

CENTRE FOR CONSTITUTIONAL RIGHTS HUMAN RIGHTS REPORT CARD 2010

Last year, on Human Rights Day, the Centre for Constitutional Rights issued its first Human Rights Report Card. We have decided to continue the process this year with a new Report Card that indicates where, in our opinion, we have been making progress with regard to human rights and where we have been regressing. 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 enjoyment of fundamental rights has remained much the same as it was in 2009 - apart from negative developments regarding freedom of expression and the further deepening of inequality. If the grades that we have awarded are averaged out, our overall performance in human rights is a little above average. Warning lights are, in our opinion, flashing for Privacy; Freedom of Expression; Political Rights; Freedom of Trade, Occupation and Profession; Labour Relations; and Property.

1. EQUALITY [Grade: E=] [2009 Grade: D-]

- According to the recent report of the OECD South Africa's GINI coefficient - which measures inequality in societies - has deteriorated from .66 in 1994 to .7 in 2008 on a scale where 0 equals absolute equality and 1 equals absolute inequality.
- The recent appointment of Adv Menzi Simelane as National Director of Public Prosecutions has further undermined confidence in the independence of the National Prosecuting Authority - and hence of the right of South African citizens to equal treatment before the law.
- The continuing imposition of unconstitutional demographic representivity continues to lead to unfair racial discrimination.
- In the recent landmark decision in the case of Captain Renate Barnard vs SA Police Service the court found that 'the failure to promote Barnard was a decision based on her race and constituted racial discrimination.' In future, merit will also have to be taken into consideration relating to promotions.
- Continuing gender discrimination undermines the equality of women - particularly in the rural areas.

2. HUMAN DIGNITY [Grade: C=] [2009 Grade: C=]

- The human dignity of many South Africans continues to be impaired by failure to make progress with the realisation of other rights - and specifically the right to equality.
- The human dignity of between 30% and 40% of the population continues to be impaired by degrading levels of poverty and persistent unemployment - which have been exacerbated by the current recession. However, the circumstances of the poorest segments of society have been improved by increased social transfers.

- Human dignity is also impaired by crime, inadequate education and poor service delivery.

3. LIFE [Grade: E =] [2009 Grade E=]

More than 300 000 South Africans have been murdered since 1994 (more than 25 times the number of South Africans who died in World War II). The proposed amendment of section 49 of the *Criminal Procedure Act* - that expands the right of the police to "shoot to kill" - will further undermine the right to life.

4. FREEDOM AND SECURITY OF THE PERSON [Grade: D=] [2009 Grade D=]

The very high continuing incidence of assault, rape, wife-beating and child abuse seriously undermines the right to freedom and security of the person. The proposed amendment of section 49 of the *Criminal Procedure Act* will also undermine the right to security of the person.

5. SLAVERY, SERVITUDE AND FORCED LABOUR [Grade: A=] [2009 Grade A=]

There are few instances of slavery, servitude or forced labour - apart from instances of the so-called white slave trade'. This right will be further enhanced when the recently tabled draft *Prevention and Combating of Trafficking in Persons Bill* is made into law.

6. PRIVACY [Grade: B-] [2009 Grade: A=]

- The privacy of citizens is generally respected. Sufficient safeguards exist with regard to state interception of written, telephonic and electronic communication.
- The right to privacy was, however, undermined by amendments to the *Regulation of Interception of Communication-Related Information Act* (Rica) that came into effect in July 2009. The amendments require operators to obtain the full name, address and identity number of customers buying SIM cards for prepaid services
- The increasingly authoritarian and unaccountable behaviour of the special Protection Unit within SAPS, as manifested in searching Mr Chumani Maxwele's premises without a warrant seriously undermines the right to privacy.

7. FREEDOM OF RELIGION, BELIEF AND OPINION [Grade: A=] [2009 Grade: A=]

Freedom of religion, belief and opinion is widely enjoyed by citizens and organisations.

