

# Human Rights Report Card (HRRC) 2019

The aim of the HRRC is to evaluate the State's fulfilment and protection of the rights in the Bill of Rights with reference to legal developments, media reports and other secondary sources.

## Section 9 Equality

2018 Grade E = 2019 Grade E =

This right continues to be a contentious issue in a society characterised by severe poverty and socio-economic disparity. According to the World Bank, South Africa remains the world's most unequal society. The highest number of complaints received by the South African Human Rights Commission (SAHRC) in 2017/18 related to the infringement of the right to equality - with reference to alleged discrimination based on race, disability and ethnic or social origin.

In relation to gender equality, women appear to still be overlooked at top management level according to the *Commission for Employment Equity Annual Report 2017/18*, which recorded representation of women at this level at 22.9%, while men occupy 77.1% of the positions. The *Employment Equity Amendment Bill 2018*, proposing sectoral numerical targets of people from "designated groups" at all occupational levels raises concern, as it fails to address deeper socio-economic disadvantage.

## Section 10 Human Dignity

2018 Grade C = 2019 Grade C -

Human dignity is the foundation upon which the enjoyment of all other rights is built. The realisation of the right to dignity depends on the promotion and protection of all other rights, emphasising the interrelated, interdependent and indivisible nature of human rights. Thus, extreme poverty, the high crime rates, growing unemployment and the lack of access to essential services for indigent groups (as reported in the HRRC), limits the realisation of the right. For example, the arbitration award in the Life Esidimeni saga highlighted State negligence relating to the care of the most vulnerable in our society, and revealed a direct infringement of the right to dignity.

## Section 11 Life

2018 Grade E = 2019 Grade E =

The right to life is inextricably linked to that of dignity. Although there are strong legislative and policy frameworks in place, this

does not translate into the everyday lives of South Africans. Positive developments for the period under review are the decrease in the infant mortality rate and improved mother-to-child HIV transmission rates. These developments are, however, overshadowed by the high murder rate across the country.

## Section 12 Freedom and Security of the Person

2018 Grade D = 2019 Grade D =

The high crime statistics in SA, particularly the increase in sexual offences and crimes against women, reflect the lack of institutional capacity of the State to protect individuals, especially the most vulnerable, from violence. The *South African Police Service Annual Report 2017/18* recorded an increase of 8.2% in rape cases from the previous year. 50 680 sexual offences were recorded, which is also an increase from the previous year. However, these figures do not necessarily reflect the true extent of these crimes, due to underreporting by victims of sexual offences.

## Section 13 Slavery, Servitude and Forced Labour

2018 Grade C - 2019 Grade C =

2018 saw more cases of human trafficking being investigated and prosecuted under the *Prevention and Combatting of Trafficking in Persons Act*. Despite this, the *Global Slavery Index* ranked South Africa 110/167, with an estimated 155 000 persons living in modern-day slavery in South Africa. This indicates that despite the introduction of a framework to combat the problem, South Africa still struggles to identify and protect victims of trafficking.

## Section 14 Privacy

2018 Grade C = 2019 Grade C -

Protection of the right is hampered by the State's failure to fully implement all chapters of the *Protection of Personal Information Act*. This failure has a domino effect, as the Information Regulator cannot exercise all its functions, such as enforcing penalties - creating potential for further abuse of personal information. 2018 also saw the Constitutional Court confirming the Western Cape High Court order that criminalisation of the possession, use and cultivation of cannabis by an adult in private under various Statutes was an unreasonable infringement on an individual's right to privacy.

## Section 15 Freedom of Religion, Belief and Opinion

2018 Grade A = 2019 Grade B =

This right is generally enjoyed in South Africa. However, due to reports of abuse by certain religious leaders, there has been a concerted investigation into the possible regulation of religion. The divisive matter concerning the discipline of children currently before the Constitutional Court, as well the Department of Home Affairs' (DHA) efforts to permit certain employees to refuse to officiate same-sex unions, influenced this year's decision to downgrade the State's fulfilment of this right.

## Section 16 Freedom of Expression

2018 Grade B + 2019 Grade B -

Freedom of the press is generally unhindered in South Africa and the World Economic Forum's (WEF) *Global Competitiveness Report 2018* ranked South Africa 26/140 globally for press freedom. There are, however, concerns about the surveillance of journalists' communications and this calls for strengthening of surveillance legislation. Multiple hate speech cases were heard by the Courts in 2018 and the first prison sentence was handed down in terms of the common law offence of *crimen injuria* in the Vicki Momberg hate speech case.

