

CENTRE FOR CONSTITUTIONAL RIGHTS HUMAN RIGHTS REPORT CARD 2011

The Centre for Constitutional Rights takes pleasure in presenting its third 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. 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.

South Africa continues to be a functioning multiparty constitutional democracy. The Bill of Rights assures its citizens the full spectrum of human rights. However, some important rights have been diluted by legislation, government practice or by government failures in implementation and service delivery. During the past year South Africans have continued to enjoy most of the constitutional rights to which they are entitled. However, proposed legislation and government initiatives raise very serious concerns with regard to some core rights such as freedom of expression; property rights; important aspects of the right to equality; and freedom of trade, occupation and profession; labour relations; and the right to freedom and security of the person.

1. EQUALITY [Grade: E=] [2010 Grade: E=]

Equality before the law and the right to equal protection and benefit of the law

- The decision of the newly appointed National Director of Public Prosecutions, Adv Menzi Simelane, to drop all investigations into the arms deal has raised doubts concerning the independence of the National Prosecuting Authority and its ability to exercise its functions "without fear, favour or prejudice."
- The continuing liberty of President Zuma's close associate, Mr Schabir Shaik, after he had been released from his 15-year prison sentence, supposedly because of terminal illness, seriously undermines the principle of equality before the law.

Full and equal enjoyment of all rights and freedoms

- According to the 2010 United Nation's Development Programme's Human Development Report South Africa's GINI coefficient, which measures inequality in societies, is 57.8 on a scale where 0 equals absolute equality and 100 equals absolute inequality. This places us 162nd of the 169 countries that were assessed.
- In practice, poverty, unemployment and poor service delivery deprive many South Africans of their right to full and equal enjoyment of all rights and freedoms.

Freedom from unfair discrimination.

- The ongoing imposition of unconstitutional demographic representivity continues to



lead to unfair racial discrimination. If the proposed amendments to the Employment Equity Act are implemented removing provincial demographics in the implementation of employment equity, it is estimated that 1.3 million Coloured and Indian workers could lose their jobs through unfair discrimination.

- Continuing gender discrimination undermines the equality of women - particularly in the rural areas. According to the UNDP, South Africa had a gender inequality index of 0.635 in 2008, placing it 82nd out of the 169 countries that were assessed.
- South Africa is one of the world leaders in respect of women's representation in government. Women comprise 44% of the members of Parliament, 43% of the Cabinet and 40% of local government councilors.
- Gender inequality remains. According to a 2010 study by the Medical Research Council, 86.7% of men and 57.9% of women endorsed the statement that "a woman should obey her husband" and 53.9% of men and 29.8% of women agreed that "the man should have the final say in all family matters".

2. HUMAN DIGNITY [Grade: C=] [2010 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.
- Human dignity is seriously impaired by degrading levels of poverty and persistent unemployment. In 2008 48% of the population were below the R524 per month poverty line index, down from 58% in 2000. The unemployment level in terms of the broader definition of unemployment is 35.9% and among black South Africans it exceeds 40%.
- Poverty was alleviated by the payment of assistant grants amounting to R80 billion to 14 million South Africans in 2009/10.
- According to critics, the proposed *Employment Equity Amendment Bill*; the draft *Security of Land Tenure Amendment Bill* and the raft of Labour Law Bills could threaten millions of jobs, with dire consequences for human dignity.
- Human dignity is also impaired by crime, inadequate education and poor service delivery.

3. LIFE [Grade: E=] [2010 Grade E=]

- More than 17 000 South Africans were murdered during 2009/10. This gives South Africa a murder rate of 34.1 per 100 000 - one of the highest in the world - although this is a considerable improvement on the 66.9/100 000 rate in 1995 and the 37/100 000 rate in 2008/2009.
- 5.7 million South Africans have HIV/AIDS - the highest number in the world - with approximately 1 000 new infections per day. The Actuarial Society of South Africa estimates that 190 000 people died of AIDS during 2010. Fatalities were down from 257 000 in 2004, primarily because of the successful roll-out of the world's biggest antiretroviral programme.



