciences Research Council (HSRC) to conduct a survey on opinions and perceptions of voters and election observers on Election Day. Their Election Satisfaction Survey (ESS) 2016, *A Vote of Confidence*, revealed that the voting public felt overwhelmingly confident that the 2016 Municipal Elections were both free and fair. They also provided a favourable evaluation of the management performance of the IEC and the conduct of officials at voting stations.
- Disruptions continued in Parliament, particularly during the joint sitting of Parliament and during the SONA in February 2017, where the SANDF was deployed, along with the SAPS, to maintain order in the Parliamentary precinct. 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. This follows the ruling of *Democratic Alliance v Speaker of the National Assembly and Others*, where the Western Cape High Court found that MPs have immunity from arrest in relation to freedom of speech and expression whilst engaged in their duty as parliamentarians. This immunity translates to the removal of MPs from Parliament with the use of force and/or violence being unconstitutional. Despite this ruling, MPs were again removed by force and with violence from the National Assembly at the SONA in 2017.
- The WEF's *Global Competitiveness Report 2016/17* ranks South Africa 109/138 countries for public trust in politicians, 11 positions lower than the previous year, and 44/138 countries for transparency in government policymaking.



2016 Grade A =

2017 Grade A =

IN PRINCIPLE, this right is well enjoyed by South Africans and is chiefly expressed through the *Citizenship Act* 88 of 1995, as amended, which forbids the arbitrary deprivation of citizenship.

- In 2016, Lawyers for Human Rights (LHR) assisted in the case of an eight-year-old stateless child born in South Africa. The SCA was scheduled to hear the case on 6 September 2016, where the DHA had asked for leave to appeal a judgment of the Pretoria High Court declaring the child to be a South African citizen. After a two-year wait the Department decided to withdraw the appeal and agreed that the child be declared to be a South African citizen by birth. They further agreed to comply with the court order by issuing the child with a South African ID number and birth certificate. The Minister of Home Affairs is to make regulations to section 2(2) of the *Citizenship Act* within 18 months in order to allow other stateless children to apply for citizenship. Once passed, other stateless children will be able to apply for citizenship and will no longer be stateless.
- In October 2016, the Legal Resources Centre (LRC) launched an application on behalf of two parents in the

Grahamstown High Court. The father is South African and the mother a citizen of the Democratic Republic of Congo (DRC). Despite the South African-born child being a South African citizen in terms of the *Citizenship Act*, their application to register their child was rejected by the DHA because the child's mother does not have a valid visa and is therefore considered "illegal".

- 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. The IEC was given 18 months to address this matter. This case is important because as a citizen, the right to vote is enshrined in the Bill of Rights and the failure to register due to the shortcomings of the IEC directly impact the enjoyment of citizenship.



Freedom of Movement and Residence

(section 21)

2016 Grade A =

2017 Grade B =

IN PRINCIPLE, South Africans enjoy the freedom of movement and residence to a large degree. The freedoms are also available to all persons who are lawfully in the country. The State may not arbitrarily interfere with the exercise of the freedoms of movement and of residence.

- The freedom of movement of South Africans was negatively affected by onerous requirements that minors travelling outside the country and those entering from other countries, must be in possession of unabridged birth certificates, in addition to passports. Unreasonable and excessive delays by the DHA 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. To streamline the process of travelling with minors in or out of South Africa, the DHA implemented two versions of the birth certificate. Previously, an abridged birth certificate was issued to parents for newborns, however since 2014, an unabridged birth certificate was issued to all newborns, which entails both parents' details. Now, newborns in South Africa will receive a birth certificate - a single document which details both their maternal and paternal birth details. In a nutshell, it simply remains an unabridged birth certificate, this just means that the word 'unabridged' as well as the abridged birth certificate is being removed. The process is still cumbersome for non-South African travellers.

- Written submissions on the *Refugees Amendment Bill* were submitted to the Parliamentary Portfolio Committee on Home Affairs in October 2016, with oral submissions made in January 2017. Concerns related to the Bill included the impact of the proposed measures on the status of refugees and whether these measures would meet international standards, as well as give effect to the constitutional right to human dignity, as well as fair administrative action - which is not only limited to citizens but also extends to non-citizens. The anti-corruption objectives of the Bill were also a concern insofar as there were insufficient checks and balances to prevent corruption. There were also additional grounds



for exclusion of refugee status - to be determined by one individual - which raised questions about the subjectivity of decisions.

- Home Affairs Minister, Malusi Gigaba, announced that Lesotho nationals living in South Africa illegally would no longer be deported, thanks to the introduction of the Lesotho Special Permit, which allows Basotho nationals - who can prove they are either working, studying or running a business - to live in South Africa for four years.

- In 2013, the UN declared Angola safe after years of civil war and Angolan refugees in South Africa were issued Angolan Cessation Permits (ACP), which allowed for a two-year stay. Many do not meet the requirements for visas or permanent residence, and faced deportation when the permits expired. In November 2016, Judge Patrick Gamble ordered the DHA to consider exemption applications from former Angolan refugees, to be granted permanent resident status under an exemption in the *Immigration Act*. The section allows the Minister to grant a "category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist". Approximately 2 000 applications were received and decisions are expected by May 2017. Home Affairs has indicated it expects rejected applicants to leave willingly or face deportation.

- The Minister of Home Affairs acknowledged that Refugee Reception Offices, in particular Marabastad in Pretoria, face many challenges, including limited human resources capacity, inadequate filing systems, poor management practices, slow information technology infrastructure, and a working environment not conducive for clients and staff. Furthermore, the news agency, GroundUp, states that Home Affairs Offices routinely lose asylum documents, which has severe implications for those seeking asylum and refugee status in South Africa.

- According to the *Amnesty International Annual Report 2016/17*, the closure of three of the six Refugee Reception Offices in South Africa put severe pressure on refugees who travel long distances to renew asylum permits.



Freedom of Trade, Occupation and Profession

(section 22)

2016 Grade D =

2017 Grade C =

KNOWN AS economic activity rights, they presuppose the right to engage freely in economic activities under the regulation of certain laws. South Africans largely enjoy this freedom, although the extent to which it is enjoyed is dependent on the achievement of other rights, such as equality, education and fair labour practices.

- In 2016, the South African Law Reform Commission (SALRC) completed a long-awaited investigation into the decriminalisation of prostitution, but the government is waiting to decide on an official position on the issue before releasing the Report.
- Sex work has yet to be legalised in South Africa and is proscribed in the *Sexual Offences Act*. There have been calls in the past to legalise sex work and studies have been presented on how the criminalisation of this profession fuels HIV infections and violence against sex workers. The draft *National Strategic Plan 2017 - 2022* (NSP) outlines the strategic framework for a multi-sector partnership to accelerate progress in reducing the morbidity (illness) and mortality (death) associated with HIV, TB and STIs. It was introduced in February 2017 for comment, and leverages lessons learned from public health gains made under the NSP 2012 - 2016. This Plan is a step in the right direction of addressing the plight of sex workers in South Africa and may lead to its decriminalisation altogether.

- The Department of Trade and Industry (DTI) introduced the *Liquor Amendment Bill* in September 2016. The overhaul of the liquor legislation, if passed, would discriminate unfairly against consumers from disadvantaged areas of society as a complete ban on the liquor trade would be damaging to the informal liquor trade industry. In South Africa, the informal liquor trade industry exceeds the formal liquor trade industry. Informal trade gives those who would otherwise be unable to obtain formal employment a chance to participate in economic activity and generate income. At grassroots level, it would result in the criminalisation of a viable source of income. The liquor trade industry operates in a diverse social and economic climate.
- The DAFF plans to launch a free app to boost government's efforts to launch and roll out a small-scale fishing industry in South Africa. The app, known as Abalobi (*abalobi bentlanzi* is isiXhosa for "fishers") and co-developed by academics, government, civil society and fishing communities will be the information management system for the Small-Scale Fisheries industry. The app is being piloted at six different sites before a complete roll-out. According to a 2007 Equality Court ruling, traditional and artisanal fishing communities have been consistently marginalised during both apartheid and in the democratic South Africa. The new Small-Scale Fisheries Policy, an attempt to redress the situation, is almost nine years in the making.



2016 Grade **B =** 2017 Grade **C =**

LABOUR RELATIONS in South Africa take place in a highly-regulated environment, where the rights to fair labour practices, freedom of association and collective bargaining are largely regulated by legislation. The rights apply to workers, employers, and employer organisations. However, the proliferation of trade unions, as well as tensions within the trade union and other labour bodies, affects the ability of many South Africans to enjoy the rights fully.

