

CENTRE FOR CONSTITUTIONAL RIGHTS HUMAN RIGHTS REPORT CARD 2013

The Centre for Constitutional Rights takes pleasure in presenting its fifth 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 Africans, in principle, enjoy the full spectrum of human rights. Regular national, provincial and municipal elections are held and overseen by an independent electoral commission. The courts function independently and overturn laws and government conduct that is unconstitutional or illegal. South Africans enjoy freedom of expression and free political activity. The media are free and the country has an active, effective and vociferous civil society. Human rights are supported by effective independent institutions - such as the Public Protector and the South African Human Rights Commission. However, other institutions that are intended to support constitutional government are either ineffective or are subject to political influence. The latter include the Judicial Service Commission, which is falling short of carrying out its primary mandate of nominating fit, proper and impartial candidates for judicial office. The abolition of an effective and independent investigation agency and political control of, and interference in, the National Prosecuting Authority are seriously undermining the integrity of the judicial system and efforts to combat pervasive corruption.

The right to participate in government has provided interesting parliamentary and political discourse during the past year. Efforts to limit the role of opposition parties in Parliament through the manipulation of parliamentary rules is chipping away the principles underlying multi-party democracy. Because MPs will lose their seats if they cease to be members of the party that nominated them to Parliament, they are, in practice, accountable to their party leaders and not to the electorate. As a result Parliament has, to a large extent, become a rubber stamp for decisions taken by the leadership of the ruling party and does not properly fulfil its primary role of holding the national executive accountable for its actions and inactions. Instead of fulfilling its proper oversight role the majority does everything it can to protect the president and the Cabinet from criticism and to stifle debate on matters of importance to the electorate.

The Government's failure to provide effective services - particularly at municipal and provincial levels - has led to a vast increase in the number of service delivery protests and accompanying violence in communities across the country. According to the police, there were 3 258 such protests throughout South African between 2009 -2012. In addition, the quality of basic education and public health services is often unacceptably poor. The government's best efforts to address these problems and realise socio-economic rights are

increasingly eroded by corruption in the public service, financial mismanagement and the deployment of unqualified political cadres to key positions in all levels of government.

Fundamental rights are interrelated, interdependent and indivisible: the fulfilment - or infringement - of any one of these rights directly influences the attainment or infringement of other rights. There are persistent efforts to undermine or circumscribe some fundamental rights - through new legislation such as the *Protection of State Information Act*, the *Traditional Courts Bill* (now withdrawn) and the *Legal Practice Bill*. As a result, there has been a plethora of protests, outcries and campaigns - most of which are aimed at defending some or other political, civil, economic, social or cultural right.

South Africa can hardly be termed a non-racial democracy. Race continues to be a major dividing factor and continues to determine, *de facto and de jure*, access to employment and social, educational and economic benefits. Government policies are increasingly race-based and the tone of the national discourse has become disturbingly - and sometimes aggressively - racial with government condoning - or even supporting such tendencies.

Future Trends

Prospects for the future enjoyment of rights have deteriorated.

Perceptions of South Africa during the past year have unfortunately been dominated by the Marikana incident and the recent brutal killing by police of a Mocambican taxi driver in Daveyton. The Marikana incident is currently the subject of investigation by the Farlam Commission and those involved in the Daveyton killing have been arrested and charged with murder. Nevertheless, the two events highlight growing concerns regarding the role of the police in a constitutional democracy.

There is concern over the future role 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* in its current form will have a negative impact on the independence of the legal profession and could undermine the Rule of Law.

Prospects for freedom of expression remain a concern as a result of the Government's intention to press ahead with the adoption of *Protection of State Information Bill* and its increased use of secrecy to avoid explaining excessive and unjustified government spending. This includes - incorrectly so - reliance on the *National Key Points Act* to limit access to information.

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 our patriarchal society and very high rate of violence and sexual offences.



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Effective implementation of the National Development Plan will have a positive effect on the realisation of a number of human rights. The NDP will, however, face resistance from some within the ruling ANC - especially those who support the underlying principles of the National Democratic Revolution.

Increased tension between the national government and provincial governments will see the constitutional principle of cooperative government deteriorate. This is already evident from the Minister of Police's reaction to a Western Cape government's commission of inquiry into effectiveness of the South African Police Service in the province.