- Between 2009 and 2010, the infant mortality rate increased from 43 per 1 000 live births to 47 per 1 000 live births, seriously affecting the right to life of infants. In the Eastern Cape the threat was substantially higher than elsewhere.
- The proposed amendment of section 49 of the Criminal Procedure Act that expands the right of the police to "shoot to kill", will further threaten the right to life.

4. FREEDOM AND SECURITY OF THE PERSON [Grade: D=] [2010 Grade D=]

- The very high continuing incidence of assault, sexual offences and child abuse seriously undermine the right to freedom and security of the person.
- The increased incidence of violent conduct of the SAPS further undermines the right to freedom and security of the person.
- The proposed amendment of section 49 of the Criminal Procedure Act, the so-called "shoot to kill" provision, also undermines the right to security of the person.
- According to the Independent Complaints Directorate's latest Report 860 people died in police custody or as a result of police action in the past year, thereby posing a serious threat to the right to freedom and security of person.
- South Africa has one of the highest rape rates in the world. The official statistic of 138.5 sexual offences per 100 000 people seriously underestimates the actual rate, since in surveys, one in three men admit to having raped a woman.
- The number of detainees in our prisons continues to increase without the corresponding increase in facilities, thereby substantially reducing our ability to provide effective rehabilitation to the offenders. The right to freedom and security of person is thus increasingly undermined by the number of un-rehabilitated offenders.
- The recent constitutional court hearing in the Glenister matter that there is a duty to establish and maintain an independent body to combat corruption and crime should greatly improve the fight against crime.

5. SLAVERY, SERVITUDE AND FORCED LABOUR [Grade: A=] [2010 Grade A=]

- There are few instances of slavery, servitude or forced labour, apart from instances of the so-called "white slave trade".
- Certain traditional customs such as the *Ukuthwala* custom, in terms of which young girls are forced to marry much older men, are tantamount to child slavery.
- This right should be further enhanced when the recently tabled draft *Prevention and Combating of Trafficking in Persons Bill* is made into law.

6. PRIVACY [Grade: B=] [2010 Grade: B-]

- The privacy of citizens is generally respected. Sufficient legislative 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*



Centre for
**CONSTITUTIONAL
RIGHTS**

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

- Certain police conduct such as searching Mr Chumani Maxwele’s premises without a warrant and the unlawful raid by the South African Police on the office of the Public Protector without a warrant undermines the right to privacy.

7. FREEDOM OF RELIGION, BELIEF AND OPINION [Grade: A=] [2010 Grade: A=]

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

8. Freedom of expression [Grade: C-] [2010 Grade: C-]

- 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.
- Certain conduct of the SAPS such as the arrest of Mr Chumani Maxwele for making a rude gesture at President Zuma’s motorcade, compounded by the subsequent defence of the police action by the government and the arrest of *Sunday Times* journalist Mzilikazi wa Afrika, who worked on a story that alleged police commissioner General Bheki Cele had leased new police headquarters for R500m without following the normal tendering process, likewise constitute serious breaches of freedom of expression and undermine the 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 (white) farmers constitutes a clear abuse of the freedom of expression.
- The proposed *Protection of Information Bill* will seriously affect investigative journalism and thus undermines the freedom of the media.
- The proposed Media Appeals Tribunal will also seriously undermine freedom of the media.
- The recent finding that the SABC Board interfered with editorial independence and blacklisted certain commentators shows how seriously the independence of the public broadcaster and the right to freedom of expression has been undermined.

9. FREEDOM OF ASSEMBLY, DEMONSTRATION, PICKET AND PETITION

[Grade: B=] [2010 Grade: B=]

This right is generally enjoyed, although certain strikes and demonstrations have turned violent, infringing the rights of others.

10. FREEDOM OF ASSOCIATION [Grade: A=] [2010 Grade: A=]

This right is universally and freely enjoyed.

