

CENTRE FOR CONSTITUTIONAL RIGHTS HUMAN RIGHTS REPORT CARD 2009

Today, on National Human Rights Day, we celebrate the remarkable progress that we have made in establishing a human rights culture. The Centre for Constitutional Rights thought that it would be appropriate to assess the degree to which we have succeeded in making the rights in the Constitution a reality for South African citizens.

We have accordingly prepared the following report card in which **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**. If the grades that we have awarded are averaged out, our overall performance in human rights is average. Warning lights are flashing for equality; freedom of expression; political rights; freedom of trade, occupation and profession; property; and language and culture.

1. EQUALITY [Grade: D-]

- According to the UNDP South Africa is the twelfth most unequal country in the world. The situation has hardly improved since 1994 and inequality has grown within all communities.
- The recent abolition of the Scorpions and dismissal of Vusi Pikoli from the post of National Director of Public Prosecutions and the early parole of President Zuma's financial adviser Shabir Shaik have seriously eroded the concept of equality before the law.
- The increasing imposition of unconstitutional demographic representivity often leads to unfair racial discrimination.
- Continuing gender discrimination undermines the equality of women - particularly in the rural areas.

2. HUMAN DIGNITY [Grade: C=]

- The human dignity of all South Africans must be protected and promoted, *inter alia* through the provision of the full spectrum of human rights.
- However, the human dignity of between 30% and 40% of the population is impaired by degrading levels of poverty and persistent unemployment.
- Human dignity is also impaired by crime, inadequate education and poor service delivery.

3. LIFE [Grade: E =]

More than 250 000 South Africans have been murdered since 1994 (more than 20 times the number of South Africans who died in World War II).

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

The very high incidence of assault, rape, wife-beating and child abuse seriously undermines the right to freedom and security of the person.

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

There are few instances of slavery, servitude or forced labour - apart from instances of the so-called 'white slave trade'.

6. PRIVACY [Grade A=]

The privacy of citizens is generally respected. Sufficient safeguards exist with regard to state interception of written, telephonic and electronic communication.

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

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

8. FREEDOM OF EXPRESSION [Grade: B-]

- There is general freedom of expression within the limits set by the Constitution.
- However, the recently adopted Broadcasting Amendment Act gives the majority party in parliament unacceptable control over the national broadcaster through its ability to dismiss the entire SABC Board.
- Disturbing proposals have also been made for the establishment of a Media Tribunal.

9. FREEDOM OF ASSEMBLY, DEMONSTRATION, PICKET AND PETITION [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.

10. FREEDOM OF ASSOCIATION [Grade: A=]

This right is universally and freely enjoyed.

11. POLITICAL RIGHTS [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.
- The extension of the franchise to some registered voters overseas has further expanded political rights.
- However, effective control of both the legislature and the executive lies in the hands of those who control the majority party. Last year this made it possible for the new (unelected in any national election) leadership of the majority party to dismiss a duly elected president.

12. CITIZENSHIP [Grade: B=]

- Citizenship rights are generally acknowledged and enjoyed.
- However, 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.

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

This right is freely enjoyed.

14. FREEDOM OF TRADE, OCCUPATION AND PROFESSION [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 of professional bodies is cause for concern.

15. LABOUR RELATIONS [Grade: A=]

This right is freely enjoyed.

16. ENVIRONMENT [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-]

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.

18. HOUSING [Grade: B+]

South Africa has succeeded in providing housing for 13 million people since 1994. This is a considerable achievement - even though there are still unacceptably large backlogs and problems with housing lists.

19. HEALTH CARE [Grade: D+]

South Africa has the world's worst HIV/AIDS problem. Some of this can be ascribed to denialism under the Mbeki government. ARV drugs are now being provided - but the reality is that life expectancy has declined from 62 to 50. Service in many clinics and state hospitals remains unsatisfactory.

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

The Government has succeeded in providing access to electricity water and sanitary services to 72% of the population. Welfare payments have increased dramatically and are now received by almost 13 million children and old-age pensioners.

21. CHILDREN [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.



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22. EDUCATION [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.

23. LANGUAGE AND CULTURE [Grade: D-]

- English has become the *de facto* single official language.
- Very little has been done to develop indigenous languages as required by the Constitution.
- Afrikaans education, particularly at universities, is under pressure.

24. CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES [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=]

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=]

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=]

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.

28. ARRESTED, DETAINED AND ACCUSED PERSONS [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 collapsed criminal justice system

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