

Human Rights

Report Card 2018

The Respect,
Protection,
Promotion and
Fulfilment of Rights
in the Bill of Rights
during 2017



Centre for
CONSTITUTIONAL
RIGHTS

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While the Centre for Constitutional Rights (CFCR) strives to provide complete and accurate information, the Centre does not assume any liability whatsoever for the accuracy and completeness of the information contained herein. To the best of the CFR's knowledge, the information contained herein is accurate and reliable as of date of publication.

Methodology

THE CENTRE for Constitutional Rights (CFCR) has for the past nine years annually presented a Human Rights Report Card in terms of which, realisation of human rights in South Africa is measured. The Report awards grades on a scale of A to E - A representing excellent, and E representing poor. The Report assesses decisions by courts, legislation, repeated incident occurrences or an incident which shocks the conscience of the nation, such as the Life Esidimeni deaths, as well the reports compiled by well-established, trustworthy and competent bodies such as Freedom House, the United Nations (UN) and Statistics South Africa (Stats SA). Thereafter, the CFCR's Panel of Advisors (made up of eminent individuals who have distinguished themselves in the fields of law and/or politics) grade the various sections, whereupon the Centre aggregates the grades to reach a final grade. The Report further serves as a baseline from which future trends in human rights violations may be identified. The Report is a snapshot in time - 2017 - and is the result of engagement with South Africa's current affairs on a continuous basis.



Report Card 2018 Grades

We have once again awarded the following grades to reflect realisation of human rights in South Africa during 2017:

A = Excellent; B = Good; C = Average; D = Poor; and E = Very Poor.

At the same time, the +, = and - signs are used to indicate whether a tendency to realise relevant rights is improving, deteriorating or remaining the same.

Equality **E =**

Human Dignity **C =**

Life **E =**

Freedom and Security of the Person **D =**

Slavery, Servitude and Forced Labour **C -**

Privacy **C =**

Freedom of Religion, Belief and Opinion **A =**

Freedom of Expression **B +**

Freedom of Assembly, Demonstration, Picket and Petition **B =**

Freedom of Association **A =**

Political Rights **A =**

Citizenship **A =**

Freedom of Movement and Residence **B =**

Freedom of Trade, Occupation and Profession **C =**

Labour Relations **C =**

Environment **C +**

Property **D =**

Housing **B =**

Healthcare, Food, Water and Social Security **C =**

Children **C =**

Education **E -**

Language and Culture **D -**

Cultural, Religious and Linguistic Communities **B =**

Access to Information **D =**

Just Administrative Action **C =**

Access to Courts **B =**

Arrested, Detained and Accused Persons **D =**

Introduction

THE BACKDROP to 2017 was largely through the lens of State Capture. This phenomenon was identified by the Office of the Public Protector, in the 2016 report entitled *State of Capture*. The former President, his family members and close associates were found to be diverting legitimate State policy to further their own goals, thereby establishing a parallel State. Institutions including the National Prosecuting Authority (NPA), National Treasury and the South African Revenue Services (SARS) bore the brunt of this reported capture and were thus unable to effectively discharge their mandates. In this regard, SARS reported a shortfall of R50 billion at the close of the tax year. This shortfall will undoubtedly negatively impact the State's ability to effectively meet its constitutional obligations, particularly in the arena of socio-economic rights, where funds are needed in order to ensure rights such as access to adequate housing, and healthcare services.

The long-running governance wrangle continued at the South African Social Security Agency (SASSA) and at the time of writing, it is unclear whether SASSA will, come 1 April 2018, be in a position to pay out grants to more than 10 million beneficiaries. The failure of former Minister Bathabile Dlamini's oversight function is a threat to the livelihoods of South Africa's most vulnerable, for whom the social grant represents the last line of defence against absolute poverty.

Weakening political leadership led to multiple oversight failures, including the creation of parallel bodies serving to cynically bypass constitutional mechanisms. This was seen in the Presidential Fiscal Commission, a body created by erstwhile President Zuma, reporting to him alone. The Presidential Fiscal Commission has immense powers, with the ability to override Cabinet decisions taken during the Cabinet budgeting process. This, despite the existence

of the Financial and Fiscal Commission, an independent body established in terms of the Constitution to ensure the implementation of prudent fiscal policies.

This weakening of institutions was witnessed too in the Public Protector's Office, with the Gauteng High Court in Pretoria finding that the *"Public Protector does not fully understand her constitutional duty to be impartial and to perform her functions without fear, favour or prejudice"*. This was after she failed to fully disclose meetings with the President's office, as well as the State Security Agency (SSA) as part of her investigations into an apartheid-era bailout involving ABSA and the Reserve Bank. The lengthy *Spy Tapes* saga in which the former President, Jacob Zuma, may face the possibility of charges over fraud, corruption, money-laundering, racketeering and tax evasion related to the *Arms Deal* in 2005 is a step closer to finality. This, with the finding by the High Court in Pretoria that the NPA had been irrational in dropping the charges back in 2009. At the time of writing, the NPA head, National Director of Public Prosecutions (NDPP), Shaun Abrahams, was challenging a decision of the High Court in Pretoria. The Court found his appointment null and void, given the circumstances in which his predecessor left the office, after accepting a R17 million golden handshake. Specialised Commercial Crimes Unit head, Lawrence Mwrebi and Deputy NDPP, Nomgcobo Jiba, were struck from the Roll of Advocates for their part in dropping charges against former head of Police Crime Intelligence, Richard Mdluli.

The South African Police Service (SAPS) has seen the appointment of a new Police Commissioner, General Khehla Sitole, to permanently fill the position from which Riah Pihyega had been suspended since 2015. Other important positions within the SAPS, for example, Crime Intelligence



head, remain empty following allegations of fraud.

The spotlight on state-owned enterprises (SOEs) revealed a myriad of maladministration and poor governance measures, with Eskom, Denel, Transnet and South African Airways (SAA) being the biggest offenders. At the time of writing, Parliament's Portfolio Committee on Public Enterprises had established an inquiry to assess the nature and extent of wrongdoing and to assign culpability to identified individuals.

The Estina Dairy Farm project in the Free State was used to unlawfully channel away R222 million, which was meant to benefit the local rural population. Although the total extent of the cost of State Capture will never be fully known, the Estina Dairy Project starkly reveals how corruption affects the most vulnerable and serves to erode the Rule of Law.

A disinterested and uncaring State took measures which lead to the deaths of 143 mentally ill patients in the Life Esidimeni project. Despite this, no one has as yet been criminally charged for the negligent deaths.

Unemployment (using the extended definition that includes discouraged job seekers) reached a 13-year record high at 27%. Economic growth was at a sluggish 0.8%. Ratings agencies downgraded South Africa to sub-investment grade, meaning that the country will borrow money at higher interest rate. The slow economic growth and the abovementioned revenue shortfall makes it harder for the State to oblige constitutional imperatives like land reform.

Black Economic Empowerment (BEE) policies continue to be applied in order to achieve substantive equality, however, they face criticism on the basis of encouraging cronyism, thus creating a super wealthy black elite at the expense of millions of South Africans requiring access to further training, skills and education. Some policies have been found by the courts to constitute absolute bars to the promotion and inclusion of, for example, white and coloured South Africans in the workplace, in direct conflict with the *Employment Equity Act 55 of 1998*.

The National Development Plan (NDP) is not being applied despite finding broad consensus across the political

spectrum regarding its value as a blueprint for South Africa's success. The protection and the attainment of property rights is yet again in the spotlight. The third largest political party has introduced motions before the National Assembly to amend the property clause on the basis that it impedes the pace of land reform. Further, the governing party in December 2017, at its Elective Conference, resolved to amend the Constitution to permit expropriation without compensation. The resolution was taken with the proviso that such conduct does not affect food security or the livelihoods of persons working the farms. Reality, however, is that there is policy uncertainty regarding land reform, coupled with incomplete information regarding the racial landholding patterns of South Africa. It is worth noting that the budget for land reform remains almost unchanged since 2008, reflecting a lack of political will to create financially viable land reform programmes, including post-land redistribution support for new farmers.

The studies conducted by the Programme for Land and Agrarian Studies (PLAAS) at the University of the Western Cape (UWC) show that at the current pace of land restitution, claims lodged by 1998 will take 35 years to be fully settled. Claims lodged after the 2014 elections will take a further 143 years to be settled. The prominent role given to traditional leaders in communal lands has weakened tenure security, in contravention of the property clause, which seeks to ensure secure tenure. Equally concerning is that the objectives of the 1997 *White Paper on Land Policy*, including poverty reduction, gender equality and farm worker empowerment, have not been met. The *Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change* submitted to the National Assembly in November 2017, lays bare the challenges and the accomplishments underpinning post-apartheid South Africa. Key findings in the Report include the enduring legacy of land dispossession and insecure tenure.

While South Africa has made tremendous strides with regard to healing the divisions of the past, more progress is required in ensuring lasting social cohesion. The Report makes wide-ranging recommendations, including the reform





of the *Electoral Act* 73 of 1998. It remains to be seen whether the Panel's Report will be implemented. The State continues to fail to give effect to the ability of individual South Africans to stand for public office at national and provincial levels of government, in violation of article 25 of the the *International Convention of Civil and Political Rights* (ICCPR), which governs the right to participate in public affairs.

The governing party's July 2017 Policy Conference took a resolution to withdraw South Africa from the International Criminal Court (ICC) following the country's failure to abide by its international obligations regarding the arrest and detention of Sudanese President, Omar al-Bashir, the subject of an international criminal arrest warrant for genocide and crimes against humanity. South Africa will have a seat at the UN Security Council in 2019. It remains to be seen whether South Africa will continue its voting patterns going forward, given a history of voting for Resolutions in the same vein as its BRICS partners, Russia and China.

The South African Judiciary, particularly in the higher courts, continued to strike down State law and conduct in conflict with the Constitution. To this end, judgments such as the *Secret Ballot* judgment and the *Spy Tapes* judgment involving the National Assembly and the NPA respectively, served to deepen South Africa's democracy. The State, by and large, particularly in high profile cases, is seen to abide by judicial decisions. The personal costs orders against State officials - including former President Jacob Zuma and the Public Protector - where they had abused the public process - serve as a deterrent measure against abuse of the legal process by officials wielding public power. Accusations of judicial overreach in political cases were leveled at judges of the higher courts, drawing the courts into the highly polarised arena of political discourse. The failure of the oversight functions by the National Assembly, as well as bodies including Chapter 9 institutions, has placed pressure on the courts, which were called upon to adjudicate such cases.

Closer scrutiny of the National Assembly reveals that two of its key functions, namely the passing of legislation and oversight, are sorely lacking. As at September 2017, 23

pieces of legislation had been assented to, of which only 7% were introduced in 2017. The rest had been introduced in 2015 and 2016. This suggests an extremely low rate of passing legislation. Notable exceptions to Parliament's oversight failure include the National Assembly-led inquiry into the maladministration at the South African Broadcasting Corporation (SABC), and a further inquiry into irregularities at Eskom. Although arguably, such oversight function arose as a result of factional battles within the governing party.

Language and cultural rights continue to dominate public discourse, particularly in view of the right to language choice in public educational institutions. The current trends suggest that English will be the default language on the basis of its universality. This negatively affects the development of Afrikaans and other indigenous languages as mediums of instruction.

South Africa maintains an objective civil society, quick to exercise the right to assembly, demonstrate, picket and petition. Although not always peaceful, the large number of service delivery protests suggest general dissatisfaction with government at local level.

The press and other media continue to enjoy a high degree of freedom of expression, with the media playing a prominent role in highlighting State excesses and shortcomings, for example, the #GuptaLeaks.

There appeared to be discernable securitisation of the State, with agencies such as the Intelligence Services both explicitly and overtly being used to further political ends. The Information Regulator as provided for in the *Protection of Personal Information Act* 4 of 2013 is not yet fully functioning. As such, there is as yet, no oversight on the right to privacy. The SSA is reported to be using mass surveillance, ostensibly under the *Regulation of Interception of Communications and Provision of Communication-Related Information Act* 70 of 2002 (RICA). In 2008, the Ministerial Review Commission on Intelligence called the SSA's mass surveillance activities unlawful and unconstitutional, yet to date, the findings of the Commission have yet to be addressed.

The Bill of Rights largely applies vertically, although in some instances, particularly where the rights to equality and



dignity are concerned, there can be horizontal application. This creates obligations between individuals, or between individuals and juristic entities such as private corporations. To this end, corruption in the private sector has been widely reported. Such corruption impacts the livelihood of ordinary South Africans. The Competition Commission played a significant role in fining corporations found to be abusing their dominant positions in the market. Such deterrent measures have a positive effect on the freedom of trade and occupation. Furthermore, the Constitution seeks to ensure that procurement laws and policies are fair, equitable and transparent while remaining competitive and cost-effective.

KEY DRIVERS

- Poverty, unemployment and inequality continue to ail South Africa despite some improvements since 1994, ushered in by the existing extensive social security system.
- The slow pace of land reform is concerning and has negative consequences for the livelihoods of rural dwellers.
- Social cohesion is threatened by the failure to progressively realise socio-economic rights.
- High youth unemployment is contributing to social tension.
- Leadership of key state institutions remain under the spotlight - in particular the Public Protector, who was found by the Gauteng High Court in Pretoria to *“not fully understand her constitutional duty to be impartial and to perform her functions without fear, favour or prejudice”*.
- The unacceptably high crime levels continue to negatively affect the quality of life of all South Africans. Despite crime levels in some categories decreasing, in comparison to global standards, the crime levels are very high.
- Policy uncertainty is affecting both employment, as well as long-term investments.
- The mortality rate is improving, with a marked decrease in child mortality rates in South Africa, reflecting improved child health.
- Access to education continues to improve, although education is dogged by concerns over quality, particularly in Mathematics and Science. The announcement regarding free higher education to students from deserving families will further positively influence the numbers of students at institutions of higher learning.

FUTURE TRENDS

High levels of inequality affect the extent to which rights are enjoyed. This is particularly true of socio-economic rights where the State has a positive obligation to progressively realise such rights. In the presence of maladministration and weak checks and balances, the State is unable to effectively meet its constitutional obligations.

While Parliament appears to have improved in its oversight functions over the Executive - although this appears largely to be driven by factional alliances within the governing party - it remains to be seen whether this improvement can be carried into the new year.

The former President, Jacob Zuma, announced in December 2017 that first year students at institutions of higher learning from households with a combined annual income of up to R350 000 would receive free education in 2018. This contradicts the recommendations of the Heher Commission into the Feasibility of Fee-Free Higher Education and Training, which had found that there was currently no capacity for the State to provide free tertiary education to all students. The then Finance Minister presented a budget to the National Assembly in February 2018, showing that R57 billion would be set aside to meet the former President’s announcement. The funds were made available through budgetary cuts to existing government spending, made across the board, from national to local level. The funds will enable more South Africans to acquire crucial skills, although a concern is raised over the impact on service delivery following the budget cuts.

The Judiciary has continued to strike down conduct and laws which are unconstitutional, and in doing so, safeguard and protect the Constitution, as well as its values. A concern is raised over the number of ultimately political matters which the courts are forced to adjudicate. This runs the risk of politicisation of the Judiciary.

South African civil society continues to play an active role in ensuring accountable governance, alongside the media. The media has played a key role in the uncovering of malfeasance, hence enhancing responsiveness and openness as foundational values. The #GuptaLeaks are a prime example of the media and civil society playing a key role in exposing corruption. Whether the momentum gained will be sustained going forward remains to be seen, regardless of the changes in political leadership.

South Africa’s foreign policy includes withdrawing from the ICC on the basis that the Court is an instrument used unfairly against African countries and fails to hold western powers to the same standards. It would appear that South Africa’s foreign policy does not reflect the same spirit and purport of its Constitution, particularly in view of the country’s voting patterns on various UN resolutions. This is a trend expected to continue.

The creeping role of the intelligence structures in South Africa and the non-implementation of the *Ministerial Review Commission on Intelligence Report* (Matthews Commission Report) suggest growing securitisation and fewer checks and balances against possible State excesses in intelligence gathering. The Matthews Commission Report detailed the mandate and activities of the intelligence services, in addition to considering infringements of constitutional rights. Its findings and recommendations have largely been ignored.

Ms Phephelaphi Dube, Director

2017 Grade E =

2018 Grade E =

THE ACHIEVEMENT of equality has both a formal and a substantive element. Formal requires that people in the same situation be accorded the same treatment, and that people should not be treated differently because of arbitrary characteristics such as gender, religion, or race. There is generally broad consensus on the moral imperative behind equality. The implementation of substantive equality, which requires a contextual application of laws and policies, however, remains highly contested.

FREEDOM FROM UNFAIR DISCRIMINATION

Applying to both the State and individuals, there is explicit prohibition from unfairly discriminating against anyone on a list of grounds, including sexual orientation, social origin and birth. The courts have interpreted this to mean that any discrimination to promote the achievement of equality for persons disadvantaged by unfair discrimination is automatically fair. This is on the condition that any such discriminatory measure to promote equality is not an absolute bar to the recruitment or the advancement of people who fall outside of the designated groups.

