

## **THE CENTRE FOR CONSTITUTIONAL RIGHTS HUMAN RIGHTS REPORT CARD 2014**

*The Centre for Constitutional Rights takes pleasure in presenting its sixth annual Human Rights Report Card indicating where, in our opinion, South Africa has been making progress with regard to human rights and where it has been regressing.*

2014 marks 20 years since South Africa's first democratic elections and a constitutional era underpinned by the values of human dignity, the achievement of equality and the advancement of human rights and freedoms; non-racialism and non-sexism; supremacy of the Constitution and the rule of law; and a multi-party democracy resulting in government that is accountable, responsive and transparent. As a result, South Africa is without doubt a better place to call home.

However, even though it is a functioning multi-party democracy, the growing failure within South Africa to fully appreciate and adhere to all of the aforementioned constitutional values - especially those of accountability, responsiveness and openness, but also non-racialism and non-sexism - is having a direct impact on the realisation of human rights and freedoms. These fundamental rights - as with constitutional values - are interrelated, interdependent and indivisible, meaning that the failure to adhere to one will affect realisation of other rights.

Nonetheless, South Africans enjoy most of the fundamental rights enshrined in the Bill of Rights in one way or another. This includes a fairly wide enjoyment of most political and civil rights, although the same cannot be said about the realisation of socio-economic rights. As a result, inequality in its many manifestations - including persisting poverty, unemployment and access to quality basic education, health services, water and sanitation services - remains a challenge even after 20 years. More communities have access to housing, electricity and water than ever before, although the inability to provide these services in a sustainable manner to all people - especially at local government level - remains the primary cause for ongoing service delivery protests across the country. Similarly, there are indeed more children enrolled in schools than ever before. However, the quality of basic education offered in the majority of South African schools continues to be low.

An apparent disregard for human rights and lack of a human rights culture within the South African Police Service (SAPS) is an increasing concern, which directly and negatively impacts on various rights in the Bill of Rights. The number of well-reported incidents of alleged police brutality - including acts of assault and torture - appears to be constant, if not increasing. In this regard, the realisation of a number of human rights in the Bill of Rights are not only dependent on the SAPS operating as a professional and effective service, but operating within the parameters of the Constitution and its Bill of Rights. Also, there is the perception that the right to equality before the law is being subverted by alleged improper interference by the National Executive in the National Prosecuting Authority (NPA), featured in a number of well-reported cases.

The lack of accountability, responsiveness and transparency in relation to governance in general is of great concern. The impact of these shortcomings on public administration and service delivery - whether due to unconstitutional conduct, corruption, wasteful expenditure or incompetence - remains one of the greatest threats to human rights and freedoms and especially the realisation of socio-economic rights.

Fortunately, the supremacy of the Constitution and its Bill of Rights are protected by independent courts, which frequently strike down unconstitutional legislation and executive action. Also, some state institutions established to support constitutional democracy - especially the Public Protector and the Human Rights Commission - are playing an important role in advancing human rights and identifying unconstitutional behaviour across the spectrum. The latter institutions are unfortunately often publicly criticised and decried by the national executive and Parliament, seriously undermining the integrity of these constitutional entities.

In turn, Parliament has, to a large extent, not lived up to its constitutional role of holding the national executive accountable for its actions and inactions. Instead of fulfilling its proper oversight role, it often appears as if Parliament is intent on protecting the national executive from criticism and on stifling debate on matters of importance to the electorate.

Encouragingly, the media are free and outspoken and civil society continues to be vociferous and engaged in the promotion of constitutional values and human rights.

Race continues to be a major dividing factor and continues to determine access to employment, as well as the enjoyment of social, educational and economic rights. In this regard, the Constitution requires restorative justice aimed at the achievement of equality. However, ironically, our efforts to promote equality sometimes have had a negative impact on South Africans - regardless of race. This is particularly so where the foundational value of non-racialism is disregarded and where the appointment of unqualified people in practice has the effect of limiting access to employment, quality education and other services.

The recently gazetted *Draft Employment Equity Regulations* are a case in point. These regulations, published in terms of the *Employment Equity Act* require employers to consider only national demographics in respect of the promotion and appointment of certain categories of senior personnel, almost completely disregarding the reality of provincial demographics. Moreover, government policies are increasingly race-based and the tone of the national and political discourse has become disturbingly and aggressively racial in nature.

### **Future trends**

The judiciary continues to play its proper role in the administration of justice. Although the lower courts have been criticised for undue delays in deciding cases and settling matters, the higher courts continue to play a constructive role. They have emphasised the importance of

judicial review of executive authority, not just in terms of the *Promotion of Administrative Justice Act* but also as an incidence of the rule of law.

The Office of the Chief Justice has been established as a separate entity from the Department of Justice and Constitutional Development, arguably enhancing the independence of the judiciary. The judiciary in general and especially the Constitutional Court are expected to continue to strike down legislation and executive acts not meeting constitutional muster. Nevertheless, concern remains over the future independence of the judiciary in the wake of criticism of the courts by the government, especially in relation to judicial review of government actions and decisions. In addition, the *Legal Practice Bill* as adopted will have a negative impact on the independence of the legal profession and could consequently undermine the rule of law.

