

# ANNUAL TRENDS ANALYSIS REPORT

2019 - 2020



south african  
**human  
rights**  
commission





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# LIST OF ACRONYMS

<b>ADR</b>	Alternative Dispute Resolution
<b>APCOF</b>	African Policing Civilian Oversight Forum
<b>BLF</b>	Black First Land First
<b>CCMA</b>	Commission for Conciliation, Mediation and Arbitration
<b>CEO</b>	Chief Executive Officer
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CHP</b>	Complaints Handling Procedures
<b>COO</b>	Chief Operations Officer
<b>CRC</b>	Committee on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CSO</b>	Civil society organisation
<b>CSVV</b>	Centre for the Study of Violence and Reconciliation
<b>DAC</b>	Disability Advisory Committee
<b>DBE</b>	Department of Basic Education
<b>DCS</b>	Department of Correctional Services
<b>DHA</b>	Department of Home Affairs
<b>DHS</b>	Department of Human Settlements
<b>DIRCO</b>	Department of International Relations and Cooperation
<b>DOD</b>	Department of Defence
<b>DOJCD</b>	Department of Justice and Constitutional Development
<b>DOL</b>	Department of Labour
<b>DPME</b>	Department of Planning, Monitoring and Evaluation
<b>DPW</b>	Department of Public Works
<b>DRDLR</b>	Department of Rural Development and Land Reform
<b>DSD</b>	Department of Social Development
<b>DWCPD</b>	Department of Women, Children and Persons with Disabilities
<b>ESR</b>	Health care, food, water and social security rights
<b>GEPF</b>	Government Employee Pension Fund
<b>HOD</b>	Head of Department



<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IMM</b>	Independent monitoring mechanism
<b>IMM</b>	Independent monitoring mechanism
<b>JICS</b>	Judicial Inspectorate for Correctional Services
<b>Legal Aid SA</b>	Legal Aid South Africa
<b>LGBTI</b>	Lesbian, Gay, Bi-Sexual, Transgender, Intersex
<b>LRMF</b>	Land Rights Management Facility
<b>LSU</b>	Legal Services Unit
<b>MEC</b>	Member of the Executive Council
<b>NAP</b>	National Action Plan to combat racism, racial discrimination, xenophobia and related intolerance
<b>NHRI</b>	National Human Rights Institution
<b>NPA</b>	National Prosecuting Authority
<b>NPM</b>	National Preventative Mechanism
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>OPCAT</b>	Optional Protocol to the Convention against Torture
<b>PAIA</b>	Promotion of Access to Information Act, 2000
<b>PAJA</b>	Promotion of Administrative Justice Act, 2000
<b>PED</b>	Provincial Department of Basic Education
<b>PEPUDA</b>	Promotion of Equality and Elimination of Unfair Discrimination Act, 2000
<b>PM</b>	Provincial Manager
<b>SAHRC</b>	South African Human Rights Commission
<b>SAHRC ACT</b>	South African Human Rights Commission Act, 2013
<b>SAJBD</b>	South African Jewish Board of Deputies
<b>SAPS</b>	South African Police Service
<b>SCA</b>	Supreme Court of Appeal
<b>SLO/LO</b>	Senior Legal Officer/Legal Officer
<b>TAR</b>	Trends Analysis Report
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organisation

# DEFINITIONS

TERM	DEFINITION
Accepted complaints	Complaints accepted by the Commission and communicated to the Complainant in writing.
Assessment	The process of determining a complaint by the PM to confirm jurisdiction and make an initial determination whether to reject, refer, accept or send the complaint to the steering committee for guidance.
Association	A group of persons organised for a joint purpose.
Allocate	To appoint an investigator (SLO/LO), depending on the complexity of the matter, to investigate the complaint.
<i>Amicus curiae</i>	One who assists the court by furnishing information or advice regarding questions of law or fact.
Cases	Includes both complaints and enquiries.
Chairperson	The Chairperson of the Commission.
Child	Any person under the age of 18 years.
Closed	The complaint is finalised because the complainant has withdrawn the complaint or has failed to provide the further information requested by the Commission within the timeframe given.
Commission	The South African Human Rights Commission.
Complainant	Any person, group or class of persons, association, organisation or organ of state, lodging a complaint with the Commission.
Complaint	An oral, written or electronic communication alleging conduct or an omission in violation of a fundamental right addressed to the Commission or a complaint initiated by the Commission on its own accord.
Complaint Handling Procedures	Procedures for Handling Complaints reported to the SAHRC as set out in the South African Human Rights Commission Complaints Handling Procedures 27 January 2002. The Complaint Handling Procedures were revised and new procedures for the handling of complaints were adopted on 1 January 2018.
Conciliation	The process of resolving a matter between parties through conciliation.
Constitution	The Constitution of the Republic of South Africa, 1996.
Day	Any calendar day excluding Saturdays, Sundays and public holidays.
Direct Referral	The complaint is referred directly to another organisation, institution or statutory body because the PM has found that the complaint does not fall within the jurisdiction of the Commission, or could be addressed more efficiently or expeditiously by that other organisation, institution or body. The organisation must be a statutory body which has legislative authority to conduct such investigations.
Direct Referral (finalised)	A final report is received from the organisation, institution or body to which it was referred and the complaint is finalised (archived).  See also <i>Monitoring direct referral</i> below





TERM	DEFINITION
Enquiry	An oral, written or electronic communication which can be established at point of receipt by the Commission, that the matter is clearly not about a human rights violation, and is not within the jurisdiction of the Commission.  <i>Where complaints are not clear, such matters are registered as complaints and assessed by the Commission to determine whether they should be investigated as human rights violations.</i>
Finalised complaints	This is a collective term for the final stage of all complaints which are rejected, referred (indirectly or directly), resolved or closed.
Finding	A conclusion reached after an assessment or investigation of a complaint, an inquiry, or a hearing regarding an alleged violation of or a threat to a fundamental right.
Fundamental rights	The fundamental rights contained in the Chapter 2 of the Bill of Rights, sections 9 to 35 of the Constitution.
Hearing	A formal investigation contemplated in section 15(1)(c) read with section 15(1)(d) of the SAHRC Act, taking on the nature of a hearing.
In camera	a legal term that means in private, without media or public presence.
Indirect Referral	Directing a complaint to another body. The complainant is provided contact information of the body and may engage with the body to which a complaint is referred on behalf of the complainant.
Intake Officer (or Designated staff member)	The person who receives and registers a complaint.
Investigation	An investigation as contemplated in section 15 of the SAHRC Act.
Judicial review	The review of an administrative action by a court or tribunal as contemplated in section 6 of the Promotion of Administrative Justice Act, 3 of 2000.
Investigator (SLO, LO, or delegated staff member)	Staff member appointed by the Provincial Manager to investigate the complaint.
Litigation	A matter brought before the courts for determination. Complaints maintain this status until the litigation is concluded.
Mediation	The process of dispute resolution through intervention between parties by an independent person or mediator to reach an agreement.
Monitoring – direct referral	The Commission refers the complaint directly to the appropriate organisation, on behalf of a complainant, and monitors progress in the resolution of the complaint in the form of status reports about the matter from the organisation, institution or body.
Monitoring – report recommendations	To monitor the implementation of any recommendations made in a report on which a finding was made.
Negotiation	The process of conferring with the parties in order to reach an agreement.
Organisation	An organised body, including a business, political party, trade union and charity.
Organ of state	Means any department of state or administration in the national, provincial or local sphere of government; or any other functionary or institution – exercising a power or performing a function in terms of the Constitution or a provincial constitution; or exercising a public power or performing a public function in terms of any legislation, but does not include a court or judicial officer.