- According to the Human Rights Watch *World Report 2017*, xenophobic violence on foreign nationals in the country has resulted in virtually no convictions, and authorities have seemed reluctant to even publicly acknowledge xenophobia. There has been no decisive action to combat it, including ensuring proper SAPS investigations. In addition, the State has yet to provide a mechanism for justice and

accountability for xenophobic crimes. The draft *National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance* is yet to be completed.

- The Trade Union Solidarity (Solidarity) challenged the implementation of affirmative action measures. The Labour Court in Johannesburg granted an urgent application by Solidarity to temporarily suspend the new SAPS *Employment Equity Plan* because SAPS had failed to follow procedure and consult with trade unions prior to implementing the plan. The interdict stipulates that SAPS' new *Employment Equity Plan*, which applies to the period from 2015 to 2019, has been suspended until the Constitutional Court gives judgment in the matter between the Department of Correctional Services (DCS) and Solidarity. In terms of this Labour Court judgment, the SAPS may not make any appointment or promotion based on the principles as contained in their 2015 - 2019 *Employment Equity Plan*.

GENDER EQUALITY

Gender inequality is still prevalent in South Africa, despite the presence of robust laws and policies to ensure gender equality. The pervasiveness of gender-based violence continues to be a key impediment in the achievement of gender equality.

- South Africa ranks 19/144 on the World Economic Forum's (WEF) *Gender Gap Index 2017*, which is down five places from last year. South Africa was ranked first (together with 33 other countries) in health and 18th in political



empowerment. It remained in the bottom half when ranked for education and economic opportunities.

- According to the *Department of Women (DoW) Annual Report 2016/17*, the Department received R196.9 million for the 2016/17 financial year, including R69.9 million earmarked for the Commission for Gender Equality (CGE). In comparison, in the 2015/16 financial year the Department received R189.1 million.
- The above Report also states that the results of the 2016 local government elections show that women representation in local government has increased from 38% of elected councillors in the 2011 municipal elections, to 41% following the 3 August 2016 municipal elections.
- According to the Human Rights Watch *World Report 2017*, violence against women, including rape and domestic violence, remains widespread and underreported in South Africa. Further research findings published in August 2017 by the Centre for the Study of Violence and Reconciliation and Oxfam South Africa, show that one in five women older than 18 has experienced physical violence, and three women die at the hands of their partner every day.
- According to the Institute of Race Relations' (IRR) *Fast Facts Wathint' Abafazi, wathint' Imbokodo - August 2017* Report, in terms of household tenure, across all race groups, more females than males live in households that they own and have fully paid off. In particular, 65.9% of black females have households which are owned and fully paid off, as compared to 46.9% of black men.
- Violence against the Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI) community is most common in the Eastern Cape Province. This is one of the findings in the IRR's *Fast Facts - November 2017* Report.
- A March 2017 Grant Thornton International Business Report, entitled *Women in Business: New Perspectives on Risk and Reward*, indicates a minimal increase in senior roles for women, particularly as chief executive officers -

with 7% in 2015, 9% in 2016 and 10% in 2017.

- According to the International Parliamentary Union (IPU) as at 1 January 2017, South Africa ranks 9th out of 193 countries for participation of women in Parliament. South Africa has 42% women, compared to the global average of 23.3%. Furthermore, South Africa has 41.7% women in Ministerial positions, with 15 of the 36 Ministers and their deputies being women. In addition, both the speaker in the National Assembly, as well as the chair of the National Council of Provinces (NCOP) are women.
- According to the *Commission for Employment Equity Annual Report 2016 - 2017*, in the workplace, black people, women, and persons with disabilities remain under-represented at top and senior management levels.
- The same Report states that at senior management level, men are better represented than women, at 66.7% and 33.3%, respectively.
- In March 2017, the Seshogo Equality Court found in favour of a transgender Limpopo woman who was the victim of abuse while at school. The Court held that certain conduct by the school amounted to humiliation and harassment based on her gender identity. The school was found to have created a hostile and intimidating environment for the learner. In addition to being ordered to pay compensation, the school was ordered to make a written apology and also attend a programme on gender sensitivity.
- In September 2017, in *KOS and Others v the Department of Home Affairs*, three transgender women and their spouses asked the Western Cape High Court to ensure their birth certificates would be amended to reflect their true genders and an assurance that their civil marriages to their spouses will remain intact. This was after the Department of Home Affairs (DHA) refused to do so. The Court held that individuals have the right to amend their gender description even if they were married as heterosexuals.





EQUALITY BEFORE THE LAW

The high levels of inequality in South Africa affect the extent to which rights and freedoms are enjoyed. Formal equality before the law - to the extent that it refers to legal process and equal treatment in the application of the law - is however generally enjoyed.

EQUALITY OF OUTCOMES

- According to the *Commission for Employment Equity Annual Report 2016 - 2017*, persons with disabilities are extremely under-represented in the workplace, making up only 1.1% of the workforce at senior management level and 0.9% at the professionally qualified level. The same Report from 2015/16 stated that persons with disabilities made up 1.5% of the workforce at management level and 1.3% at the professionally qualified level.
- According to the above Report, 58.1% of top management workforce was white, compared to 68.9% in 2015/16. 22.1% was black compared to 14.3% in 2015/16, 10% was Indian compared to 8.6%, 7.7% was coloured compared to 4.7%, and 1.4% was foreign when compared to 3.5% in 2015/16.
- In September 2017, the Department of Labour (DoL) announced that it has claimed more than R23 million from 360 employers prosecuted for not complying with the *Employment Equity Act 55 of 1998*. According to the Department's Director-General, only R1.3 million has been paid so far.
- The World Bank tracks the GINI coefficient, a measure of inequality in a society, with 0 being an equal society and 1 being an extremely unequal society. South Africa is a consistently unequal society. South Africa's GINI coefficient ranges between 0.66 to 0.70.
- A 2018 Oxfam briefing paper, entitled *Reward Work, Not Wealth*, found that South Africa remains one of the world's most unequal countries. The top 10% of society receive half of all wage income, while the bottom half of the workforce receive just 12%.
- The Grant Thornton *Women in Business Report* states that

only 28% of senior management roles in South Africa are held by women. Furthermore, a 23% plunge in senior roles held by women compared to 2016 was reported, while 39% of businesses remained without female representation in senior management positions.

- On 15 June 2017, the Minister of Mineral Resources announced the release of the *Broad-Based Black Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (2017 Mining Charter)*, which would come into effect on date of publication. The 2017 Mining Charter requires that a new prospecting right must also have a minimum of 50% plus one black person shareholding. A new mining right must also have 30% black persons' shareholding. The 2017 Mining Charter also provides for an 8% shareholding to be allocated to mine communities, which would be held through a trust. Furthermore, a minimum of 65% of total spent on services must be sourced from black-owned companies.
- The Action Group on Briefing Patterns (Action Group) was established in response to the outcry from certain members of the legal profession and other stakeholders regarding the uneven distribution of legal work among advocates and attorneys. It is comprised of members of the Law Society of South Africa (LSSA), the General Council of the Bar, Advocates for Transformation and the Department of Justice and Constitutional Development (DoJ&CD). The LSSA held a Summit on Briefing Patterns in the Legal Profession to find solutions to the perceived discriminatory practice. The Action Group has made progress by gathering information on how national government departments and SOEs distribute their legal work to legal practitioners. It found that most lucrative work is assigned to a select pool of black and white male advocates, to the exclusion of many others. Furthermore, a limited group of black female advocates receive work and the majority of advocates, regardless of gender and race, receive little and/or no work. The Action Group found that the bulk of lucrative work, particularly from State departments, is assigned depending on Broad-Based Black Economic Empowerment (BBBEE) status. Since this summit, the LSSA and the Action Group has published the *Procurement Protocols*, a transformation charter to address the above matters and permit a better distribution of legal work.



2017 Grade C =

2018 Grade C =

HUMAN DIGNITY functions as a legal principle, upon which all other rights and freedoms are dependent. Both the State and individual South Africans are obliged to respect and protect the right.

- According to the *South African Social Security Agency (SASSA) Annual Report 2016/17*, the biggest contributor to poverty alleviation in the past decade was the expansion of social grants from 10.9 million in 2006 - when SASSA was established - to 17.2 million in 2017. These 17.2 million grants represent about 31% of South Africans dependent on social grants for survival.
- The Child Support Grant recipient figures remain the highest at 12.1 million, followed by the Old Age Grant at 3.3 million, according to the *SASSA Annual Report 2016/17*.
- The top five complaints lodged with the South African Human Rights Commission (SAHRC) include rights relating to equality, section 27 (healthcare, food, water, and social security), arrested, detained, and accused people, labour relations, as well as just and administrative action.
- The *South African Human Rights Commission (SAHRC) Annual Report 2017* states that, in terms of the right to equality, the highest number of complaints received related to the issue of racism.
- According to *The Hate & Bias Crimes Monitoring Project Form Report* covering 2013 to 2017, community members are sceptical of telling service providers that they have been victims (or witnesses) of hate-based crimes, often due to fear of further victimisation - either at the hands of the original perpetrators or by telecommunications service providers - or

because they erroneously believe that nothing can be done for them.

- The same Report states that the majority of offenders were either persons known to the victim (34%) or persons from the victim's community (34%). In 32% of cases the offender was unknown to the victim. In 7% of cases the offenders were officers of the SAPS; in 4% they were public officials; in 2% of cases the offender was a school/college staff member; and in 1% of cases the offender was a medical professional.
- While 36% of the victims that reported hate crimes felt that the police were helpful and supportive, 18% perceived the SAPS as being dismissive or disinterested in their case. 8% of the victims thought that the police were hostile, insulting or prejudiced, and in 10% of cases the police refused to assist the victim.
- In 72% of the reported cases the type of support relates to the type of incident and the needs of the victims. These entities included persons such as family, friends, or community members; organisations such as local non-governmental organisations (NGOs) or religious organisations; and official structures such as the SAPS or healthcare facilities.
- The President's Fund to compensate apartheid victims stands at R1.5 billion but has not been dispersed to all identified victims. The next-of-kin of Truth and Reconciliation Commission-identified victims continue to receive education assistance from the same Fund.
- The *Department of Justice and Constitutional Development (DoJ&CD) Annual Report 2016/17* states that a total of 1 104 beneficiaries - 754 for basic and 450 for higher education - were identified for assistance for the 2017 academic year.



2017 Grade E +

2018 Grade E =

WHILE 2016/2017 saw some fundamental improvements in the protection and promotion of the rights, such improvements were cancelled by factors such as the high rate of femicide and increasing murder rate.

- According to the Statistics South Africa (Stats SA) *Mid-year Population Estimates 2017*, life expectancy at birth for 2017 is estimated at 61.2 years for men and 66.7 years for women, compared to 2016's 59.7 and 65.1 respectively.
- Life expectancy of South Africa's female population fares poorly against other countries according to the IRR's *Fast Facts Wathint' Abafazi, wathint' Imbokodo - August 2017 Report*.
- The 2017 infant mortality rate (IMR) for South Africa is estimated at 32.8 per 1 000 live births according to the *Mid-year Population Estimates 2017*, compared to 33.7 per 1 000 live births in 2016.
- Globally, according to data from the Global Health Observatory (GHO), the IMR has decreased from an estimated rate of 64.8 deaths per 1 000 live births in 1990, to 30.5 deaths per 1 000 live births in 2016. Annual infant deaths have declined from 8.8 million in 1990, to 4.2 million in 2016.
- The Department of Health (DoH) launched the *MomConnect* programme in August 2014 as part of a series of interventions to address the relatively high maternal mortality ratio, child mortality rate and perinatal mortality rate in South Africa. By 31 March 2017, a total of 917 053 pregnant women had registered for the *MomConnect* programme designed to improve access to early antenatal services and to empower pregnant women.
- The Stats SA *South Africa Demographic and Health Survey (SADHS) 2016*, released in May 2017, says South African women have given birth to fewer children in the last three years. From 2015, the average number of children born per woman was 2.6, compared to an average of 2.9 over a three-year period.
- The Gauteng Provincial DoH terminated a contract with Life Esidimeni Hospital and transferred mentally ill patients to various unlicensed NGOs in Gauteng. This transfer resulted in the deaths of 144 patients. At time of publication, 49 patients still need to be found, 27 of whom do not have ID numbers and seven without full names, making it difficult to trace them.

HIV/AIDS

- According to the *Mid-year Population Estimates 2017*, the estimated overall human immunodeficiency virus (HIV) prevalence rate is approximately 12.6% among the South African population. The total number of people living with HIV is estimated at approximately 7.06 million in 2017. For adults aged 15 to 49 years, an estimated 18% of the population is HIV-positive. Approximately one-fifth of South African women in their reproductive years (ages 15 to 49) are HIV-positive. HIV prevalence among the youth aged 15 to 24 has declined over time, from 7.3% in 2002 to 4.6% in 2017. The rate at which the population in South Africa is being infected is estimated to be declining - from 1.9% in 2002, to 0.9% in 2017.
- According to the *Department of Health (DoH) 2016/17 Annual Report* the country has surpassed the annual target



of 1.4% for the prevention of mother-to-child transmission of HIV.

- Despite having the largest Antiretroviral (ARV) programme in the world, South Africa's treatment coverage - 56% of all people living with HIV - was below the regional average of 60%, as reported by the Joint United Nations Programme on HIV/AIDS (UNAIDS).

CRIME

- According to the *SAPS Annual Crime Report 2016/2017*, there were 1 537 police officers who were attacked, resulting in 83 murdered officers, compared to 79 during 2015/16. According to IRR's *South Africa Survey* released in June 2017, the rate at which police officers are being murdered has fallen significantly over the past 20 years.
- According to the same Report the police recorded a total of 19 016 murders, up from 18 673 murders in 2015/16, indicating an 1.84% increase.
- According to the *Annual Crime Report 2016/2017*, 2.1 million serious crimes were reported in the period.
 - Between April 2016 and March 2017, there were 49 660 reported cases of sexual offences, a decrease from 51 895 in the previous year. This marks a 4.31% decrease although this may be attributed to underreporting on the part of the victims.
 - There were 44 252 reported crimes against children and 173 405 reported crimes against women in 2016/17.
- According to the *South African Police Service (SAPS) Annual Report 2016/2017*, 39 828 cases of rape were reported.
- While murder increased by 1.84% and common assault by 5.16%, assault with grievous bodily harm decreased by 6.73%.

Freedom and Security of the Person (section 12)

2017 Grade C -

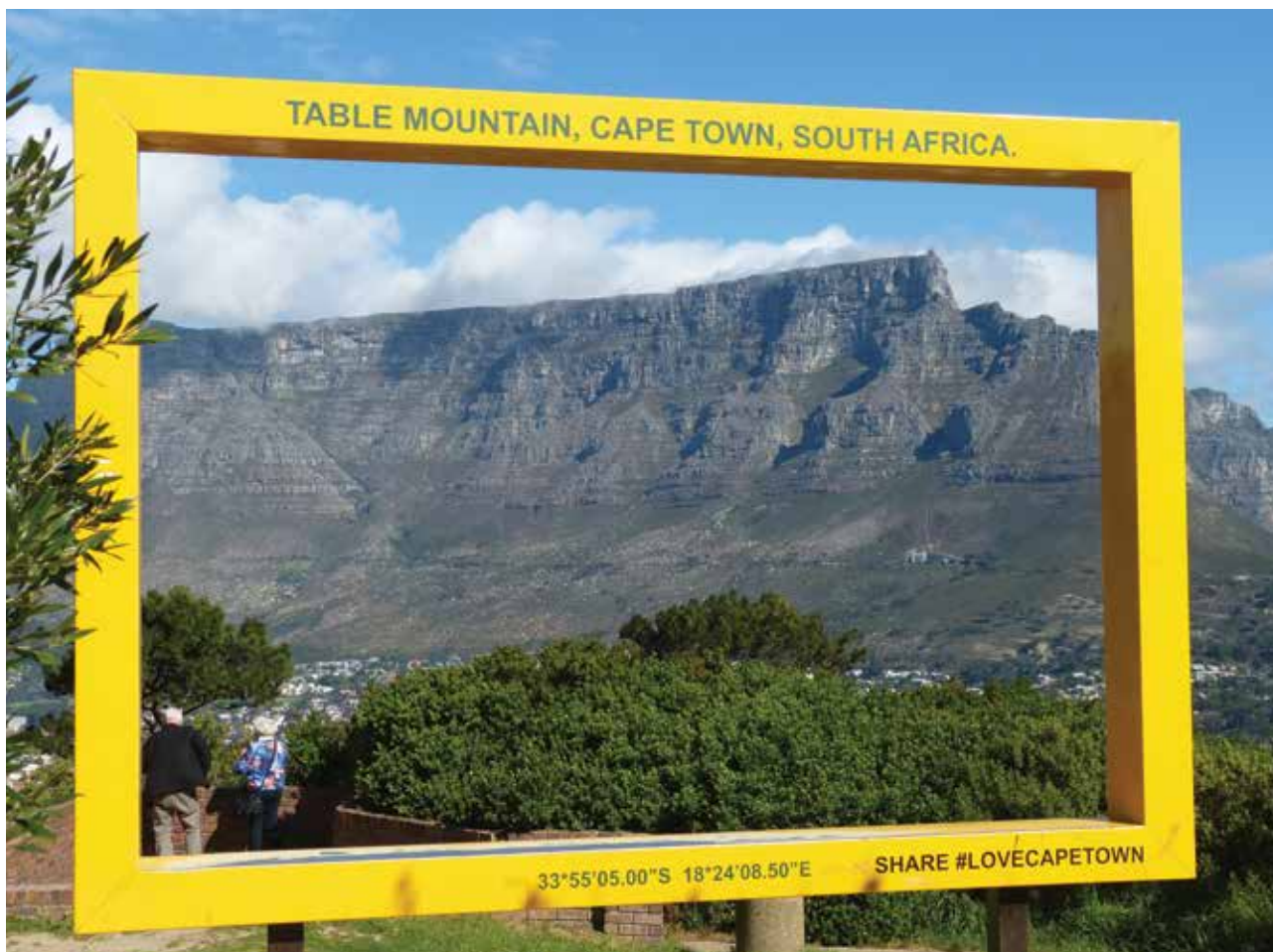
2018 Grade D =

THIS PROVISION seeks to ensure that all South Africans are free from all forms of violence, whether the source of the violence is the State, or is from a private source. However, weak institutional capacity affects the extent to which the State can adequately protect and fulfil this right, as is evidenced by the increasing rates of reported violence.