Unless effectively addressed by way of the new *Green Paper on Policing*, as well as legislation to that effect, the lack of an apparent human rights culture within the SAPS will increase the likelihood of more incidents of police brutality.

Gender equality and violence against women and children remain a great concern. The government's inability to effectively prevent, suppress and prosecute these crimes is exacerbated by a patriarchal society and very high rate of violence and sexual offences in general.

Government has announced its intention of accelerating the land reform process but has promised to deal with it within the framework of the Constitution. As such, land and property rights will continue to be in focus in light of the *Restitution of Land Rights Amendment Bill*, which will reopen the land claims process. The *Properly Valuation Bill* does away with the "willing-buyer, willing-seller" requirement for land reform purposes. It also attempts to preclude the courts from involvement in the valuation process once land is identified for land reform purposes. Other laws such as the *Draft Expropriation Bill*, the *Private Security Industry Regulation Amendment Bill*, the *Infrastructure Development Bill*, and the *Promotion and Protection of Investment Bill* all further have the potential to weaken property rights. The latter Bill is intended to protect property rights following the unilateral termination by South Africa of a number of bilateral treaties. It is problematic because it raises the possibility of expropriation without compensation of any property in South Africa.

The number of service delivery protests - some characterised by violence - reflects the growing frustration at the lack of access to basic services, the slow pace of housing delivery under the Reconstruction and Development Programme (RDP) and high unemployment rates. This is likely to continue and even increase.

Effective implementation of the National Development Plan (NDP) will have a positive effect on the realisation of a number of human rights. The NDP, however, does not enjoy the support of all within the ruling party and its alliance partners and may encounter great difficulty in being implemented in full.

## Pointers

Some of the factors that can be expected to affect constitutional rights in 2014 include:

- The ability of Parliament to ensure effective oversight over the national executive - thus ensuring accountability, responsiveness and openness;
- The effectiveness, independence and integrity of Chapter 9 institutions - especially the Public Protector, the Human Rights Commission, the Independent Electoral Commission and the Auditor-General;
- The influence of public participation in democratic processes - including the 2014 elections and legislative processes;
- The impact of an increasingly racialised political and national discourse on national reconciliation, social cohesion and levels of tolerance;
- The ability of the government to effectively address socio-economic rights such as health, education and housing;
- The future behaviour of the Judicial Services Commission (JSC) and its ability to attract and propose fit, proper and impartial candidates for the judiciary;
- The impact of a failing basic education system on the achievement of equality in the long run;
- The impact of the *Legal Practice Bill* on the independence of the legal profession and consequently the judiciary;
- The impact of the *Protection of State Information Bill* and the *Higher Education and Training Laws Amendment Act* on freedom of expression and academic freedom respectively;
- Growing incidents of police brutality in the absence of firm leadership and the findings of the Marikana Commission of Inquiry into the Marikana-shootings;
- Developments relating to the independence - or lack of independence - of the NPA.
- The impact of new legislation and policies potentially weakening property rights;
- Growing unease in key sectors of the economy such as agriculture and mining, given the prevalence of violent strikes and uncertain property rights;
- The impact of continued cadre deployment, resulting in ineffective public administration within the public service, organs of state and public enterprises, rendering them unable to deliver on their mandates, including the provision of sufficient energy and clean water; and
- The impact of South Africa's high, but falling, murder rate and prevalence of HIV/AIDS on the right to life.

*We have once again awarded the following grades for human rights in this year's report card: **A = Excellent; B = Good; C = Average; D = Poor; and E = Very Poor.** At the same time, the +, = and - signs are used to indicate whether things are getting better, staying the same or deteriorating. We have also included last year's grade for comparison.*

## **THE RESPECT, PROTECTION, PROMOTION AND FULFILMENT OF RIGHTS IN THE BILL OF RIGHTS DURING 2013**

### **EQUALITY (section 9)**

2014 Grade E =

2013 Grade E =

#### **Freedom from Unfair Discrimination**

- The Supreme Court of Appeal in *Solidarity obo Barnard v SAPS (165/2013) [2013] ZASCA 177* decisively held that employment equity must be given a contextual approach and that regional - rather than national - demographics should be used in the implementation of employment equity policies. In this regard, the Department of Correctional Services (DCS) stated that a similar ruling of the Labour Court need not be implemented as the department had lodged an appeal against it. The DCS-matter is currently being heard on appeal before the Constitutional Court.
- It would appear as if there is a growing trend towards the accentuation of race in the interpretation of employment equity policies, despite non-racialism being a foundational value of the Constitution. The Supreme Court of Appeal in *Solidarity obo Barnard v SAPS* stated "*In striving to achieve an egalitarian society and in addressing employment equity, whilst maintaining fairness as a standard, and meeting the country's needs, there can be no victors, nor should there be persons considered to be vanquished.*"
- The recently gazetted *Draft Employment Equity Regulations* require employers to consider only national demographics with regard to the promotion and appointment of certain categories of senior personnel. This could have far-reaching, negative implications for coloured South Africans in the Western Cape and for Indian South Africans in KwaZulu-Natal.
- There were renewed xenophobic attacks, although not on the scale of those in 2008. Homes and businesses of refugees, asylum-seekers and migrants in Gauteng were targeted. Similar attacks against Somali nationals in Port Elizabeth were reported. According to the Human Rights Watch *World Report 2013*, 60 foreign nationals were killed in such attacks.