11. POLITICAL RIGHTS [Grade: C=] [2010 Grade: C=]

- 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. The ruling party applies a policy of cadre deployment, which gives its politburo control over all government leaders, including the country's President.
- The South African Communist Party, a registered political party, continues to hold more than 70 seats in the National Assembly under the aegis of the African National Congress without having contested any election in its own name.
- Despite the Constitutional Court finding that all South African citizens have the right to vote, the failure to adopt legislation giving effect to this right means that the right to vote of South Africans living abroad is still impaired. This is disturbing in the light of the impending municipal elections.

12. CITIZENSHIP [Grade: B=] [2010 Grade: B=]

- Citizenship rights are generally acknowledged and enjoyed.
- The dysfunctionality of the Department of Home Affairs in quickly and effectively issuing passports, IDs and other documents however hampers enjoyment of this right.

13. FREEDOM OF MOVEMENT AND RESIDENCE [Grade: A=] [2010 Grade: A=]

This right is freely enjoyed.

14. FREEDOM OF TRADE, OCCUPATION AND PROFESSION [Grade: D-] [2010 Grade: D-]

- Although the freedom is formally available, high unemployment of 35.9% 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.
- The proposed raft of labour Bills - *The Basic Conditions of Employment Act Amendment Bill, Labour Relations Amendment Bill, Employment Equity Amendment Bill* and the *Employment Services Bill*, will seriously impact on the right of people to choose to work for labour brokers or pursue other forms of atypical or temporary employment.
- The ban on labour broking under these bills will also infringe the right of labour brokers to pursue occupations of their choice.
- Increased state control and interference in the activities of professional bodies, particularly the legal profession (from which judges are chosen), is a cause for concern.

15. LABOUR RELATIONS [Grade: A-] [2010 Grade: A-]

- This right is generally enjoyed. However the four draft Labour Bills propose far more rigid labour laws.
- Moves by the South African Democratic Teachers Union to declare a single union in the education sector would deprive other small unions in the sector of their labour rights.

16. ENVIRONMENT [Grade: C-] [2010 Grade: C+]

- South Africa's power stations are 8th worst in the world in terms of carbon dioxide emissions.
- The rising levels of acidic water in the abandoned mine shafts located in and around Johannesburg, coupled with our limited water resources, pose a serious threat to the environment.
- Some fisheries and other natural resources are under serious pressure.
- Poaching remains a serious problem, with 71 Rhinos having been poached this year.
- On the other hand, South Africa is a world leader in many areas of conservation.
- 75% of South Africa's sewage treatment plants are not up to green drop standard, which is broadly equivalent to international standards. Only 3.8 % of the total plants enjoy green drop status.

17. PROPERTY [Grade: C-] [2010 Grade: B-]

- Property rights are increasingly under threat.
- The proposed draft *Green Paper on Land Reform* would limit the freehold property rights of South Africans and would seriously restrict foreign ownership of property.
- The effective expropriation of some mineral rights has seriously undermined property rights.
- The draft *Security of Tenure Bill* will have as yet immeasurable implications for the property rights of farmers.

18. HOUSING [Grade: B+] [2010 Grade: B+]

- By 2009/2010 the government had built more than 3 million houses and another 930 000 were in the planning stage. 76.2 of South African households lived in formal dwellings, 13.5% were still in informal dwellings and 10.4% were in traditional dwellings. Nevertheless, there remains an unacceptably large backlog of 2 million homes. Problems continue to exist with housing lists.
- The poor quality of workmanship in many of the RDP houses undermines the right to access to adequate housing.

19. HEALTH CARE [Grade: D+] [2010 Grade: D-]

- South Africa spends approximately 8.5% of GDP on health services. Public health

expenditure accounts for 4.6% of GDP and private health expenditure the remainder.

- Private health care which is enjoyed by 16% of the population is generally of high world standard, but public health care is relatively poor, despite increases in expenditure. Service in many clinics and state hospitals remains unsatisfactory and there is a dire shortage of nurses.
- The most serious health threat remains HIV/AIDS, which also has a negative impact on tuberculosis rates and infant mortality. Between 2009 and 2010 the number of people with HIV/AIDS increased from 5.7 million to 5.8 million people.
- The government is actively considering the introduction of a National Health Insurance Scheme, but there is still no consensus regarding the model and funding of the scheme which would require an estimated additional 10 000 general practitioners and between 7 000 and 17 000 specialists.