The right is, however, potentially threatened by the proposed statutory offence of hate speech by the *Prevention and Combatting of Hate Crimes and Hate Speech Bill*. The proposed offence does not relate to hate speech as understood in terms of the Constitution and unreasonably infringes on freedom of expression.

## Section 17 Freedom of Assembly, Demonstration, Picket and Petition

2018 Grade B = 2019 Grade B =

The surge in service delivery protests is highly concerning, as it is often accompanied by violence and damage to resources. According to Municipal IQ, there were 24% more protests in 2018 than there were in 2014. Although it may appear that the right is robustly exercised from the prevalence of demonstrations, the available protest data may not necessarily indicate efficient State action regarding this right.

## Section 18 Freedom of Association

2018 Grade A = 2019 Grade A =

This right is generally enjoyed in South Africa, other than concerns over the political killings in KwaZulu-Natal, which appeared to be politically-motivated.

## Section 19 Political Rights

2018 Grade A = 2019 Grade A =

The period under review saw the passing of the *Political Party Funding Act*, contributing to much-needed transparency regarding political party funding. This crucial development will contribute significantly to informed voting practices for South Africans.

## Section 20 Citizenship

2018 Grade A = 2019 Grade B =

The majority of South Africans enjoy the right unencumbered. However, due to gaps in law and policy, an inexcusable number of children cannot obtain birth certificates if one or both of their parents are unavailable, or if they are of foreign nationality. The DHA has failed to fulfil its obligation to uphold this right and the Courts had to be approached in several instances in 2018 by civil society organisations on behalf of unregistered minors seeking birth certificates. The proposed *Draft Regulations on the Registration of Births and Deaths, 2018* raises serious concerns on the impact of children of refugees and asylum-seekers whose parents are unable to approach their embassies to obtain a birth certificate as the draft regulations propose.

## Section 21 Freedom of Movement and Residence

2018 Grade B = 2019 Grade C =

This right guarantees the free movement of individuals who are lawfully in South Africa. It further allows the free selection of a place of residence, while limiting the interference of the State on the exercise of these freedoms. The slow pace of the DHA in reopening Refugee Reception Offices - despite court orders to that effect having been granted - has a direct impact on the access to socio-economic rights of a vulnerable group of people. This is particularly concerning because South Africa is host to refugees from multiple African countries.

## Section 22 Freedom of Trade, Occupation and Profession

2018 Grade C = 2019 Grade C =

In line with the *National Development Plan 2030* there is a need to create a more empowering environment for small business enterprises and it is crucial for the State to remove red tape. In general, the right is largely enjoyed but access to essential services, and to an extent, the internet, restrict enjoyment of the right. The WEF's *Global Competitiveness Report 2018* highlighted that South Africa's competitiveness is restricted by the workforce's lack of digital and critical thinking skills, which also speak to the lack of access to the internet.



## Section 23 Labour Relations

2018 Grade C = 2019 Grade C =

During the year under review the passing of the *National Minimum Wage Act*, which aims to protect workers from unreasonably low wages was a positive development together with the *Labour Relations Amendment Act*, which would now make it possible for fathers to effectively take paternity leave on the birth of a child. There are concerns, however, about the impact of the *National Minimum Wage Act* in light of South Africa's slow economic growth and high unemployment rate.

## Section 24 Environment

2018 Grade C + 2019 Grade C =

South Africa is bound to act consistently to mitigate the damage done by harmful environmental practices, not least of which is coal mining. In the period under review there have been positive developments, such as the Department of Energy's updated Integrated Resource Plan, which maps the direction for the adoption of renewable energy sources. However, the impact of this Plan is heavily reliant on the implementation thereof, which has been slow.

## Section 25 Property

2018 Grade D = 2019 Grade D -

The debate around the proposed amendment to section 25 of the Constitution dominated the political and social landscape in 2018. The Joint Constitutional Review Committee recommended in November 2018 that section 25 be amended to make "explicit that which is implicit in the Constitution, with regards to expropriation of land without compensation, as a legitimate option for land reform". The uncertainty relating to the proposed constitutional amendment, coupled with policy uncertainty related to other proposed legislation, has created fear and a loss of investor confidence in South Africa. South Africa's ranking for the protection of property rights has also dropped significantly in terms of the WEF's *Global Competitiveness Report 2018* from the year before.

## Section 26 Housing

2018 Grade B = 2019 Grade B -

The steady movement of economic migrants from rural and peri-urban areas into metropolises seeking employment has put a strain on provincial housing budgets and capacity. The proliferation of informal settlements is a testament to this. According to Stats SA's *General Household Survey 2017*, 13.6% of South African households were living in RDP or state-subsidised dwellings. The State must increase the budget for

rural development, as the housing backlog has contributed to an increase in housing protests.