#### **Gender Equality**

- The *Women Empowerment and Gender Equality Bill*, currently before the National Council of Provinces (NCOP), purports to introduce substantive equality through the introduction of quotas where both public and private bodies must have at least 50% women candidates sitting on their Boards. The Minister is also granted sweeping powers to enforce the provisions of the Bill. These provisions appear to duplicate the functions of the constitutionally-mandated Commission for Gender Equality.
- The *Traditional Courts Bill* was overwhelmingly rejected by the provinces in October 2013. Parliamentary procedure would have required the Bill to be withdrawn at this stage, but instead the NCOP committees sent it back to the provinces for further consultation for a third time. The Bill would give traditional leaders immense powers to



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create and enforce laws. The Bill does not have an "opt out" clause, which means that almost 16 million rural people would be unable to access justice from Magistrates Courts. Department of Justice and Constitutional Development spokesperson, Mthunzi Mhaga, indicated that the Department will resuscitate the Bill after the May 7 elections.

- The Western Cape prosecuted its first case of *ukuthwala*, the traditional practice of kidnapping young girls in order to force marriage negotiations.
- SA ranks 17/135 nations in the World Economic Forum (WEF) *Gender Gap Index 2013*, falling one place since last year.
- The International Organization of Parliaments (IPU) ranks South Africa in 5<sup>th</sup> place worldwide in 2014 for gender equality in Parliament, with 179/400 (44.8%) women sitting as members of the National Assembly.

#### **Equality before the Law**

Generally equality before the law is enjoyed.

#### **Equality of Outcomes**

- Our Gini coefficient of 0.7 makes South Africa one of the most unequal countries in the world.
- One of the contributing factors is an official unemployment rate of 24.16%. However, actual unemployment among black South Africans might be as high as 40%.
- According to the South African Institute for Race Relations (SAIRR) only 41.1% of the working age population is employed (labour absorption rate) - compared with more than ± 65% in most economies.
- According to the SAIRR, 63.6% of the white working age population are employed, compared with 37.3% of black people, 53.6% of Indian people and 47.7% of coloured people.
- According to the *UNDP Millennium Development Goals Country Report 2013* South Africa has achieved one of the Millennium Development Goals - the eradication of extreme poverty and hunger - by halving the number of people living on less than \$2.50 per day. However, SA is not likely to meet the target of ensuring that the poorest quintile of its population has a 5.8% share in national consumption.
- Approximately 10 million South Africans have entered the Living Standards Measure (LSM) 5-10 demographic since 2001, according to the Goldman Sachs *Two Decades of Freedom* Report. This means that fewer South Africans are living in extreme poverty.

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#### **HUMAN DIGNITY (section 10)**

2014 Grade C=

2013 Grade C=

The right to human dignity is generally observed. However, it is undermined to the extent that citizens are not able to enjoy, in practice, the other rights guaranteed by the Constitution. Human dignity is, in particular, eroded by poverty, inequality, violence, and by racial, gender and other forms of discrimination.



- According to the SAIRR, 1 806 172 South Africans were living on less than \$2/day in 2012, up from 1 361 421 in 2011.
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### **LIFE (section 11)**

2014 Grade E -

2013 Grade E -

- The Social Change Research Unit of the University of Johannesburg reported a total of 43 protesters allegedly killed by police between 2004 and 2014. This does not include the 34 miners killed during the strike at Marikana in 2012, but does include eight victims of police action in 2014 alone.
  - According to the SAPS crime statistics for 2012/13, incidents of murder increased by 650 murder cases (4.2%), from 15 609 murders in 2011/12 to 16 259 murders in 2012/13.
  - Our murder rate increased from a total average of 43 murders per day to 45 murders per day during the 2012/13 financial year.
  - South Africa's murder rate of 31.2/100 000 is about four and a half times higher than the global average of 6.9/ 100 000.
  - Attempted murder cases increased from 14 859 to 16 363, an increase of 10.1%
  - Sexual offence cases increased from 64 514 to 66 387, an increase of 2.9%.
  - Sexual offence rates increased from 125.1/100000 to 127/100000, an increase of 1.5%.
  - According to estimates from the South African Medical Council, there may be as many as 1.4 million rapes per annum.
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### **FREEDOM AND SECURITY OF THE PERSON (section 12)**