- The *DoJ&CD Annual Report 2016/17* shows that 38.6% of matters pertaining to domestic violence cases resulted in protection orders granted, with 11% of domestic violence cases withdrawn.
- The same Report states that during the year under review, 11 Sexual Offences Courts were established, to bring the total number of Sexual Offences Courts to 58.
- According to the *SAPS Annual Report 2016/2017*, 905 persons escaped from police custody in 2016/17, compared to the 949 in the 2015/16 year.
- In 2016/17, 49 660 sexual offences were recorded by SAPS, down from 51 895 in 2015/16. According to the Institute for Security Studies (ISS), these figures cannot be taken as an accurate measure of the extent or trend of the offences. This is largely due to the underreporting of victims of sexual offences.
- R100 million was set aside to upgrade the Muizenberg Police Station, despite the presence of under-resourced and poorly policed communities in Cape Town. The same R100 million was then reallocated to build police stations

in Makhaza, Nyanga and Samora. Civil organisations, the Social Justice Coalition (SJC) and Equal Education (EE), have challenged the Minister of Police before the Equality Court over the unfair distribution of police resources. A July 2017 report compiled by the SJC states that Nyanga, which has a population of 172 425, only has 139 police officers allocated for each 100 000 persons. In comparison, Camps Bay, with only 5 524 residents, has 887 officers per 100 000 residents.

- Over 2 000 police officers do not have firearm certificates. Furthermore, 760 SAPS-owned firearms were reported stolen or lost according to the *SAPS Annual Report 2016/2017*.
- According to the *State of Urban Safety in South Africa Report 2017*, the City of Cape Town and Nelson Mandela Bay are the most violent metros in the country, based on murder rates, but the former has the highest rate of crime detected through police work.
- According to the *SAPS Annual Crime Report 2016/2017*, during the 2016/17 reporting period, there were 22 343 incidents of house robbery recorded. On average, 61.2 households were robbed each day.
- The same Report notes that at least 1 886 people have died in gang-related murders in Cape Town in the past five years, but there have only been 61 convictions, a conviction rate of 3%. Gang-related murders have increased dramatically over the last five years, from 83 during 2011/12, to 408 in 2016/17.





- According to SAPS Annual Reports for the respective periods, acts of violence on farms and smallholdings in South Africa increased - farm murders by 27.5% and farm attacks with 22.9%. There were 638 attacks and 74 murders in 2016/17, compared to 519 attacks and 58 murders in the 2015/16 period.
- At the end of 2017, at least 16 young men were reported as dead after the close of initiation season in the Eastern Cape. 11 initiates died in July during the winter initiation season. The year-on-year death toll for the summer initiation season has decreased dramatically from 46 deaths in 2015 and 29 deaths in 2016. Chairperson of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission), Thoko Mkhwanazi-Xaluva, announced the suspension of all initiation-related activities in Gauteng until December 2018.
- The African Christian Democratic Party (ACDP) is proposing a bill to amend the *Termination of Pregnancy Act* 92 of 1996 to ensure women who want an abortion after 12 weeks should first go for an ultrasound and counselling. The Bill further proposes doing away with a clause that allows the termination of a pregnancy beyond 20 weeks if a medical professional believes the birth will cause harm to the foetus. This affects the extent to which the right to bodily autonomy for women is enjoyed.
- The *Independent Police Investigative Directorate (IPID) Annual Report 2016/2017* states that a total of 7 014 cases were reported to the IPID during the period under review.
- According to the Report, investigations led to 276 disciplinary convictions and 45 criminal convictions for misconduct by members of the SAPS.
- The *IPID Annual Report 2016/2017* states that during the

reporting period there were:

- 302 deaths in police custody;
- 394 deaths as a result of police action;
- 1 640 complaints of the discharge of an official firearm;
- 112 rapes by a police officer;
- 20 rapes in police custody;
- 173 cases of torture;
- 3 827 cases of assault; and
- 160 cases of corruption.
- The same Report states that members of the SAPS were involved in 51 rape incidents, 61 torture incidents, 66 corruption cases and 159 other criminal cases.
- In addition, the same Report provides that deaths in police custody contributed to 43%, while deaths as a result of police brutality contributed 57% of the total deaths. There were 51 cases in relation to these offences reported against police officers, committed by both on-duty and off-duty officers.
- According to the *Annual Report National Director Public Prosecutions (NDPP) 2016/17*, all courts managed to obtain 321 166 convictions, with a 94.1% conviction rate. High courts maintained a 91% conviction rate, with 968 convictions and exceeded the target with 4%. The regional courts maintained a rate of 79.8%, which represents the highest rate in the past decade. The district courts exceeded their target with 7.6%, although they deal mainly with minor offences such as shoplifting and *crimen injuria*.
- In June 2017, in the case *L and Others v Frankel and Others*, the Gauteng High Court in Johannesburg declared section 18 of the *Criminal Procedure Act* 51 of 1977 unconstitutional. This removes the time limit for victims of sexual abuse to report the offence.

Slavery, Servitude and Forced Labour

(section 13)

2017 Grade B -

2018 Grade C -

THERE APPEARS to be an increase in the number of reported instances where infringements of the freedom are reported. The State does not provide reliable and comprehensive information to establish the full scale of the nature and impact of trafficking into or out of the country. As such, there is a high likelihood of underreporting of any infringements.

- According to the US Department of State's *Trafficking in Persons (TIP) Report 2017*, South Africa does not fully meet the minimum standards for the elimination of trafficking, although it is making significant efforts to do so. 11 traffickers, including the first convictions under the *Prevention and Combating of Trafficking in Persons Act 7 of 2013 (PACOTIP)*, were jailed in 2016/17. The courts also handed down stringent sentences in 10 other related cases. The State established a national anti-trafficking hotline alongside other initiatives with civic society.
- According to the *TIP Report 2017*, South Africa is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking. South African children are recruited from poor rural areas to urban centres, such as Johannesburg, Cape Town, Durban and Bloemfontein, where girls are subjected to sex trafficking and domestic servitude, and boys are forced to work in street vending, food service, begging, criminal activities, and agriculture.
- The same Report states that a March 2015 investigation of two Ethiopian smugglers suspected of moving 38 000 Ethiopians, potentially including trafficking victims, to South Africa and the Middle East for unknown purposes, is yet to secure a conviction.
- According to the above Report, the government of Lesotho maintained its efforts to prevent trafficking through public awareness activities and measures to protect Basotho workers in South Africa, which is the main destination

for trafficked women. In 2016, the state implemented an agreement signed during the previous reporting period with South Africa that increased protection for Basotho workers, including domestic workers, employed in South Africa, by authorising the issuance of long-term work permits, requiring signed employment contracts, and allowing Basotho to register for unemployment insurance in South Africa.

- The *TIP Report 2017* states that Mozambican men and boys are subjected to forced labour on South African farms and mines. Here, they often labour for months without pay under coercive conditions, before being turned over to police for deportation as undocumented migrants. The same Report states that Eastern European criminal syndicates operate in the Cape Town sex trade, while Chinese nationals organise the sex trafficking of Asian men and women. Nigerian syndicates are said to dominate the commercial sex trade in several provinces. Though to a lesser extent, South African women are recruited to Europe and Asia, where some are forced into sex work, domestic service, or drug smuggling. Thai women remained the largest group of identified foreign victims, but officials reported an increased number of Chinese victims.
- In September 2017, the Gauteng High Court in Pretoria dismissed Lloyd Mabuza's appeal to overturn eight life terms for trafficking underage Mozambican nationals for sexual exploitation - this is the harshest sentence ever handed down for human trafficking in South Africa.
- SAPS, the Department of Social Development (DSD), the NPA, the DHA and the DoJ&CD had uniform formal procedures to identify and refer trafficking victims to care, in accordance with PACOTIP. Implementation of these procedures varied by Department and province; not all officials were aware of referral procedures. SAPS was widely criticised for not identifying victims, even after NGOs had conducted preliminary identification screening.



2017 Grade **B =**

2018 Grade **C =**

THE RIGHT is popularly characterised as existing on a continuum where the more individuals interrelate with the world, the more the right is weakened. As such, in the age of social media, it is vital that the regulatory framework is developed to adequately protect the right, while allowing the free flow of information. Creeping State securitisation - as evidenced by the number of law enforcement agencies' interception of private communications - suggests a gradual weakening of the right.

- According to *DoJ&CD 2016/17 Annual Report*, the Office of the Information Regulator was established in December 2016. The Chairperson and Commissioners of the Regulator were appointed during the 2016/17 financial year, in line with chapter 5 of the *Promotion of Personal Information Act 4 of 2013 (POPI)*. This Office is entrusted with the monitoring and enforcement of compliance by public and private bodies with provisions of the *Promotion of Access to Information Act 2 of 2000 (PAIA)* and the *POPI Act*. The *POPI Act* seeks to regulate the retention, processing and sharing of personal information of private and public bodies and in so doing, it gives effect to the right to privacy.
- Parliament filled the post of Inspector-General of Intelligence in March 2017 with Dr Setlhomamaru Dintwe, after the post stood vacant for over a year. This Office serves as a civilian secretariat watchdog and works to curb possible State excesses in the conduct of intelligence objectives.
- In April 2017, amaBhungane Centre for Investigative

Journalism launched a constitutional challenge to the *Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (RICA)*. They contend there are fundamental flaws in the Act and they have two issues, specifically the areas where RICA regulates surveillance, and where it fails to regulate certain monitoring activities. At the time of writing, judgment was yet to be handed down.

- The largest data leak ever seen by South Africa was reported in 2017. Approximately 27 gigabytes of data containing the names, full identity numbers, income, employment history and home addresses of 33 million South Africans were uploaded to the internet.
- Statistics from telecommunications companies have revealed that the State accesses tens of thousands of people's sensitive communications information every year using a loophole in South Africa's surveillance policies, namely section 205 of the *Criminal Procedure Act 51 of 1977*. The section allows access to phone records outside RICA's established due process. The numbers show that law enforcement agencies are spying on the communications of at least 70 000 phone numbers each year according to Right2Know Campaign (R2K). R2K has compared the most recent statistics showing that in 2014/15 only 760 warrants for interception were issued, compared to the 25 808 section 205 warrants issued over the same period - highlighting the abuse of section 205 of the *Criminal Procedure Act 51 of 1977* to obtain sensitive information of people.



Freedom of Religion, Belief and Opinion

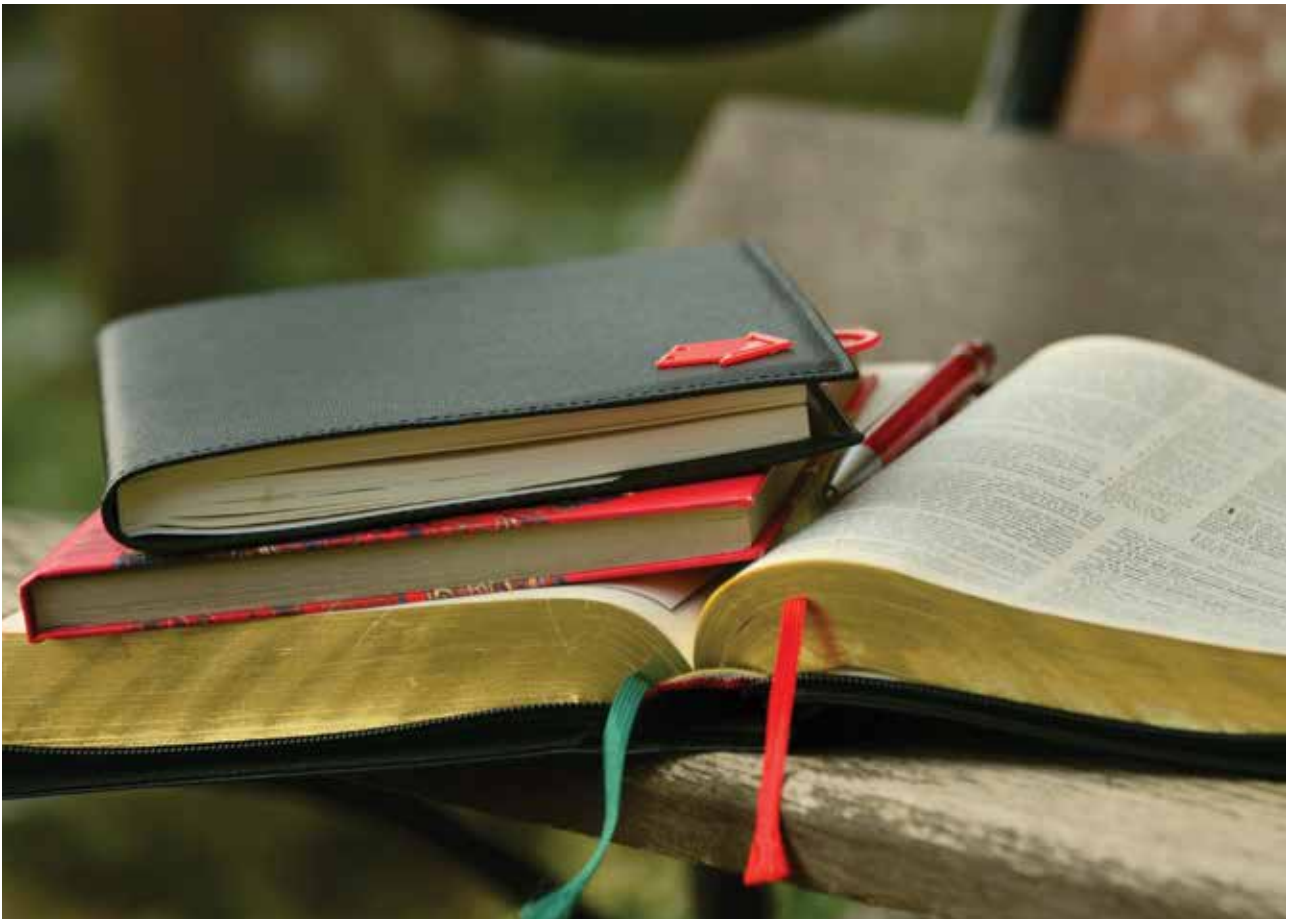
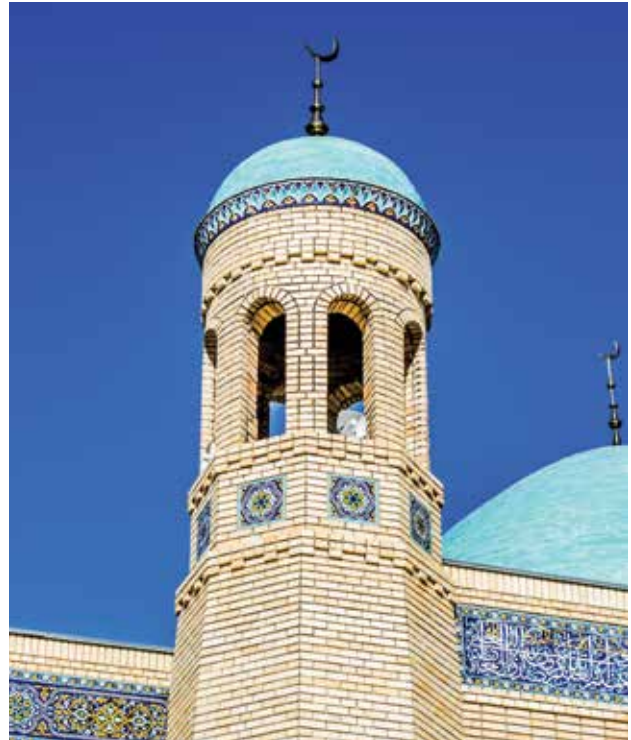
(section 15)

2017 Grade A =

2018 Grade A =

WHILE THIS right continues to be widely enjoyed, there are however, concerns over the nature and effect of regulation by the CRL Rights Commission.