It is expected that land reform will be a crucial issue this year - which is the centenary of the 1913 Land Act that deprived many black South Africans of their land. The government has announced a new land tenure system that will put a cap on the amount of freehold land that South Africans may own and that will limit the land rights of foreigners to leasehold. Government has announced its intention of accelerating the land reform process but has promised to deal with it within the framework of the constitution.

Pointers

Some of the factors that can be expected to affect constitutional rights during the coming year include:

- The further development of the ANC's "second transition" approach - particularly with regard to moves to dispense with 1994 constitutional compromises;
- Further developments relating to the government's proposed review of the judgments of the Constitutional Court, as well as further statements elucidating its attitude toward the independence of the courts;
- The future behaviour of the JSC and its ability to attract and propose fit, proper and impartial candidates for the judiciary;
- Developments regarding the *Legal Practice Bill* and the independence of the legal profession;
- Further developments and discussion relating to the *Green Paper on Land Reform*;
- Further developments relating to the Democratic Alliance's case against the NPA in relation to withdrawal of charges of corruption against President Zuma;
- Developments regarding the effectiveness of Commission of Inquiry into the Arms Deal;
- Developments relating to the independence - or lack of independence - of the National Prosecuting Authority;
- The willingness of the government to adopt measures to ensure that 'the Hawks' will be truly independent of political control;
- The degree to which the *SA Languages Act* will be brought into line with the requirements in section 6 of the Constitution;
- The progress of the raft of labour bills that were introduced into parliament in 2012;
- Developments regarding violent strikes;

- The ability of the government to realise socio-economic rights including housing, sanitation and water;
- The ability of the government to improve basic education and public health services; and
- The implications of the adoption of the *Protection of State Information Bill* in its current form - and possible constitutional challenges.

Constitutional Rights

1. EQUALITY [Grade: E=] [2012 Grade: E=]

Freedom from Unfair Discrimination

- In accordance with ANC's policy of demographic representivity, appointments and promotions in the public service - and ultimately in the private sector - should be in accordance with the national racial demographics of the country. Appointments and promotions of coloured employees of the Department of Correctional Services in the Western Cape have been suspended because they have exceeded the 8.8% coloured quota (based on national demographics) - even though coloured people comprise 54% of the population of the Western Cape - and were a disadvantaged group under apartheid.
- In the same manner, the promotions to officer rank of more than 1 500 white policemen have been suspended. The blanket application of demographic representivity is leading to a situation where the careers of South Africans are being determined by race rather than individual merit.

Gender Equality

- SA generally fares well in terms of gender equality. It ranks 16/135 nations in the 2012 World Economic Forum (WEF) Gender Gap Index, losing two places since last year.
- SA maintains the top spot in sub-Saharan Africa on political empowerment, holding the 7th position on this sub-index and the 4th on the women in parliament indicator. According to the Parliamentary Monitoring Group 169/400 (42.3%) members of the National Assembly are women.
- The 2012 *Traditional Courts Bill* - which would have discriminated against rural women - was withdrawn by the government after it encountered serious opposition from women's rights groups and civil society organisations.

Equality before the Law

South Africans generally enjoy equality before the law. However, persistent allegations of attempts to undermine the independence of the National Prosecuting Authority have led to fears that prosecutions may be influenced by political considerations. There is particular concern over the NPA's decision to drop charges against Lt-Gen Richard Mdluli, the former head of the Police Intelligence Division - and more recently against Thoshan Panday and Col Navin Madhoe in KwaZulu-Natal - despite the admission of the KZN head of the NPA, Moipone Noko, that there was a *prima facie* case against them.

Equality of Outcomes

Despite sustained moderate economic growth since 1994 - and despite the rapid growth of the black middle class - South Africa remains one of the most unequal societies in the world.

- According to a presentation delivered by Dr Max Price at the *Strategies to Overcome Poverty and Inequality: Towards Carnegie III* Conference, held in September 2012, South Africa's failure to achieve greater income equality is reflected in the fact that its Gini index has deteriorated from 66 in 1996, to 70 in 2008. This makes it, according to the World Bank, the second most unequal country in the world after Namibia. Inequality has also increased within all population groups - from 54 to 62 among black South Africans, and from 43 to 50 among whites. This means that even whites have much higher levels of inequality than the levels in developed countries.
- Unemployment - exceeding 40% in the black community - poor education and family circumstances are among the main causes of persistent inequality.
- Annual incomes for black households have increased by 169% over the past 10 years - but are still only a sixth of those of white households.