TERM	DEFINITION
Panel	The panel of the Commission appointed in a hearing or inquiry process.
Period under review	2019/2020 financial year (1 April 2019 to 31 March 2020).
Provincial Office	The office of the Commission as contemplated in section 3(2) of the SAHRC Act, in each of the nine provinces as contemplated in section 103 of the Constitution.
Referred complaint	The Commission does not have jurisdiction. Complaints can be either directly referred or indirectly referred. <i>Direct referrals must be to statutory bodies.</i>
Rejected complaint	Where there is no human rights violation; the violation took place before 1994; or the matter has already been determined through the courts or is currently before another legal forum.
Report	A written account or opinion formally expressed after an investigation, consideration or finding.
Resolved complaint	The final status of any accepted complaint where all internal processes have been exhausted (negotiation, conciliation mediation, and hearing); where the parties agree to end the process; or the complainant is satisfied with the outcome through the intervention of the SAHRC.
Respondent	A person, group or class of persons, association, organisation or organ of state who is allegedly in violation of or a threat to a fundamental right.
Transfer	The internal transfer of a complaint from one provincial office to another.
The South African Human Rights Commission Act, or SAHRC Act	The South African Human Rights Commission Act, 40 of 2013.
Unclear – refer to the Steering Committee (SC)	The provincial office is uncertain of what the assessment outcome should be in a complaint and refer it to the SC for guidance and advice.



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# FOREWORD BY THE CHAIRPERSON



*Adv. Bongani Majola, Chairperson*

The South African Human Rights Commission (Commission) presents this seventh Annual Trends Analysis Report (TAR) for the financial year that commenced in April 2019 and ended in March 2020. Through the annual TAR, the Commission seeks to provide a detailed statistical and substantive analysis on how the Commission has advanced its mandate to promote the protection, development, and attainment of human rights during the period under review. The report provides an overview of the various interventions undertaken by the Commission in the delivery of its protection mandate. Despite efforts to promote and entrench the protection of human rights in the country, there remains a number of challenges that inhibit the quick and full realisation of such aspirations, including severe resource constraints, high levels of violence, abiding poverty and inequality, and an unstable political environment. The interventions referenced in the report nonetheless evince an endeavour by the Commission to protect human rights and enhance access to justice in the Republic.

The report highlights an increase in the number of complaints received by the Commission which is testament to the fact that the Commission's public outreach engagement model is working, and that both awareness of and confidence in the Commission are increasing. These increases, however, also impact the total number of complaints the Commission can finalise given the concomitant increasing complexity of matters and decreasing resources.

The Commission remains acutely concerned by the fact that equality related complaints have remained high and at the top five human rights violations over the past six years. The Commission calls for strong efforts geared towards fostering social cohesion. It is hoped that the vigorous implementation by the state and other role players of the National Action Plan, to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance will assist in addressing and reducing inequality and discrimination in all their manifestations. The Commission is also concerned that ESR related complaints (which comprise health care, food, water and social security), have consistently remained in the top five human rights violations reported to the Commission. These trends reflect the continuing deep socio-economic disparities and fissures in our society, requiring the state to adopt pro-poor policies, including budget or fiscal policies, which are anchored on human rights to ensure that poverty is alleviated.

It is concerning that poverty continues unabated in a milieu where corruption is thriving. The correlation between deprivation in the enjoyment of rights and the increase in corruption are being documented in studies, a situation which requires the state and the public to actively call out and expose.

Corruption, which has become endemic, flourishes while fundamental rights which promote transparency and accountability are disregarded. The TAR reveal a concerning pattern of continued non-compliance with the Promotion of Access to Information Act, which is most prevalent in the sphere of local government. The public right to receive and impart information is crucial to transparency and for accountability, particularly in respect of service delivery at the local level. Less than 5% of local government complied with reporting obligations under the PAIA, lending to inferences of failures within local government to promote transparency, public participation and accountability. The report points to the need for the implementation of training and accountability measures

to cultivate a culture of transparency. The Commission, working with the Information Regulator, will continue to advocate for access to information going forward.

A range of interventions have been used by the Commission to bolster the protection of human rights. Summaries of selected litigation during the period under review, demonstrate the cautious approach the Commission has had to take in the strategic choices to litigate in particular matters. In general, litigation has been informed by factors which look for strategic impact to strengthen law reform and to protect the rights of particularly vulnerable groups. This includes litigation - in partnership with the Nelson Mandela Foundation - to test equality legislation, where the Commission argued that the gratuitous display of the old South African national flag constituted hate speech; and successful litigation that saw an admission policy which prohibits schools from providing basic education to undocumented children of foreign nationals declared to be in violation of the best interests of the learners and the constitution. Entering uncharted territory; the Commission applied for protection of a whistleblower who had made numerous unsuccessful attempts through organs of state to secure protection of his life. Despite these and other successes, however, the decision to litigate is not made lightly. Although litigation can be a powerful instrument, it carries high resource related implications, which financially constrained bodies such as the Commission must frugally spread in servicing its wide mandate. Delays associated with litigation also have negative implications for the timely provision of redress. Such delays have implications for wider non-legal concerns for parents and caregivers of affected children. Thus, as documented in this report, the Commission has, where possible, used alternative redress mechanisms to achieve swift and cost-effective redress for complainants where rights violations have been established.

The Commission also continued to use investigative hearings and inquiries as a means of addressing complaints of a systemic nature in an endeavour to establish the root causes of human rights violations, provide a democratic space where multiple voices are heard and to offer pragmatic solutions.

Some of the investigative hearings and inquiries focused on: the issues of violence directed at non-nationals in the freight and transport sector; rural land use and ownership patterns and its implications on human rights; racism and related intolerance in the social media space; socio-economic conditions in the Alexandra Township; safety and security challenges faced by children with disabilities in North West schools; and the status of public health facilities in the Limpopo Province. These investigative hearings and inquiries highlight human rights vulnerabilities in the Republic, and the Commission hopes that the recommendations in the various reports will be implemented by those who have been directed to take corrective steps to address the human rights violations identified in those hearings.

As a National Human Rights Institution, accredited with an A status by the Global Alliance of National Human Rights Institutions, the Commission, also carries out work in regional and international spaces. This work, which is documented in the TAR, includes strategic interventions and engagements by the Commission with international human rights bodies and other national human rights institutions. Since the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) by the state, the Commission and other stakeholders have worked in earnest to establish the National Preventative Mechanism (NPM). The work undertaken by the NPM, which is largely coordinated and functionally led by the Commission with the support of other oversight bodies, will be crucial in ensuring the prevention of a culture of torture and other cruel, inhuman or degrading treatment or punishment in the Republic.

The Commission views the annual TAR as an invaluable reference resource for the state and all role-players and stakeholders invested in the promotion of a culture of respect for and protection of human rights. The Commission trusts therefore that this report will also galvanise and bolster efforts of human rights defenders, civil society organisations, the media and the general public in their efforts to protect and promote the observance of human rights in the Republic.