- In June 2017, the *Organisasie vir Godsdienste-Onderrig en Demokrasie v Laerskool Randhart and Others* matter concerned the promotion of religion in South African public schools and whether a public school may hold itself out as a Christian school, with reference to section 15(2) of the Constitution. The Gauteng High Court in Johannesburg found that public schools, as state institutions, can practice religion on an equitable basis, but cannot promote a single religion to the exclusion of others.
- In July 2017, the CRL Rights Commission presented its investigative *Commercialisation of Religion and Abuse of People's Belief System* report to Parliament. The Report recommends that every religious practitioner must be registered, and the Commission also proposed an organisational structure under which every religious organisation should fall. The recommendations are yet to be fully implemented.



Freedom of Expression

(section 16)

2017 Grade C -

2018 Grade B +

2016/2017 SAW the media, largely unhindered, play a central role in exposing corruption, maladministration and malfeasance by both the State and private actors. The freedom is robustly enjoyed by South Africans.

- Reporters Without Borders ranked South Africa 31 out of 180 countries in their *2017 World Press Freedom Index*, eight positions higher than it was ranked in 2016.
- According to the Freedom House *Freedom of the Press 2017 Report*, South Africa maintains its partly free status with regard to press freedom (a nation is scored between 0 and 100 and the lower the award, the freer the press). South Africa achieved a press freedom score of 38, which takes into account the legal, political and economic environments in the country. This is two spots down from 2016, when South Africa scored 36.
- The *Prevention and Combatting of Hate Crimes and Hate Speech Bill* [BX-2016] was published by the DoJ&CD on 24 October 2016 and was open for public comment till the end of January 2017. The Bill aims to criminalise the offence of hate speech and hate crimes and in terms of the proposed Bill, it is possible for a person to be imprisoned for three years following their first conviction for the offence of hate speech, with 10 years for subsequent offences. The vague and far-reaching offence of hate speech does not fall within the constitutional parameters of hate speech in terms of the Constitution.
- The *Cybercrimes and Cybersecurity Bill* [B6-2017] was introduced in the National Assembly on 21 February 2017. The Bill essentially seeks to address the increase in cybercrimes and cybersecurity breaches. Some of the Bill's provisions are overbroad and might threaten the right to freedom of expression.
- In April 2017, the former Ambassador to Uganda, Jon Qwelane, was found guilty of hate speech by the Gauteng High Court in Johannesburg following a column he published

in 2008, in which he denigrated the rights of the LGBTQI community. He was ordered to make an unconditional apology. At the time of publication, the apology had not yet been issued.

- The SABC experienced an upheaval over the reporting period, largely due to the policies of former Chief Operations Officer, Hlaudi Motsoeneng. The dismissal of Motsoeneng in June 2017, and the appointment of a new permanent Board in October 2017, have restored a measure of confidence in the public broadcaster.
- In July 2017, in *South African National Editors Forum and Others v Black First Land First and Others*, the Gauteng High Court in Johannesburg granted an interdict to the South African National Editor's Forum (SANEF) and 11 other journalists against Black First Land First (BLF) and its leader, Andile Mngxitama. The order interdicted BLF from harassing, intimidating and threatening journalists. The matter followed an exposé on the allegations of corruption by the Gupta family and others (State Capture), after which, members of BLF threatened and harassed members of the press who had written on or spoken out against the corruption allegations. BLF violated the interdict later that month by again harassing journalists, leading to the same Court finding BLF and its leader, Andile Mngxitama, in contempt of court. The granting of the interdict affirms the freedom of the press and other media in South Africa, which contributes to an open, transparent and accountable state.
- The Film and Publication Board (FPB) announced in February 2018, that the film *Inxeba* - concerning the topic of male circumcision in Xhosa tradition - was reclassified X18. This reclassification means that it cannot be shown in cinemas and can only be seen by specific adult viewers under certain specified circumstances. This classification, akin to censorship, has a chilling effect on the freedom of artistic creativity.



Freedom of Assembly, Demonstration, Picket and Petition

(section 17)

2017 Grade B =

2018 Grade B =

SOUTH AFRICANS to a large degree enjoy the right, as evidenced by the number of recorded protests and other forms of assembly.

- According to the ISS *Public Violence Monitor 2017*, 523 protests were recorded in 2016. In the first four months of 2017, 217 were recorded. In the first four months of 2017, 54% of the protests were found to be violent, which is lower than the two-thirds that were violent in 2016 and 2015.
- According to Municipal Data and Intelligence (Municipal IQ) - which measures service delivery protests - 2017 accounts for 11% of service delivery protests recorded since 2004. This means that 2017 could eclipse other years' records for service delivery protests. Municipal IQ further states that violent protest activity remains a concern for many South African communities given its adverse impact on schooling, work opportunities and community safety. Policing of protests appear to add another layer of violence, further destabilising the already vulnerable relationship between communities and authority figures.
- According to Municipal IQ, Gauteng has been the

most prominent site for service delivery protests in 2017, accounting for more than one out of every three protests.

- The highest number of incidents were reported in Gauteng with 35%, the Eastern Cape with 15%, KwaZulu-Natal with 13%, the North West with 12%, the Western Cape had 9%, with the least reported activity in the Free State (1%).
- According to the *Civic Protests Barometer 2018* - which covers all types of protest action across South Africa - the number of protests fell in 2017 (from 170 in 2016, to 123 in 2017), reaching the lowest level in three years. Civic protests declined 40% between 2009 and 2017.
- In April 2017, the Constitutional Court held in *Hotz and Others v University of Cape Town* that damaging university property is unlawful but that the five #FeesMustFall activists had the right to protest on their campuses.
- In January 2018, in *Mlungwana and Others v S and Another*, the Western Cape High Court declared section 12(1)(a) *Regulation of Gatherings Act* 205 of 1993 unconstitutional in so far as it criminalises the gathering and attending gatherings without giving prior notice to the SAPS.



Freedom of Association

(section 18)

2017 Grade A =

2018 Grade A =

THE DIFFERENT forms of association are largely enjoyed, despite some forms of political association being infringed upon in KwaZulu-Natal and Mpumalanga provinces.

- The Moerane Commission of Inquiry into political killings in KwaZulu-Natal was established in response to a spate of murders, which appeared to be politically motivated. Since 2014, there have been over 100 deaths in the province linked to political posts. There have been investigations into some of the deaths, including action by the Hawks when high-profile politicians were targeted. For the most part, few arrests have been made. This Commission is important as the killings appear to target only members of the governing party,

the African National Congress (ANC). Findings indicate the conflict is internal.

- According to the Institution for Justice and Reconciliation (IJR) *SA Reconciliation Barometer Survey: 2017 Report*, of the persons interviewed, most do not have difficulties associating with other race groups. While 38% of South Africans indicated that they do not have difficulties with any other race group, 26.9% indicated that they find it most difficult to associate with white South Africans, 20.1% with black South Africans and 12.2% with Indian/Asian South Africans. Only 2.7% of South Africans found it difficult to associate with Coloured South Africans.



2017 Grade **B =**

2018 Grade **A =**

UNDERGIRDING SOUTH AFRICA'S constitutional democracy, this cluster of rights provides assurance of a democratic State. Despite reported low levels of trust in political institutions, political rights are largely well enjoyed by eligible citizens.

- The WEF *Global Competitiveness Report (GCR) 2017 - 2018* ranks South Africa 114 out of 138 countries for public trust in politicians, five spots lower than in 2016/17.
- The WEF *GCR 2017 - 2018* ranks South Africa 74 out of 138 countries for transparency in government policymaking. This is a drop from 44th slot in the 2016/17.
- The Electoral Commission of South Africa (IEC) has confirmed readiness for forthcoming elections, following adverse findings concerning the voters' roll in the 2015 Constitutional Court judgment *Kham and Others v Electoral Commission*. The judgment required the Commission to take steps to record and register the addresses of all voters, to guard against voter fraud. As part of a national campaign to update the voters' roll in preparation for the 2019 elections, the IEC has announced that 10 and 11 March 2018 will be set aside for voter registration for all South Africa's eligible voters. All 22 612 voting stations around the country will be

open to the public.

- According to the *South African Reconciliation Barometer Survey: 2017*, Parliament attracted a low confidence score of 30.3%, and between 2006 and 2017, confidence in Parliament plummeted from 29.6% to 12.6%. Confidence is the lowest it has been since 2006.
- According to the Barometer, more than half of voting-age South Africans (55.6%) surveyed agreed with the statement that "voting is meaningless because no politician can be trusted".
- According to the Barometer, 25.6% of South Africans do not feel close to any political party. That means one in every four South Africans do not feel that they have a political 'home'.
- According to the *Electoral Commission Annual Report 2017*, the Commission saw an increase in the number of registered voters countrywide from 25.6 million voters in 2015/16, to 26.1 million in the year under review.
- Women are well-represented in the electoral spectrum, with 54.9% of registered voters being female, according to the IRR's *Fast Facts Wathint' Abafazi, wathint' Imbokodo - August 2017*.



Citizenship

(section 20)

2017 Grade A =

2018 Grade A =

THIS RIGHT is well enjoyed by South Africans and is chiefly expressed through the *Citizenship Act* 88 of 1995, as amended, which forbids the arbitrary deprivation of citizenship. Stateless persons however, are forced to resort to legal challenges to receive protection from the State.

- In March 2017, the Department of Basic Education (DBE) was urged by human rights organisations to issue a directive to all schools instructing them to refrain from discriminating against foreign and undocumented children and to assist them in obtaining the necessary documents. This followed after the media reported that the School Governing Body

(SGB) of Eastleigh Primary School in Edenvale issued a letter threatening to take immigrant pupils without valid paperwork to the police. At the time of writing, the Directives were yet to be issued.

- In the judgment of *Miriam Ali and Others v the Minister of Home Affairs and Another*, delivered on 7 September 2017, the Western Cape High Court held that children born in South Africa to foreign parents are entitled to apply for citizenship. This gives effect to the *South African Citizenship Act* 88 of 1995, and applies even if they were born before the 2010 Amendment Act, which came into effect in 2013.



Freedom of Movement and Residence

(section 21)

2017 Grade B =

2018 Grade B =

SOUTH AFRICANS enjoy the freedom of movement and residence to a large degree. The freedoms are also available to all persons who are lawfully in the country. The State may not arbitrarily interfere with the exercise of the freedoms of movement and of residence.

- According to the *Department of Home Affairs (DHA) Annual Report 2016/2017*, 740 259 (95.4%) of machine-readable passports were issued within 13 working days in



2016/17, up from 609 748 (92.4%) of machine-readable passports (also issued within 13 working days) during 2015/16.

- Currently, South Africa's policy of non-encampment means that asylum-seekers and refugees are free to move within the country. The *Green Paper on International Migration* would require asylum-seekers to live near processing centres on the country's northern borders until their applications are processed and approved. Together with the *Border Management Authority Bill* [B9-2016], the policy would make entering South Africa a difficult process.

- The United Nations High Commission on Refugees (UNHCR) *Global Trends Report 2016* on population displacement singled out South Africa for skewed figures representing the latest global asylum-seeker population. According to the UNHCR, the number of asylum-seekers dropped by nearly 900 000 in just one year. South Africa moved down to fourth in the world, behind Germany, the US and Turkey for the size of its asylum-seeker population, which was recorded at 218 300 in the latest report, down from 1.1 million in 2015.

- The *Refugee Amendment Act 11 of 2017* has been assented to, but the date of commencement has yet to be announced. It provides that asylum-seekers may be offered shelter and assistance by the UNHCR pending the outcome of their application for refugee status.

- The Port Elizabeth Refugee Reception Office - which was closed by the DHA - remains closed, despite a 2015 order by the Supreme Court of Appeal (SCA) to reopen it by 1 July 2015.

- The DHA has failed to comply with a court order of June 2017, that allowed the release of a Syrian refugee from the Lindela Repatriation Centre. Lawyers for Human Rights (LHR) had successfully fought for the release of the refugee, whom they said had been detained on the basis of a fraudulent asylum permit since late May 2017.

- Refugees continue to face challenges in South Africa, particularly with regard to the maintenance of valid asylum-seekers' documentation, with over 200 000 asylum applications still pending at the DHA, as at June 2017.

- In September 2017, in *Scalabrini Centre, Cape Town v Minister of Home Affairs* the SCA set aside a 2012 decision by the Director-General of the DHA to close the Cape Town Refugee Reception Office. The DG was ordered to re-open and maintain a Refugee Reception Office in Cape Town by March 2018.

- In June 2017, in *Lawyers for Human Rights v Minister of Home Affairs and Others*, the Constitutional Court found sections 34(1)(b) and (d) of the *Immigration Act 13 of 2002* which permit the detention of 'illegal foreigners' for up to 120 days without a court appearance, to be inconsistent with sections 12(1) and 35(2)(d) of the Constitution. The concerned constitutional provisions prohibit the arbitrary deprivation of freedom, and the right of every detained person to challenge the lawfulness of any detention in person before a court respectively. Parliament was given two years to rectify the problematic legislation. The judgment affirms the right of all detained persons to access the courts within a reasonable time.

Freedom of Trade, Occupation and Profession

(section 22)

2017 Grade C =

2018 Grade C =

KNOWN AS economic activity rights, they presuppose the right to engage freely in economic activities under the regulation of certain laws. South Africans largely enjoy this freedom, although the extent to which it is enjoyed is dependent on the achievement of other rights, such as equality, education and fair labour practices.

- In May 2017, the South African Law Reform Commission (SALRC) briefed Parliament on their report, on 'adult prostitution' (sex workers) and why it should not be completely decriminalised. The 2017 report recommended two legislative amendments - partial decriminalisation or diversion from the criminal justice system for sex workers. Non-legislative actions included the development of a national strategy to exit prostitution and administrative mechanisms to monitor and respond to reports of police violence. Further, in December 2017, a decision to decriminalise sex workers was announced at the ANC's 54th national elective conference.
- In July 2017, the South African Liquor Brand owners Association (SALBA) criticised the socio-economic impact assessment of the draft *Liquor Amendment Bill* [BX-2016], which was introduced in September 2016 for failing to quantify the effect of the Bill on jobs, advertising revenue

and the industry. It also did not estimate the cost to the State of the harmful effects of alcohol abuse. In September 2017, the National Economic Development and Labour Council (NEDLAC) announced that in light of the dissatisfaction by stakeholders, it had commissioned a socio-economic impact assessment. These results are pending.

- In August 2017, hundreds of unlicensed miners, known as *zama-zamas*, marched to the Department of Mineral Resources (DMR) in Pretoria to demand the legalisation of their trade. Their memorandum argued that the banning of unlicensed mining in terms of the *Mineral and Petroleum Resources Development Act 28 of 2002* (MPRDA), prohibited them from making a living and that they were being harassed by mining security and police. In January 2018, there were further calls for the legalisation of unlicensed mining, following the discovery of seven bodies, believed to be connected to *zama-zama* violence.
- In November 2017, the Department of Agriculture, Forestry and Fisheries (DAFF) told Parliament that it did not have the resources to support the co-operatives of the States's small-scale fisheries policy. This would impact the livelihoods of small-scale fishing communities, particularly in rural coastal areas.



2017 Grade C =

2018 Grade C =

THE PROVISIONS governing labour relations are an essential tool in ensuring greater balance between employers and the employed. The slow economic growth serves as an impediment to the full enjoyment of labour relations and often exacerbates workplace tensions between employees and trade unions.

- According to the WEF *GCR 2017 - 2018*, South Africa dropped 14 places in its overall ranking on the *Global Competitiveness Index*, namely 61/137 compared to its previous ranking of 47/138. The Index measures national competitiveness and looks at institutions, policies and other factors. South Africa's ability to implement competitive policy influences its labour relations.
- The WEF *GCR 2017 - 2018* also noted that South Africa's economy is at a standstill, with GDP growth forecast at just 1.0% in 2017 and 1.2% in 2018 - with a low international demand for South Africa's commodities. The Report also emphasised political uncertainty in 2017, which contributed to loss of confidence by South African business leaders.
- According to a Stats SA report of 5 December 2017, the South African economy grew by 2.0% in the 3rd quarter of 2017, which was down from a revised 2.8% in the 2nd quarter. It was noted that agriculture, mining and manufacturing were the main drivers in the expansion.
- The National Union of Mineworkers (NUM) was held liable for damages caused by its members in Cape Town in 2015, when more than 200 NUM members went on strike at

building sites, demanding protective clothing and payment according to skills.