2. HUMAN DIGNITY [Grade: C=] [2012 Grade: C=]

Although all South Africans theoretically have a right to human dignity, their enjoyment of the right is dependent on their enjoyment of equality and other rights in the Bill of Rights. In as far as South Africans do not enjoy these rights in practice, their human dignity is inevitably affected. Similarly, the right to human dignity is seriously eroded by poverty. According to the SAIRR, 1 361 421 South Africans were living on less than \$2/day in 2011.

3. LIFE [Grade: E-] [2012 Grade: E+]

Despite marginally declining murder rates, deaths caused by violent crime continue to impede the enjoyment of this right. Increased incidents of killings by the police - especially in the wake of the Marikana incident on 16 August 2012 - are major causes for concern. According to the South African Police Service (SAPS), the murder rate for 2011/12 was 15 609 or 30.9 murders per 100 000 people, down from 31.9 in 2010/11.

- The Independent Police Investigative Directorate (IPID) revealed that the number of deaths in police custody increased by 17% to 932 in 2011/12.
- Of the greatest concern were the killing of 34 protesters at the Marikana mine on 16 August 2012 - and the recent killing of a Mozambican taxi driver in Daveyton. The Marikana incident is currently being investigated by the Farlam Commission.
- Nevertheless, AIDS remains by far the largest killer in South Africa. Despite dramatic progress with the roll-out of the national anti-retroviral programme, 196 000 South Africans will die of AIDS this year - and will account for 31% of all deaths.

4. FREEDOM AND SECURITY OF THE PERSON [Grade: D=] [2012 Grade: D=]



Freedom of and security of the person are seriously compromised by extraordinarily high levels of rape and gender violence - and by increasing allegations of violence and torture perpetrated by the police.

- South Africa has one of the highest rates of sexual offences globally. According to a recent survey by the Medical Research Council that included 1738 men in the Eastern Cape and KwaZulu-Natal, 28% of those questioned admitted that they had raped a girl or a woman and 3% reported that had raped a man or a boy. Almost 50% of those who admitted to rape said that they had raped more than once and 73% committed their first rape before they were 20.
- The government has to date enacted a fairly progressive legislative framework and has adopted various policies, programmes and plans of action aimed at ending sexual violence against women and children. However, effective implementation of these laws and policies - especially within the criminal justice system - remains the real weakness in the government's response.
- It is well-established fact that most sexual offences are never reported to the SAPS - either by victims or by third parties who may have knowledge of crimes. In addition, those cases that are reported are apparently quite often not properly investigated and prosecuted. According to the most recent crime statistics, 64 514 sexual offences were reported to the SAPS in 2011/12. In turn, in its last annual report to Parliament, the National Prosecuting Authority (NPA) reported that only 6 913 sexual offence cases were finalised in 2011/12, of which only 65.1% resulted in convictions. This means that only 6.9% of all sexual offence cases reported to the SAPS in 2011/12, resulted in convictions.
- According to the SAPS 2011/12 Annual Report there were 192 651 cases of assault with the intent to do grievous bodily harm, a decrease of 4.2% in 2011/12.
- Common assault cases decreased by 3.4% to 181 670 cases.

5. SLAVERY, SERVITUDE AND FORCED LABOUR [Grade: B=] [2012 Grade: A=]

SA's current human trafficking laws do not yet fully conform to the *United Nation's Protocol to Prevent, Suppress and Punish Trafficking in Persons*, especially Women and Children (UN TIP Protocol). Government efforts to comply with the minimum standards for the elimination of human trafficking nevertheless signal positive improvements regarding legislation and prosecution of offences.

- The tradition of *ukuthwala* (forced marriage of girls as young as 12 to adult men) is still practiced in some remote villages in Eastern and Western Cape.
- The enactment of the *Prevention and Combating of Trafficking in Persons Bill* (introduced to Parliament in 2010) will be a useful addition to current legislation such as the *Sexual Offences Act (SOA)*, *Basic Conditions of Labour Act of 1997* and the *Children's Act*.