2014 Grade C -

2013 Grade D =

- The Khayelitsha Commission of Inquiry (established in 2012 in response to complaints about policing in Khayelitsha) is currently in session.
- According to the Institute for Security Studies (ISS), the Public Order Policing Unit is in tatters: understaffed, under-skilled, under-equipped, while often using regular SAPS officers without crowd control training during protests.
- The number of service delivery protests increased from 7 913 in 2009/10 to 10 517 in 2012/13 - averaging 30 protests per day throughout the country. Of these, five protests a day involved violence.
- The Independent Police Investigative Directorate (IPID) reported 4 131 cases of assault committed by SAPS members during 2012/13.
- Of the 1 448 police officials convicted of various crimes in 2013, 79% were convicted after they had joined the SAPS.
- The so-called "Rambo Squad" (16 constables accused of attacking residents in Ficksburg and surrounding townships in Pretoria) were apprehended.



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- Three out of every five cases reported to the IPID during the 2012/13 financial year were linked to torture or assault by officers. The IPID received just over 6 700 complaints and notifications against members of the SAPS in 2012/13.
- The *Prevention of Combating and Torture of Persons Act* was signed into law to give effect to the *United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.
- The *Dangerous Weapons Act* was also signed into law; it gives police wide-ranging powers to search individuals and provides a much-needed legal framework for containing violence during protests.
- The appointment of Robert McBride as head of the IPID drew widespread criticism because of his controversial history, his lack of appropriate qualifications and SAPS experience and because of questions relating to his independence.

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#### **SLAVERY, SERVITUDE AND FORCED LABOUR (section 13)**

2014 Grade B +

2013 Grade B =

Freedom from slavery, servitude and forced labour is generally enjoyed.

- The *Prevention and Combating of Trafficking in Persons Act* was signed into law and came into force in January 2014.

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#### **PRIVACY (section 14)**

2014 Grade B =

2013 Grade B =

- The *General Intelligence Laws Amendment Act* was signed into law in July 2013, allowing for interception of signals that originate outside the national borders without a warrant.
- The *Protection of Personal Information Act* was signed into law, although it is not yet in effect. It regulates the manner in which companies must protect and may use the private information of individuals.

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#### **FREEDOM OF RELIGION, BELIEF AND OPINION (section 15)**

2014 Grade A =

2013 Grade A =

Freedom of religion, belief and opinion is generally enjoyed.

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#### **FREEDOM OF EXPRESSION (section 16)**

2014 Grade C -



2013 Grade C -

- The *Protection of State Information Bill* was adopted by Parliament and is awaiting assent. Although the Bill is an improvement on earlier drafts, concerns remain about the lack of protection for whistleblowers and journalists exposing information as a matter of public interest. The Bill has not yet been signed into law.
- Freedom House's *Freedom of the Press 2013* index ranked South Africa 71/197 worldwide, and 7<sup>th</sup> in sub-Saharan Africa, with a classification of "partly free". Reasons for the one-point drop from the previous year include political interference with the public broadcaster, an increasingly hostile climate for government critics, and progression through the legislature of the *Protection of State Information Bill*.
- Conversely, Reporters Without Borders praised President Zuma for initially refusing to sign the *Protection of State Information Bill* into Law. SA improved its ranking with 10 places, moving up to 42<sup>nd</sup> place on their *2014 World Press Freedom Index*.
- The *Higher Education and Training (HET) Laws Amendment Act* has been signed into law and grants the Minister wide-ranging powers, including the ability to suspend university councils and vice-chancellors, as well as intervene in the running of institutions. This limits academic freedom.

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#### **ASSEMBLY, DEMONSTRATION, PICKET AND PETITION (section 17)**

2014 Grade B =

2013 Grade B -

This freedom is largely enjoyed.

- According to the ISS, South Africa recorded 10 517 service delivery protests in 2012/13 - an average of 30 per day.
- Protests and demonstrations tend to be disorderly, resulting in destruction of property, as well as intimidation and injury of non-participants and the public.

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#### **FREEDOM OF ASSOCIATION (section 18)**

2014 Grade A =

2013 Grade A =

This right is generally enjoyed.

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#### **POLITICAL RIGHTS (section 19)**

2014 Grade B +

2013 Grade B =

- Parliament adopted the *Electoral Amendment Act* at the end of 2013. It amended the



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*Electoral Act* in order to allow South Africans living abroad to register and vote in national elections from within the respective countries in which they reside.

- The Voters' Roll stands at over 25.6 million registered people, representing 77% of eligible voters.
- According to data from the ISS's *South African Crime Quarterly* of September 2013 (they include a caveat on reliability as it is difficult to define incidents of violence as purely 'politically' motivated), there have been 61 politically-motivated killings in KwaZulu-Natal between 2009 and 2013. This is contrasted with the 54 politically-motivated killings between 2006 and 2008.