- In November 2017, the *National Minimum Wage Bill* [B31-2017] was introduced in the National Assembly. The Bill provides for the national minimum wage, it establishes the National Minimum Wage Commission and provides for exemptions from paying the national minimum wage. The Bill will apply to all workers and employers, except members of the South African National Defence Force (SANDF), the Intelligence Agency and the South African Secret Service. In terms of schedule 1 to the Bill, the national minimum wage is R20 for each ordinary hour worked. However, despite this, farm workers are entitled to a minimum wage of R18 per hour and domestic workers are entitled to a minimum wage of R15 per hour. The Bill, should it be passed in its current form, is intended to be implemented as from 1 May 2018.
- In February 2018, the results of the Stats SA *Quarterly Labour Force Survey* (QLFS) for the 4th quarter of 2017 were released, which indicated that South Africa's unemployment rate declined from 27.7% to 26.7% in the 4th quarter of 2017. It appears that between the 3rd and 4th quarters of 2017, 330 000 more people found work but 5.9 million people remain unemployed. The expanded unemployment rate, which relaxes the requirement of job search to be classified as unemployed, declined 0.5% of a percentage point, from 36.8% to 36.3% at the national level between the last two quarters of 2017.



2017 Grade C -

2018 Grade C +

THE PROTECTION of environmental rights, as well as their enforcement, has improved considerably. The improved institutional capacity of the Department of Environmental Affairs (DEA) has yielded positive results in the enforcement arena.

- The *Annual Report NDPP 2016/17* reflects a conviction rate of 95% overall in environmental offences, while the prosecution of rhinoceros and related matters resulted in a conviction rate of 96.3%.
- According to the Yale Centre for Environmental Law and Policy's *2018 Environmental Performance Index (EPI)*, South Africa is ranked 142 out of 180 countries, a drop of over 15 places since 2016. The EPI ranks performance on high priority environmental issues in two areas: protection of human health and protection of ecosystems. The same Report noted South Africa's battle to retain forests and ranked it 136 out of 180 countries in this regard.
- The *National Environmental Compliance and Enforcement Report (NECER)* for 2016/17 states that there has been a 26.2% increase in the number of criminal dockets registered: from 1 186 in 2015/16, to 1 497 in 2016/17. The number of criminal dockets handed to the NPA has generally increased, from 257 in 2014/15, to 293 in 2015/16, and 416 in 2016/17.
- The NECER shows a total of 1 497 criminal dockets registered by the Environmental Management Inspectors

(EMIs), with a slight increase in the total of arrests made, from 939 in 2015/16, to 1 092 in 2016/17. The Report also indicates an increase in the number of convictions obtained, from 52 in 2015/16 period, to 76 in the 2016/17, a 46.1% increase.

- The total number of acquittals has increased from five in 2015/16, to 10 in 2016/17, an increase of 100%. There has been a general decrease in the number of plea and sentence agreements concluded, from 15 in 2014/15, to 13 in 2015/16, and 11 in 2016/17.
- A new court was opened by the DoJ&CD at Skukuza to combat rhinoceros poaching.
- According to the NECER, there were 588 reported incidents of illegal hunting of rhinoceros in a national park in the 2016/17 period. 1 028 rhinoceros were poached in 2017, a slight decline (26) from the 1 054 animals killed in 2016. This amounts to nearly three killed per day. In addition, poaching declined last year by just over 10%.
- According to the *Department of Environmental Affairs (DEA) Annual Performance Plan 2017/18*, over 70% of South Africa's surface has been intensely affected by a variety of soil erosion.
- The same Plan states that biodiversity or ecosystem services, estimated at R73 billion, contribute up to 7% of South Africa's GDP per annum. The sector has shown consistent growth of 6% per annum since 2012.



- South Africa adopted the *Paris Agreement* in November 2016 after the 21st Conference of Parties (COP21) to the *United Nations Framework Convention on Climate Change* (UNFCCC). The *Paris Agreement* recognises that climate change represents an urgent threat to human societies and the planet, requiring the widest possible cooperation by all countries and other stakeholders.
- According to the Climate Action Tracker (CAT), as at October 2017, South Africa comes close to meeting its 2030 target, although the CAT rates it as “highly insufficient.” While it has a strong renewable energy target for 2030, South Africa’s coal-fired generation, which supplies 93% of electricity, is expected to grow, with new coal plants either planned or under construction. The state-owned grid operator Eskom, which also owns a majority of the coal plants in South Africa, is stalling on signing power purchase agreements with renewables companies, delaying progress.
- In 2015, Cabinet approved South Africa’s Climate Change Mitigation System Framework. The *Draft Carbon Tax Bill* [BX-2015] will be introduced in two phases according to a briefing by National Treasury in February 2018 to the Finance Standing Committee.
- According to a Centre for Environmental Rights report entitled *Broken Promises: The Failure of the Highveld Priority Area*, 1 200 people on the Mpumalanga Highveld die from Eskom’s emissions every year. The report exposes the DEA’s failing air pollution governance system, particularly in Mpumalanga.
- The DMR announced in early 2017 that the State would be proceeding with shale-gas extraction - also known as fracking - in the Karoo. Fracking been opposed consistently by environmental activists and other critics for its negative

impact on the environment and water supply. In February 2018, the Treasure Karoo Action Group (TKAG) and civil rights group AfriForum challenged the State’s technical regulations on shale-gas fracking.

- According to the Department of Water and Sanitation (DWS), in total, R59 million has been spent on drought relief for farmers in the Western Cape over the 2016/17 year.
- In April 2017, the Western Cape High Court reviewed the State’s nuclear procurement programme in *Earthlife Africa-Johannesburg and 1 Other v the Minister of Energy and 5 Others*. The Court set aside the Minister of Energy’s determination and NERSA’s endorsement that 9.6GW of nuclear power is required in terms of section 34 of the *Electricity Regulation Act 4 of 2006*, which should be procured from Eskom. The Court held that the Minister and NERSA failed to have any public input on the matter before taking the decision, which is a crucial failure taking into account the far-reaching effects, such as the estimated R1 trillion expenditure. Although this case does not rule out nuclear power procurement in the future, it does provide clear guidance on consulting the public and having an open and transparent process relating to such a determination.
- In July 2017, a *Mail & Guardian* investigative report stated that 50 000 litres of sewage flow into South Africa’s rivers every second, largely due to ineffective or mismanaged water treatment plants. Of the 824 treatment plants, approximately 60 release clean water.
- South Africa’s nuclear plans seem to have been stalled following an announcement by then Deputy President Ramaphosa at the WEF in Davos in 2018 that nuclear energy is an unaffordable option.



2017 Grade D -

2018 Grade D =

THE CONSTITUTION provides a delicate balancing act between the protection of property rights on the one hand and ensuring more equitable access to property rights through land reform, on the other hand. However, the slow pace of land reform, coupled with poor implementation of land redistribution policies, means that many South Africans do not enjoy the right. Equally concerning is the increasing political rhetoric concerning the property clause, which threatens to undo the balancing nature of the property clause.

- South Africa has a ranking of 76/138 for the protection of property rights on the WEF's *GCR 2017 - 2018*, a significant drop from 29/138 in 2016-2017.
- The *Commission for Restitution of Land Rights Annual Report 2016/2017* stated that a total of 804 new land claims were settled against the target of 605 in the 2016/17 period. This was 199 more claims than the Commission's target.
- The *Private Security Industry Regulation Amendment Bill* [B27-2012], which will require foreign owners of security firms to sell 51% of their shares to South Africans, is still awaiting Presidential assent. The Bill was sent to the President in March 2014 and at date of publication of this report the Bill has still not been assented to.
- The *Protection of Investment Act 22 of 2015*, aims to provide protection of investors and their investments and it affirms the Republic's sovereign right to regulate investments in the public interest, however there are fears that it fails to give foreign property owners and investors adequate protection. It was signed into law on 13 December 2015. This, despite heavy criticism from foreign investors over fears that it fails to give foreign investments adequate levels of protection. At time of writing, the Act was yet to be put into effect by proclamation.
- The *Mineral and Petroleum Resources Development Amendment Bill* [B15-2013] was sent back to Parliament in January 2015 relating to constitutional reservations the President had regarding public participation on the Bill. The Bill was further deliberated in the National Assembly and was sent to the NCOP in November 2016 for concurrence. At time of writing the Bill was still being deliberated by the NCOP.
- The draft *Regulation of Land Holdings Bill* [BX-2017] was published by the Department of Rural Development and Land Reform (DRDLR) in March 2017 for public comment. It places a maximum ceiling of 12 000 hectares on agricultural land ownership and seeks to restrict foreigners to leases of between 30 and 50 years instead of ownership.
- The *Communal Property Association Amendment Bill* [B12-2017] was introduced into the National Assembly in April 2017. This Bill intends to allow communities to regulate the way land is distributed and used amongst themselves.
- The *Expropriation Bill* [B4D-2015] was passed in 2016 after much revision. The Bill has however, since been sent back to Parliament by the President in February 2017, due to inadequate public consultation. At the time of writing, the Bill is still before the National Assembly.
- The *Land Centre of Excellence Land Audit: A Transactions Approach*, released in November 2017 by Agricultural Development Solutions (in partnership with AgriSA) held that broader measures need to be considered when evaluating ownership share besides hectare land size alone.

Accordingly, the Report found that the ownership share of Previously Disadvantaged Individuals (PDIs) with reference to land value and land potential has grown significantly from 1994, at which time PDIs only had a 14.9% ownership share (with reference to land hectare size). In 2016, PDIs share in land value was 29.1% and 46.5% in land potential.

• The *Land Audit Report* released by the DRDLR in November 2017 states that black South Africans own the smallest percentage of the country's private land when compared to their white counterparts. Of the total comprising 37 031 283 hectares of farms and agricultural holdings by individual landowners, ownership is as follows:

- White - 26 663 144 hectares (72%)
- Coloured - 5 371 383 hectares (15%)
- Indian - 2 031 790 hectares (5%)
- African - 1 314 873 hectares (4%)
- Others - 1 271 562 hectares (3%)
- Co-owners - 425 537 hectares (1%)

• Furthermore, the *Land Audit Report* shows:

- Individual males own 26 202 689 hectares (72%) of the total farms and agricultural holdings owned by individual owners;
- Females at 4 871 013 hectares (13%)
- Male-female (jointly) own 3 970 315 hectares (11%)
- Co-owners 655 242 hectares (2%)
- Other 1 379 029 hectares (3%)
- South African individuals own 33 996 255 hectares (92%) of the total farms and agricultural holdings;
- Foreign individuals at 769 284 hectares (2%)
- Co-ownership at 933 728 hectares (2%)
- Other at 1 379 023 hectares (4%)

• In May 2017, more than 100 land claimants from George received R13 million from the DRDLR in what is to date, the largest community land claim in the Southern Cape. The 122 families made restitution claims for loss of tenancy rights, residential rights and agricultural rights after they were forced off their land in Lawaaikamp between 1950 and 1986.

• In August 2017, in *Jordaan and Others v City of Tshwane Metropolitan Municipality and Others*, the Constitutional Court held that municipalities can no longer pass on historical debt from municipal bills to new property owners.

• In December 2017, the governing party adopted a resolution to amend the Constitution to enable expropriation without compensation, with the proviso that a feasibility study be done to ensure that the decision does not affect food security.

• Further to this, in February 2018, the National Assembly adopted a resolution in terms of an Economic Freedom Fighters' (EFF) sponsored Motion, to amend section 25 of the Constitution to permit expropriation without compensation. The Constitutional Review Committee is currently seized with the matter and has been given until 31 August 2018 to provide feedback on proposals to effect the resolution.



2017 Grade **B -**

2018 Grade **B =**

STATS SA suggests that the great majority of South Africans live in formal housing, while there appears to be decrease in the growth rate of informal settlements.

- According to Stats SA's *General Household Survey (GHS) 2016*, released in May 2017, 13.5 % of South African households were living in state-subsidised dwellings, which increased from 5% in 2002.
- According to the *Department of Human Settlements (DHS) Annual Report 2016/2017* a total of 338 housing projects have been implemented in municipalities with mining towns to service mine employees.
- The DHS managed to make inroads with regard to title deeds that were backlogged, issuing 67 449 title deeds, over 60% of its set target.
- In March 2017, after a drawn-out battle with activists including Reclaim the City and *Ndifuna Ukwazi*, the Western Cape Provincial Cabinet decided to proceed with the R135 million sale of land in Sea Point to the Phyllis Jowell Day School in Camps Bay, following the conclusion of a public participation process. The NGOs had been at the forefront of campaigning for the land to be used for affordable housing in the inner city - particularly for workers who cannot afford to live close to their places of work.
- In May 2017, the SCA dismissed an application to appeal the Western Cape High Court judgment regarding the families who took the City of Cape Town to court in a bid to prevent eviction from their homes in South Road, Wynberg, for the

development of the MyCiti bus route without adequate consultation.

- In May 2017, the Constitutional Court in *Daniels v Scribante and Another* found that a domestic worker, a single mother of three children, was entitled to make improvements to her dwelling on her employer's farm in Stellenbosch. The *Extension of Security of Tenure Act 62 of 1997* affords an occupier the right to make improvements and the owner's consent cannot be a prerequisite when the occupier wants to raise the standards of the dwelling to a level fitting of human dignity.
- In June 2017, in *Occupiers of Erven 87 and 88 Berea v De Wet NO and Another*, the Constitutional Court held that a court must consider all relevant circumstances when dealing with a mass eviction, even where the occupiers have supposedly consented to the eviction where the eviction will lead to homelessness.
- In July 2017, the provincial DHS in Gauteng reached an agreement with the leaders of hostel dwellers to begin renovations to all hostels in the province.
- In July 2017, the Constitutional Court in *Baron and Others v Claytile (Pty) Limited and Another* found that the City of Cape Town was constitutionally bound to provide suitable alternative accommodation in an eviction matter. This obligation is not applicable to private citizens. The Court however, failed to establish what constitutes suitable alternative accommodation.



Healthcare, Food, Water and Social Security

(section 27)

2017 Grade C -

2018 Grade C =

HEALTHCARE

There has been progress reported in the combatting of HIV, which has resulted in improved quality of life for affected South Africans. While the plans for the implementation of the National Health Insurance (NHI) are at an advanced stage, there is still uncertainty as to its affordability, given shrinking State revenues.

- There has been progress with the implementation of the NHI, with limited pilot projects being rolled out across the country. The NHI is intended to allow access to equitable, quality healthcare for all South Africans.
- According to the DoH 2016/17 Annual Report, transgender, as well as other members of the LGBTQI community seeking bias-free health care, still face stigma and public humiliation by healthcare officials when going for care.
- The Cancer Association of South Africa (CANSA) says road tar workers, employees in synthetic chemical industries and beauty salons, and painters are some of the occupations at higher risk of developing cancer. According to the World Health Organisation (WHO), 19% of all cancers are attributable to the environment.
- In the 2016/17 financial year, a national TB treatment success rate of 85.6% and TB death rate of 4.5% was achieved, against the targets of 84% and 6% respectively.

LIFE EXPECTANCY

- According to the Stats SA Mid-year Population Estimates 2017, life expectancy at birth for 2017 is estimated at 61.2 years for males and 66.7 years for females.
- According to the same Report, the IMR for 2017 is estimated at 32.8 per 1 000 live births.

• According to the Stats SA SADHS 2016, the poor immunisation coverage of children is of great concern. Only 61% of children age 12 to 23 months received all basic vaccinations and only 53% received all age-appropriate vaccinations. Among children 24 to 35 months, only 42% had received all the age-appropriate vaccinations.

• The 2015/16 District Health Barometer (DHB) released in December 2017, by Health Systems Trust, shows the country's public health system has made strides in reducing infant mortality, increasing immunisation in children under one, and increasing cervical screening coverage.

HIV/AIDS

• According to the Mid-year Population Estimates 2017, the total number of people living with HIV in the country increased from an estimated 7.03 million in 2016, to approximately 7.06 million in 2017, approximately 12.6% among the overall South African population.

• According to the above Report, regarding adults aged 15 to 49 years, an estimated 18% of the population is HIV-positive. The United Nations Development Programme (UNDP) HIV, Health and Development 2016 - 2017 Annual Report, states that South Africa has the highest number of people living with HIV in the world, with half of all new HIV infections in the country concentrated in 19 municipalities.

• According to the Stats SA SADHS 2016, South Africans are aware of HIV and AIDS testing and in this regard, 93% of those surveyed are aware of this medical condition. Although 81% of the overall group have tested for HIV and AIDS, in the age group 15 to 24, 31% have never tested for HIV and AIDS.

• According to the DoH 2016/17 Annual Report, since



the HIV Counselling and Testing (HCT) Campaign was introduced in 2010, over 44 million people have been tested. A total of 14 233 123 people were tested for HIV during the 2016/17 financial year, exceeding the annual target of 10 million.