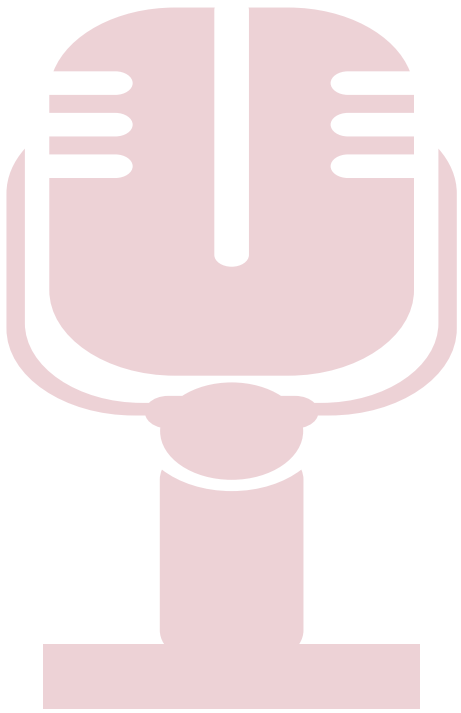




CHAPTER 1

# Introduction





# INTRODUCTION

## 1.1 PURPOSE OF THE REPORT

This report is the seventh Annual Trends Analysis Report (TAR) published by the South African Human Rights Commission (SAHRC, or “Commission”). The purpose of the TAR is to provide a general overview of the handling of complaints by the Commission during the relevant financial year. The TAR provides statistical information about complaints received by the Commission. It identifies and provides an analysis of national and local trends in complaints received. It also provides an overview and analysis of the manner of responding to those complaints through the use of alternative dispute resolution (ADR) mechanisms, investigations, national and provincial investigative hearings and inquires, and litigation.

## 1.2 AN OVERVIEW OF THE COMMISSION

The Commission is established under section 181 of the Constitution of the Republic of South Africa, 1996 and is an independent state institution supporting constitutional democracy. The Commission must –<sup>1</sup>

- a) promote respect for human rights and a culture of human rights;
- b) promote the protection, development and attainment of human rights; and
- c) monitor and assess the observance of human rights.

The Commission has the requisite power to perform its functions, including the power –<sup>2</sup>

- a) to investigate and to report on the observance of human rights;
- b) to take steps to secure appropriate redress where human rights have been violated;
- c) to carry out research; and
- d) to educate.

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**1 Section 184(1) of the Constitution.**

**2 Section 184(2) of the Constitution.**



These powers are regulated by the South African Human Rights Commission Act, 40 of 2013 (“SAHRC Act”).

The Commission has an office in each of the nine provinces, situated in central business districts. Each provincial office is staffed by legal, advocacy and administrative teams overseen by a provincial manager (PM). While local presence in each province facilitates access to the Commission, much more needs to be done to reach rural communities. Outreach interventions and collaborative partnerships with other rights bodies have assisted in part to mitigate challenges to accessibility. The Commission’s head office is located in Braamfontein, Johannesburg.

Complaints are lodged with the Commission through a variety of mechanisms, including:

- a) ‘walk-in’ complainants lodged at an office of the Commission;
- b) complaints lodged by telephone or email;
- c) online complaints lodged on the Commission’s website;
- d) complaints lodged through social media platforms such as Twitter or Facebook; and
- e) complaints raised during provincial outreach and advocacy initiatives.

Complaints are dealt with and managed according to the SAHRC Act and the Complaints Handling Procedures.<sup>3</sup> Broadly, the Commission may:

- a) investigate, on its own initiative or on receipt of a complaint, any alleged violation of human rights;
- b) mediate, conciliate or negotiate any complaint;
- c) reject a complaint;
- d) directly or indirectly refer a complaint to another body or to an Equality Court.

Strategic direction and oversight is provided through the guidance and leadership of the Commissioners. Overall, the performance of the Commission is regulated by the Commissioners, the Chief Executive Officer (CEO), and the Chief Operations Officer (COO). The work of the Commission is guided by five strategic objectives, namely to:

- a) promote compliance with international and regional human rights related treaties;
- b) advance the realisation of human rights;
- c) deepen the understanding of human rights to entrench a human rights culture;
- d) ensure the fulfilment of constitutional and legislative mandates; and
- e) improve the effectiveness and efficiency of the Commission to support delivery on the mandate.

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**3 Government Gazette No. 41362 of 29 December, 2017. Available at: <https://sahrc.org.za/index.php/what-we-do/lodge-complaints>.**

As an A-status national human rights institution (NHRI), the Commission also operates in compliance with the United Nations Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights ('the Paris Principles'). Under the Paris Principles, the Commission is required to:

- a) monitor situations of violations of human rights;
- b) advise the government, parliament and other competent body on specific violations;
- c) educate and inform on issues of human rights; and
- d) use its quasi-judicial powers to obtain redress where rights have been violated.

### **1.3 THE TAR: TRANSPARENCY AND INFORMATION SHARING**

The Commission, an independent constitutional body and NHRI, publishes the annual TAR as a means to share information regarding the nature and management of complaints within the Commission, and in the interests of public accountability and transparency. This information is an important reference for the legislature and the executive, providing information of discernible trends in human rights violations, at the local and national level, for which accountability may be exacted and interventions shaped.

It is hoped that this information can serve as an invaluable resource to potentially inform and mobilise efforts by civil society, human rights defenders, and other statutory bodies, organs of state, the media and the general public in their efforts to protect the observance of human rights.

The report is intentionally selective in the choices made to reflect litigation, ADR and hearing outcomes. This deliberate selection is informed by a desire to demonstrate deviations in trends, highlight opportunities and to showcase challenges typically encountered, with a view that such information will serve to strengthen efforts in protecting rights. Practical considerations regarding the length of the report have also impacted on the comprehensiveness of the report.

The methodology informing the compilation of the report includes an analysis of the quantitative data and statistics of complaints recorded through the complaints management system of the Commission, and internal programmatic information. Some consideration to external sources has been made where jurisprudence, legislation, media and other reports have been referenced. It should be noted that trends reported by the Commission are not necessarily entirely conclusive, as statistical reports are, by their nature reflected in the design and inputs to the system.

As a result, the top five rights reported as violations to the Commission do not necessarily document violations of related rights. Similarly, complaints from an individual community member about a violation to the right to water and sanitation does not specifically document violations to the total number of people affected in an entire community. In such instances statistical information regarding violations to certain rights do not reflect the total number of people affected by violations of such rights. Complaints relating to matters of high visibility and public interest are also not expressly disaggregated or accounted for in the total complaints to the Commission. The Commission receives a high number of complaints regarding the same alleged human rights violation due to the public visibility. These complaints are consolidated and reported as a single complaint. Despite these limitations, it is intended that the TAR provide a valuable resource for the protection of human rights both domestically and beyond.



CHAPTER 2

# Profile and Nature of Complaints





# PROFILE AND NATURE OF COMPLAINTS

## 2.1 OVERVIEW

South Africa is considered one of the world's most unequal societies. The South African labour market is heavily racialised and gender-biased, with the bottom 60% of households depending more on social grants and less on income from the labour market.<sup>4</sup> Poor economic growth sees a further constrained financial environment with limited human resources. South Africa's history of colonialism and apartheid entrenched systems of inequality along racial lines has informed deeply entrenched patterns of persisting inequality 25 years since it has embraced a new constitutional dispensation founded on the rule of law.