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#### **CITIZENSHIP (section 20)**

2014 Grade A =

2013 Grade A =

This right is generally enjoyed.

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#### **FREEDOM OF MOVEMENT AND RESIDENCE (section 21)**

2014 Grade A =

2013 Grade A =

This right is freely enjoyed.

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#### **FREEDOM OF TRADE, OCCUPATION AND PROFESSION (section 22)**

2014 Grade D -

2013 Grade D -

This right is generally enjoyed.

- The *Legal Practice Bill* was adopted by Parliament and is awaiting assent. The Bill allows the Minister great influence in the regulation of the profession to the extent that it may well fall short of international norms and principles requiring the legal profession to be independent.
- Critics claim that the government's imposition of rigid demographic representivity in the public service is unconstitutional because it unfairly limits the right of minorities to progress in their chosen occupations and professions. Although the Constitution requires the achievement of "broad representation" it also requires management practices based on ability, objectivity and fairness.
- DCS employees in the Western Cape were denied promotion because they had exceeded their 8.8% national demographic quota.
- The Minister of Trade and Industry announced the government's intention to impose demographic representivity on the private sector as well. In terms of regulations

recently published in terms of the *Employment Equity Act*, designated employers with more than 150 employees have to ensure that the top three categories of their employees reflect national demographics.

- The increasing application of national demographics in pursuit of employment equity targets could adversely impact coloured and Indian South Africans residing in the Western Cape and KwaZulu-Natal provinces respectively.
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### **LABOUR RELATIONS (section 23)**

2014 Grade B -

2013 Grade B -

- The World Economic Forum's *Global Competitiveness Report 2013-2014* ranks South Africa 116/148 for labour market efficiency, 147/148 for its hiring and firing practices, 144/148 for wage flexibility and last for labour-employee relations given the number of reported strikes.
  - The Association of Mineworkers and Construction Union (Amcu), which was involved in the Marikana incident, has been accused of using intimidation to expand its influence in the mining sector. Such allegations - together with all the other circumstances involved - are currently under investigation by the Marikana Commission of Inquiry.
  - 99 strikes were recorded: almost half of them were unprotected or illegal strikes, and many were characterised by violence.
  - The *Labour Relations Amendment Bill* (awaiting assent) will disallow the Labour Court from issuing an order suspending a strike, even when it turns violent.
  - The Free Market Foundation is challenging the extension of collective bargaining agreements to employers who were not involved in the relevant sector negotiations. It claims that this practice breaches employers' rights in terms of section 23(5) of the Constitution.
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### **ENVIRONMENT (section 24)**

2014 Grade C -

2013 Grade C -

- 1004 rhinos were killed in 2013, almost double the 668 killed in 2012. South Africa failed to attend or to send representatives to the 2014 London Conference on the Illegal Wildlife Trade where 46 nations signed a declaration of commitment to stem the tide of poaching.
- The moratorium on fracturing, or fracking as it is commonly known, has been extended pending the finalisation and promulgation of technical regulations.
- In a first for South Africa, the Director of mining company - Blue Platinum - was held personally liable for environmental damage and failure to implement rehabilitation measures in accordance with the *National Environmental Management Act*.



- In the *Environmental Performance Index*, South Africa ranked 72 out of 178 countries. The decline in the water quality caused by the use of pesticides in agriculture and the effects of mining in Gauteng and Mpumalanga influenced the ranking.

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### **PROPERTY (section 25)**

2014 Grade C -

2013 Grade C -

- A series of bills with the potential to weaken property rights have been published, namely the *Draft Expropriation Bill*, the *Private Security Industry Regulation Amendment Bill* (currently before the NCOP), the *Infrastructure Development Bill* (currently before the NCOP), the *Property Valuation Bill* (currently before the NCOP), the *Draft Promotion and Protection of Investment Bill*, the *Mineral and Petroleum Resources Development Amendment Bill* (currently before the NCOP) and the *Restitution of Land Rights Amendment Bill* (currently before the NCOP).
- The *Private Security Industry Regulation Amendment Bill* requires foreign-owned private security companies to sell 51% of their shareholding to South Africans.
- The *Property Valuation Bill* raises questions regarding the future role of the courts in determining compensation in expropriation cases.
- In the course of 2013, South Africa terminated bilateral investment treaties with various Western nations including Switzerland, Germany, the Netherlands, Belgium, Luxembourg, and Spain. The Minister of Trade and Industry indicated further bilateral investment treaties with other western nations would either be terminated or cancelled, depending on the terms of the treaties. The existing investment policy will be replaced with domestic legislation - the *Draft Promotion and Protection of Investment Bill* - currently before Parliament. This Bill is problematic in that it proposes expropriation measures without compensation for property owners (both foreign and local) whose property the state takes as 'custodian' for the underprivileged. It is feared that in such an eventuality the state would not be required to pay compensation for seized property.
- The *Mineral and Petroleum Resources Development Amendment Bill* will give the state a free carried interest of 20% and a further unlimited participation interest if it should so wish. Whereas compensation would previously have been paid at a 'fair market value' it will now be paid "at an agreed price". The state will also be able to limit the exportation of petroleum and mineral products that it declares to be 'strategic'.
- The *Restitution of Land Rights Amendment Bill* has extended the period for the submission of land restitution claims until 2019. It is expected that as many as 390 000 new claims may be submitted during this period. The extension will create continuing uncertainty among land-owners regarding their property rights and will inhibit essential investment in food production.
- According to the SAIRR *South Africa Survey 2013* there was a marked increase in house robberies - the deprivation of property and infringement of property rights. The number of burglaries at residential premises almost doubled between 2002/03 and 2012/13, from 9 000 to 17 950.