8. FREEDOM OF EXPRESSION [Grade: C-] [2009 Grade: B-]

- There is general freedom of expression within the limits set by the Constitution.
- The *Public Service Broadcasting Bill* 2009 has further strengthened government control over the public broadcaster and in so-doing has inhibited the right to freedom of expression.
- The conduct of the Special Protection unit within the SAPS, as reflected in the arrest of Mr Chumani Maxwele for making a rude gesture at President Zuma's motorcade - and the subsequent defense of the police action by the government - and their action in forcing a journalist to delete pictures that he taken of the President's



residence constitute serious breaches of freedom of expression and freedom of the media.

- The failure of the government to constrain or condemn the actions of Mr Julius Malema in singing songs calling for the killing of whites and of farmers constitutes a clear abuse of the freedom of expression.
- The coming into operation on the 14th of March this year of the *Films and Publications Amendment Act*, No 3 of 2009, further undermines the freedom of the media.

9. FREEDOM OF ASSEMBLY, DEMONSTRATION, PICKET & PETITION

[Grade B=2009] [Grade: B=]

This right is generally enjoyed. However, the establishment of 'no-go areas' in some parts of the country - particularly during national elections - is a matter of concern. Likewise the mooted ban on all marches to the Union Buildings is cause for concern.

10. FREEDOM OF ASSOCIATION [Grade: A=] [2009 Grade: A=]

This right is universally and freely enjoyed.

11. POLITICAL RIGHTS [Grade: C=] [2009 Grade: B-]

- South Africa is a fully-fledged constitutional democracy enjoying universal adult franchise, a national common voters' roll, regular elections and a multiparty system of democratic government.
- However, effective control of both the legislature and the executive lies in the hands of those who control the majority party. In 2008 this made it possible for the new (unelected in any national election) leadership of the majority party to dismiss a duly elected president.
- The South African Communist Party - a registered political party - continues to enjoy disproportionate representation in parliament under the aegis of the African National Congress.
- The arrest of Mr Chumani Maxwele for making a rude gesture at President Zuma's motorcade and the subsequent insistence by the police that Mr Maxwele should write a letter of apology to the President are serious contraventions of the right to free political activity.
- The dysfunctionality of the Department of Home Affairs in quickly and effectively issuing passports, IDs and other documents sometimes seriously hampers enjoyment of this right.
- Despite the Constitutional Court finding in *Richter v The Minister of Home Affairs and others* that all registered South African citizens have the right to vote, the absence of legislation giving effect to this right, means that the right to vote of South Africans living abroad are still impaired.

12. CITIZENSHIP [Grade: B=] [2009 Grade: B=]

Citizenship rights are generally acknowledged and enjoyed.

13. FREEDOM OF MOVEMENT AND RESIDENCE [Grade: A=] [2009 Grade: A=]

This right is freely enjoyed.

14. FREEDOM OF TRADE, OCCUPATION AND PROFESSION [Grade D-] [2009 Grade: D-]

Although the freedom is formally available, high unemployment of 33%+ effectively deprives millions of South Africans of this right. Unbalanced affirmative action increasingly prevents some South Africans from practising the trade, occupation or profession of their choice. Increased state control and interference in the activities of professional bodies is cause for concern.

15. LABOUR RELATIONS [Grade: A-] [2009 Grade: A=]

This right is generally enjoyed. However, current moves by SADTU to enforce Section 19 of the *Labour Relations Act* to deregister the existing NAPTOSA and SAOU trade unions would seriously undermine the rights of workers to form and join a trade union.

16. ENVIRONMENT [Grade: C+] [2009 Grade: C+]

South Africa is one of the world's major emitters of carbon dioxide. Some fisheries and other natural resources are under serious pressure. On the other hand, South Africa is a world leader in many areas of conservation.