In 2018 the World Bank, in collaboration with the Department of Planning, Monitoring and Evaluation (DPME) and Statistics South Africa (Stats SA), published an analysis of South Africa's progress in reducing poverty and inequality since 1994, with 2006-2015 as a reference point.<sup>5</sup> The aim of the report is to understand the dynamics of poverty and inequality in South Africa and to identify the drivers of progress for the purpose of further policy actions in this area. Some of the key findings of the report include:

- South Africa has high levels of chronic poverty and a relatively small middle class, with nearly half of the population of South Africa considered chronically poor.
- While South Africa has made progress in reducing poverty, high inequality acts as a brake on poverty reduction thus poverty remains high for an upper middle-income country.
- Poverty levels are consistently highest amongst female-headed households, Black South Africans, the less-educated, the unemployed, large families and children.
- Geography is still a marker of poverty, a demonstration of the enduring legacy of apartheid. Not only do poverty and inequality vary cross provinces, they vary across districts and municipalities.
- Social protection is important in supporting poverty and inequality reduction, particularly among the extremely poor.
- Accelerating the reduction of poverty and inequality will require unlocking the full potential of labour markets and promoting inclusive growth through skills creation.

<sup>4</sup> Stats SA "How unequal is South Africa?" (2020).

<sup>5</sup> IBRD "Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities" (2018).



The Office of the United Nations High Commissioner for Human Rights (OHCHR) recognises that:<sup>6</sup>

*"[n]o social phenomenon is as comprehensive in its assault on human rights as poverty. Poverty erodes or nullifies economic and social rights such as the right to health, adequate housing, food and safe water, and the right to education. The same is true of civil and political rights, such as the right to a fair trial, political participation and security of the person. This fundamental recognition is reshaping the international community's approach to the next generation of poverty reduction initiatives."*

It is within this is the context that the Commission must fulfil its broad constitutional mandate.

During the period under review the Commission dealt with an increased number of complaints. An analysis of those complaints, and how they compare to the previous seven financial years, is provided below.

## 2.2 PROFILE OF COMPLAINTS

In the sections below, statistical information is provided regarding complaints received through the Commission's nine provincial offices mainly focused on the 2019/2020 financial year, the period under review. At times statistics for previous financial years are provided.

### 2.2.1. Year-on-year change

The year-on-year statistics provide an overview of all complaints and enquiries recorded by the Commission, reflecting the total caseload for the financial year. The most significant statistical information that this overview provides, are the percentage changes in complaints received by the Commission per financial year and the number of actual finalised complaints (with percentages) per financial year.

The total number of complaints made to the Commission on an annual basis has steadily increased over the past eight financial years. Conversely, the total percentage of complaints finalised by the Commission has decreased. There is a need for additional human resources to attend to and investigate the growing number of complaints. The recent budget cuts implemented by government do not allow for such additional resources, further constraining the ability of the Commission to fulfil its constitutional mandate. The total number of complaints received by the Commission increased by **13%** from the previous financial year.

The increase is partly as a result of the increased advocacy activities undertaken by the Commission during the period under review.

'Advocacy' is defined as human rights-based and people-driven activities aimed at empowering and informing people to effectively realise their rights. For the 2019/2020 financial year, the Commission conducted 224 provincial outreach engagements reaching 19,551 people; 301 provincial key engagements reaching 13,865 people; 128 provincial stakeholder collaborative activities reaching 7,099 people; commemorated 20 key human rights calendar days reaching 2,897 people as well as five human rights month dialogues reaching 5,624 people; and 10 national strategic stakeholder engagements reaching 336 stakeholders. The Commission also developed and digitised four educational materials.

The Commission continues to utilise public outreach engagements to reach selected communities. The communities are identified through a scoping exercise which seeks to identify rural communities, and those which experience greater socio-economic vulnerability on account of poverty and inequality. The public outreach engagement model has been largely successful, reaching more people and providing simplified, accessible messaging within a short space of time. In line with the Commission's 2015-2020 strategic focus, the communities selected were mainly rural or peri urban, marginalised, and disadvantaged communities, which often have the least access to human rights information and services.

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<sup>6</sup> OHCHR "Human rights dimension of poverty" see: <https://www.ohchr.org/en/issues/poverty/dimensionofpoverty/pages/index.aspx>



Financial year	Complaints	Enquiries	Total Caseload	Year-on-Year Change	Finalised + Once off Enquires			% Achievement	Carried over
					Complaints	Enquiries	Total		
2011-2012			11363				9851		1512
2012-2013	4947	3972	8919	-22%	3075	3972	7047	79%	1872
2013-2014	4980	4237	9217	3%	4313	4237	8550	93%	667
2014-2015	3685	4494	8179	-11%	2843	4494	7337	90%	842
2015-2016	4613	4625	9238	13%	3575	4625	8200	89%	1038
2016-2017	4938	4792	9730	5%	3706	4792	8498	87%	1235
2017-2018	5144	4316	9460	-3%	3523	4316	7839	83%	1621
2018-2019	5268	5145	10413	10%	3346	5145	8491	82%	1922
2019-2020	6092	5711	11803	13%	3180	5711	8891	75%	2927

FIGURE 1 – OVERVIEW OF COMPLAINTS HANDLING OVER NINE FINANCIAL YEARS (2011 – 2020)

### 2.2.2. Complaints recorded per provincial office

With the exception of Gauteng, the number of complaints recorded per provincial office increased for the period under review with the Western Cape and KwaZulu-Natal consistently receiving a high number of complaints. Complaint volumes for the Western Cape are comparatively high on account of the number of complaints carried over each year.

Notable spikes in complaint volumes are evident in the Limpopo, Mpumalanga and the Western Cape provinces. Only the Eastern Cape and the Northern Cape record complaint volumes under the 500 range over the eight year period. However, the Eastern Cape recorded 492 complaints in the period under review – its highest number of complaints recorded to date. Low complaint volumes should not be interpreted to mean that fewer rights violations take place in such provinces. Instead, complaint volumes may indicate a need for sustained support to communities within those provinces as poverty levels and inequality in these provinces continue to impede access to justice for such communities.

Number of complaints recorded	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	448	419	444	471	429	430	444	492
Free State	450	452	309	482	598	671	639	666
Gauteng	1441	1135	921	1093	909	918	557	544
KwaZulu-Natal	407	571	510	568	515	704	722	783
Limpopo	255	479	401	416	480	467	544	674
Mpumalanga	372	434	247	279	639	319	302	519
Northern Cape	231	245	159	133	154	172	251	265
North West	420	383	177	503	453	440	511	557
Western Cape	923	862	517	668	761	1023	1298	1592
TOTAL	4947	4980	3685	4613	4938	5144	5268	6092

FIGURE 2 – NUMBER OF COMPLAINTS RECORDED PER PROVINCIAL OFFICE OVER EIGHT YEARS

An analysis of the average percentage of complaints received per province over an eight year period reveals that Gauteng and the Western Cape receive on average the highest number of complaints, followed by KwaZulu-Natal and the Free State. The Northern Cape receives the least number of complaints.