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- Residential burglary increased by 6.8% (an additional 16 582 cases) to a total of 262 113 incidents in 2012/13. This means that each day on average 720 households were burgled.
  - Business burglaries increased by 5.1% (an additional 3 589 cases) to a total of 70 041 incidents. This means that each day on average 193 businesses were burgled.
  - The theft out of and from motor vehicle rate increased by 7% (an additional 9 183 cases), to a total of 130 475 incidents. This means that each day on average 358 vehicles are broken into and property stolen.
  - The arson rate decreased by 6.8%.
  - The malicious damage to property rate decreased by 2.2%
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#### **HOUSING (section 26)**

2014 Grade B =

2013 Grade B -

Progress has been made since 1994 but this right is undermined by corruption in allocation of RDP houses and slow service delivery.

- R34.8 billion has been allocated to housing development in the next tax year, up 19% from 2013/14.
  - According to Department of Human Settlements 2 799 702 "houses and units" were delivered between 1994 and December 2013. The number of "serviced sites" delivered over that period was 876 774 and nearly 500 informal settlements were replaced with quality housing and given access to basic services over the past five years.
  - These RDP houses are subject to an eight year sale restriction provision.
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#### **HEALTHCARE, FOOD, WATER AND SOCIAL SECURITY (section 27)**

2014 Grade C -

2013 Grade D - [HEALTHCARE]

2013 Grade B = [FOOD, WATER AND SOCIAL SECURITY]

##### **Healthcare**

- The 2013 budget allocated R133.6 billion to healthcare.
- Government made further progress with the development of pilot projects for the proposed National Health Insurance scheme.
- However, government continues to experience problems with the delivery of public health services. According to *National Health Care Facilities Baseline Audit*, conducted in 3 880 hospitals and clinics in South Africa between May 2011 and May 2012, public health facilities collectively scored less than 50% compliance with vital measures in two out of the six priority areas. These measures included patient safety and security (34%) and positive and caring attitudes (30%).
- Life expectancy improved from 50 years for males in 2002, to 56.8 years in 2012. For



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females it improved from 55.2 to 60.5 during the same period.

- The Department of Health's 2012/13 *District Health Barometer* estimated that 2 161 170 adults were on anti-retroviral treatment by the end of 2012/13.

### **Food, Water and Social Security**

- In the 2012/13 year, 16.49 million individuals received some form of social grant (i.e. old age, war veterans, disability, foster care, care dependency or a child care grant).
- The 2012/13 *Financial and Fiscal Commission Report* concluded that social grants improved the welfare of households in rural formal, tribal authority and urban informal areas.
- According to the SAIRR, 26% of households were living without electricity in 2011/12.
- Despite the Constitution granting the right to access sufficient food and water, and the Constitutional Court provision that households should be given an allowance of 6000 litres per month freely, millions of people still do not have access to water and sanitation. Towns such as Grahamstown (located in the Makana municipality) reported dry taps for up to 16 days at a time. Mothutlung in the Madibeng municipality saw violent protests in response to its water shortages.
- According to a 2014 SAHRC report on access to water and sanitation, despite national averages, which seem to indicate progress, when disaggregated in historically poor areas, these statistics reflect limited access. For example, national statistics show that 85% of households have access to RDP acceptable levels of water. However, in KwaZulu-Natal, 14.1% of households have never had access to water. National statistics also reflect that over 70% of all households in South Africa have access to RDP acceptable sanitation. However, 12.5% of households in the Eastern Cape do not have access to any sanitation.

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### **CHILDREN (section 28)**

2014 Grade D =

2013 Grade D =

- The Constitutional Court held that sections 15 and 16 of the *Criminal Law Amendment Act* are unconstitutional in that they impose criminal liability on children younger than 16 for consensual sexual activity.
- The Constitutional Court in *Head of Department: Department of Education, Free State Province v Welkom High School and Another; Head of Department: Department of Education, Free State Province v Harmony High School and Another 2013 (9) BCLR 989 (CC)* also held that pregnancy policies punishing school girls are unacceptable and learner pregnancy policies should be aimed at supporting pregnant learners.
- South Africa's under-5 mortality declined between 2000 and 2011, from 74/1000, to 47/1000 live births, but it is still below the 20 deaths per 1000 births benchmark of the Millennium Development Goals according to South Africa's *UNDP Millennium Development Goals Country Report 2013*.
- According to the SAIRR's *South Africa Survey 2013*, 4.3% of all under-5 children are

severely malnourished.