17. PROPERTY [Grade: B-] [2009 Grade: B-]

Property rights are still generally secure. However, some mineral rights have, in effect, been expropriated and the recently withdrawn *Expropriation Bill* would have seriously undermined property rights. Similarly the recent talk of nationalising the mining industry and farmland raises concerns regarding this right.

18. HOUSING [Grade: B+] [2009 Grade: B+]

South Africa has now built more than 3 million houses - sufficient to accommodate a quarter of the population. This is a considerable achievement - even though there are still unacceptably large backlogs and problems with housing lists.

19. HEALTH CARE [Grade: D-] [2009 Grade: D+]

Anti-retroviral drugs are now being provided to more than half the 1.7 million people who require them. Service in many clinics and state hospitals remains unsatisfactory. Proposals for a National Health Insurance Scheme could have negative unintended consequences for the provision of health services - if not handled correctly.

20. FOOD, WELFARE AND SOCIAL SECURITY [Grade: B-] [2009 Grade: B+]

The Government has succeeded in providing access to electricity water and sanitary services to 72% of the population. The number of people receiving old age, children's and disability allowances has increased to more than 14 million. The fact that more than half of the farms bought by the Government as part of the land redistribution programme for agricultural development had either failed or fallen into decline and more than 90% of the

5.9 million hectares bought by the Government was not productive poses a threat to food security.

21. CHILDREN [Grade: D=] [2009 Grade: D=]

The ample children's rights guaranteed by the Constitution are often unavailable in practice to millions of children. Child abuse is widespread and there are tens of thousands of child-headed households and street children.

22. EDUCATION [Grade: E+] [2009 Grade: E+]

Despite enormous allocation of funds education since 1994 has been a disastrous failure. South African children fare very badly in international literacy and numeracy tests - even when compared with results in the poorest African states. There are, however, indications that the government plans a more concerted and realistic approach to education, particularly at junior school level. Speakers of indigenous languages do not have adequate access to education in the language of their choice at any level of education. Developments at some Afrikaans universities are placing pressure on the right of people to education in the language of their choice.

23. LANGUAGE AND CULTURE [Grade: D+] [2009 Grade: D-]

The outlook for language rights has improved substantially as a result of the landmark judgement of the case of *Louwrens vs the State President and others* in which Judge Du Plessis ordered the government to take legislative and other steps within two years to meet its obligations in terms of section 6 (4) of the Constitution to manage and monitor its use of official languages. Despite this, English has become the *de facto* single official language and very little has been done to develop indigenous languages as required by the Constitution. Many children whose mother tongue is one of the black official languages are forced to receive education in English. Afrikaans education, both at schools and at universities, is under pressure.

24. CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES [Grade: B=] [2009 Grade: B=]

Cultural, religious and linguistic communities are generally free to pursue their interests - although the state sometimes tries to impose requirements for demographic representivity in community-based charitable organisations.

25. ACCESS TO INFORMATION [Grade: C=] [2009 Grade: C=]

Although the right is granted by the Constitution it is often difficult or impossible to obtain relevant information from the state.

26. JUST ADMINISTRATIVE ACTION [Grade: C=] [2009 Grade: C=]

The decline in service delivery and standards - particularly in some poorer provinces - has made it difficult for some people to claim their right to just administrative action. Fortunately, the courts generally uphold this right when they are approached.

27. ACCESS TO THE COURTS [Grade: C -] [2009 Grade: C=]



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The courts are theoretically accessible. However, many citizens who do not have the resources to appoint lawyers, find it difficult to press their claims unless they are assisted by legal resources centres. The unacceptably high backlog at the Courts further deprives people of this right, as does the dysfunctional criminal justice system, which often results in cases being thrown out.

28. ARRESTED, DETAINED AND ACCUSED PERSONS [Grade: D=] [2009 Grade: D=]

In practice, prisons are overcrowded and dysfunctional. People in the prisons system are subject to wide-scale abuse by gangs. Awaiting trial prisoners are subjected to unacceptable delays due to the admittedly collapsed criminal justice system.

[2010-03-21]