- The DoH states that voluntary medical male circumcision (VMMC) is one of their combination HIV prevention interventions. During 2016/17, a total of 491 859 VMMCs were conducted, this included VMMC data obtained from partner organisations.
- According to the DoH, at the end of March 2017, the total number of clients remaining on antiretroviral therapy (ART) was 3 831 730. The Department revised the HIV guidelines to align with the WHO HIV Guidelines.
- According to the *DoH 2016/17 Annual Report*, South Africa has surpassed the annual target of 1.4% for the prevention of mother-to-child transmission (PMTCT) of HIV.
- Further improvements were seen in the PMTCT of HIV, with more than 90% of HIV-positive women initiated on ART during the antenatal period. The infant polymerase chain reaction (PCR) test positivity rate stands at 1.3%; the value has improved from 1.5% reported in the previous financial year.
- In June 2017, the South African National Aids Council launched the world's first LGBTI HIV Plan in Durban at the 8th South African Aids Conference. Its goal is to provide guidance to reverse the burden of disease from HIV, STIs and TB, and to promote a rights and evidence-based environment for the country's LGBTI community.

HEALTH PROFESSIONALS

- The DoH revealed that it cannot afford to fill doctor and nursing staff vacancies on the basis of a R3.2-billion shortfall for the 2017/18 financial year.
- In June 2017, in response to the complaint *Dr Imran Keeka, DA, MPL vs. Addington Hospital and 3 Others KwaZulu Natal Complaint File Ref: KZ/1516/0451*, the SAHRC released an investigative report in which it found that the Department of Health in KwaZulu-Natal had violated the rights of cancer patients to health, life and human dignity because of the lack of oncologists and functional equipment to screen,

diagnose and treat cancer patients. The Report states that cancer patients at government facilities in KwaZulu-Natal have to wait at least five months before they are seen by an oncologist. Furthermore, if cancer radiotherapy is the recommended course of treatment, patients admitted to a KZN DoH hospital will have to wait a further eight months - meaning that it will be 13 months from diagnosis before a patient receives cancer radiotherapy. At the time of writing, no timelines had been made available as to the rectification of this problem.

- Gauteng's DoH has had more than R13.8 billion in medico-legal claims lodged against it since March 2016, more than 70% due to maternal and neonatal health problems.

REPRODUCTIVE HEALTH

- An April 2017 report entitled *The costs and cost effectiveness of providing first-trimester, medical and surgical safe abortion services in KwaZulu-Natal Province, South Africa*, shows South African women's experiences with inefficient abortion service delivery and proves increasing access to high quality medication abortion services will not increase costs for the State. The study indicated that medical abortion with a combined regimen of abortion-inducing medication would not result in increased costs to the public health services.
- Published in August 2017, a report entitled *Accessing medical and surgical first-trimester abortion services: Women's experiences and costs from an operations research study in KwaZulu-Natal Province, South Africa* examined the experiences of women who accessed either first-trimester manual vacuum aspiration or medication abortion in public health facilities in KwaZulu-Natal.
- In August 2017, the *National Female Condom Evaluation Study*, conducted by MatCH Research Unit, provides that South Africa is one of the world's largest users of female condoms. 80% of the women believe that the female condom "puts them in charge" of their own sexual health. On 4 August 2017, Minister Angie Motshekga gazetted the DBE's finalised *National Policy on HIV, STIs and TB for Learners*. Learners will have a right to access sexual and reproductive health services without parents' consent.



FOOD

South Africa is recognised as one of the most food secure countries in Africa. However, the high levels of inequality mean that many particularly vulnerable South Africans experience food poverty. The severe drought in 2016/2017 affected the agricultural sector, and this will have negative implications for food security in future.

- According to the DAFF, about 14.1 million (26%) people in South Africa are still predisposed to hunger and malnutrition, and have severely inadequate access to food, thereby increasing levels of absolute poverty every year.
- According to the 2017 Stats SA Report, *Poverty Trends in South Africa: An examination of absolute poverty between 2006 & 2015*, one in seven South Africans (13.8 million people) experienced extreme food poverty or survived on R441 or less per person per month in 2015.
- More than five million children go hungry in South Africa according to the annual *South African Child Gauge 2017*, released in November 2017.
- According to the Stats SA *GHS 2016*, the percentage of households that experienced hunger decreased from 23.8% to 11.8%, while the percentage of individuals who experienced hunger decreased from 29.3% to 13.4% over



the same period.

- The outbreak of listeriosis (food poisoning caused by eating contaminated foods) that South Africa is experiencing is the largest outbreak ever reported worldwide, according to the WHO. The outbreak was declared on 5 December 2017, and at the time of writing, out of 134 recorded patients, 61 had died.
- In January 2018, the DAFF warned that South Africa's poultry industry, which includes domestic fowl such as chicken, geese and ducks, could face another wave of outbreaks of avian influenza in winter 2018. Avian influenza (H5N8) - or bird flu - is a virus that can cause high mortality in birds.
- According to the DAFF, during 2016/17 the country experienced a fall armyworm (FAW) outbreak. As a new pest to South Africa, no pesticide was previously registered to be used against it. A process of emergency registration was therefore initiated, where suppliers were encouraged to apply for emergency registration of agricultural chemicals to be used on maize and other host plants against the FAW.
- According to the *Department of Agriculture, Forestry and Fisheries (DAFF) Annual Report 2016 - 2017*, South Africa is recovering from a severe drought - the worst since 1904 - that has almost crippled the country's agricultural sector.
- Vegetable production decreased by 373 125 tons, to a total of five million tons. Gross income increased by R10.6 billion, to a total of R23.5 billion. Red meat production (slaughtering) increased by 54 967 tons, worth R3.8 billion.

WATER

The nation is experiencing a drought, with the provinces of Western Cape, Northern Cape and Eastern Cape being declared disaster zones requiring urgent national government intervention. It is anticipated that the water scarcity will affect South Africa's food security.

- South Africa is experiencing a drought, with many dams operating at critical level. As at the time of writing, the provincial dam levels are 61% in Eastern Cape, Free State 65.4%, Gauteng 93.5%, KwaZulu-Natal 54.2%, Limpopo 65%, Mpumalanga 77%, North West 67%, Western Cape 22.9%, and 76% in the Northern Cape.

- At the time of reporting, the Western Cape faced a severe drought. When Cape Town dam levels drop to 13.5%, the City will have to shut down its reticulation system in residential areas. The City's estimated hypothetical date for this shut down - based on daily water consumption averages - has been labeled 'Day Zero'. Each person will then be allocated 25L of water daily, to be collected at communal water points. Harsh water restrictions - 50L per person, per day - have accordingly been implemented in an attempt to avoid Day Zero and the possible health hazards and accompanying socio-economic challenges.
- According to the *Department of Water and Sanitation (DWS) Annual Report 2016/17*, South Africa has a mean annual rainfall of approximately 500mm, as compared to the world's average of 860mm.
- According to the above Report, there are more than 4 395 registered dams in South Africa, including 350 dams belonging to the DWS, and a number of large-scale inter-basin water transfer schemes. Water services infrastructure covers more than 35 000km of bulk pipelines and 200 000km of reticulation systems that are managed by 152 water service authorities and providers.
- In the 2016/17 period, the DWS implemented the resource-poor and rainwater harvesting programmes, countrywide. A total of 1 455 resource-poor farmers were provided with financial subsidies for *inter alia* operations and maintenance of waterworks used for irrigation. A further 807 water harvesting tanks were installed for household productive uses, such as livestock watering and food production.

SANITATION

- Through the implementation of the bucket eradication and the rural household infrastructure programmes, the DWS replaced 19 424 sanitation systems within households in informal settlements and rural areas.
- Stats SA's *GHS 2016* estimates that 88.8% of South African households had access to piped water, compared to 81.2% in 1996. Households in the Western Cape are most likely to have access to piped water, while those in Limpopo and the Eastern Cape are the least likely to have access to piped water.
- The *GHS 2016* further revealed that, nationally, 63% of households rated the quality of water-related services they

received as 'good'. Satisfaction has, however, been eroding steadily since 2005, when 76.4% of users rated the services as good.

- A further 26.8% accessed water on site, while 13.3% relied on communal taps and 2.4% relied on neighbours' taps. Although generally households' access to water is improving, 3.7% of households still had to fetch water from rivers, streams, stagnant water pools and dams, wells and springs in 2016. This is, however, much lower than the 9.5% of households that had to access water from these sources in 2002.

- Nationally, the percentage of households with access to improved sanitation increased from 62.3% in 2002, to 80.9% in 2016. Most households in the Western Cape (94.3%) and Gauteng (90.7%) had access to adequate sanitation, while about half those in Limpopo (57.1%) and 67.4% in Mpumalanga had adequate access. The majority of households in the City of Johannesburg (95.5%) and Nelson Mandela Bay (92.8%) had access to improved sanitation facilities, while households in the City of Tshwane (82.9%) and eThekweni (83%) were the least likely to have access to improved sanitation. Nationally, the percentage of households without sanitation, or who used bucket toilets, decreased from 12.3% to 4.2% between 2002 and 2016.

SOCIAL SECURITY

Over 17 million social grants are paid out to South Africans each month. At the time of writing, the State was yet to announce plans regarding the finalisation of how social grant recipients would be paid come 1 April 2018. Despite supervision by the Constitutional Court and further interventions by Parliament, SASSA is plagued by mismanagement, which threatens the right to social security.

- The biggest contributor to poverty alleviation over the past decade was the expansion of social grants. According to the *SASSA Annual Report 2016/17*, grants increased from 10.9 million in 2006 (when SASSA was established) to 17.2 million in 2017.

- SASSA was allocated R6.9 billion to carry out its mandate over the 2016/17 period.

- According to the *SASSA Annual Report 2016/17*, the Child

Support Grant has the highest number of grants, at almost 12.1 million, followed by the Old Age Grant with 3.3 million.

- SASSA has 46 district offices, 389 local and 1 163 service offices, and more than 9 900 pay-points across the nine regions. Furthermore, mobile offices (trucks) are used to provide services to areas where there are no SASSA offices, thus alleviating the plight of citizens who would otherwise have to travel long distances.

- At the end of the financial year, SASSA paid 17 200 525 social grants. The number of social grants in payment grew by 1.23%, or 208 891 from the previous financial year.

- In addition to the social grants, 461 750 awards of Social Relief of Distress were made in 2016/17, to individuals and households to rescue them from destitution, undue hardship and disasters.

- According to the *SASSA Annual Report 2016/17*, more than one-third of individuals in the Eastern Cape (40.3%), Limpopo (38.2%), Northern Cape (36.9%) and KwaZulu-Natal (36.8%) were grant beneficiaries, compared to 17.5% in Gauteng and 22% in Western Cape.

- More than half of households in the Northern Cape (59.9%), Eastern Cape (59.2%), Limpopo (57.6%), KwaZulu-Natal (53.1%), Free State (52.4%) and Mpumalanga (51.3%) received at least one form of grant, compared to 30.8% of households in Gauteng and 37% of households in Western Cape.

- More than one-third of black African individuals (33.5%) received a social grant, compared to 27% of Coloured individuals, and 12% of Indian/Asian individuals. By comparison, only 6.3% of the white population received social grants.

- The contract for payment of social grants with Cash Paymaster Services (CPS) signed in 2012, expired on 31 March 2017. SASSA was unable to take over the social grant payment function from CPS due to the complexities and delays in insourcing of technical expertise to guide the implementation process. The intervention by the Constitutional Court in March 2017 saw the contract with CPS extended for a further 12 months, on generally, the same terms and conditions. SASSA accepted the Constitutional Court order and at time of writing, was in talks with the South African Post Office (SAPO) for the latter to take over the payment of social grants as of 1 April 2018.



2017 Grade C =

2018 Grade C =

SOUTH AFRICA'S children remain particularly vulnerable to crime, despite the Constitution's recognition of their vulnerability and subsequent inclusion of safeguards against rights' infringements. Almost 12.1 million Child Support Grants from the State are disbursed and this is often the only barrier between absolute poverty and relative dignity.

- According to the *South African Child Gauge 2017*, there were 18.6 million children in South Africa in 2015. 17% of children are orphans who have lost either their mother, father or both parents; 21% of children do not live with either of their biological parents; and 0.3% of children live in child-only households.
- The *SADHS 2016* reveals that 40% of children grow up without a father, while one in five children do not live with their parents.
- The *SASSA Annual Report 2016/17* demonstrated that SASSA was highly effective in targeting the poor for social assistance, with a coverage rate of 82.48% - rated among the best coverage in the world. The estimated 1.83 million children excluded from support have been SASSA's priority in the period under review.
- According to the Department of Planning, Monitoring and Evaluation (DPME), 77.7% of children now live in a formal housing environment. In addition, 69% of children have access to clean drinking water on site.
- The *KidsRights Index* is an annual global index, which ranks how countries adhere to and are equipped to improve children's rights. It comprises a ranking for all UN Member States that have ratified the *UN Convention on the Rights of the Child* and for which sufficient data is available (165 countries). In 2017, South Africa ranked 84 on the Index, up from 109 in the previous year - a significant rise. The Index considers five categories, namely: the right to life, the right to health, the right to education, the right to protection, as well as an enabling environment for child rights.
- According to *Stats SA Mid-year Population Estimates 2017*, the IMR has declined from an estimated 48.1 infant deaths per 1 000 live births in 2002, to 32.8 infant deaths per 1 000 live births in 2017.

CRIMES AGAINST CHILDREN

- According to the *SAPS Annual Report 2016/2017*, 44 252 crimes against children were reported over the concerned financial year, up from 40 689 in 2015/16.
- The *South African Child Gauge 2017* states that one in three children are victims of sexual violence and physical abuse before they reach the age of 18. Violence against children cost South Africa an estimated R239 billion - or 6% of the gross domestic product - in 2015.
- According to *SAPS Annual Report 2016/2017* the number of children in remand detention decreased from a 187 in the 2015/16 year, to 110 at 31 March 2017 and constituted 0.25% of the remand detainee population.
- The *Children's Amendment Act 17* of 2016 which was assented to in January 2017 but has yet to commence, places additional protection measures for children in ensuring early intervention to prevent abuse.

NUTRITION

- More than five million children go hungry in South Africa

according to the *South African Child Gauge 2017*. The Report also says that about 12% of children live below the international ultra-poverty line, or less than R17.50 a day. A further 27% of children under five are stunted - a sign of chronic malnutrition that compromises children's health, education and employment prospects.

- According to the SA-UK Bilateral Research Chair in Social Protection in Food Security (SARChI) at least a fifth of South Africa's children are chronically malnourished. Even though almost two-thirds of minors receive a Child Support Grant, there has been only a negligible drop in the prevalence of children with stunted growth since 1993.
- According to the *SADHS 2016*, national data on the nutritional status of children has been scarce. Underweight and wasting accounted for 6% and 3% of children, respectively. However, stunting clearly remains a national concern with 27% of children 0 to 59 months falling below minus standard deviations of the median of the reference population. The survey also reveals that only 23% of toddlers age 6 to 23 months are fed a diet considered adequate for infants and young children. Given the long-term health and development consequences of poor nutrition in early childhood, further investigation into the causes and opportunities for intervention is needed.



2017 Grade E = 2018 Grade E -

THE RIGHT to basic education is entrenched, while the right to further education and training is qualified. Early childhood development (ECD) does not appear to receive the same attention as basic and further education and training. 2016/2017 saw less protests over the fulfilment of the right to further education and training.

- The WEF's *GCR 2017 - 2018* ranks the quality of SA's primary education system at 116/137. In the 2016-17 Report, South Africa was ranked 126/138.
- Higher education and training in South Africa is ranked at 114/137 by the same Report, down from 77/138 the previous year. Mathematics and science education are ranked at 128/138. Last year South Africa's mathematics and science education were ranked 138/138.
- According to the *South African Child Gauge 2017*, only 45% of children who enter Grade 1 pass Grade 12; 27% of Grade 6 learners are illiterate (unable to read or comprehend a simple sentence). Only 1 in 8 youth attend university, and of this group, 40% drop out without completing their degree.
- According to the IRR *Fast Facts Wathint' Abafazi, wathint' Imbokodo - August 2017*, women account for 51.35% of the population aged 20 and older who have completed Grade 12, and 52.9% of the population aged 20 and older who have completed post-school education.
- The SAHRC is investigating the South African Democratic Teachers Union (SADTU) for its role in denying children the right to basic education, following the 'jobs-for cash-report' released by a Ministerial task team in 2016.

BASIC EDUCATION

- According to the National Treasury's *Budget Review 2017*, spending in the Basic Education sector is expected to increase from R 216.9 billion in 2016/17, to R268.8 billion in 2019/20, accounting for 17.5% government expenditure.
- The *Department of Basic Education (DBE) Annual Report 2016/2017* shows that:
 - The Class of 2016 recorded the highest enrolment for the National Senior Certificate (NSC) yet.
 - The total number of candidates who registered for the 2016 NSC Examinations was 828 020, up from 799 306 in 2015.
 - The National School Nutrition Programme reached an average of 9 045 049 learners, providing daily meals to 20 300 primary, secondary and special schools nationally.