- In April 2016, the Department of Labour (DoL) gave non-compliant South African employers six months to meet Employment Equity criteria. According to the Minister, South Africa's labour market transformation is not taking place fast enough, with 69% of top management positions filled by white South Africans. Failure to comply will result in hefty fines for the offending employer.
- In April 2016, the DoL insisted that farm owners comply with the minimum wage legislation for the sector in exchange for drought relief funding. The Department was aware of a number of employers who are not sticking to the agreement to pay workers the legislated R2 000 per month.
- In May 2016, the South Gauteng High Court, in *Nkala and Others v Harmony Gold Mining Company Limited and Others*, gave the green light for class action suits seeking damages from gold companies for up to half a million miners who contracted the fatal lung diseases silicosis and tuberculosis underground. The parties are in discussions in the hope to reach a settlement agreement, which may be concluded in 2017.
- The DoL announced an increase in the minimum wage for the domestic worker sector - by law classified as vulnerable - adjusted upwards with effect from 1 December 2016. The minimum wage adjustment is in line with the *Basic Conditions of Employment Act*. The Department launched one of the most extensive efforts anywhere in the world to formalise and regulate paid domestic work, a sphere widely dominated by women workers.
- In February 2017, the Constitutional Court in *Association of Mineworkers and Construction Union and Others v Chamber of Mines of South Africa and Others*, dismissed an appeal by the Association of Mineworkers and Construction Union (AMCU) to a collective agreement between the Chamber of Mines and majority trade unions. The Court was



asked whether a collective agreement concluded between the Chamber on behalf of certain gold mining companies and the majority trade unions in the gold mining sector overall, could be binding on AMCU members, although AMCU had majority representation at other individual mines. The agreement stipulated that workers could not strike whilst the agreement was still in force and this was the point of contention. The Court found that any infringement of the right to strike was reasonable and justifiable based on the principle of majoritarianism which, in this context, benefitted orderly collective bargaining. The ruling confirmed the principle of majoritarianism in the labour environment that allowed the agreement to be reached in the first place between employers and majority trade unions in the sector to be extended to all parties, including minority unions.

- South Africa has an overall ranking of 47/138 on the WEF's *Global Competitiveness Report 2016/17*, compared to the previous ranking of 49/140. The country achieved 97/138 for labour market efficiency, an improvement from last year's ranking of 107/140. Additionally, South Africa ranked 11/138 for financial market development, an improvement from 12/138.
- Labour market efficiency is affected by hiring and firing practices and ranked at 135/138 compared to 138/140 in 2015, flexibility of wage determination ranked 135/138, compared to 137/140 in 2015, and tensions in the labour-employer relations South Africa again ranked last on the index.
- The proposed national minimum wage of R3 500 per month (R20 per hour) was presented to the National Economic Development and Labour Council (Nedlac) by a panel of advisors appointed to determine the figure at which to set minimum wage. This amount was accepted but the signing was postponed following a request from COSATU to be given time to provide a full report to its Central Executive Committee.
- The Department of Mineral Resources (DMR) reported an improvement in the fatality figures in the mining sector for 2016, which improved by 5% compared to 2015. 73 fatalities were reported in 2016, compared to 77 in 2015.
- According to the *PricewaterhouseCoopers Global Economic Crime Survey 2016*, 69% of organisations have experienced some sort of economic crime.



2016 Grade C +

2017 Grade C -

THE PLACEMENT of environmental rights within the Bill of Rights is a recognition of the link between environmental rights and human rights. While the term ‘environmental right’ is wide-ranging, it nonetheless includes rights of access to natural resources, as well as planning laws. South Africa’s legislation and policies are keenly aware of environmental rights, however, the lack of institutional capacity by the Department of Environmental Affairs (DEA) limits the enjoyment and protection of the right.

- Hydraulic fracturing (fracking) is still a controversial issue, with Parliament having debated its impact on both the environment and economy at the close of 2016. 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 such as water contamination. Parliament debated the issue in December 2016 and a clear polarisation was evidenced by Parliamentarians. No investigative missions have been authorised.
- The DEA reported a decrease in the number of rhinoceros killed between January and the end of August 2016. 458 poached rhino carcasses were found in the Kruger National Park, compared to 557 in the same period the previous year. This represents a 17.8% decline in the number of rhino carcasses. Nationally, 702 rhinos were poached since the beginning of 2016, whereas between January and July 2015, a total of 796 rhinos were poached. Poaching arrests

increased to 414 in 2016.

- The World Health Organisation (WHO) released a new air quality model in September 2016. Communities who live near air-polluting plants or factories breathe in concentrations of airborne particles five times greater than recommended.
- In 2016, the Minister of Water and Sanitation announced that the Department would be developing a R10 billion plant to deal with polluted water from acid mine drainage (AMD). In response, a feasibility study identified a long-term solution to the problem in the Witwatersrand Gold Field, which utilises desalination and beneficial reuse of mine water. Although an environmental impact assessment (EIA) practitioner was identified, the planned EIA was not achieved.
- South Africa is planning to charge mining companies about 67% of the cost for cleaning up toxic water pollution caused by their century-long operations in Gauteng, the country’s richest province that includes Johannesburg. The Water Ministry said the long-term plan to treat AMD will cost as much as R12 billion and be implemented by February 2020. The mining sector will pay 67% of an acid mine water treatment plant in Gauteng as part of the “polluter pays” principle.
- The Department of Cooperative Governance and Traditional Affairs (COGTA) cites poor water infrastructure as one of the leading causes of the nationwide drought.
- The Yale Centre for Environmental Law & Policy (YCELP) *2016 Environmental Performance Index* ranks South Africa 81/180 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.

- The DEA's *National Environmental Compliance and Enforcement Report 2015/16* on criminal enforcement of environmental offences, notes that there has been a 0.8% increase in the number of criminal dockets registered, from 1 250 in 2014/15, compared to the 1 261 in 2015/16.
- The number of criminal dockets in connection with environmental offences handed to the NPA has increased by 14%, from 257 in 2014/15, to 293 in 2015/16.
- The Environmental Management Inspectorate (EMI), previously referred to as the Green Scorpions, is a network of environmental enforcement officials, tasked with ensuring the successful prosecutions of environmental offenders. The total number of arrests by Environmental Management Inspectorates (EMIs) has generally decreased from 1 371 in 2013/14, to 1 259 in 2014/15, and 939 in 2015/16.
- Convictions reported have decreased by 20%, from 65 reported in 2014/15 to 52 in 2015/16.
- The 2015/16 financial year saw the local authority EMI capacity increase from 185 in 2014/15, to 236 in 2015/16, with 18 EMIs designated in Mpumalanga and four in the Northern Cape, which previously had no local authority EMIs. While KwaZulu-Natal have designated the most local authority EMIs, Limpopo saw their capacity more than double from 10 EMIs in 2014/15, to 22 EMIs in 2015/16.
- In total, there are 2 647 EMIs designated across the country, comprising 2 411 national and provincial EMIs and 236 municipal EMIs, a 5.1% increase in the total number of EMIs on the national register (national and provincial authorities) in 2015/16.
- According to the *Department of Environmental Affairs Annual Performance Plan 2016/17*, South Africa is the world's 12th largest carbon dioxide emitter - due largely to heavy dependence on coal.
- South Africa ranks among the world's 20 biggest greenhouse gas emitters, and poor air quality is harming people's health in some areas (i.e. respiratory diseases, vector-borne diseases, and waterborne diseases like cholera).
- The *DEA Annual Performance Plan 2016/17* states that land degradation and soil erosion remain a serious challenge, undermining the productive potential of the land. Over 70% of the South African land surface has been affected by a variety of soil erosion.
- It is estimated that almost 9 000 plant species have been introduced so far to South Africa. Of these, about 161 species are deemed invasive, covering 10% of the country.
- According to the *DEA Annual Performance Plan 2016/17*, an estimated 50% of our wetlands have been destroyed or converted to other land uses.
- Lobby groups are fighting to maintain control over the



Philippi Horticultural Area (PHA) and have appealed for an EIA on a proposal to convert a section of the land into a silica sand mining site. The mining would undermine efforts to preserve the environment, displace birdlife, and affect food and job security for those who use the land.

- The Department of Energy (DoE) has experienced legal troubles following a lack of transparency concerning the details of South Africa's nuclear programme. Earthlife Africa (Johannesburg) and the Southern Africa Faith Communities' Environment Institute applied to the Western Cape High Court to review the procurement process for nuclear new generation capacity. The matter was initially set down on 13 December 2016, however, legal counsel for the State argued that the State is no longer the procurer of nuclear power and that this responsibility has now been handed over to Eskom, in terms of a later Section 24 determination. The matter was postponed to February 2017, in order to ensure that all parties are joined to the matter and the Court handed a punitive cost order against the State.
- In January 2017, scientists from South African National Biodiversity Institute (SANBI) announced the development of tiny devices - Radio Frequency Identification (RFID) tags - to protect endangered cycad plants from poachers.
- The first largescale waste-to-energy plant in Africa was opened in Athlone in January 2017. The plant converts waste to various products such as fertiliser and will redirect approximately 10% of Cape Town's total waste as alternative to landfills.
- The DEA plans to permit the annual export of 800 lion skeletons to manufacturers of fake tiger wine. This is a move which supports local lion breeding enterprises for purposes such as canned lion hunting and the supply of lion body parts. Captive breeding is animal cruelty and is also at odds with the global shift against captive wildlife. There are between 6 000 and 8 000 captive lions in the country, which is more than twice the number of wild lions.
- According to the DAFF, over the past seven years, the number of poached perlemoen has rocketed. It is estimated that more than seven million abalone were poached in 2014. The last time the numbers were that high was in 2003, when it is estimated that more than eight million perlemoen were poached. Abalone poaching costs an estimated R1 billion annually.