- According to the Department of Health, during 2012/13 98.2% of all pregnant women were tested for HIV, meeting their target of 98%.
- SAPS reported that 827 children were murdered, a 4.29% increase in the child murder rate.
- 21 575 cases of assault against children were recorded during 2012/13, decreasing from 23 275 in 2011/12.
- Sexual offences against children decreased by 1.61% in 2012/13.

## **EDUCATION**

2014 Grade E -

2013 Grade E -

### **Education**

In order to qualify for a higher certificate pass, a learner must achieve a minimum of 40% for three subjects (one of which must be a Home Language), a minimum of 30% for a further three subjects, and fail (less than 30%) a 7th subject.

- The Department of Basic Education (DBE) achieved a national Matric pass rate of 78.2%. This is an improvement of 4.3% from 2012, but almost half of all learners from the original cohort did not reach Matric. Of the 78.2%, only 30.6% - or 128 000 - received university exemption. Of the children who started school 12 years earlier, only about 12.5% acquired an acceptable qualification.
- At 64.9%, the Eastern Cape's pass rate was well below the national average and 44.7% of schools in the province had a pass rate below 60%. This means that almost half of Eastern Cape high schools are "underperforming schools".
- In 2013 enrolment for Grade R (the reception year) increased to 779 370 (public and independent schools).
- The Department of Higher Education and Training's 2012/13 Annual Report states that student enrolment at universities increased by 12%: from 837 779 in 2009, to 938 201 in 2012/13.
- According to Higher Education South Africa (in a presentation to the Portfolio Committee on Higher Education and Training) the funding of universities has increased from R11 billion in 2006 to R26 billion in 2013.
- The WEF *Global Competitiveness Report 2013-2014* ranks the quality of SA's education system at 146/148, dropping six places since 2012/13.
- SA's maths and science education continues to deteriorate, and has now slipped to last place - 148/148 - on the *Report*.

### **Education in the Language of One's Choice**

- The Constitutional Court delivered a well-balanced judgment in the pivotal *Rivonia*-matter. The judgment reiterated the legal position and framework for SGBs to determine admission policies in terms of the *South African Schools Act*, while

balancing that right and capacity by stating that although the Head of Department (Gauteng Province in this instance) had the power to admit a learner in excess of Rivonia Primary School's admission policy, such power must be exercised in a procedurally fair manner. Ultimately the Court called for co-operation between both parties, guided by the best interest of the child/ children involved.

- In 2012 the DBE announced that full implementation of the *Incremental Introduction of African Languages Policy* (IIAL) would be preceded by Grade 1 pilot classes in each province during 2014. Seven schools in the Western Cape are in the pilot project for mother tongue language education in early years. The IIAL policy will be implemented incrementally, commencing in Grade 1 in 2015, and continuing until 2026 when it will be implemented in Grade 12.

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#### **LANGUAGE AND CULTURE (section 30)**

2014 Grade B =

2013 Grade B =

This right is enjoyed in principle.

- The Pan South African Language Board (PanSALB) is plagued by charges of corruption and is largely ineffectual.
- The Constitutional Court ruled that the denial of education to Rastafarian learners on the basis that certain of their cultural practices do not conform to school rules is unconstitutional.
- The *Use of Official Languages Act* has been adopted but is not adhered to.
- The National Heritage Council of South Africa is largely ineffectual.

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#### **CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES (section 31)**

2014 Grade A =

2013 Grade B =

South Africans generally are able to enjoy cultural, religious and language rights without interference.

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#### **ACCESS TO INFORMATION (section 32)**

2014 Grade D -

2013 Grade D -

- The *Promotion of Access to Information Act* gives effect to this right in principle.
- According to the SAHRC 2012/13 *PAIA Annual Report*, 19996 of 23380 PAIA requests received were granted in full.
- According to the Promotion of Access to Information Civil Society Network, there has



been a decrease in the full release of records requested by information holders from 22% in 2011, to 16% in 2013. Of these, 66% of all initial requests are refused.

- The *Protection of State Information Bill* has not yet been signed into law. It will regulate the classification, protection and dissemination of state information.
- The national executive's reluctance to make the Khampepe Report available, the increasing use of *National Key Points Act* to shield the Presidency from questions and the tendency of ministers to hide behind "national security" in order to avoid answering questions in Parliament raises serious questions about government's commitment to this right.

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### **JUST ADMINISTRATIVE ACTION (section 33)**

2014 Grade C =

2013 Grade C -

The Court previously held in *Masetla v President of the Republic of South Africa 2008 (5) SA 31 (CC)* that judicial review of administrative action is an incidence of the rule of law, which underpins the Constitution, suggesting that the right is generally enjoyed.