6. PRIVACY [Grade=] [2012 Grade: B=]

The *General Intelligence Laws Amendment Bill* may adversely impact on this right.

- The controversial *General Intelligence Laws Amendment Bill* ("Spy Bill") provides for monitoring of "foreign signals intelligence" which "includes any that emanates from outside the borders of the Republic, or passes through or ends in the Republic". Because many websites and email accounts are hosted outside SA, and the intelligence services will be allowed to monitor domestic and foreign communication in various forms, they could potentially access citizens' emails and phone calls - without a warrant.

7. FREEDOM OF RELIGION, BELIEF AND OPINION [Grade: A=] [2012 Grade: A=]

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

- The ruling party's growing sensitivity towards matters such as the FNB "You can Help" campaign and "The Spear" painting is a cause for concern.

8. FREEDOM OF EXPRESSION [Grade: C=] [2012 Grade: C-]

Freedom of expression, within the limits set by the Constitution, is recognised in general.

- The decision by the ANC not to appeal the judgement by the South Gauteng High Court, which held that the struggle song *Dubul' iBhunu* (Shoot the Boer), amounted to hate speech, showed moral courage and respect for the Constitution.
- The controversial *Protection of State Information Bill* was amended (and improved) in 2012, in response to criticism from civil society and state institutions. Some concerns still remain, particularly the lack of a 'public interest defence' clause. It is likely that if government doesn't take the bill to the Constitutional Court for certification civil society organizations will challenge it before the same court.
- The 2012 World Press Freedom Index ranked SA 42/179 with regard to press freedom.
- The South African Press Council instituted sweeping reforms to the SA Press Code, including increased public participation, to strengthen and maintain media credibility.
- According to Joe Thlooe, the Director of the SA Press Council, the government appears to have shelved its plans for the establishment of a 'Media Appeals Tribunal'.

9. FREEDOM OF ASSEMBLY, DEMONSTRATION, PICKET & PETITION [Grade: B-] [2012 Grade: B=]

This right is generally enjoyed.

- During 2011-12 there were almost daily service delivery protests in communities throughout South Africa.
- Strike action has become increasingly violent (such as the 'wildcat' strikes at Marikana and De Doorns).
- Illegal and unprotected strikes and protests often result in the destruction of property, acts of intimidation and assault that infringe on the rights of other citizens to freedom of assembly.

- In May 2012, the trade union confederation Cosatu attempted to disrupt a peaceful protest by the opposition Democratic Alliance, held in support of government's proposed youth wage subsidy.
- Government has criticised violence, intimidation and destruction of property during protests and demonstrations and has called on all parties to act peacefully and within the framework of the Constitution.

10. FREEDOM OF ASSOCIATION [Grade: A=] [2012 Grade: A=]

This right is generally enjoyed.

11. POLITICAL RIGHTS [Grade: B=] [2012 Grade: C-]

SA is a constitutional democracy enjoying universal adult franchise, a national common voters roll, regular elections and a multiparty system of democratic government.

- However, although the National Assembly is elected to represent the people and their interests, this essential function is limited because MPs can, in terms of section 47(3)(c), lose their seats in Parliament if they cease to be members of the parties that nominated for the National Assembly. In practice, this means that MPs are accountable to their political leaders rather than to the voters who elected them.
- It is also anomalous that the South African Communist Party - which is a separately registered political party with a programme and goals that differ substantially from those of the African National Congress - is handed some 20% of the seats in Parliament by the ANC without having to contest elections.

12. CITIZENSHIP [Grade: A=] [2012 Grade: A=]

Citizenship rights are generally acknowledged and enjoyed.

13. FREEDOM OF MOVEMENT AND RESIDENCE [Grade: A=] [2012 Grade: A=]

This right is freely enjoyed.

14. FREEDOM OF TRADE, OCCUPATION AND PROFESSION [Grade: D-] [2012 Grade: D-]

The imposition of demographic representivity (racial quotas) in government departments - for example the Department of Correctional Services and the South African Police Service - in effect denies many South Africans the right to freedom of trade, occupation and profession.

- The ability to practice one's trade, occupation and profession is in practice often negated by levels of unemployment that exceed 35%.
- 67% of those jobless have been without work for more than a year.
- There is also a disturbing tendency for government to interfere arbitrarily in the management of professions, thus limiting the right of those involved to choose and

practise their professions and occupations freely. For example, the *Legal Practice Bill* currently before Parliament would give the Minister of Justice power to disband the proposed legal profession council and to replace it temporarily with nominated members.