2016 Grade **D -**

2017 Grade **D -**

THE PROPERTY clause both protects property rights and allows for land reform, in order to enable greater access to land by South Africans affected by previously racially discriminatory laws. However, the slow pace of land reform, coupled with poor implementation of land redistribution policies, means that many South Africans do not enjoy the right. Equally concerning is the increasing political rhetoric concerning the property clause, which threatens to undo the balancing nature of the property clause.

- The Financial and Fiscal Commission reported that the government has ploughed more than R60 billion into land reform since the 1990s and despite this figure, no economic development has been stimulated in rural areas.
- The *Commission on Restitution of Land Rights Annual Report 2015/16* stated that a total of 617 land claims were settled in the 2015/16 period. This was 154 more claims than the Commission's target. Limpopo settled the most land claims, with over 180 claims.
- The same Report states that a total of 560 land claims were finalised during the period under review - almost double the target of 373.
- In July 2016, the Constitutional Court in *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others*, declared the *Restitution of Land Rights Amendment Act* invalid. The Act reopened the lodging of land claims for a period of five years - from 1 July 2014 to 30 June 2019. The Constitutional Court found that the public consultation process facilitated by the NCOP and other Provincial Legislatures did not meet the standard set in the Constitution. The Court also ordered the Commission to continue to receive new land claims and issue letters of acknowledgement of receipt, but interdicted it against processing any new claims until a new Act reopening lodgement of claims is enacted.
- 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 *Mineral and Petroleum Resources Development Amendment (MPRDA) Bill* was sent back to Parliament so that issues relating to the public consultation process undertaken by Provincial Legislatures can be addressed.
- The *Regulation of Land Holdings Bill*, which places a maximum ceiling of 12 000 hectares on agricultural land ownership and seeks to restrict foreigners to leases of between 30 and 50 years instead of ownership, has yet to be published.
- In *Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Others*, the Land Claims Court has ruled that market value is not the sole determinant for compensation when land is being expropriated for restitution purposes. The Court ordered the appointment of a special master to assist labour tenants to make claims for portions of the land they have worked and lived on, thus confirming and protecting the rights of labour tenants.
- The *Communal Property Associations Amendment Bill* was approved by Cabinet. This Bill intends to allow communities to regulate the way land is distributed and used amongst themselves. It is however, not without flaws. Elders in the communities have been known to abuse the power they have been given, and the youngest and the women inadvertently remain at the mercy of the patriarchal society.
- The *Expropriation Bill* was passed in 2016 after much revision. This version was the best that had been tabled since the Bill's conceptualisation. The Bill has however, since been sent back to Parliament by the President due to inadequate public consultation, as well as with the aim to achieve transformation in the land arena.
- South Africa has a ranking of 29/138 for the protection of property rights on the WEF's *Global Competitiveness Report 2016/17*, this is five spots lower than the previous year.



2016 Grade **B =**

2017 Grade **B -**

DESPITE VARIOUS housing programmes implemented nationwide, reported levels of corruption and fraud all too often interfere with the ability of the State to adequately meet the demand for urban housing.

- In April 2016, the North West Department of Local Government and Human Settlements spent over R54 million on a project to develop 2 400 social housing units. According to the Portfolio Committee on Local Government, the project was abandoned and the money had not been accounted for.
- According to the Department of Human Settlements (DHS), by May 2016, Government had delivered more than 4.3 million houses and subsidies since 1994, benefiting more than 20 million South Africans. Government has made strides in providing affordable housing but over time the quality of housing has become substandard, due to the inability to maintain adequate upkeep.
- The IRR *State of the Nation: The Silver Lining* Report, indicated that the number of households living in formal housing stood at 13 404 199 in 2016 - 131.3% more than in 1996. The number of households in informal housing stood at 2 193 968 - 51% more than in 1996.
- In *Bongane Ngomane and Others v Govan Mbeki Municipality*, the Constitutional Court was faced with families who had illegally erected residential structures on land zoned by the Municipality for agricultural purposes. The occupiers were evicted from the land and the informal structures were demolished. The occupiers then settled on land earmarked for a primary school development. The Municipality sought another eviction order, as well as an interdict preventing the dwellers from erecting other structures elsewhere. *Inter alia* the Court held that the Municipality needed to ensure procedural conduct in terms of the eviction, to allow

for substantive fairness. This included the provision of emergency housing. The Court emphasised the need for a just and fair solution to the problem, especially considering the constitutional nature of the affected right.

- In January 2017, at least 3 000 social housing units were in the pipeline for Salt River and Woodstock in Cape Town. The units will be available for residents earning between R1 500 and R7 500 per month.
- A group of people were evicted from a piece of land they occupied next to the wetland in Masiphumelele in January 2017, leaving 50 persons homeless. The City of Cape Town said the evictions were an effort to ensure the wetlands, situated at the back of Site 5 informal settlement, were not invaded because they posed a flood risk.
- In January 2017, it was reported that between 2010 and 2011 the DHS in the Free State Province spent approximately R631 million on housing under the Reconstruction and Development Programme (RDP). However, no houses were ever constructed. The Department was guilty of grossly underspending its allocated budget and spent the concerned funds in under six months. Some of the contractors being sued for the irregular expenditure are owned by prominent figures in the country.
- Research in the *Amnesty International Annual Report 2016/17* shows that the failure of mining company Lonmin to address housing conditions at Marikana contributed to the death of 34 striking mineworkers shot by police. In 2016, Lonmin said that approximately 13 500 of its 20 000 permanent employees still needed formal accommodation. Many mineworkers continued to live in informal settlements in the area. The Report notes that Lonmin's operations are inconsistent with the right to an adequate living standard.



Healthcare, Food, Water and Social Security

(section 27)

2016 Grade C =

2017 Grade C -

WHILE THERE are some laudable attempts by the State to progressively realise the rights to healthcare, food, water, and social security, institutional incapacity prohibits the ability of the State to discharge its obligations. Moreover, rampant corruption and fraud in the procurement processes negatively impacts the delivery of such services.

HEALTHCARE

- Life expectancy at birth for 2016 is estimated at 59.7 years for males and 65.1 years for females, compared to 59.3 years for males and 64.7 years for females in 2015.
- South Africa committed to the *Abuja Declaration* with the other African Union (AU) nations in 2001, to allocate 15% of its budget to healthcare by 2020.
- In March 2016, over-the-counter self-test HIV kits became available in pharmacies across the country. This is in a bid to encourage more people to know their status and to alleviate the stigma that is attached to other forms of testing. The Department of Health (DoH) does not encourage the use of home testing kits, but there is no legislation to regulate the sales of the tests.
- In May 2016, the South African government updated the HIV policy to allow ARV treatment for all South Africans, regardless of their CD4 count. Previously patients had to have a CD4 count of 500 to qualify for ARVs, despite the WHO recommendation to take ARVs as soon as a person tests HIV-positive.
- In June 2016, as part the *South African National Sex Worker HIV Plan 2016 - 2019*, South Africa became one of the first countries in the world to provide Pre-Exposure Prophylaxis (PrEP), a pill that mitigates against HIV, free of charge to sex workers.
- Following repeated attacks on paramedics during 2016, the Western Cape Health Department said that Emergency Medical Services (EMS) crews will no longer respond to calls in township “red zones” without a police escort.
- The *DoH Annual Report 2015/16*, states that the infant mortality rate for 2016 is estimated at 33.7 per 1 000 live births.
- The Report also indicates that mother-to-child transmission of HIV has been reduced from 70 000 babies born HIV-positive in 2004, to less than 7 000 in 2015.
- The number of new HIV infections in adolescent girls and young women aged 15-24 years is still very high, at 1 986 per week.
- The *DoH Annual Report 2015/16* cites prevention as the mainstay of efforts to combat HIV and AIDS. Since the HIV Counselling and Testing (HCT) campaign was introduced in 2010, over 44 million people have been tested. A total of 11 898 308 people between the ages of 15 and 49 years were tested, exceeding the annual target of 10 million for the financial year 2015/16.
- The same Report states that the estimated overall HIV prevalence rate is approximately 12.7% of the total South African population. The total number of people living with HIV is estimated at approximately 7.3 million in 2016. For adults aged 15 - 49 years, an estimated 18.9% of the population is HIV-positive.



- The *DoH Annual Report 2015/16* lists medical male circumcision (MMC) as one of the Department’s combination HIV/AIDS prevention interventions. During 2015/16, a total of 464 731 MMCs were conducted.
- Statistics SA has reported considerable declines in TB-associated mortality, from the high of 70 000 in 2009 to less than 40 000 in 2014. Successes have been recorded in the expansion of TB and HIV/AIDS services among people with an elevated risk of infection to TB. In 2015, 569 475 inmates in correctional service facilities were screened for TB; the inspectors deployed in the mining sector reported that 95% of controlled mines are now offering routine TB screening services to miners; and TB screening was conducted among more than 30 million people who presented in public health facilities in 2015.
- During 2016/17, the Global Fund approved a three-year grant of approximately R700 million, to strengthen the national response to the TB epidemic.
- To date, almost 100 mentally ill patients died since 23 March 2016 in Gauteng after being transferred from Life Esidimeni to numerous NGOs around the province. All 27 NGOs to which patients were transferred operated under invalid licenses. All patients who died in these NGOs died under unlawful circumstances. A report by Health Minister, Aaron Motsoaledi, found that former MEC Qedani Mahlangu and other health officials had gross negligence during the transfer of the patients. Many counts of human rights violations have occurred, including the violation of right to life, dignity, and healthcare.
- The DoH 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.