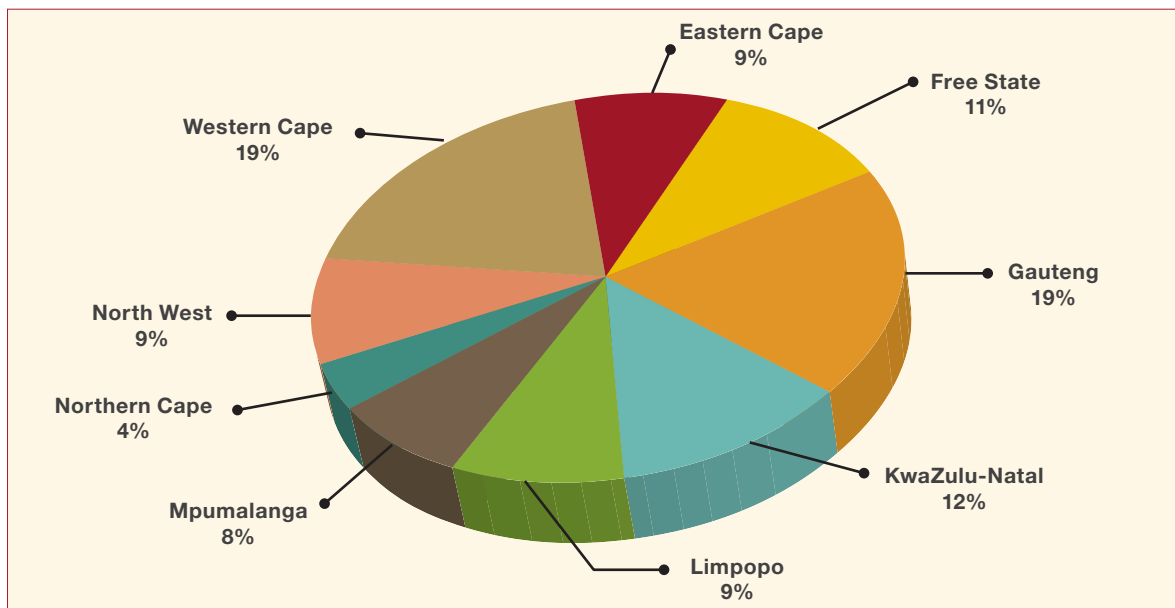


FIGURE 3 – AVERAGE PERCENTAGE OF COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD

### 2.2.3 Complaints carried over

'Complaints carried over' refers to those complaints that were not finalised in the previous financial year. These complaints are typically those where litigation is in progress. Other reasons delaying finalisation of complaints within the prescribed period, resulting in the carrying over of such complaints include delays in finalisation on account of non-responsiveness of parties involved in the matter; new developments such as subpoena hearings or where a matter is complex. Complaints which are carried over result in a backlog of complaints which, in turn, increases the workload of the Commission. The Commission aims to minimise the number of complaints that are carried over in each financial year including by exercising its powers to compel the information it seeks to reduce delays occasioned by non-responsiveness, and the provision of inadequate information by parties involved in investigations.

Figure 4 and 5 provide an overview of the total number of complaints carried over by the Commission, and the new complaints received over a period of eight years.

	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Complaints carried over	1870	667	842	1038	1232	1621	1922	2912
New complaints	3077	4313	2843	3575	3706	3523	3346	3180
Complaints at end of financial year	4947	4980	3685	4613	4938	5144	5268	6092

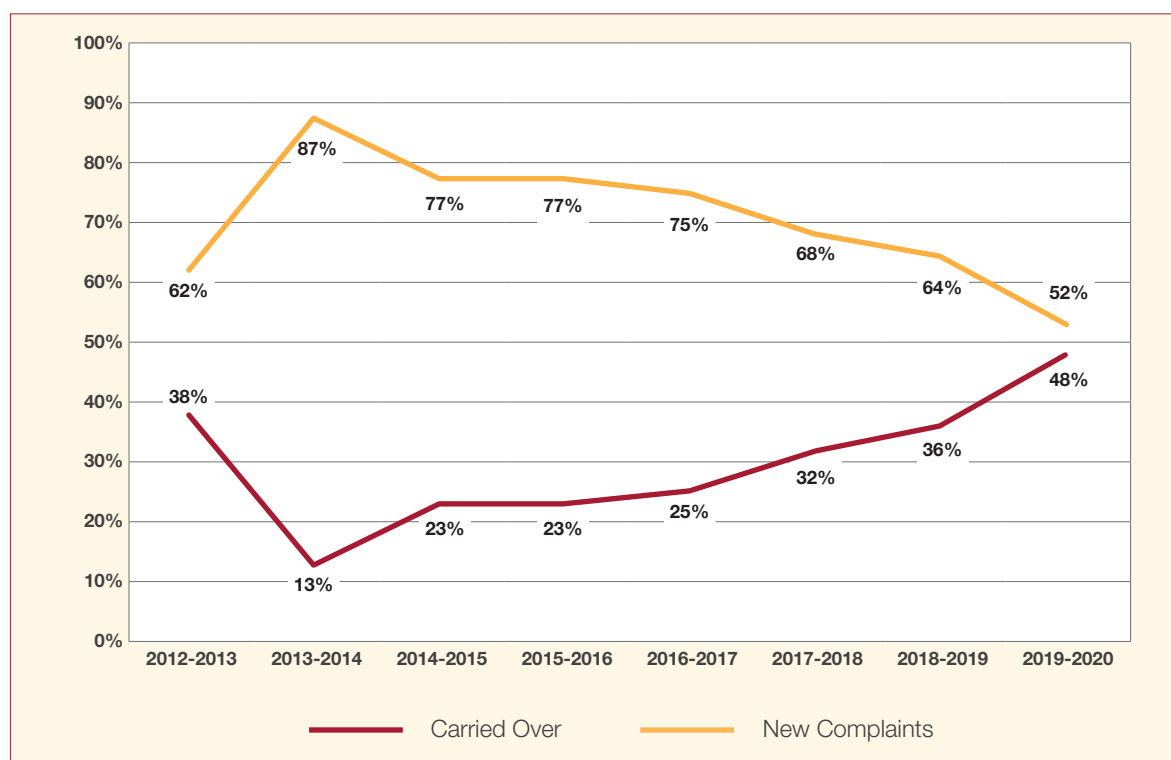


FIGURE 4 & 5 – TOTAL COMPLAINTS CARRIED OVER AND NEW COMPLAINTS RECORDED OVER EIGHT YEAR PERIOD



Figure 5 shows the steady increase in the number of complaints carried over for the past eight financial years. At the end of the period under review, **48%** of all recorded complaints were carried over. The number of complaints carried over has a direct effect on the finalisation of new complaints accepted by the Commission in the period. In the 2013/2014 financial year, the Commission was able to finalise 93% of its complaints, despite the 21% backlog carried over from the preceding financial year. The improvement was largely due to the Commission's decision to restructure its operational divisions, and to employ more professional staff to address its backlog in complaints handling. The number of complaints carried over to the 2014/2015 financial year was significantly reduced to 7%. However, matters which remained in litigation or which were complex in nature remained in the category of backlogged matters, carried over.