- A total of 179 schools have been delivered through the Accelerated Schools Infrastructure Development Initiative (ASIDI) since its inception, but it appears that only 16 were delivered during the 2016/17 review period (this relates to inappropriate schools).
- Furthermore, an amount of R142 million was converted from the School Infrastructure Backlogs Grant (SIBG) for the implementation of ASIDI schools currently implemented in the Western Cape. National Treasury also approved an amount of R177 098 million for the repair and rehabilitation of protest-damaged schools in Vuwani, Limpopo.
- On 4 January 2018, the Minister of Basic Education announced the matric results of the 2017 class. The 2017 matric class accordingly achieved a pass rate of 75.1%, up from 72.5% in 2016. The Free State was the top-achieving province, with a pass rate of 86%, followed by Gauteng with a pass rate of 85.1%. The Eastern Cape, was the lowest-scoring province but their pass rate improved from 59.3% in 2016, to 65%. However, concerns were raised about the true reflection of the results as there was a 22% decline in the number of pupils who wrote matric in the Eastern Cape from 2016. Furthermore, only 42.3% of the pupils in the Eastern Cape received 30% and above in mathematics.
- According to Gauteng and Western Cape Provincial DBEs, at the time of writing, more than 40 000 Grade 1 learners in the country had not been placed for the 2018 academic year.
- According to the *Progress in International Reading Literacy Study (PIRLS) 2016: South African Highlights Report*, by the University of Pretoria (UP), South Africa was the lowest performing country out of 50 countries in the PIRLS 2016 study, which assess 4th Year reading comprehension and literacy internationally. Furthermore, according to the study, 78% of South African Grade 4 learners do not reach the international benchmark and do not have basic reading skills by the end of Grade 4.
- According to the *South African Child Gauge 2017*, many children in South Africa have to travel long distances to school. One in seven children (14%) live far from their primary school and this increases to nearly one in five children (20%) in secondary school. Despite these barriers, South Africa has made significant strides in improving access to education, with a gross attendance rate of 97% in 2015.

Access is also increasing in the pre-school years, with 92% of five to six-year-olds attending some kind of educational institution or care facility. However, this does not necessarily translate into improved educational outcomes or progress through school. In 2015, 87% of 10 to 11-year-olds had completed Grade 3, and only 70% of 16 to 17-year-olds had completed Grade 9.

- In August 2017, the Western Cape DBE was reprimanded for the manner it dealt with the proposed eviction of a primary school on privately-owned land in Oudsthoorn (Grootkraal), and failure to consult with the parents in terms of a 2011 order in the matter of *Jacobus du Plessis N.O. and Others v Members of the Executive Council for Education Western Cape and Others*. The eviction application was postponed in order for all parties to comply with the 2011 order.
- In September 2017, the Northern Cape Department of Education confirmed that teachers at Bothithong High School implicated in the alleged impregnation of 30 girls will be placed on precautionary suspension. This, following allegations that the pupils were impregnated by teachers after being given stipends for unprotected sex. Investigations are continuing, and some teachers have been arrested.
- In October 2017, the Portfolio Committee on Basic Education met with the DBE for a briefing on the Department's annual performance for 2016/17. The Committee noted serious problems with contractors and Implementing Agencies, especially in the Free State. At the same meeting, concerns were raised about the cost of R40 million to build a single school. The same amount could have been used to build five or more schools. Additional concerns were raised about the finding that only 22% of ECD educators had NQF 6 qualifications.
- In October 2017, the DBE released the draft *Basic Education Laws Amendment Bill [X-2017]*, for public comment. The Bill proposes to amend the *South African Schools Act 84 of 1996* and the *Employment of Educators Act 76 of 1998*, to accordingly align it with developments in the education field. Serious concerns are raised by many about the undue limitation of the Bill on the decision-making powers of SGBs, relating to the determination of a public school's admission and language policy and their power relating to the appointment of the school's deputy principal and principal. Concerns remain about the proposal for stricter penalties on parents who refuse to send their children to schools.

HIGHER EDUCATION AND TRAINING

- In May 2017, there was outrage at the UP after male students waved posters bearing offensive sexist slogans at a 'Serrie' competition (a sing and dance competition hosted by the University residences). This was strongly condemned by the Department of Higher Education and Training (DHET). According to later reports, students implicated in the incident were to face disciplinary hearings and all forms of cultural practices at residences that fostered and promoted patriarchal practices were outlawed.
- In August 2017, an accidental R14 million pay-out to a Walter Sisulu University (WSU) student, by the National Student Financial Aid Scheme (NSFAS) was discovered. According to reports, the student allegedly spent more than R800 000. Parliament's Portfolio Committee on Higher Education and Training called on the DHET in November 2017, to conduct a forensic investigation into the matter. Furthermore, Intellimali, the company tasked by the University to distribute NSFAS funding, opened a case of theft against the student.
- In August 2017, various protests against gender-based violence were held at campuses across the country and

in specific, a silent protest was held at the University of Cape Town (UCT) in solidarity with sexual assault and rape victims. In October 2017, students protested again at three public universities. At the Cape Peninsula University of Technology (CPUT) a shuttle was, according to reports, set alight and students occupied the upper campus at UCT. At the University of the Free State (UFS), students delivered a memorandum to UFS management and there were urgent calls to the President for the release of the *Report of Commission of Inquiry into the Feasibility of Making High Education and Training Fee-free in South Africa* (Fees Commission Report).

• In November 2017, the Fees Commission Report was released by the Presidency. The Commission of Inquiry was chaired by Judge Jonathan Arthur Heher, and was established on 14 January 2016. The Commission made the following important recommendations:

- It is not financially feasible for the State to provide totally free tertiary higher education; the report also raised concerns that it may not be in the best interest of the expansion of South Africa's higher education to do so;
- South Africa needs to expand and improve the Technical and Vocational Education and Training (TVET) sector to benefit the economy and TVET education should be free for all and stipends should be made available;
- An amount of R50 billion should, subject to necessary legislative amendments, be transferred from the surplus in the Unemployment Insurance Fund (UIF) and ring-fenced for infrastructure development of the TVET colleges;
- A cost-sharing model for funding of students attending public universities should be established in the form of a contingent loan scheme (without an opt-out provision) and certain non-negotiable principles should be part of the scheme.
- In December 2017, former President Zuma - despite the Fees Commission Report findings - released a statement, effectively introducing a fully subsidised free higher education and training for poor and working class students through government grants from 2018. This is to be effected by the amendment of the definition of "poor and working class student" to include "currently enrolled TVET college or university students from South African households with a combined annual income of up to R350 000". The former President also increased subsidies to universities from 0.68% to 1% of the GDP over the next five years, as recommended in terms of the Report. There will also be no tuition fee increment for students from households earning up to R600 000 a year during the 2018 academic year.



Language and Culture

(section 30)

2017 Grade D =

2018 Grade D -

THE STATE is failing to promote multilingualism, with English becoming the *de facto* language of communication by the State. The use of Afrikaans as a medium of instruction at institutions of higher learning continues to diminish.

- The use of Afrikaans as a primary medium of instruction at the University of Stellenbosch (US) and the UFS, and factors influencing the decision to abandon or diminish the use of Afrikaans, came under judicial scrutiny in 2017 and posed a serious threat to the use of minority languages.
- In June 2017, the DBE stated that the draft Incremental Introduction of African Languages (IIAL) policy was piloted in Grade 1 and 2 in 264 schools in 2014, and this number grew to 973 schools in 2017 across all provinces. This accounted for 27% of public schools targeted to implement the IIAL programme. The DBE aims to roll out this policy in the remaining schools from Grade 1 in 2018.
- In July 2017, the Constitutional Review Committee of Parliament recommended that South African Sign Language (SASL) be recognised as an official language in the Constitution and that sections 6(1) and 5(a) of the Constitution be amended accordingly.
- In October 2017, the Western Cape High Court in *Gelyke Kanse and Others v the Chairman of the Senate of the Stellenbosch University and Others*, reviewed the US's 2016 language policy, which was challenged on the basis that Afrikaans students' section 29(2) rights were not being realised. The challenge was dismissed on the basis that the policy has not yet been implemented. This means that the previous policy is still in place.
- On 8 November 2017, in the judgment of *Solidariteit Helpende Hand NPC and Another v Minister of Basic Education and Another*, the North Gauteng High Court upheld the constitutionality of the DBE's Funza Lushaka Bursary Programme, which aims to increase the number of indigenous language teachers in rural areas.
- In the judgment of *Afriforum and Another v University*

of the Free State, delivered on 29 December 2017, the Constitutional Court dismissed Afriforum's leave to appeal the SCA judgment in the case between the *University of the Free State v Afriforum and Another*. This means that Afrikaans will no longer be a primary language of instruction in all but two faculties at the University.

PANSALB

- According to the *Pan South African Language Board (PanSALB) 2016-17 Annual Report*, they received 26 complaints regarding language rights violations, five of which have been resolved. The other 21, according to the Report, are still being investigated. The Auditor-General's report on the annual financial statements noted that PanSALB did not take practical steps to prevent irregular expenditure.
- The *PanSALB 2016-17 Annual Report* indicated that the institution invited all national government departments to account for their observance of the prescripts of the *Use of Official Languages Act 12 of 2012*. PanSALB concluded that the government departments have achieved "consolidated progress reports on language policy construction and implementation in public institutions".
- In March 2017, the Heads of the Courts released a notice to all attorneys that English will be the only official language of record for all courts in the Republic. Prior to this decision Afrikaans and English were the official languages of court records. According to PanSALB, the directives contravene the *Use of Official Languages Act 12 of 2012* and the DoJ&CD's 2016 language policy. In September 2017, the Chief Justice clarified the decision by stating that it does not prohibit mother tongue use in Courts.
- In the judgment of *Madiba and Others v Minister of Arts and Culture and Others*, delivered on 17 August 2017, the extent of PanSALB's mandate to promote and develop official languages was questioned, to the extent that its ability to function properly is hampered.



Cultural, Religious and Linguistic Communities

(section 31)

2017 Grade B =

2018 Grade B =

SOUTH AFRICA'S diversity of cultural, religious and linguistic communities are largely enjoyed, although there are growing concerns about the State's will to protect the cultural rights of minorities.

- The *Traditional and Khoi-San Leadership Bill* [B23-2015], introduced in the National Assembly in September 2015, was passed by the National Assembly on 7 November 2017 and has been sent to the NCOP for concurrence. The Bill provides for the recognition of traditional and Khoi-San communities, and includes the establishment of kingship and queenship councils.
- In June 2017, the Department of Cooperative Governance and Traditional Affairs (COGTA) published the *Draft Customary Initiation Bill* [BX-2017] for public comment, which aims to provide norms and standards for customary initiation practices. The Bill also provides for the establishment of a National Initiation Oversight Committee and Provincial Coordinate Committees.
- In September 2017, a class action suit to have Muslim marriages declared legally valid in South Africa was heard in the Western Cape High Court. The Women's Legal Centre (WLC) launched the application in the public interest, seeking relief aimed at providing women in Muslim marriages, and the children born of such marriages, with legal protections, primarily upon the dissolution of such marriages. The relief was sought due to the continued failure on the part of the State to fulfil the obligations imposed on it by the Constitution to recognise Muslim marriages as valid marriages for all

purposes in South Africa, and to regulate the consequences of such recognition. At the time of publication, judgment was reserved.

- In November 2017, the CRL Rights Commission released their *Report on some challenges that lead to deaths and injuries at initiation schools in South Africa*, which emphasised that the high number of hospital admissions, deaths, penile amputations and related incidents over the last few years could not be ignored. It noted that in 2014 alone there were 64 deaths nationally. Recommendations in the Report include the establishment of a Traditional Initiation Leadership structure to oversee initiation schools, that practice guidelines be developed to specify what may be done at an initiation school, and traditional surgeons and nurses be trained, registered and accredited. Following the release of the aforementioned Report, the CRL Rights Commission also ordered the suspension of all initiation-related activities in Gauteng until December 2018. However, in December 2017, there were further reports of at least 16 young men who died in Eastern Cape initiation schools over the summer initiation season.
- On 30 November 2017, the Constitutional Court confirmed the unconstitutionality of section 7(1) of the *Recognition of Customary Marriages Act* 120 of 1998 in the matter of *Ramuhovi and Another v the President of the Republic of South Africa*. The Court held that section 7(1) of the Act, which provides for proprietary consequences for customary marriages, unfairly discriminates against women in polygamous customary marriages entered into before the Act.



2016 Grade D -

2017 Grade D =

ACCESS TO information is a right that is fundamental to the health of South Africa's democracy. Access to information is primarily regulated through the *Promotion of Access to Information Act 2 of 2000* (PAIA). However, many organs of State, as well as government departments, fail to abide by requests for information and this hinders the extent to which the right is enjoyed.

- According to the Freedom House *Freedom on the Net 2017* report, South Africa is considered "free" with regard to internet freedom status, with a score of 25 (0 being most free, 100 least free). There has been no change from the previous year. The Report states there is a diverse and vibrant online sphere, with a culture of free expression. Freedom House also says that internet freedom in South Africa remains free and open, with access to the internet available to over half the country's population.

- The *Freedom on the Net 2017* Report indicates that while the South African government has not proactively restricted access to information and communications technologies (ICTs) or online content, officials have increasingly expressed apprehension over potential threats posed by ICT advancement, reflected in the country's July 2016 vote against the UN Resolution aimed at "the Promotion, Protection and Enjoyment of Human Rights on the Internet." The vote led civil society to worry that South Africa may seek to follow the example of internet governance set by other countries that voted against the resolution, including China, Russia and Saudi Arabia, all of which have a record of repression against internet rights.

- According to the *Freedom on the Net 2017* report, during the period under review there were no reported incidences of legal, administrative, or other means used to force the deletion of content from the internet in a way that contravenes international norms for free speech or access to information. The Report does however, express concern

that while both English and Afrikaans-language content is well represented online, nine of South Africa's 11 official languages are underrepresented, including on government websites.

- The end of 2017 marks four full years since the *Protection of State Information Bill* [B6-2010], also known as the Secrecy Bill, was passed by the National Assembly, but has not yet been assented to. The Secrecy Bill could prevent the free flow of information and hide corruption at certain levels within government. The public has a right to have access to certain information in line with the spirit of the constitutional principles of openness and transparency. The expectation of protection of the right to privacy in the public domain is not as high as that of the personal or private arena.

- The Department of Communications (DOC) accelerated the implementation of the digital migration programme to provide South Africans with new platforms and content, as well as to free up much-needed radio frequency spectrum for high-speed broadband and internet networks. The 2016/17 financial year saw the commencement of extensive distribution and installation of Digital Terrestrial TV (DTT) set-top boxes (STBs) and related devices. In total, 136 364 registrations of qualifying household have been recorded across the country. Of the total registrations recorded, 38 520 installations were completed. A number of digital migration awareness campaigns were coordinated in the provinces. This enhances the access to information for South Africans who rely on these sources for day-to-day information. December 2018 is the latest deadline for completing South Africa's migration from analogue to DTT. This is three-and-a-half years later than the target originally set in 2007, by the International Telecommunication Union (ITU).

- The Office of the Information Regulator has been established. The Chairperson and Commissioners of the Regulator were appointed during the 2016/17 financial year, in line with chapter 5 of the Act. This Office is entrusted with the monitoring and enforcement of compliance by public and private bodies with provisions of the *Promotion of Access to Information Act 2 of 2000* (PAIA) and the *Protection of Personal Information Act 4 of 2013* (POPI).

- In June 2017, the Board of the World Association of Newspapers and News Publishers (WAN-IFRA) called on the South African government to ensure an environment that better protects media freedom and the independence of journalists, notably in the face of the *Cybercrimes and Cybersecurity Bill* [B6-2017], which they say is "an assault on the right to digital privacy".

- According to the South African History Archive (SAHA) Freedom of Information Programme (FOIP), in the year under review, there were 1 155 requests for information to various departments of State. Only 183 were granted in full, with 144 granted in part. A further 497 were deemed to have been refused after no response was forthcoming.

- On 31 July 2017 the President assented to the *Protected Disclosures Amendment Act 5 of 2017*. The Act is intended to contribute to the fight against fraud, corruption and other improprieties and gives protection to whistle-blowers who make honest disclosures about wrong-doing in the workplace. It furthermore criminalises the making of deliberate false disclosures which result in harm to a person or institution.