FOOD

- The final Small-Scale Fisheries Regulations were gazetted on 8 March 2016, along with the *Marine Living Resources Amendment Act* signed by the President. These now provide the legal mechanism for the implementation of the Small-Scale Fisheries Policy. These reforms give legal recognition to small-scale fishers and will promote the transformation of the subsector to assist fishing communities living along the

coastal areas in creating sustainable livelihoods, generating income and creating jobs.

- South Africa is experiencing a drought which is threatening food security, with many dams operating at critical level. At mid-February 2017, provincial dam levels were at 58.6% in Eastern Cape, Free State 54%, Gauteng 87.1%, KwaZulu-Natal 43.6%, Limpopo 57.5%, Mpumalanga 64.9%, North West 67.5%, Western Cape 41.4%, and 67% in the Northern Cape.

- The *Hunger and Nutrition Commitment Index - Africa* (HANCI-Africa), produced by the Institute for Development Studies, ranks South Africa the highest in its commitment to ending hunger and malnutrition among its people.

- In early January of 2017, the armyworm invasion caused - and may continue to cause - devastation on maize farms in the country. The invasion could result in high food prices and limited food export potential.

- The *Department of Agriculture, Forestry and Fisheries Annual Report 2015/16* reports that more than 14 million citizens have insufficient access to food, are vulnerable to hunger and are food insecure.

- The DAFF hopes to boost production and trade through the innovative drought-tolerant maize cultivar, which was launched by the Agricultural Research Council (ARC) in 2014. Results indicate that farmers who planted the new maize cultivar experienced on average 50% increased yields when compared to conventional varieties available on the market.

- Red meat production was 1 454 000 tons for 2015. There was a decrease of 64 000 tons in 2015, compared to 2014.

- Production of vegetables amounted to 5.2 million tons in 2015, an increase of 306 000 tons. The gross value of production also increased to R18 063 million, representing an increase of R933 million.

- According to the *Stats SA Community Survey 2016: Agriculture Households*, 873 355 households are involved in vegetable production, additionally 1 120 233 households are involved in poultry production.

- The *Review of Dietary Surveys in the Adult South African Population from 2000 to 2015* study, done by the Centre of Excellence in Food Security, revealed that most South Africans consume high-energy but nutrient-poor foods. The study found that while the WHO-recommended average energy intake for adults to lead a healthy and active lifestyle is 8 700 kilojoules (kJ), South African males were consuming between 6 100kJ to 13 974kJ, and females between 5 400kJ and 11 978kJ. This indicates that many South Africans are either underweight or overweight. A closer look at the source of their energy intake revealed that people consume

too much sugar and carbohydrates, and too little protein.

- In its commitment to further public health, South Africa will introduce a new tax on sugar which will be implemented from 1 April 2017.

WATER

- According to the Department of Water and Sanitation (DWS), it will take at least three years for South Africa to recover from the drought, but even then, the country may not be out of the woods. Mid-February 2017, provincial dam levels were at 58.6% in Eastern Cape, Free State 54%, Gauteng 87.1%, KwaZulu-Natal 43.6%, Limpopo 57.5%, Mpumalanga 64.9%, North West 67.5%, Western Cape 41.4%, and 67% in the Northern Cape.

- The IRR's *State of the Nation: The Silver Lining* Report



states that 15 218 753 households had access to piped water in 2016. The report also states that 11 463 619 households had access to flush or chemical lavatories.

- According to the *Department of Water and Sanitation Annual Report 2015/16* the single most pressing challenge has been the severe drought. The Inter-Ministerial Task Team on Service Delivery was created to ensure that there continue to be a reliable supply of water in all communities. The role of civil society organisations in supporting this effort cannot be overemphasised.

- During 2015/16, 11 bulk infrastructure schemes and 52 accelerated community infrastructure projects were completed with 36 water services and eight water augmentation projects ongoing. A further four operations and maintenance projects were completed, with four dam safety and nine conveyance projects ongoing.



- The DWS financially supported 1 348 resource-poor farmers and 862 rainwater harvesting tanks were installed.
- Over 34 000 households were provided with basic/ interim water supply, over 1 800 bucket sanitation systems eradicated, and over 3 000 households supported through the Rural Household Infrastructure Programme (RHIP) to eradicate the sanitation backlog.
- The DWS further evaluated 154 dams for compliance with dam safety regulations, and 274 water users in the mining industry and agriculture sectors were monitored for compliance. Performance assessments were conducted in 346 water supply systems to assess compliance with drinking water standards.
- According to the Stats SA *General Household Survey (GHS) 2015*, (released mid-2016), 89.4% of South African households had access to piped water in 2015. However, only 74.9% of Eastern Cape households enjoyed such access. This is still a substantial improvement from 2002, when only 56.3% of households in this province had access to piped water.
- Nationally, 62% of households rated the quality of water-related services they received as “good”. Levels of satisfaction have been decreasing steadily since 2005, when 76.4% of users rated the services as good. An estimated 45.8% of households had access to piped water in their dwellings in 2015. A further 27% accessed water on site, while 13.9% relied on communal taps and 2.7% relied on neighbours’ taps.
- Although households’ access to water is improving, 4.4% of households still had to fetch water from rivers, streams, stagnant water pools and dams, wells and springs in 2015. This is a decrease of more than five percentage points from 9.5% of households that had to access water from these sources in 2002.
- According to the Stats SA *GHS 2015*, nationally, the percentage of households with access to ‘RDP-standard’ sanitation increased from 62.3% in 2002, to 80% in 2015. The majority of households in Western Cape (93.3%) and Gauteng (91%) had access to adequate sanitation, while about half those in Limpopo (54%) and just below two-thirds of those in Mpumalanga (65.8%) had adequate access. The percentage of households that continued to live without proper sanitation facilities declined between 2002 and 2015, decreasing from 12.3% to 4.7% during this period.
- The safety of women in informal settlements without adequate sanitation has been a cause for concern with multiple reports of rape and murder when women visit outside toilet facilities at night.

SOCIAL SECURITY

- South Africa spent close to 3% of its Gross Domestic Product (GDP) on social assistance, to the value of R128 billion in 2015/16 financial year.
- SASSA managed to increase the number of social grants in payment by 2%, from 16 642 643 at the end of 2014/15, to 16 991 634 at the end of 2015/16 financial year.
- The Stats SA *Living Conditions Survey 2014/15* (released Feb 2017) revealed that social grants contributed more to total household income in the lowest three income deciles than income from work.
- The Old Age Grant threshold was increased to benefit more elderly people, resulting in a further 80 000 recipients in the 2014/2015 year. The Old Age Grant increased from R820, to R1 500 in 2016.
- The *South Africa Social Security Agency Annual Report 2015/16* states that the Child Support Grant is the largest by



number, totalling just below 12 million, which represents approximately 31% of the South African population.

- The *SASSA Annual Report 2015/16* shows an overall increase of 2.3% in the numbers of Child Support Grant payments was recorded. However, there was a decrease from 596 920 to 499 257 children aged 0 - 1 in payment at the end of March 2016. This represents a decrease of 97 663 from the previous financial year.
- In *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others*, the November 2013 “merits” judgment, the Constitutional Court ruled that SASSA had irregularly and unlawfully awarded a tender to pay social security grants to CPS, a subsidiary of the Nasdaq and JSE-listed Net1. In its subsequent judgment in April 2014, the Constitutional Court ruled on how the wrongdoing should be remedied and asserted that its primary motivation for maintaining the *status quo* with CPS over the next two years, was to ensure that the poorest South Africans were not prejudiced by the awarding of an illegal and irregular contract by SASSA. The ruling also instructed SASSA to regularly report to the Constitutional Court on its progress of awarding a new tender. With a deadline approaching, the Minister of Social Development, as custodian of SASSA, has failed to report adequately to Parliament nor to the Constitutional Court on the plan to distribute grants to almost 17 million beneficiaries come 1 April 2017.
- A SASSA report, *Fact sheet: Issue no 11 of 2016 - 30 November 2016. A statistical summary of social grants in South Africa* states that 17 208 268 South Africans receive some form of social grant.
- The same Report shows that more than 12 million children benefited from the Child Support Grant, while about 3.2 million older persons were recipients of the Old Age Grant.

2016 Grade D +

2017 Grade C =

SOUTH AFRICA'S children remain particularly vulnerable to crime, despite the Constitution's recognition of their vulnerability and subsequent inclusion of safeguards against violations. Almost 12 million South African children receive Child Support Grants from the State and this is often the only barrier between absolute poverty and relative dignity.

- In April 2016, the Constitutional Court dismissed an appeal by the Registrar of Adoptions regarding an order of the South Gauteng High Court in *T v T and Others*. That case concerned the rescinding of an application by a stepfather to adopt his former wife's children, six years after the adoption order was granted. This has serious implications for children who have been adopted in that the parents will no longer have any parental obligations for the concerned children.
- In August of 2016, a KwaZulu-Natal teacher was found filming himself having sex with pupils. In South Africa, events like this are unfortunately not unique. Over the course of 2016, numerous incidents of child abuse were reported in the classroom. Instances of abuse like this have long-term detrimental effects on children, with the overwhelming majority of the victims being girls.
- In October 2016, the UN Committee on the Rights of the Child (CRC) recommended a review of *Education White Paper 6*, to further include a framework that is more inclusive of children with disabilities.
- South Africa ranked 109/165 on the *KidsRights Index*, an 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). 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.