15. LABOUR RELATIONS [Grade: B-] [2012 Grade: B-]

Labour rights are generally enjoyed. However, recent labour disputes in the mining and agricultural sectors highlight weakening labour relations.

- There is a growing disillusionment with the larger unions, which has led to a growth of smaller, unions that are not affiliated to COSATU.
- There is also concern regarding the extension of collective bargaining agreements to companies without their agreement.
- The WEF's *Global Competitiveness Report* for 2012, ranks SA as 134/144 countries surveyed in terms of pay and productivity of workers.
- SA ranks *last* in co-operation in labour-employer relations.
- The same report ranks SA 140/144 regarding flexibility of labour wage determination and 143/144 for hiring-and-firing practices.

16. ENVIRONMENT [Grade: C-] [2012 Grade: C=]

There is cause for concern regarding the continued protection of the environment.

- Rhinoceros poaching and the government's inability to curb the crime is threatening the viability of the species. SanParks reported that 668 rhinos were lost to poaching in 2012 alone.
- The 2012 Environmental Performance Index - which ranks countries on environmental performance in sectors like air and water quality, forest and fisheries protection and greenhouse gas emissions - ranked SA 128/132. We are the worst performer in Africa.
- The government has introduced a carbon tax on annual emissions for all the industrial sectors responsible for greenhouse gas emissions.
- The moratorium on 'fracking' in the arid Karoo region was lifted in September 2012. Not only does this process require substantial amounts of water, but chemical spills and cracked wells can lead to ground water contamination.
- According to Mineral Resources Minister, Susan Shabangu, illegal mining costs SA an estimated R5 billion a year, and mercury used in the mining process can poison rivers and ground water.

17. PROPERTY [Grade: C-] [2012 Grade: C-]

There has been continuing erosion of property rights.

- The government has announced its intention to introduce a new land tenure system that will make it possible to limit the size of freehold properties so that it can appropriate 'excess' land for redistribution.



- In terms of the proposed system foreigners will no longer enjoy freehold rights but will be able to acquire land on a leasehold basis for at least 30 years. The intention is to restrict the access of foreigners to agricultural land. Foreigners who have permanent residence will enjoy the same right to freehold ownership of land as South Africans - i.e. with limited extent.
- Government has announced its intention to speed up expropriation of farmland for the purpose of land reform but insists that this will take place within the framework of the Constitution. It has decided to abandon the 'willing seller, willing buyer' approach and to apply instead the 'fair and equitable' norm in the Constitution.
- Government appears to have dropped proposals for the nationalisation of the mines for the moment and wants, instead, to "capture an equitable share of mineral resource rents".
- Government is also considering the possibility of using the assets of insurance and pension funds to finance state developmental projects.

18. HOUSING [Grade: B-] [2012 Grade: B+]

Substantial progress has been made in providing housing for South Africans.

- Since 1994 more than three million homes have been built by the government - enough to house almost 25% of the population. However, the right to housing is often undermined by slow service delivery and poor workmanship.
- Human Settlements Minister, Tokyo Sexwale, revealed in May 2012 that since 2002, the Department had spent R400 million to repair poorly built RDP houses.
- A great deal must still be done. The Department of Human Settlements estimated that in 2011/12, the housing backlog stood at 2.3 million households.

19. HEALTHCARE [Grade: D-] [2012 Grade: D+]

Despite investing a sizable portion of GDP in the health sector, AIDS, the lack of staff and infrastructure hamper the full realisation of this right for many South Africans.

- SA's health budget for 2012/13 is R121 billion (3.8% of GDP).
- Overall expenditure on health exceeds 8% of GDP. However, private health schemes, which cover only 17% of the population, represent more than half this expenditure.
- Government introduced the pilot phase of the National Health Insurance system in April 2012 and allocated R1 billion for the project. However, it remains to be seen how the NHI will be funded and there is general agreement that it will not succeed if the existing public health system cannot be substantially improved.
- R1.2 billion was spent in refurbishing nursing training colleges during 2012 and government plans to increase the supply of doctors by 3 600 per annum by rebuilding five medical schools.
- South Africa now has the most extensive anti-retroviral programme in the world and is on track to supply ARVs to 2.5 million people by 2014. As a result, life expectancy improved from 54 in 2005, to almost 60 today.