## Section 27 Healthcare, Food, Water and Social Security

2018 Grade C = 2019 Grade C -

The year under review saw the publication of the contentious *National Health Insurance Bill* for public comment. The Bill has raised serious concerns regarding its feasibility, considering the financial burden. South Africa remains a food-secure country - despite the drought and other agricultural threats such as avian flu. However, because of poverty and stark inequality, over 20% of the population live below the poverty line, putting them at risk of going hungry. The drought has, however, highlighted the urgent need for national and provincial government to work together effectively and cooperatively in addressing such a crisis. Social grants continue to be the last line of defence for a large percentage of the indigent population, with over 17.5 million grants having been paid during the period under review. The transfer of grant payments from CPS to the South African Post Office in October 2018, was marred by technical difficulties and resulted in the non-payment of up to 8% of grants, threatening this right.

## Section 28 Children

2018 Grade C = 2019 Grade C =

Children in South Africa remain particularly vulnerable. Considering the extensive reports about crime against children, it is apparent that these crimes are mostly committed by their caregivers. South Africa's commitment to upholding children's rights has also dropped significantly on the *KidRights Index*, an annual global index ranking countries' commitment to improve children's rights. Although South Africa has advanced legislative measures to protect children from harm, lack of implementation greatly impacts the State's commitment to uphold children's rights.

## Section 29 Education

2018 Grade E - 2019 Grade E =

The lack of adequate infrastructure has been a consistent obstacle to the realisation of the right to basic education. In 2018, the High Court removed legislative loopholes that made accountability in the provision of school infrastructure impossible. The impact of this judgment remains to be seen, as the failure of the Department of Basic Education to execute court orders in the past has been the norm.

The announcement of fully-subsidised higher education for poor and working-class South African students and the related practicality thereof were significant developments in the field of higher education.



## Section 30 Language and Culture

2018 Grade D - 2019 Grade D -

The official recognition of South African Sign Language as an examinable subject for the National Senior Certificate was a positive development in 2018. The promotion of multi-lingualism, however, is still greatly hampered by the lack of political will. Capacity and governance constraints experienced by PanSALB directly impacted the Board's constitutional mandate to act on linguistic complaints, and this directly impacts the fulfilment and promotion of the right. Furthermore, the use of Afrikaans at tertiary institutions remains a contentious issue.

## Section 31 Cultural, Religious and Linguistic Communities

2018 Grade B = 2019 Grade C =

The CRL Rights Commission generally ensures the realisation of this right. However, abuse in religious spaces, as well as the threat to the lives of young men who are circumcised in unregistered initiation schools, have comprised much of the work of the Commission in the year under review. During the December 2018 initiation season, 21 initiate deaths were reported. The slow pace for the recognition of the rights of Khoi-San people, and lack of effective implementation of policies to facilitate the achievement of their rights, remains highly concerning.

## Section 32 Access to Information

2018 Grade D = 2019 Grade D =

The slow rate of response to requests under the *Promotion to Access to Information Act*, and in some cases, the failure to respond, suggests that government departments could be more transparent and accountable. The proposed *Critical Infrastructure Protection Bill* further raises concerns as a source of possible limitations to the right to access to information by the South African public at large.

## Section 33 Just Administrative Action

2018 Grade C = 2019 Grade C =

This right guarantees access to administrative action - on the part of State functionaries and the courts - that is lawful, reasonable and procedurally fair. In the year under review, the courts emphasised that some offices, such as Chapter 9 Institutions, have a higher duty when exercising administrative functions.

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## Section 34 Access to Courts

2018 Grade B = 2019 Grade B -

High costs of legal representation are a major obstacle in accessing legal representation by the majority of the public. Reports of proposed cuts to Legal Aid SA's budget by R503 million over the next three years raise serious concerns over the organisation's ability to fulfil their mandate. The apparent regression of the *Traditional Courts Bill* after a decade of deliberation is also a departure from the constitutional spirit and purpose.

## Section 35 Arrested, Detained and Accused Persons

2018 Grade D = 2019 Grade D -

A consistent issue with this right is the overcrowding in prisons, which directly affects the inherent right to human dignity, among other rights. According to the *World Prison Brief* database, South Africa's prison population at end of March 2018 was 38.2% over capacity. In addition, cuts to the Legal Aid budget dealt a blow to the access to legal representation by those who need it the most.

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