- According to SASSA, 11 972 900 Child Support Grants were received in 2016, whilst 470 015 children received Foster Child Grants, and 131 040 received the Care Dependency Grant.
- According to the *SAPS Annual Report 2015/16*, 45 034 offences against children were reported in the 2015/16 period.
- Researchers led by Naeemah Abrahams of the Gender and Health Research Unit at the South African Medical Research Council (SAMRC) in Cape Town estimate the South African rates for neonaticide (killing a child within the first 28 days of life) to be 19.6 per 100 000 live births, and for infanticide (killing a child under one year) to be 27.7 per 100 000 live births.
- The *Stats SA Mid-Year Estimates 2016* indicated an overall decline in infant mortality (48.2 to 33.7 deaths per 1 000 live births) and under-five mortality rate (70.8 to 44.1 deaths per 1 000 live births).
- According to the United Nations Children's Fund (UNICEF) *2016 Nutrition Report*, South Africa ranks 70/132 countries for stunting prevalence, with a prevalence of 23.9% of the population.
- According to the IJR South African Reconciliation Barometer's Special Briefing Paper, *20 Years of the SA Constitution - People, Institutions and Rights: Sometimes*





Hope gets quite tired, 42% of respondents identified “service delivery” as most important for the country’s future, 31.5% identified the same item as most important in their own lives.

- *Global goals for every child: Progress and disparities among children in South Africa* (the Report), compiled by the SAHRC and the UNICEF, illustrates the progress and disparities among children in South Africa. According to the Report, nearly 7/10 children are currently living in households below the upper bound poverty line. Infant mortality also remains high, with glaring disparities between black and white children: black children are five times more likely to die before the age of one, compared to their white counterparts. Additionally, malnutrition can be seen widely, manifesting as both undernutrition and obesity, which the Report argues is a “double burden”. 1/5 children are considered to have stunted growth, and amongst poor children this rate rises to 28%. In addition to malnutrition, children further remain vulnerable to communicable diseases.

- According to the Report, an estimated 235 000 children under the age of 15 are currently living with HIV.



- Recent estimates gathered from civil society groups assert that it is likely that upwards of seven million girls miss school every month because they do not have access to sanitary products.

- According to the Report, 50% of children in Grade 9 have not mastered their home language, and, as a result, nearly all fail to meet national math standards.

- According to the *South African Child Gauge 2016* report, published by the Children’s Institute at the University of Cape Town (UCT), 18.5 million children were living in South Africa in 2014. 16% are orphans (having lost either mother, father or both parents), 21% of children do not live with either of their biological parents and 0.3% of children live in child-headed households.

- According to the same Report, many children in South Africa have to travel long distances to school. 1/8 children (13%) live far from their primary school, increasing to nearly 1/5 children (19%) in secondary school. Despite this, South Africa has made significant progress in improving access to education, with a 98% gross attendance rate in 2014. Access to education (an educational institution or care facility) in preschool years has increased to 91% of 5 to 6-year-olds.

- The South African Depression and Anxiety Group (SADAG) reports that one in 10 teen deaths in the country are due to suicide, with figures from the Western Cape showing a staggering 20% of teen deaths from suicide.

- In *Raduvha v Minister of Safety and Security and Another*, the Constitutional Court ruled on the principle of the best interests of the child. In this case, Michelle Raduvha was claiming for damages, which she brought against the Ministry of Safety and Security, as well as the SAPS following her arrest and detention at the age of 15 without an arrest warrant. The Court agreed with the assertion that detention should have been an option of last resort and that the police could have considered alternatives to arresting and detaining her and reemphasised the importance of considering the best interests of a child in any conduct involving children.

- According to a study conducted by the UBS Optimus Foundation in 2016, the *Optimus Study: Sexual Victimization of Children in South Africa*, 35.4% of all young people have experienced some form of abuse at some point in their lives, and nearly 26.3% have experienced some form of sexual abuse. The study states that a total of 351 214 cases of sexual abuse had occurred among 15 to 17-year-olds in 2016 alone.

2016 Grade E =

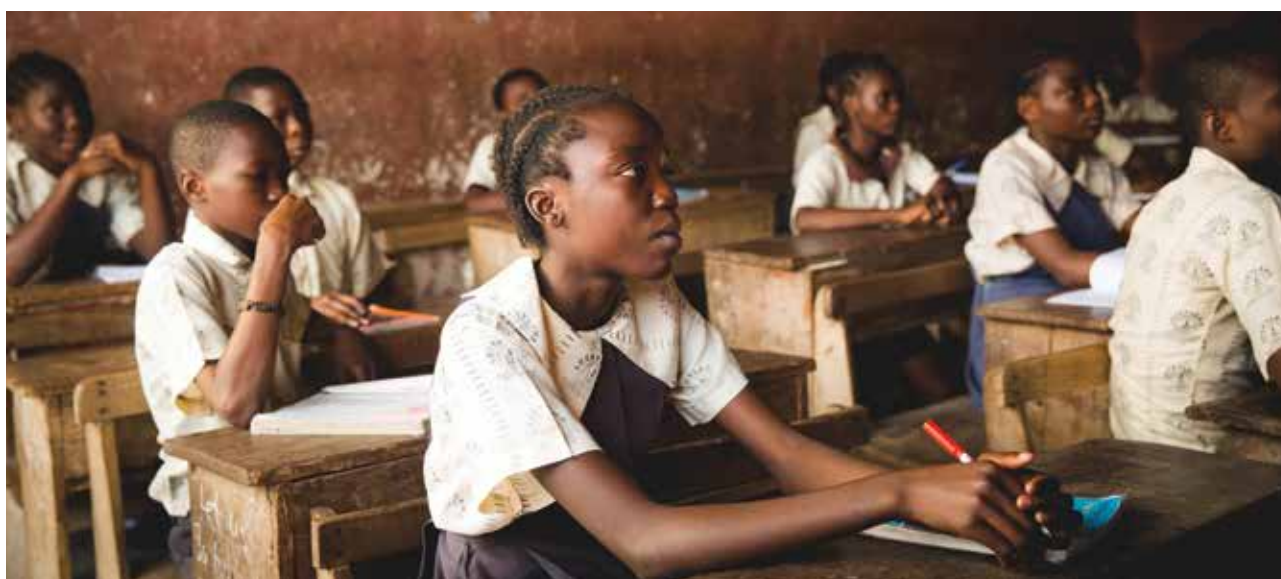
2017 Grade E =

THE RIGHT to education remained highly contested in 2016, particularly the right to further education and training. While more funding for 2017 has been allocated to institutions of higher learning, it remains to be seen whether such increased funding will assist in increasing the number of South Africans with access to higher education and training. Early Childhood Development (ECD) does not appear to receive the same attention as basic and further education, despite well-founded evidence of its importance in creating a solid educational foundation for young learners.

- In June 2016, Basic Education Minister Angie Motshekga deployed teams of experts to three provinces (Eastern Cape, KwaZulu-Natal, and Limpopo) following continued poor matric results, bad curriculum delivery and weak administration, including financial mismanagement.
- In September 2016, the Grahamstown High Court in *Head of Department of Education, Eastern Cape Provincial Government v South African Democratic Teachers Union and Others*, ordered the South African Democratic Teachers' Union (SADTU) to cooperate with the Education Department on teacher staffing decisions for schools for the next three years. This is following years of SADTU thwarting attempts by the Eastern Cape Department of Basic Education (DBE) to place teachers in schools in the province. The Court held that the Constitution protects the right to basic education and the conduct of SADTU was a direct infringement of that right.
- In August 2016, Gauteng Education MEC Panyaza Lesufi instituted an investigation at Pretoria High School for Girls to unpack issues that resulted in anti-racism protests at the school. After a meeting between the school governing body (SGB), learners, and parents to discuss the Code of Conduct, it was found that the clause that deals with hairstyles would be suspended. Lesufi said that the SGB and learners would draft a new Code of Conduct, which would not alienate certain groups of people.
- A 2016 SAHRC report, *National Investigative Hearing into the Impact of Protest-related Action on the Right to a Basic Education in South Africa*, states that public protests have an impact on children's right to basic education. The

SAHRC monitored protests over the last five years and found that protest-related actions include burning of educational infrastructure and barring children from accessing school premises.