Carried Over complaints per financial year	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	105	68	67	92	61	75	61	128
Free State	110	22	40	94	85	112	122	198
Gauteng	372	146	214	251	280	242	167	164
KwaZulu-Natal	149	132	91	111	144	187	153	336
Limpopo	181	63	53	82	80	110	199	252
Mpumalanga	195	54	43	50	37	49	62	161
Northern Cape	83	63	42	36	40	60	141	128
North West	231	32	28	36	53	48	102	216
Western Cape	444	87	264	286	452	738	915	1329
<b>NATIONAL</b>	<b>1870</b>	<b>667</b>	<b>842</b>	<b>1038</b>	<b>1232</b>	<b>1621</b>	<b>1922</b>	<b>2912</b>

*FIGURE 6 – TOTAL COMPLAINTS CARRIED OVER PER PROVINCE OVER EIGHT YEAR PERIOD*

All provincial offices, with the exception of Gauteng and the Northern Cape, reported a marked increase in the number of carried over complaints in the 2019/2020 financial year. The number of carried over complaints more than doubled when compared to the previous financial year in the Eastern Cape, KwaZulu-Natal, Mpumalanga, North West and Western Cape. Human resource factors influenced complaints management in the Western Cape and North West provincial offices, over a period of time. This factor alone demonstrates the direct relationship between the finalisation of complaints and the need for adequate human resources to do so effectively. Moreover, provinces such as the Western Cape have often required the Commission's intervention in response to frequent situational incidences such as protest action and evictions in the province, thereby drastically reducing capacity for the handling of complaints submitted to the Commission in that area.

Strategic stakeholder engagements with Members of Executive Committees, provincial parliaments, leadership and senior officials in national departments, and the use of its subpoena powers have been strategies employed by the Commission to accelerate the resolution and finalisation of appropriate complaints. In addition, as will be seen in the litigation chapter which follows below, the Commission has also brought various contempt proceedings where outcomes in response to human rights violations have not been complied with.



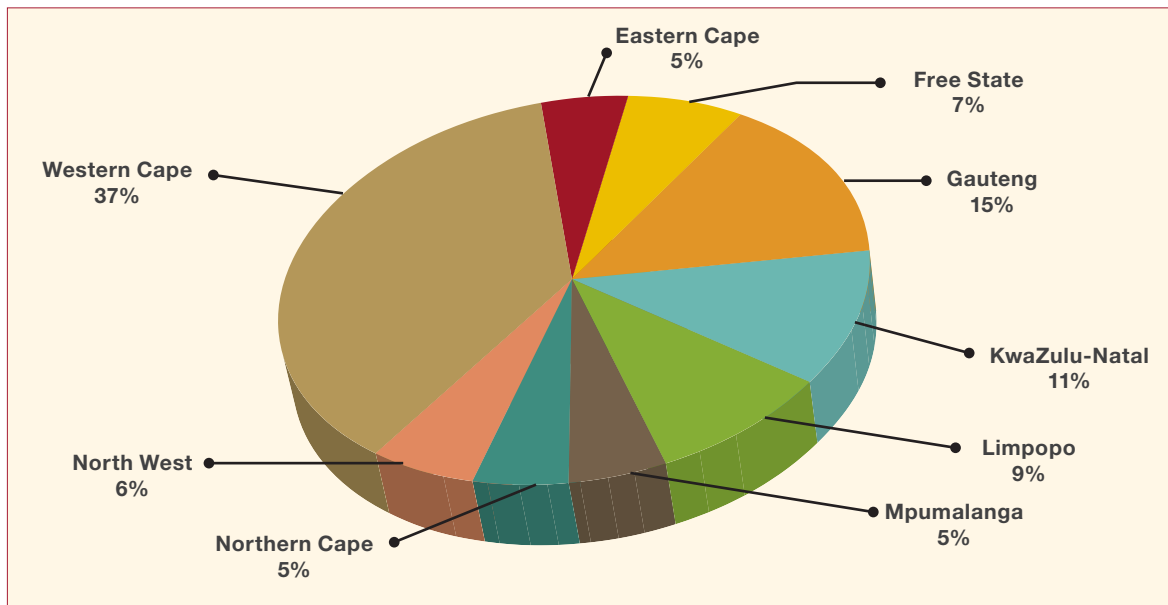


FIGURE 7 – AVERAGE PERCENTAGE OF COMPLAINTS CARRIED OVER PER PROVINCE OVER EIGHT YEAR PERIOD

#### 2.2.4. New complaints per province over eight-year period

The total number of new complaints recorded by the Commission over an eight-year period, from 2012 to 2020, is 27,563. The highest number of new complaints in a financial year were recorded at the end of 2013-2014, with a total of 4,313 complaints recorded. In the period under review, the Commission recorded a total of 3,180 new complaints.

All provinces, with the exception of Limpopo, Mpumalanga and the Northern Cape saw a decrease in the number of new complaints recorded in the 2019/2020 financial year. Mpumalanga and Limpopo experienced the highest increases in new complaints. The increase of complaints in Limpopo may be attributable to endeavours to ensure visibility and accessibility to the Commission, with a specific focus on vulnerable groups. To this end, the Limpopo office hosted 71 activities in all five district municipalities and utilised community radio stations to increase its community reach.

Over the eight financial years, the more densely populated regions of Gauteng, KwaZulu-Natal and the Western Cape comparatively received higher numbers of complaints. While population density appears to be a factor influencing complaint volumes, some variances in volumes are notable. The Eastern Cape - with the fourth highest population density in the country - has demonstrated consistently low reporting trends, between 300 to 400 complaints during the eight-year period – a trend that concerns the Commission as the region has a high poverty index. The Free State province on the other hand, has the second lowest population density in the country, alongside the Northern Cape, but has seen a notable increase in complaints reported to the Commission. Mpumalanga and Limpopo, the fifth and sixth most populous provinces, have seen a marked increase in new complaints during the period under review.

New complaints per provincial office	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	Total – eight years
Eastern Cape	343	351	377	379	368	355	383	364	2920
Free State	340	430	269	388	513	559	517	468	3484
Gauteng	1069	989	707	842	629	676	390	380	5682
KwaZulu-Natal	258	439	419	457	371	517	569	447	3477
Limpopo	74	416	348	334	400	357	345	422	2696
Mpumalanga	177	380	204	229	602	270	240	358	2460
Northern Cape	148	182	117	97	114	112	110	137	1017
North West	189	351	149	467	400	392	409	341	2698
Western Cape	479	775	253	382	309	285	383	263	3129
<b>NATIONAL</b>	<b>3077</b>	<b>4313</b>	<b>2843</b>	<b>3575</b>	<b>3706</b>	<b>3523</b>	<b>3346</b>	<b>3180</b>	<b>27563</b>

FIGURE 8 – NUMBER OF NEW COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD

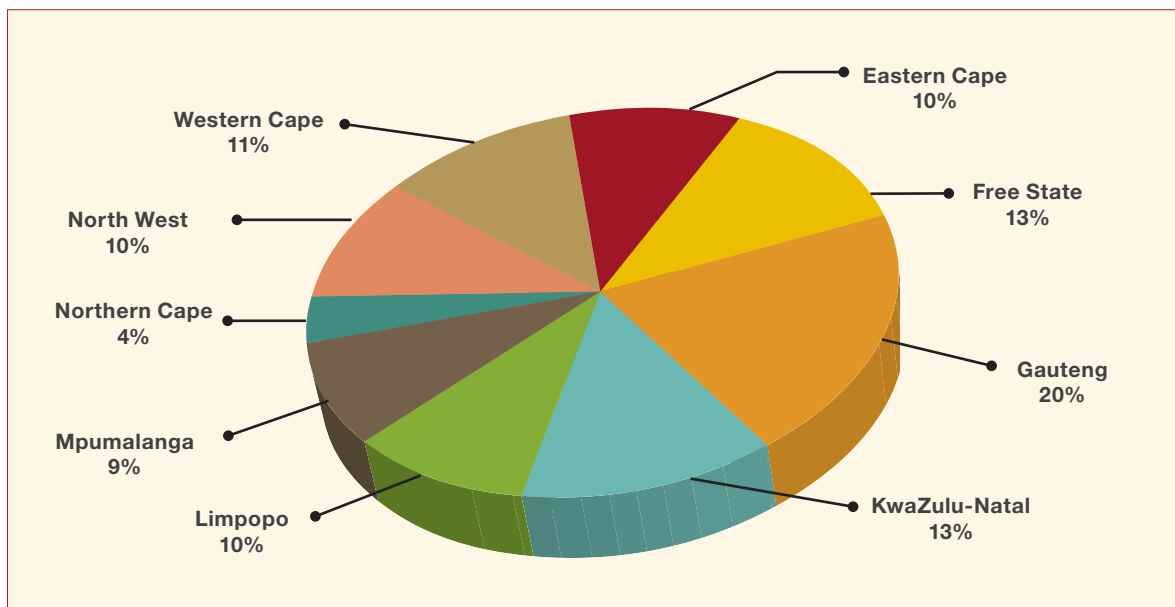


FIGURE 9 – AVERAGE NUMBER OF NEW COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD

Although Gauteng, on average over the past eight years, has recorded the highest number of complaints, the number of complaints recorded by that office over the past two financial years has decreased drastically despite the fact that Gauteng remains the most populous province in the country, of over 15 million people. KwaZulu-Natal and the Free State are second to Gauteng, recording an average of 13% of the total new complaints. One of the possible reasons for this downward trend in complaints trends reported by the Gauteng provincial office, may be on account of its handling of complaints. In this regard, a success indicator resides in the highly visible interventions by the provincial office in matters of public interest through engagement either proactively, or through a rapid response. The resolution of such matters has to some degree resulted in a reduction of multiple complaints on the same cause of action to the Commission. In addition, the provincial office was able to dispense with a number of complaints by treating them as enquiries. KwaZulu-Natal and the Free State are second to Gauteng, recording an average of 13% of the total new complaints.



## 2.2.5. Enquiries per financial year

The Commission also deals with a number of enquiries each financial year. An enquiry can be oral, written or electronic, is not about a human rights violation or is not within the jurisdiction of the Commission. Where the Commission is not in a position to assist with the enquiry, it may refer the complainant to an institution which is better suited to provide the assistance to the person.

The number of enquiries recorded by the Commission increases each financial year. Over the past eight years, the Commission has recorded a total of 37,292 enquiries. In the period under review, the Commission recorded 5,711 enquiries. Gauteng, the Western Cape and KwaZulu-Natal, the most densely populated provinces, recorded the highest number of enquiries.

Enquiries per financial year	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	8 Years Totals
Eastern Cape	197	291	172	204	232	187	113	197	1593
Free State	185	115	274	286	168	188	181	189	1586
Gauteng	713	658	1050	863	894	951	1344	2000	8473
KwaZulu-Natal	826	790	592	747	766	714	870	702	6007
Limpopo	113	97	376	363	387	561	481	331	2709
Mpumalanga	105	195	206	185	493	306	492	603	2585
Northern Cape	642	529	149	252	284	262	490	399	3007
North West	189	196	175	260	208	163	262	344	1797
Western Cape	1002	1366	1500	1465	1360	984	912	946	9535
<b>NATIONAL</b>	<b>3972</b>	<b>4237</b>	<b>4494</b>	<b>4625</b>	<b>4792</b>	<b>4316</b>	<b>5145</b>	<b>5711</b>	<b>37292</b>

FIGURE 10 – NUMBER OF ENQUIRIES PER PROVINCE OVER EIGHT YEAR PERIOD

Trends indicating an increase in the number of enquiries recorded by the Commission may be attributable to a number of factors. Key among these at an external level is the increase in the means of communication with the Commission through social media and mobile coverage. Other factors contributing to increases in enquiries include the higher visibility of the Commission, resulting in it being regarded as a preferred point of contact for the public in relation to matters involving their human rights.

## 2.2.6. Workload per financial year

'Workload' refers to the combined total of complaints and enquiries recorded by the Commission in a financial year and the total number of carried over complaints referred to earlier.

The workload of the Commission increases each year. At the end of the year under review, the total workload for the Commission had increased to 11,803 from 10,413 in the preceding financial year. Despite being the fourth most populous province, the Eastern Cape has consistently recorded the lowest workload each financial year. Only in 2019/2020, did the Eastern Cape record, for the first time, a higher workload than the Northern Cape (the least populous province in South Africa). In general, workloads appear to be consistent with population densities in provinces.

Workload	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	645	710	616	675	661	617	557	689
Free State	635	567	583	768	766	859	820	855
Gauteng	2154	1793	1971	1956	1803	1869	1901	2544
KwaZulu-Natal	1233	1361	1102	1315	1281	1418	1592	1485
Limpopo	368	576	777	779	867	1028	1025	1005
Mpumalanga	477	629	453	464	1132	625	794	1122
Northern Cape	873	774	308	385	438	434	741	664
North West	609	579	352	763	661	603	773	901
Western Cape	1925	2228	2017	2133	2121	2007	2210	2538
<b>NATIONAL</b>	<b>8919</b>	<b>9217</b>	<b>8179</b>	<b>9238</b>	<b>9730</b>	<b>9460</b>	<b>10413</b>	<b>11803</b>

FIGURE 11 – WORKLOAD PER PROVINCE OVER EIGHT YEAR PERIOD

### 2.2.7. Finalised workload per financial year

'Finalised workload' refers to the total number of complaints (new and carried over) and enquiries that have been finalised or concluded at the end of the financial year. At the end of the period under review, the finalised workload of 8,891 was recorded - an increase of 400 complaints and/or enquiries compared to the preceding financial year. At the end of the 2019/2020 financial year, the three highest workloads were recorded in Gauteng, the Western Cape and KwaZulu-Natal. Gauteng finalised approximately 27% of the national workload, followed by the Western Cape with 14%. KwaZulu-Natal finalised approximately 13% of the workload. These figures also represent the trend over the past eight financial years.

Finalised workload	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	540	642	549	583	600	542	496	561
Free State	525	545	543	674	681	747	698	657
Gauteng	1782	1647	1757	1705	1523	1627	1734	2380
KwaZulu-Natal	1084	1229	1011	1204	1137	1231	1439	1149
Limpopo	187	513	724	697	787	918	826	763
Mpumalanga	282	575	410	414	1095	576	732	961
Northern Cape	790	711	266	349	398	374	639	536
North West	378	547	324	727	608	555	632	685
Western Cape	1481	2141	1753	1847	1669	1269	1295	1209
<b>National</b>	<b>7049</b>	<b>8550</b>	<b>7337</b>	<b>8200</b>	<b>8498</b>	<b>7839</b>	<b>8491</b>	<b>8891</b>

FIGURE 12 – FINALISED WORKLOAD PER PROVINCE OVER EIGHT YEAR PERIOD

### 2.2.8. Accepted complaints

New complaints to the Commission are assessed and are either accepted, rejected or referred to other bodies. A complaint will be accepted should it demonstrate a prima facie violation of a human right that no other body is mandated to respond to. The Commission has a wide discretion to decide whether or not to accept and investigate a complaint, and in making such a determination, shall at all times act fairly.