20. FOOD, WELFARE AND SOCIAL SECURITY [Grade: B-] [2010 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 social grants increased to 14.1 million in 2009/2010 - 28% of the population, which is not sustainable indefinitely.
- The fact that more than 90% of the 5.9 million hectares of land that the state has bought for emerging farmers is no longer productive poses a threat to our food security.
- Critics claim that the proposed *Draft Security of Tenure Bill* might further threaten food security through the creation of agri-villages and through negatively impacting on commercial productivity.

21. CHILDREN [Grade: D=] [2010 Grade: D=]

- The ample children's rights guaranteed by the Constitution are largely unavailable in practice to millions of children.
- Child abuse is widespread.
- In 2009/2010 there was a 14.5% increase in child murders.
- There was a 42.3% increase in attempted child murders.
- There was a 36.1% increase in all sexual offences.
- There are tens of thousands of child-headed households and street children.
- 36% of our children do not have access to running water.
- 39% do not have adequate sanitation at home.
- 18% of children live in households where children go hungry.
- Over 9 million children live off child grants, which are mostly used to support other members of the family.

22. EDUCATION [Grade: E+] [2010 Grade: E+]



Centre for
**CONSTITUTIONAL
RIGHTS**

- Despite enormous allocation of funds, education since 1994 has been a disastrous failure.
- Although there was a nominal increase in the number of pupils who passed with grades good enough to proceed to higher education, the figure remains unacceptably low at 23.5%.
- Only 15.1% passed the mathematics paper with 40%.
- South African children fare very badly in international literacy and numeracy tests, even when compared with results in the poorest African states.
- The Global Competitiveness Report revealed that South Africa is ranked 130th out of 139 countries in so far as the quality of our education system is concerned. The quality of our maths and science education places us 137th.
- There are, however, indications that the government plans a more concerted and realistic approach to education, particularly at junior school level.
- Indigenous language speakers do not have adequate access to education in the language of their choice at any level of education.
- 78% of schools don't have libraries.
- 87% do not have computer centres or centres that are not stocked with computers.

23. LANGUAGE AND CULTURE [Grade: D=] [2010 Grade: D+]

- The outlook for language rights has remained largely unchanged due to the failure of PANSLAB to actively promote and develop the 11 indigenous languages.
- English remains the de facto single official language.
- Many black South African children are being deprived of the right to adequate basic education in their mother tongue.
- Afrikaans education, both at schools and at universities, is under pressure.

24. CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES [Grade: B=] [2010 Grade: B=]

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

25. ACCESS TO INFORMATION [Grade: D-] [2010 Grade: C=]

- Although the right is granted by the Constitution, it is often difficult or impossible to obtain relevant information from the state.
- The proposed *Protection of Information Bill* will seriously limit access to information from organs of the State, including government departments and parastatals.

26. JUST ADMINISTRATIVE ACTION [Grade: C-] [2010 Grade: C=]

The increased decline in service delivery and standards, particularly in some of the 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=] [2010 Grade: C-]

- 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 resource centres or legal aid.
- The unacceptably high backlog at the Courts and delays further deprives people of this right, as does the dysfunctional criminal justice system, which often results in cases being thrown out.
- The successful litigation mounted by an individual, Mr Hugh Glenister, with regard to the abolition of the Directorate of Special Operations (the Scorpions) is a heartening example of effective access to the courts.

28. ARRESTED, DETAINED AND ACCUSED PERSONS [Grade: D-] [2010 Grade: D=]

- The current average overcrowding rate in South Africa's prisons is 143%.
- 188 prisons countrywide are overcrowded, and more than 20 of these have an occupancy rate of more than 2 offenders per bed.
- Overcrowding is a serious state of affairs as it leads to the growth of gangsterism and contributes towards the high level of recidivism.
- Awaiting trial prisoners are subjected to unacceptable delays due to the collapsed criminal justice system.

N de Havilland
[2013-03-21]