- According to the *Human Rights Watch World Report 2017*, South Africa became the first country to endorse the *Safe Schools Declaration* at a global conference in Norway in May 2015. By joining the Declaration, it agreed to protect students and education during conflict, and to avoid using educational buildings for military purposes.
- The WEF's *Global Competitiveness Report 2016/17* ranks the quality of SA's education system at 134/138, while mathematics and science education remain last at 138/138.
- The *Department of Basic Education Annual Report 2015/16* shows that in 2016, 72.1% of learners obtained a National Senior Certificate (NSC). This is a decrease from the 77.1% of learners who passed the 2015 academic year.
 - The number of candidates that obtained admission to Bachelor studies also increased from the 152 018 announced in January 2015, to 166 263 for 2016.
 - According to the *Department of Basic Education Annual Performance Plan 2016/17*, the Class of 2015 had the highest enrolment of Grade 12 learners in the history of the nation's basic education system.
 - The same Report shows that 646 020 learners wrote the 2016 NSC examinations.
 - Additionally, the Report states that a total of 26 475 110 Grade R-9 textbooks were delivered around the country in 2016.
 - 90.7% of 14 to 18-year-olds attend educational institutions.
 - 9.2 million learners nationwide benefit from the National School Nutrition Programme.
- The *Report of the Ministerial Task Team appointed by Minister Angie Motshekga to Investigate Allegations into the Selling of Posts of Educators by Members of Teachers Unions and Departmental Officials in Provincial Education Departments*, which investigated the 'jobs-for-cash' scandal could lead to criminal charges for implicated persons. The task team investigated claims that some members of SADTU





were 'selling' posts at schools.

- The matter of *Federation of Governing Bodies for South African Schools v Member of the Executive Council for Education, Gauteng and Another* concerned the validity of amendments to the *Regulations for Admission of Learners to Public Schools in Gauteng* (Regulations), which were promulgated by the Member of the Executive Council for Education, Gauteng (MEC) in 2012. Another key provision is Regulation 11(5), which empowers a District Director to consider the relative capacity of other schools in a district as a criterion for placing a learner in a particular school. The Court held it to be reasonable, rational and justifiable as its guiding purpose is to ensure that every learner is placed in a school regardless of that learner's residential background. The MEC was directed to set feeder zones as required by regulation 4(1) within a reasonable time, not later than one year from the date of the court order. The right to education is linked to freedom from unfair discrimination in that one cannot be limited to accessing education in a particular geographical area based on one's race. As the rules for the determination of feeder zones stood, a child could be precluded from accessing basic education based on his/her race.
- The SAHRC is considering taking legal action against the DBE for failure to deliver textbooks as this is not the first time the Department has failed to provide textbooks for the poorest of the poor.
- The Budget allocation for the Department of Higher Education and Training (DHET) for the 2015/16 financial year saw an increase from R9.5 billion in 2015, to R10 billion in 2016/17. Of this amount, over R700 million has been allocated to full bursaries.
- Higher Education and Training in South Africa is ranked at 77/138 by the WEF's *Global Competitiveness Report 2016/17*.
- In May 2016, the *Higher Education Amendment Bill* was narrowly passed in the National Assembly. The Bill, which, among others, sets fixed transformation goals and oversight mechanisms, imposes stricter oversight over universities' spending of government subsidies, and gives the Minister greater powers to intervene in under-performing universities, raised concerns in academia that institutional autonomy and academic freedom could be affected. On 17 January 2017, the President signed the *Higher Education Amendment Act* into law.
- In October 2016, in response to a proliferation of sexual

and gender-based violence (SGBV) incidences occurring on university campuses across the country, the DHET, in conjunction with the Higher Education and Training HIV/AIDS Programme (HEAIDS), developed a task team called the Higher Education SGBV Technical Task Team (TTT) to campaign against such heinous acts.

- 2016 saw the continuation of the 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 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.
- The Commission of Inquiry into Higher Education and Training (the Fees Commission) was established in 2016 by President Zuma to investigate the feasibility of free higher education and training. The Commission is expected to present its final report on the feasibility of free higher education by the end of June 2017.
- 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 DHET that a new payment structure will be put in place to make NSFAS more effective.
- In response to changes regarding language policies at institutions of Higher Learning across the country, various lobby groups approached the courts in order to challenge these changes and ask the courts to consider the constitutional right to receive education in one's language of choice, as enshrined in section 29(2).



2016 Grade C -

2017 Grade D =

THE RIGHT is in principle largely enjoyed, although the use of Afrikaans as a medium of instruction at institutions of higher learning is gradually being limited. This affects the extent to which the language and culture can be enjoyed.

- In 2016, the North Gauteng High Court in *Afriforum and Another v Chairperson of the Council of the University of Pretoria and Others* dismissed an application to have the resolution of the University's Council to change the institution's language policy and have English as the main medium of instruction, set aside. The matter concerned language rights. The ruling affirmed the intertwined nature of language, culture and identity, whilst acknowledging history and the use of language by some groups to dominate and exclude others. The Court considered the evolution of the University's demographics, as well as that of its language policy as the demographics changed, in a bid to meet the constitutional mandate of transformation. The Court noted that at the time of litigation, there was only an 18% overall demand for Afrikaans as tuition language. The Council had considered reasonable practicability and equity, along with the demographics, when it made its resolution. It was argued that Afrikaans students had the option of mother-tongue education whilst the remaining students did not and this amounted to an unfair disadvantage. The Court dismissed the application based on the fact that the resolution was taken after careful consideration and that it moved towards accommodation of all students.
- In May 2016, the Congress of Traditional Leaders of SA (Contralesa) argued in an application before the Western Cape High Court that Parliament failed its constitutional duty to deal with matters regarding traditional leadership, in particular the constitutional rights of Traditional Leaders who want immunity from liability related to decisions taken in Traditional Courts.
- On 3 February 2017, the Pan South African Language Board (PanSALB), the Department of Arts and Culture (DAC) and the CRL Rights Commission discussed the status of South African Sign Language (SASL) and other lesser-known languages in South Africa. Parliament's Constitutional Review Committee will make representations before end 2017 calling for SASL to be officially recognised as an official language.
- Language rights have been contentious following allegations of exclusion at university campuses, with violent student protests over their respective language policies reported at Pretoria, Stellenbosch and Free State.
- In June 2016, the Council of the University of Pretoria approved a new language policy, making English the only language of tuition and assessment.
- In June 2016, the Council of Stellenbosch University approved the proposed new language policy with the amendments proposed by the Senate. The new policy ensures that the English policy is expanded so that no student is denied academic learning. Afrikaans tuition will not be decreased and will continue to be a medium of instruction should the number of students who desire instruction in this language warrant its use.
- In June 2016, the CGE ruled that a so-called "maiden bursary" scheme (introduced by uThukela district earlier in the year to reward women for remaining virgins), was unlawful and unconstitutional. Many cultural activists and

traditional leaders were angered by the ruling, and stated that the maiden bursaries fall in line with the Constitution. Chairwoman of the CRL Rights Commission, Thoko Mkhwanazi-Xaluva, said that for many virginity is a cultural right and must be protected under the Constitution.

- In July 2016, the Constitutional Court, in *City of Tshwane Metropolitan Municipality v Afriforum and Another*, upheld an appeal by the City of Tshwane against an interim order by the High Court in 2013, which restrained the municipality from removing street names and road signs bearing the old names of streets, pending a review application by AfriForum. The Court set aside the interim court order requiring both old and new street names to be displayed alongside one another. The old names will have to be taken down. The Court held that that because apartheid and colonialism were so harmful, they retard national progress and the past must not be pampered with great care or sympathy.
- In September 2016, allegations surfaced that Sans Souci Girls' High School in Cape Town fined pupils R10 for speaking isiXhosa. The school's Principal acknowledges that fining students goes against the school's Code of Conduct, however students are encouraged to use English in the classroom. Following the allegations, protests erupted at the school after students accused the Code of Conduct of perpetuating institutional racism in the classroom. As a result, the Principal resigned in January 2017.
- The SCA heard a language policy dispute in *University of the Free State v Afriforum and Another*. The new language policy pushed for multilingualism and promoted English as a medium of instruction, with the introduction of a tutorial system in Afrikaans and progressively in Sesotho to assist first and second year students. The University reached a decision to make English the primary medium of instruction following weeks of protest against its English-Afrikaans policy. AfriForum was concerned that the new policy would only benefit students with English as a home language thus unconstitutionally infringing on the rights of Afrikaans-speaking students. The SCA however, found that AfriForum failed to prove that any students, prospective or otherwise, faced prejudice with the introduction of the new language policy.



Cultural, Religious and Linguistic Communities

(section 31)

2016 Grade B -

2017 Grade B =

SOUTH AFRICA'S diversity of cultural, religious and linguistic communities is largely enjoyed, although a number of harmful practices in the name of culture and religion were reported during the year under review. The CRL Rights Commission has increased its presence and influence as a State institution tasked with respecting the rights of cultural, religious and linguistic communities, as well as promoting tolerance amongst South Africans.

- In November 2016, the SAHRC hosted a National Investigative Hearing on human rights violations in South African Khoisan communities (including Khoi, San, Nama, Griqua and Koranna) at their headquarters in Braamfontein, where submissions were made regarding access to basic services and land, as well as renewed calls for formal recognition of the language and culture of Khoisan communities.
- The CRL Rights Commission launched an investigation into the mass deaths of initiates, to find out why dozens of boys and young men die at initiation schools. 24 deaths were recorded by the Eastern Cape Provincial Government during the last initiation period.
- According to the Limpopo Provincial House of Traditional Leaders, over 20 illegal initiation schools in the Sekhukhune district of Limpopo have been shut down. These schools perform circumcisions illegally, which has resulted in numerous deaths from surgical complications.