- In *All Pay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer South African Social Security Agency 2014 (1) SA 604 (CC)*, involving allegations of tender irregularities in the payment of social grants to some 16 million South Africans, the Constitutional Court underscored accountability and transparency as underlying values of governance and public administration. The Court made it apparent that executive action, policies and procedures should be accountable and transparent.
- There has been a lack of adherence to court orders by government in the Eastern Cape (education judgments) and Western Cape (employment equity judgments). The NPA has not yet obeyed a court order to hand over important tapes to the Democratic Alliance.
- The Department of Home Affairs refused to reopen three of its seven Refugee Reception Centres, despite court orders compelling the Department to do so.

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### **ACCESS TO THE COURTS (section 34)**

2014 Grade B =

2013 Grade B =

- According to the NPA 2012/13 Annual Report, 323 390 criminal court cases received a verdict during the year under review. The High Courts had an average conviction rate of 87.5% (1 045 cases), Regional Courts 75.1% (28 198 cases) and district courts 91.9% (261 591 cases).
- According to the Department of Justice and Constitutional Development's 2012/13 Annual Report, there were 31 054 cases on the backlog roll, an increase from 29 604 cases in 2011/12.
- The 2012/13 Annual Report also indicated a vacancy rate of 10.24% for language

practitioners (including translators and interpreters).

- Two new High Court buildings are planned for Polokwane and Nelspruit, at a cost of R800 million each.
- The number of Small Claims Courts increased by 16 to a total of 263 courts.
- Designated Sexual Offences Courts were introduced in order to cope with gender-based violence, including violence against LGBT individuals. 47 regional courts were equipped with technology to assist in sexual offence cases.
- In *Ronald Bobroff & Partners Inc v Juane Elize De La Guerre; South African Association of Personal Injury Lawyers v Minister of Justice and Constitutional Development and Another*, the Constitutional Court confirmed that lawyers may not charge more than 25% of the value of a claim with regard to contingency fees. This ensures that members of the public duly benefit from litigation that is conducted on their behalf.
- The *Legal Practice Bill* - awaiting assent - aims to ensure greater access to justice through increased regulation of fees that legal practitioners may charge their clients.
- The *Property Valuation Bill* may preclude the possibility of approaching the court for a decision on compensation that should be awarded in expropriation cases.
- The *Traditional Courts Bill* - which would have denied access to justice to rural women and made it mandatory to approach Traditional Courts even where Magistrates Court had jurisdiction - has been temporarily scrapped.

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### **ARRESTED, DETAINED AND ACCUSED PERSONS (section 35)**

2014 Grade D -

2013 Grade D -

The 2012/13 report by the Judicial Inspectorate for Correctional Centres, presented in September 2013, indicates that conditions in South African prisons remain poor, with inmates increasingly frustrated by their treatment.

- The DCS is failing on its core mandate of rehabilitating offenders, with the re-offending rate between 67% and 94%.
- The same report stated that the inmate population decreased from 158 790 in 2011/12 to 153 049 in 2012/13, whilst the number of prison unnatural deaths declined from 852 to 709 in the same period. Natural deaths increased from 48 to 57.
- 38% of inmates were not examined within 24 hours of their admission and 29% were not informed of their rights to healthcare.
- The Electronic Monitoring Pilot Project (EMPP) has proven to be economical (monthly cost to the taxpayer is currently R9 876.35 per inmate, versus electronic monitoring at R3 379 per inmate). Electronic monitoring is now available to the courts, particularly for remand detainees, non-custodial sentencing and parolees.
- It is now compulsory for every inmate without a qualification equivalent to Grade 9 to complete Adult Basic Education and Training (ABET) levels 1 to 4.
- The DCS also launched the Victim-Offender Dialogue (VOD) programme on 28th November 2012. More than 85 VOD sessions were hosted, and 1 342 DCS officials



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countrywide were trained on the VOD implementation guidelines.

- During 2012/13, 19 officials were dismissed, two were demoted, 15 were issued with final written warnings and 14 were suspended without pay. Only 3 603 of 40 286 officials have security clearance.
  - *The Dudley Lee vs. the Minister of Correctional Services* 2013 (2) SA 144 (CC) matter noted the state's responsibility in safeguarding the constitutional rights of inmates. Due to the conditions in Pollsmoor Prison, Lee contracted tuberculosis. The DCS was found liable for the damages suffered by Lee as a result of the tuberculosis because the Department had violated its own health regulations and failed to perform its constitutional mandate.
  - According to the 2013 IPID Annual Report there were:
    - 275 deaths in police custody;
    - 415 deaths as a result of police action;
    - 641 complaints of the discharge of an official firearm;
    - 141 rapes by a police officer;
    - 22 rapes in police custody;
    - 50 cases of torture;
    - 4 047 cases of assault;
    - 116 cases of corruption;
    - 127 cases of non-compliance with section 29 of the *IPID Act*, which compels police to report alleged crimes to the IPID within 48 hours.
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