Just Administrative Action

(section 33)

2017 Grade C =

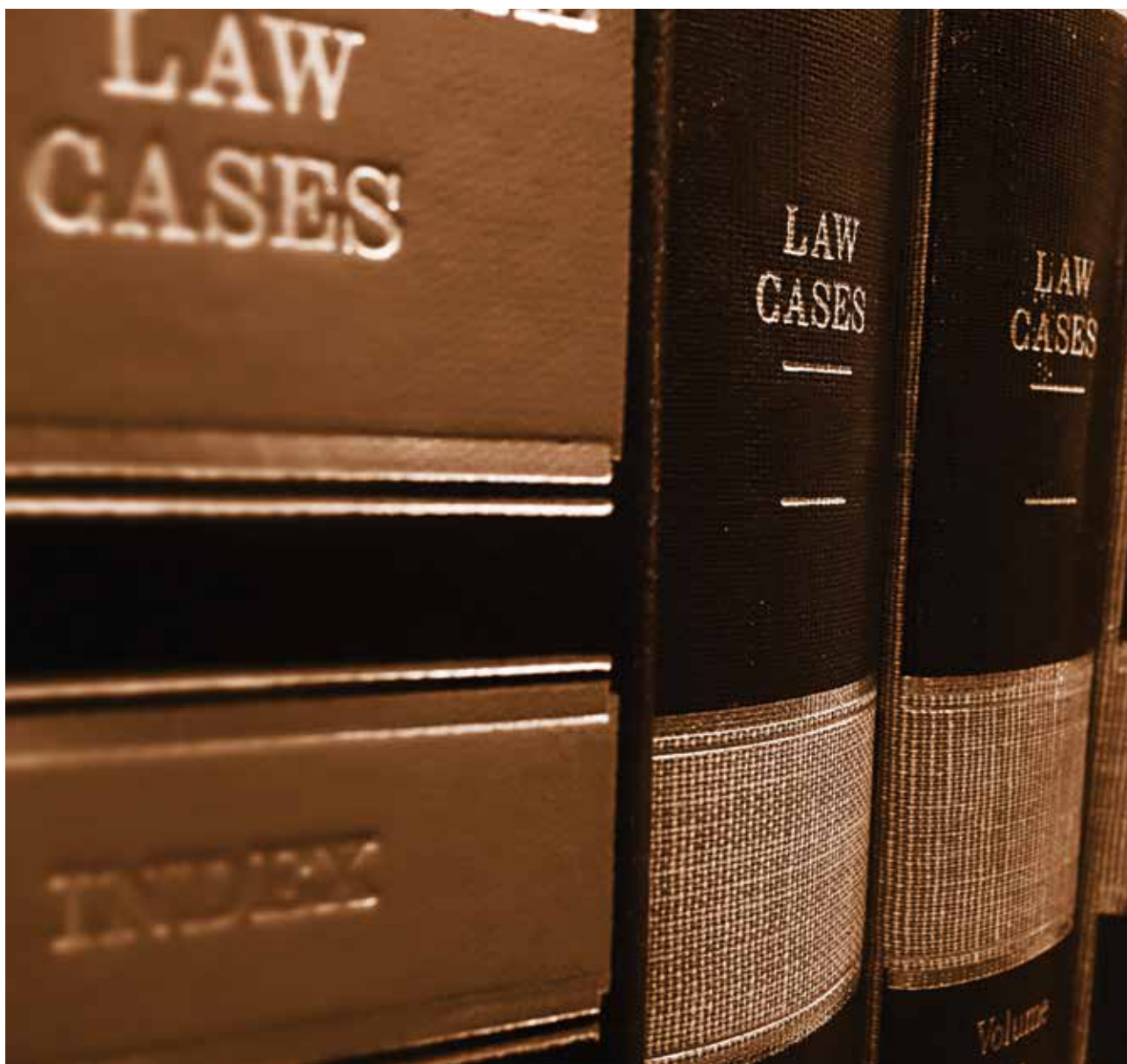
2018 Grade C =

THE STATE'S administrative bodies have a duty to act lawfully, fairly and reasonably - this right is linked to the right to access information, as well as the right to access courts. The Judiciary continues to give content to the right and it is apparent that any exercise of State power should be fair and reasonable.

- On 17 March 2017, in the matter of *Helen Suzman Foundation and Another v The Minister of Police and Others*, the Pretoria High Court reviewed and set aside the appointment of Major General Ntlemenza (Ntlemenza) by the Minister of Police (Minister) as the National Director of the Directorate for Priority Crimes Investigations (DPCI - the 'Hawks'). This was on the basis that the Minister failed to consider adverse findings on the character of Ntlemenza made in previous judgments. In holding that the decision to appoint Ntlemenza was not rational, the Court set aside the appointment. The decision affirms the principle of legality

in making apparent that the exercise of public power should be conducted rationally, which gives effect to the right to just administrative action. In *Freedom under Law (RF) NPC v National Director of Public Prosecutions and Others*, the Pretoria High Court, in December 2017, emphasised a similar principle in the exercise of public power, when it set aside the decision of the NDPP to withdraw perjury and fraud charges against the former Deputy NDPP.

- In the judgment of *State Information Technology Agency SOC Limited v Gijima Holdings (Pty)Ltd*, delivered on 14 November 2017, the Constitutional Court held that administrative decisions of Organs of State can be reviewed under the principle of legality. The importance of this matter is that it enhances the right to administrative justice in ensuring State actions are reviewable, not just in terms of the *Promotion of Administrative Justice Act 3 of 2000 (PAJA)*, but also in terms of the principle of legality.



2017 Grade **B =**

2018 Grade **B =**

THE HIGHLY unequal nature of South Africa's society influences the degree to which the right to access courts is enjoyed. Access to legal representation, particularly in civil matters, remains elusive for many South Africans.

- According to the IJR's *South African Reconciliation Barometer Survey: 2017*, there has been a significant decrease in confidence in the legal system, from 15.7% in 2015 to 10.4% in 2017. However, confidence in the Constitutional Court remains high with only a slight decrease from 2015 at 17.3% to 15.7% in 2017.
- According to the *Legal Aid South Africa Integrated Annual Report 2016-2017*, 445 625 Legal Aid matters were finalised. Legal Aid also served a total of 767 656 people through legal services provided in new criminal and civil matters and legal advice services. This represents 444 962 new legal matters and 322 694 clients provided with general legal advice.
- The number of people served when compared to the last financial year increased by 1% for new criminal and civil legal matters, and 4.6% for general advice.

CONVICTION RATES

- According to the *DoJ&CD Annual Report 2016/17*, the high courts achieved a 91% conviction rate, with 968 convictions, exceeding the target by 5%.
- The regional courts achieved an 80% conviction rate with 25 209 convictions, which represents the highest rate in the past decade.
- The district courts achieved a conviction rate of 96%, with 295 013 convictions and exceeded the target with 9%, whilst a marginal improvement of 1% was also achieved compared to the previous financial year.

- According to the *DoJ&CD Annual Report 2016/17*, the Department's collective efforts, together with the NPA, to deal with sexual offences have taken the conviction rate in these matters to 72% in the past financial year (against the previous financial year's 70%). The NPA continued to put special emphasis on sexual offences as this crime affects the most vulnerable members of society. The courts finalised 6 669 sexual offences crime cases, with 4 780 convictions.
- However, according to the ISS, conviction rates as a measure of performance are questionable. Prosecutors enjoy a wide discretion and as such, are likely to decline to prosecute cases in which they have slim prospects of securing a conviction.

INFRASTRUCTURE

- The Mpumalanga High Court is still under construction and is two years behind schedule. This, despite an undertaking by the State in 2013, to have it completed by 2015.
- 30 new Small Claims Courts were established to bring the total number of these courts in the country to 405. A total of 11 Sexual Offences Courtrooms were designated to enable children to give evidence in an appropriate environment.

LEGISLATION

- The *Traditional Courts Bill* [B1-2017] was introduced to the National Assembly in January 2017. It seeks to address criticism levelled at previous versions on the basis of failing to promote equality and also failing to sufficiently give effect to the right to access to courts. In addition, the Bill seeks to ensure that women have equal representation and participation in traditional courts. Further, individuals can opt out of the traditional justice system.



Arrested, Detained and Accused Persons

(section 35)

2017 Grade D =

2018 Grade D =

THIS SECTION seeks to balance the public interest between apprehension and conviction of those found guilty by the courts, and the public interest in protecting the values of freedom, dignity and equality from infringement by the State. A perennial concern is the number of SAPS members convicted of serious offences.

• The *IPID Annual Report 2016/2017* states that during the year under review there were:

- 302 deaths** in police custody;
- 394 deaths** as a result of police action;
- 1 640 complaints** of the discharge of an official firearm;
- 112 rapes** by police officers;
- 20 rapes** in police custody;
- 173 cases of torture**;
- 3 827 cases of assault**;
- 160 cases of corruption**; and
- 62 cases of non-compliance** with section 29 of the *IPID Act 1 of 2011*, which compels police to report alleged crimes to the IPID within 48 hours.

• According to the World Prison Brief database, South Africa's Prison population in 2017 was recorded as being 161 054. Female prisoners constituted 4 174 (2.6%) of the

total prison population.

• During 2016/2017, the DCS had an annual average of 42 525 unsentenced inmates. Of these inmates, 1 128 were female and 41 397 were male. The unsentenced category consists of remand detainees, state patients and the deportation group, with an annual average of 43 646 inmates. During 2016/17, the DCS said that the remand detainees were 43 646 on 31 March 2017 and constituted 27.10% the total inmate population.

• According to the *Department of Correctional Services (DCS) Annual Report 2016/2017*:

- 10 741 offenders attended educational programmes as per the daily programme attendance register. The number includes both offenders who attended Adult Education and Training (AET) as well as Further Education and Training (FET) programmes. By the end of March 2017, 77% (80 960/104 740) of offenders with correctional sentence plans had completed their correctional programmes.
 - The Department achieved a TB cure rate of 83% (1 034/1 250) for offenders, which is below the set target of 85%.
 - The Department treated 98% (24 506/25 042) of inmates who tested HIV-positive, against the set target of 98%.
 - During the year under review, correctional centres were on average 35% overpopulated, while a number of individual centres were more than 100% overpopulated. Overcrowding is still one of the DCS's major challenges.
 - 9 886 victims participated in the Restorative Justice programmes.
- According to Legal Aid South Africa, as at July 2017, 8 000 people who cannot afford bail ended up in prison awaiting trial; further delays are caused by backlogged court rolls.



Index

ABBREVIATIONS

ACDP African Christian Democratic Party
AET Adult Education and Training
ANC African National Congress
ART Antiretroviral therapy
ARV Antiretroviral
ASIDI Accelerated Schools Infrastructure Development Initiative
BBBEE Broad-Based Black Economic Empowerment
BEE Black Economic Empowerment
BLF Black First Land First
CANSA Cancer Association of South Africa
CAT Climate Action Tracker
CGE Commission for Gender Equality
COGTA Department of Cooperative Governance and Traditional Affairs
COP21 21st Conference of Parties
CPS Cash Paymaster Services
CPUT Cape Peninsula University of Technology
CRL Rights Commission Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
DAFF Department of Agriculture, Forestry and Fisheries
DBE Department of Basic Education
DCS Department of Correctional Services
DEA Department of Environmental Affairs
DHA Department of Home Affairs
DHB District Health Barometer
DHET Department of Higher Education and Training
DHS Department of Human Settlements
DMR Department of Mineral Resources
DOC Department of Communications
DoH Department of Health
DoJ&CD Department of Justice and Constitutional Development
DoL Department of Labour
DoW Department of Women
DPCI Directorate for Priority Crimes Investigations
DPME Department of Planning, Monitoring and Evaluation
DRDLR Department of Rural Development and Land Reform
DSD Department of Social Development
DTT Digital Terrestrial TV
DWS Department of Water and Sanitation
ECD Early childhood development
EE Equal Education
EFF Economic Freedom Fighters
EMIs Environmental Management Inspectors
EPI Environmental Performance Index
FAW Fall armyworm
FET Further Education and Training
FOIP Freedom of Information Programme
FPB Film and Publication Board
GBH Grievous bodily harm
GCR Global Competitiveness Report
GHO Global Health Observatory
GHS General Household Survey
H5N8 Avian influenza
HCT HIV Counselling and Testing
HIV Human immunodeficiency virus
ICC International Criminal Court
ICTs Information and communications technologies
IEC Electoral Commission of South Africa
IIAL Incremental Introduction of African Languages
IJR Institution for Justice and Reconciliation
IMR Infant mortality rate
IPID Independent Police Investigative Directorate
IPU International Parliamentary Union
IRR Institute of Race Relations
ISS Institute for Security Studies
ITU International Telecommunication Union
LGBTQI Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex
LHR Lawyers for Human Rights
LSSA Law Society of South Africa
MPRDA Mineral and Petroleum Resources Development Act
NAP National Action Plan
NCOP National Council of Provinces

NDP National Development Plan
NDPP National Director of Public Prosecutions
NECER National Environmental Compliance and Enforcement Report
NEDLAC National Economic Development and Labour Council
NGOs Non-governmental organisations
NHI National Health Insurance
NPA National Prosecuting Authority
NSC National Senior Certificate
NSFAS National Student Financial Aid Scheme
NUM National Union of Mineworkers
PACOTIP Prevention and Combating of Trafficking in Persons Act
PAIA Promotion of Access to Information Act
PanSALB Pan South African Language Board
PCR Polymerase chain reaction
PDIs Previously Disadvantaged Individuals
PIRLS Progress in International Reading Literacy Study
PLAAS Programme for Land and Agrarian Studies
PMTCT Prevention of mother-to-child transmission
POPI Promotion of Personal Information Act
QLFS Quarterly Labour Force Survey
R2K Right2Know Campaign
RICA Regulation of Interception of Communications and Provision of Communication-Related Information Act
SABC South African Broadcasting Corporation
SADHS South African Demographic and Health Survey
SADTU South African Democratic Teachers Union
SAHA South African History Archive
SAHRC South African Human Rights Commission
SALBA South African Liquor Brand owners Association
SALRC South African Law Reform Commission
SANDF South African National Defence Force
SANEF South African National Editor's Forum
SAPO South African Post Office
SAPS South African Police Service
SARChI SA-UK Bilateral Research Chair in Social Protection in Food Security
SARS South African Revenue Service
SASL South African Sign Language
SASSA South African Social Security Agency
SCA Supreme Court of Appeal
SGB School Governing Body
SIBG School Infrastructure Backlogs Grant
SJC Social Justice Coalition
SSA State Security Agency
STBs Set-top boxes
TKAG Treasure Karoo Action Group
TVET Technical and Vocational Education and Training
UCT University of Cape Town
UFS University of the Free State
UIF Unemployment Insurance Fund
UN United Nations
UNAIDS Joint United Nations Programme on HIV/Aids
UNDP United Nations Development Programme
UNFCCC United Nations Framework Convention on Climate Change
UNHCR United Nations High Commission on Refugees
UP University of Pretoria
US University of Stellenbosch
UWC University of the Western Cape
VMMC Voluntary medical male circumcision
WAN-IFRA World Association of Newspapers and News Publishers
WEF World Economic Forum
WHO World Health Organisation
WLC Women's Legal Centre
WSU Walter Sisulu University

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Annual Report National Director of Public Prosecutions (NDPP) 2016/17
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Broad-Based Black Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry
 Green Paper on International Migration
 International Convention of Civil and Political Rights
 National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance
 National Policy on HIV, STIs and TB for Learners
 Paris Agreement
 Procurement Protocols
 UN Convention on the Rights of the Child
 United Nations Framework Convention on Climate Change
 White Paper on Land Policy

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Basic Education Laws Amendment Bill [X-2017]
Border Management Authority Bill [B9-2016]
Children's Amendment Act 17 of 2016
Citizenship Act 88 of 1995
Communal Property Association Amendment Bill [B12-2017]
Criminal Procedure Act 51 of 1977
Cybercrimes and Cybersecurity Bill [B6-2017]
Draft Customary Initiation Bill [BX-2017]
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Baron and Others v Claytile (Pty) Limited and Another
Daniels v Scribante and Another
Earthlife Africa-Johannesburg and 1 Other v the Minister of Energy and 5 Others
Freedom under Law (RF) NPC v National Director of Public Prosecutions and Others
Gelyke Kanse and Others v the Chairman of the Senate of the Stellenbosch University and Others
Helen Suzman Foundation and Another v The Minister of Police and Others
Hotz and Others v University of Cape Town
Jacobus du Plessis N.O. and Others v Members of the Executive Council for Education Western Cape and Others
Jordaan and Others v City of Tshwane Metropolitan Municipality and Others
Kham and Others v Electoral Commission
KOS and Others v the Department of Home Affairs
L and Others v Frankel and Others
Lawyers for Human Rights v Minister of Home Affairs and Others
Madiba and Others v Minister of Arts and Culture and Others
Miriam Ali and Others v the Minister of Home Affairs and Another
Mlungwana and Others v S and Another
Occupiers of Erven 87 and 88 Berea v De Wet NO and Another
Organisasie vir Godsdienste-Onderrig en Demokrasie v Laerskool Randhart and Others
Ramuhovi and Another v the President of the Republic of South Africa
Scalabrini Centre, Cape Town v Minister of Home Affairs
Solidariteit Helpende Hand NPC and Another v Minister of Basic Education and Another
South African National Editors Forum and Others v Black First Land First and Others
State Information Technology Agency SOC Limited v Gijima Holdings (Pty)Ltd




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