- The Department of Justice and Correctional Services has redrafted the *Traditional Courts Bill*. The previous Bill was problematic as it entrenched controversial apartheid boundaries by establishing the Court's area of jurisdiction to be the same as Traditional Leaders under the *Traditional Leadership and Governance Framework Act*. The new Bill has been redrafted to address fears that it affords Traditional Leaders excessive power at the expense of women. The Bill goes further and provides for the inclusion of women in the Constitution of Traditional Courts to promote and protect the representation of women. The law has been debated for over 10 years due to potential odds with the Constitution whilst simultaneously attempting to recognise Customary Law and cultural practices.

- In *Mkabe v Minister of Home Affairs and Others*, the North Gauteng High Court ruled that Lobola does not have to be paid in full before a Customary Marriage is deemed valid. The Court found that Customary Law had evolved over the years and Lobola did not have to be paid in full before a valid Customary Marriage could be entered into by parties. The applicant sought an order declaring that he is the customary husband of the deceased. The respondent was the daughter of the deceased and argued that because the applicant had not paid Lobola in full, he was not her husband and thus not entitled to inherit from the estate. The Court confirmed that the pair had indeed entered into a Customary Marriage and ordered Home Affairs to register the marriage.



2016 Grade C -

2017 Grade D -

TO ENSURE an open and democratic society, it is necessary that the workings of policies should be made transparent to everyone. While there is legislation to give effect to the right to access information, it appears that many government departments do not have officially-designated information officers to respond to requests for information under the *Promotion of Access to Information Act* (PAIA). In addition, the SABC has been accused of censorship. This negatively affects the ability to access information, as the state broadcaster has the widest telecommunications reach in the country.

- In March 2016, the SCA in *City of Cape Town v South African National Roads Authority Limited and Others*, overturned a High Court judgment that had restricted public access to filed court documents. The Court based its findings on the principle of open justice and said that court records by default should be open to the public. Any departure from this constitutional principle is an exception and should be justified.
- In May of 2016, the SABC implemented an editorial policy stating that it would not be broadcasting any footage of violent protests which involved the destruction of property. This move was viewed as censorship as the Broadcaster is, for many South Africans, the only source of news. This decision was found to be infringing on press freedom by the Independent Communications Authority of South Africa (ICASA). ICASA ordered the reversal of the policy and in early 2017, submitted the matter to the Directorate for Priority Crime Investigation (DPCI) for investigation, citing lack of evidence on the part of the Broadcaster that the policy had indeed been reversed.
- The end of 2016 marks three full years since the *Protection of State Information Bill*, also known as the Secrecy Bill, was passed by the National Assembly. It has not yet been assented to. The Secrecy Bill could prevent the free flow of information and hide corruption at certain levels within government. The public has a right to have access to certain information, in line with the spirit of the constitutional principles of openness and transparency. The expectation of

protection of the right to privacy in the public domain is not as high as that of the personal or private arena.

- In response to concerns raised by R2K, as well as other civil society actors, a newly revised *Cybercrimes and Cybersecurity Bill* was introduced at the end of 2016. The DoJ&CD stated that it would not give the SSA the authority to monitor citizens.
- According to the Freedom House *Freedom on the Net 2016* report, South Africa is considered “free” with regard to internet freedom status, with a score of 25 (0 being most free, 100 least free), this is two places up from the previous year. The report states there is a diverse and vibrant online sphere, with a culture of free expression.
- The same Report also makes mention of the *Draft Online Regulation Policy of the Film and Publications Board*, 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 *Freedom on the Net 2016* report also mentions that between June 2015 and May 2016, there were no reported incidences of legal, administrative, or other means used to force the deletion of content from the internet in a way that contravenes international norms for free speech or access to information.
- The Report does however, express concern that while both English and Afrikaans-language content is well represented online, nine of South Africa’s 11 official languages are underrepresented, including on government websites.
- In 2016, R2K championed the #DataMustFall campaign, holding a number of pickets and making submissions to Parliament on the high cost of airtime and data.
- R2K also campaigned around the issue of digital migration, from analogue to digital TV - there was little progress in 2016. The Government has delayed the rollout of digital migration for over a year. Digital migration is not only vital for South African broadcasting, but the delay also has negative implications for the rest of Africa.



Just Administrative Action

(section 33)

2016 Grade

B =

2017 Grade

C =

THE STATE'S administrative bodies have a duty to act lawfully, fairly and reasonably - this right is linked to the right to access information, as well as the right to access courts. The Judiciary continues to give content to the right and it is apparent that any exercise of State power should be fair and reasonable.

- The *Minister of Basic Education v Basic Education for All* textbooks matter, which was decided in the SCA, set a definitive standard for all organs of state with an administrative function. Organs of State must ensure that when fulfilling obligations, 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. In December of 2016, the SCA upheld the High Court order of 2012, and ruled that the failure to deliver textbooks and learning materials was a violation of the right to basic education of the affected pupils. In spite of the above ruling and the orders made by the Court,

the DBE has failed to fulfil its constitutional mandate and admitted to a repetition of the crisis that led to this ruling reoccurring in 2017.

- In *General Council of the Bar of South Africa v Jiba and Others*, the North Gauteng High Court held that the Deputy National Director of Public Prosecutions, Nomgcobo Jiba, and her colleague, Special Director of Public Prosecutions, Lawrence Mrwebi, were not fit and proper individuals to occupy their seats on the Gauteng Bar Association. This follows their roles in the controversial decisions to withdraw fraud, corruption and murder charges against suspended crime intelligence boss, Richard Mdluli, as well as the attempted prosecution of suspended KwaZulu-Natal Hawks head, Major-General Johan Booysen, on racketeering charges. The two were struck off the Roll of Advocates in September 2016 and placed on special leave. In January 2017, they were granted leave to appeal the High Court ruling in the SCA.

- According to the Democratic Alliance (DA) in Limpopo, the DBE is not ready for the 2017 academic year, as evidenced by the delay in delivering textbooks and stationery to some schools. The DA confirmed that Waterberg, Sekhukhune and Mopani Districts have not received their textbook cache, and in the Capricorn and Vhembe districts only around 50% of the schools received their textbooks.



Access to Courts

(section 34)

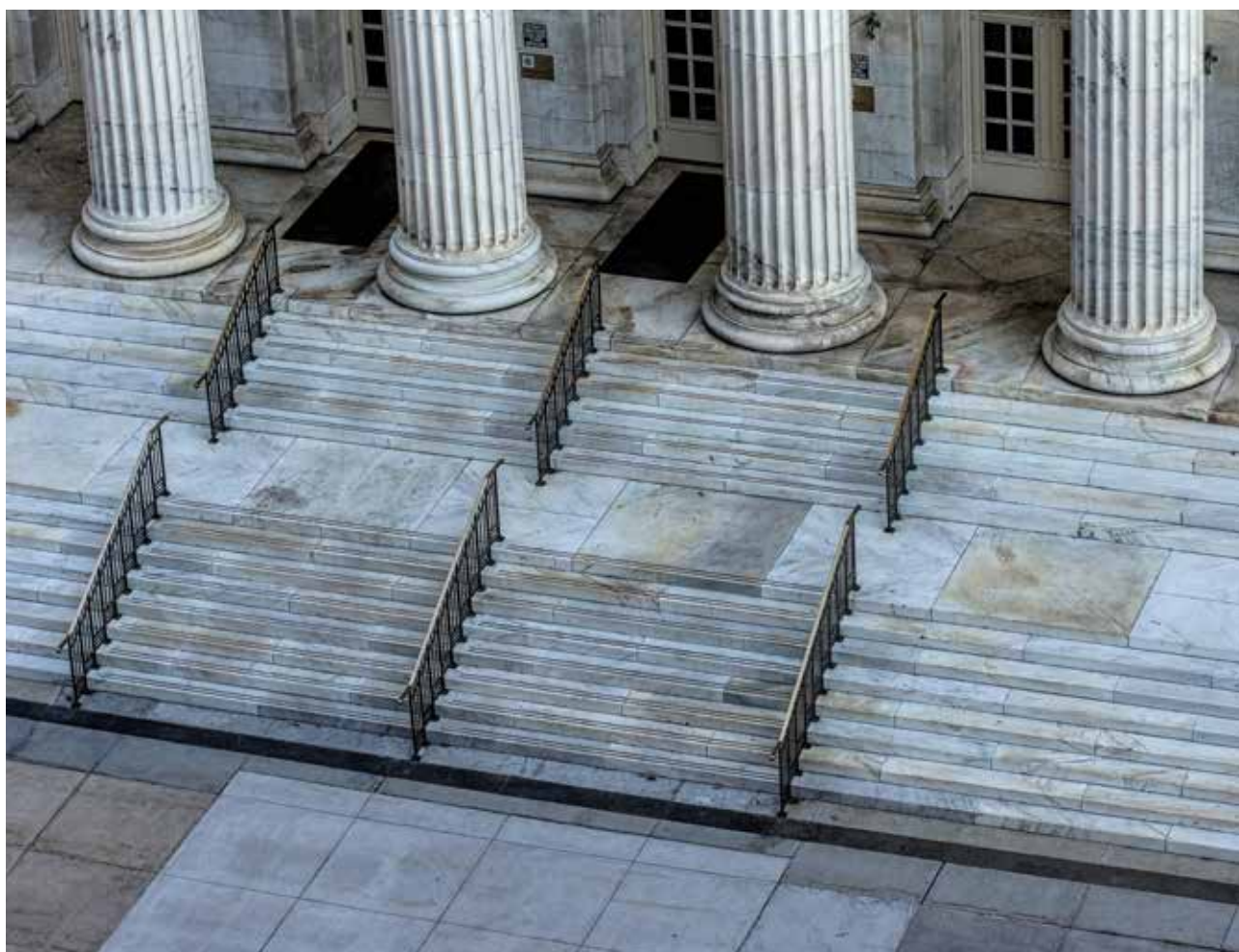
2016 Grade **B =**

2017 Grade **B =**

VIEWED THROUGH a narrow lens, the right to access to courts means access to legal representation and the speedy resolution of disputes. However, the right encompasses the Rule of Law, where the Judiciary is independent, and the Courts impartial and effective. It is true that access to legal representation for many South Africans remains elusive, but the Judiciary, on the other hand, is largely impartial and well capable of dispensing the law.