- Nevertheless, AIDS remains by far the main health problem. 21.2% of the female population between the ages of 15 and 49 is HIV positive and this year 196 000 people will die of the disease - representing 31% of all fatalities and bringing the total number of AIDS deaths so far to 2,9 million. There will be 321 000 new infections this year - half the figure in 1999.

20. FOOD, WATER AND SOCIAL SECURITY [Grade: B=] [2012 Grade: B=]

Access to food, water and social security has been improved for the poorest sections of the population by a dramatic expansion of social grants. Although this has helped to reduce significantly the percentage of people living in absolute poverty, it creates the danger of long-term welfare dependency.

- SA will spend over R112 billion in 2012/13 on social grants to assist the most vulnerable in the country, with the number of beneficiaries projected to grow by a million to over 16 million people.
- The World Bank indicated that in 2012 social grants made up 70% of the income of the poorest 20% of South Africans.
- Households earning less than R800 per month are entitled to a free water supply of 6 000 litres per month. However, many citizens have had to approach the courts to secure this right and between 2010 and 2012 the South African Human Rights Commission received 114 complaints regarding the supply and quality of water.

21. CHILDREN [Grade: D=] [2012 Grade: D=]

Children make up almost a third of SA's population, and their rights are largely under threat.

- According to the SAPS, 23 275 cases of assault against children were reported in 2011/12, down from 24 405 in 2010/11.
- 793 children were murdered, a 12.5% drop in the child murder rate.
- Sexual offences against children also decreased by 8.1%.
- In 2012 the estimated infant mortality rate was 43 deaths for every 1000 live births.
- 703 234 youths (15 - 24 years) and 465 633 children (0 - 14 years) are living with HIV/AIDS.
- Young people between the ages of 18 and 24 have to contend with a youth unemployment rate of 48.2 percent.
- 729 sentenced children were admitted to custody by the DCS during 2011/12, and 564 children were released.
- According to a report by the SAIRR, 30% of black African children have present fathers, 35% of coloured children, 85% of Indian children, and 83% of white children.
- Only 34% of children (0 - 17 years) live with both biological parents.

22. EDUCATION [Grade: E-] [2012 Grade: E+]



SA's education system delivers very poor results, despite very high levels of expenditure. Causes of widespread dysfunctionality include insufficient mother tongue education at primary school; poorly trained and motivated teachers; teacher absenteeism; lack of facilities and basic infrastructure in many schools; and attempts to raise pass-rates by lowering standards.

- According to the Department of Basic Education (DBE), in 2012 there were 12 428 069 school children in 25 826 (public and independent) schools in SA, who were served by 425 167 teachers.
- In the 2012/13 financial year, education will account for almost R226 billion - per capita expenditure of more than R 16 000 per annum for every schoolchild and student in the country.
- 73.9% of candidates passed the 2012 exam - up from 70.2% in 2011. However, candidates can pass the exam with only 30% in three subjects and 40% in three others.
- The 2012/13 Global Competitiveness Report ranks SA's education system 140/144, down seven places since 2011/12.
- SA's maths and science education continues to deteriorate, with a 2011/12 ranking of 143/144.
- The state of primary education, relative to other countries, continues to decline. South Africa has dropped five places in the past year, and is now ranked 132/144 countries.
- UNICEF reported that 27% of public schools do not have running water, 78% are without libraries and 78% do not have computers.
- Findings of the *Metcalfe report* indicated that the DBE had delivered only 15% of learner's textbooks in Limpopo by 3 July 2012, contradicting the DBE's claims that 98% had been delivered.

23. EDUCATION IN THE LANGUAGE OF ONE'S CHOICE [Grade: C-] [2012 Grade: C-]

Afrikaans single-medium primary and high schools are under increasing pressure to admit English-speaking schoolchildren. If they refuse to do so they are accused of trying to preserve "racial privilege".