- In the first three quarters of the 2015/16 financial year, Legal Aid South Africa (Legal Aid SA) took on approximately 315 000 new criminal matters, 228 000 new civil matters and assisted nearly 12 000 children via its 154 justice centres, satellite offices, High Court units and civil units, thereby increasing the number of persons accessing justice.
- According to the *DoJ&CD Annual Report 2015/16*, the NPA continued to achieve most of its performance indicators. This includes the improved conviction rate in sexual offences, with a slight increase from last year's 69%, to 70%. There were 7 098 sexual offences crime verdict cases, with 4 978 convictions.
- Furthermore, during the year under review, the Department upgraded 14 regional courts into Sexual Offences Courts, in accordance with the newly-developed Sexual Offences Courts Model. To date, 47 Sexual Offences Courts have been upgraded.

- A new Language Services Directorate has been established in the Branch Court Services, to improve efficiency in the use and promotion of all languages and to streamline court interpreting across the court system.
- The Department of Justice and Correctional Services has redrafted the *Traditional Courts Bill*. The Bill will improve access to the courts and to justice, in both traditional and common law forums.
- According to the *DoJ & CD Annual Report 2015/16*, the High Courts maintained a 90% conviction rate, with 910 convictions. The Regional Courts maintained a 78% conviction rate with 24 958 convictions, the highest rate in the past decade. District Courts achieved a rate of 95% - a marginal improvement of 1% - with 263 377 convictions.
- During the year under review, a further 40 Small Claims Courts were established, many in rural areas. The goal is to have a court in every magisterial district by the end of 2016/17.
- The Limpopo Division of the High Court commenced functioning on 25 January 2016, after Cabinet approved its proclamation as a separate Division of the High Court.
- The construction of the Mpumalanga High Court is nearing completion. The condition of court infrastructure influences whether or not a person can access adequate justice services. Courts that are in poor working condition may hinder a person's right to a fair public hearing.



Arrested, Detained and Accused Persons

(section 35)

2016 Grade D =

2017 Grade D =

THIS SECTION seeks to balance the public interest between apprehension and conviction of those found guilty by the Courts, and the public interest in protecting the values of freedom, dignity and equality from infringement by the State. A perennial concern is the number of SAPS members convicted of serious offences.

- As at 31 March 2016, South Africa's inmate population reached 161 984.
- During 2015/16, the DCS had an annual average of 45 257 unsentenced inmates. Of these inmates, 1 157 were female and 44 100 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 187 in the 2015/16 year.
- According to the *Department of Correctional Services Annual Report 2015/16*, 11 548 offenders attended educational programmes as per the daily programme attendance register. The number includes both offenders who attended Adult Education and Training (AET) and Further Education and Training (FET) programmes. The Department achieved a 73% (81/111) pass rate for the year.
- By the end of March 2016, 74.3% (75 595/ 101 740) of offenders with correctional sentence plans had completed their correctional programmes.
- A report issued by the NGO HIV Care Association says that drug-users around the country have reportedly been assaulted by the police, detained without cause or charge, sprayed with tear gas and had their heads held under water.
- According to the DCS, record-keeping of deaths at Mangaung Prison, outside of Bloemfontein, is not up to standard. Death by torture may be undetected, with several inmates having died under suspicious circumstances.
- An 2016 Institute for Security Studies (ISS) Policy Brief, *Tools of Torture? Use of electric shock equipment among African police*, reported that the SAPS have used electric shock equipment as a means of torture on detainees.
- The *Cameron Report on Pollsmoor Correctional Centre*, authored by Constitutional Court Justice, Edwin Cameron, revealed that prison inmates are exposed to an unhygienic environment due to overcrowding (above 300% capacity), which leads to poor sanitation.
- The Judicial Inspectorate for Correctional Service (JICS), a watchdog body that oversees SA's correctional system, reported that 2.3% of the entire national inmate population are women.
- In *Sonke Gender Justice v The Government of the Republic of South Africa and the Head of Pollsmoor Centre Remand Detention Facility*, the Court declared that the Government failed to provide the constitutional and legislative standard of core services, including nutrition, accommodation, exercise, ablution facilities and healthcare services (hereinafter referred to as core services) to awaiting-trial inmates. This court order signalled a great victory for the constitutional right to human dignity of awaiting-trial inmates. It required Government to show why the Court should not order it to reduce overcrowding at Pollsmoor Remand Detention

Facility (RDF) to 120% of its approved accommodation (from a level of 250%). The court order also made it mandatory for the Head of the Pollsmoor RDF (the Second Respondent) to report on his weekly findings on inspections of cell accommodation. Non-adherence to this court order - which ordered the development of a comprehensive plan by 31 January 2017 - may leave the Government in contempt of court.

- According to the DCS, sentenced inmates at Pollsmoor Prison are to be transferred to correctional centres outside the city and the province in a bid by the DCS to reduce overcrowding.
- The *IPID Annual Report 2015/16* states that there were:

216 deaths in police custody;
366 deaths as a result of police action;
865 complaints of the discharge of an official firearm;
112 rapes by police officers;
23 rapes in police custody;
145 cases of torture;
3 509 cases of assault;
112 cases of corruption; and
41 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 CFR's mission is to uphold and promote the Constitution. The CFR's goals are to promote the values, rights and principles in the Constitution; to monitor developments that might affect the Constitution; to inform people and organisations of their constitutional rights; and to assist people and organisations claim their rights. As such, the annual Human Rights Report Card is a key tool with which to promote the rights and values in the Constitution through monitoring the achievements and failures of the State in protecting, promoting and fulfilling the Bill of Rights. More than two decades post-apartheid, South Africa is still grappling with what it means to live in a constitutional democracy.



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GOVERNMENT DEPARTMENTS & OTHER ORGANISATIONS

Civilian Secretariat for Police
Commission for Gender Equality (CGE)
Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission)
Congress of Traditional Leaders of SA (Contralesa)
Democratic Alliance (DA)
Department of Agriculture, Forestry and Fisheries (DAFF)
Department of Arts and Culture (DAC)
Department of Cooperative Governance and Traditional Affairs (COGTA)
Department of Energy (DoE)
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Judicial Inspectorate for Correctional Service (JICS)
Lawyers for Human Rights (LHR)
Legal Aid South Africa (Legal Aid SA)
Legal Resources Centre (LRC)
Mexican Council for Public Security and Criminal Justice
Municipal IQ
National Prosecutions Service (NPS)
National Student Financial Aid Scheme (NSFAS)
North West Department of Local Government and Human Settlements
Pan South African Language Board (PanSALB)
Right 2 Know Campaign (R2K)
South African Depression and Anxiety Group (SADAG)
South African Human Rights Commission (SAHRC)
South African Law Reform Commission (SALRC)
South African Medical Research Council (SAMRC) Gender and Health Research Unit
South African National Biodiversity Institute (SANBI)
South African Social Security Agency (SASSA)
Statistics South Africa (Stats SA)
United Nations Committee on the Rights of the Child (CRC)
Women's Legal Centre (WLC)
World Bank
World Health Organisation (WHO)




FW de Klerk
FOUNDATION

FW de Klerk Foundation

E-mail: info@fwdeklerk.org

Website: www.fwdeklerk.org

 Facebook: www.facebook.com/FWdeKlerkFoun

 Twitter: [@FWdeKlerkFoun](https://twitter.com/FWdeKlerkFoun)

Zeezicht Building, Tygerberg Park,
163 Uys Krige Drive, Platteklouf, Cape Town, 7500, South Africa
PO Box 15785, Panorama, 7506, South Africa
Tel: +27 (0) 21 930 36 22
Fax: +27 (0) 21 930 38 98





Centre for
CONSTITUTIONAL
RIGHTS

Centre for Constitutional Rights

E-mail: info@cfc.org.za

Website: www.cfc.org.za

 Facebook: facebook.com/theCFCR

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Support the FW de Klerk Foundation and its Centre for Constitutional Rights

The Foundation is a non-profit organisation with a small operating budget. If you are interested in making a contribution, there are several ways to donate. All donations are tax-deductible and received in terms of Section 18A of the *Income Tax Act No 58 of 1962*.

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Account Number: 406 009 2839

Branch Code: 632005

Reference: CFCR_name/company_name

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