- The *Rivonia*-matter will be pivotal for South African education, school governing bodies (SGB's) as well as public single-medium schools. The case rests upon the question of who has the final say in determining language and admissions policy in SA's public schools: schools and their SGB's, or provincial departments of education.
- Afrikaans education at school and university level is under pressure, despite the fact the ANC declared at their most recent policy conference: "*We should ensure the development and promotion of indigenous language, with a view to include the programme in the curriculum. And that an indigenous language policy which seeks to ensure that one African language should be compulsory in schools depending on the region should be developed in 2014*".
- Despite the government's commitment to multilingualism and the promotion of language rights, the education sector does not reflect the multilingual nature of SA.

Government needs to do more, particularly in promoting the African languages in SA schools, as well as the promotion of mother tongue education in general.

- English remains the preferred and *de facto* language of SA education, despite being only the fourth largest spoken language in SA.

24. LANGUAGE AND CULTURE [Grade: B=] [Grade: D-]

Although government has finally adopted *The Use of Official Languages Act*, the legislation does not meet the language requirements in section 6 of the Constitution.

- The Act permits government to determine language policy by ministerial regulation - whereas a matter of such great constitutional importance as the use of official languages should be determined by legislation.
- The Act does not make adequate provision to advance the use of indigenous languages or to promote sign language or the language of numerous other communities such as the KhoiSan.
- The Act contains little assurance that all official languages will enjoy parity of esteem or that they will be treated equitably, as required by section 6 of the Constitution.

25. CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES [Grade: B=] [2012 Grade: B-]

South Africans generally are able to enjoy cultural, religious and language rights without interference. However, increasing pressure on single-medium, non-English-speaking schools could threaten the long-term viability of language and cultural minorities.

- The *Use of Official Languages Act* does not promote effectively promote the multi-lingualism required in section 6 of the Constitution.

26. ACCESS TO INFORMATION [Grade: D-] [2012 Grade: D-]

There is good legislation - the *Promotion of Access to Information Act (PAIA) 2 of 2000* - in place to give effect to this right, but government's commitment to this legislation is questionable.

- According to a recent Right2Know (R2K) report, the South African History Archive (SAHA) surveyed all PAIA requests administered in 2012. 102/159 (64%) requests for information were either refused outright, or received no response.
- The same R2K report revealed a 54% increase in the use of the *National Key Points Act 102 of 1980* to suppress information in the interests of 'national security'.

27. JUST ADMINISTRATIVE ACTION [Grade: C-] [2012 Grade: C=]

The courts generally uphold this right when they are approached and have interpreted and applied it widely. However, despite good legislation - the *Promotion of Administrative Justice Act 3 of 2000* - the steady decline in service delivery continues.

28. ACCESS TO THE COURTS [Grade: B=] [2012 Grade: B=]

This right remains theoretically possible and accessible for all. However, it is under threat due to court backlogs, increasing pressure on the criminal justice system and infrastructure problems at existing courts, such as poor quality of interpretative services as well as judicial vacancies.

- According to Justice and Constitutional Development Minister, Jeff Radebe, 327 818 cases were finalised during the period April to December 2012. The High Courts had an average conviction rate of 84.4% (752 cases), Regional Courts 74.2% (21 886 cases) and district courts 90.5% (185 884 cases).
- At the end of December 2012, the outstanding roll consisted of 194 725 cases, including 29 604 (16.2%) backlog cases.
- Regional and District backlog courts removed 17 425 cases from the court rolls between April 2012 to December 2012.

29. ARRESTED, DETAINED AND ACCUSED PERSONS [Grade: D-] [2012 Grade: D=]

The conditions in SA jails are deteriorating, with overcrowding exacerbating diseases like HIV and TB. This consequently infringes on prisoners' rights to dignity as well as numerous other constitutional rights. Furthermore, awaiting trial inmates do not always enjoy the same rights and amenities as sentenced inmates.

- According to the DCS their inmate population was 158 790 during 2011/12. The average number of sentenced offenders was 112 748 and remand detainees 46 062.
- As at March 2012, there were 243 correctional facilities with an approved bed capacity of 118 441. DCS figures reveal that overcrowding remains a problem, and increased from 34.87% in 2010/11 to 35.95% in 2011/12.
- According to the DCS, 5 284 (3.3%) inmates were assaulted in correctional facilities during 2011/12.
- The Independent Police Investigation Division received 720 new cases for investigation of suspicious deaths in custody or in other policing contexts from April 2011 to March 2012.

[2013-03-21]