Some complaints are rejected in the following circumstances: where it has been determined that there is no human rights violation; where it has been determined that there is a human rights violation, but it took place prior to 1994; or in circumstances in which the matter is currently before another dispute resolution forum or has already been determined by the courts.

Referred complaints are complaints that may fall within the broad mandate of the Commission, but which may be more appropriately addressed by another statutory body. Complaints which fall within the jurisdiction of such bodies are referred to them either directly by the Commission, or indirectly where a complainant is advised to approach such bodies in their individual capacity. These complaints are not investigated by the Commission, however, where the Commission has specific interest in the outcome of the matter referred, it will monitor the progress and outcome of the matter.

Complaints which are within the mandate of other specialist bodies (referred complaints), continue to present in high numbers to the Commission.

Accepted	2012-2013	2013-2014	2014 - 2015	2015 - 2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	159	147	144	152	166	195	223	211
Free State	149	135	67	138	171	223	224	292
Gauteng	520	377	329	500	518	520	363	302
KwaZulu-Natal	135	195	193	186	238	373	373	364
Limpopo	197	212	153	154	206	200	290	391
Mpumalanga	140	137	117	158	403	175	198	278
Northern Cape	171	161	116	79	75	106	167	170
North West	185	183	72	201	148	161	227	383
Western Cape	573	317	327	411	561	818	1046	1392
National	2229	1864	1518	1979	2486	2771	3111	<b>3783</b>

*FIGURE 13 – ACCEPTED COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD*

Once accepted a complaint may be subjected to ADR, may result in findings by the Commission following an investigation, or may form the basis for litigation.

From time to time the Commission has deemed it appropriate to inquire into matters of national interest. Such matters are either comprised of complaints to the Commission which are accepted or are matters which the Commission deems - of its own accord - warrant an inquiry. Inquiries or national hearings by the Commission are typically those matters which are complex in nature, have wide impact, or are likely to involve the basic human rights of vulnerable groups. Matters of this nature often require national hearings to lend insights into root causes and may require multiple interventions ranging from advocacy and awareness to policy reform interventions at domestic level, through to reporting on State compliance with international and regional human rights responsibilities.

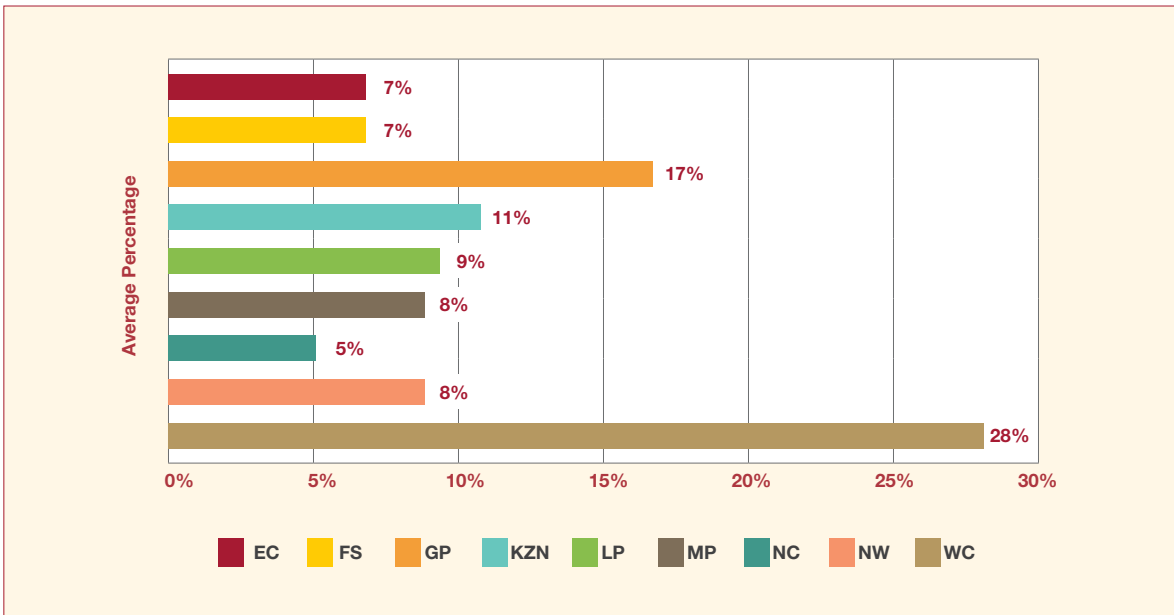


FIGURE 14 – AVERAGE PERCENTAGE OF ACCEPTED COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD

Figure 14 shows that, on average over the past eight years, the Western Cape has accepted the highest number of new complaints and the Eastern Cape has accepted the lowest number.

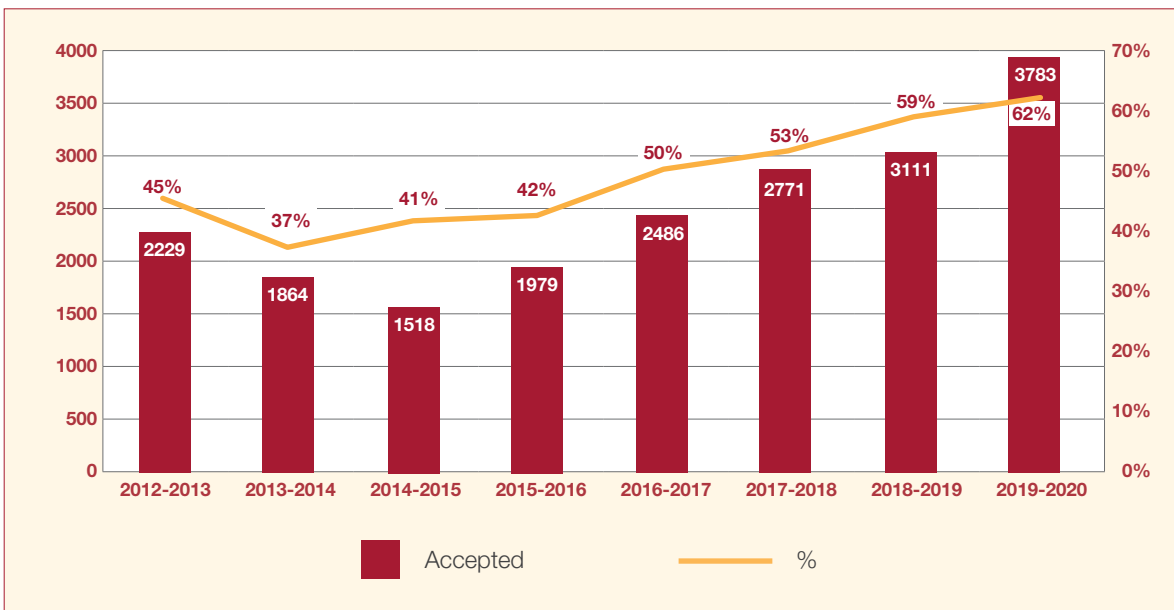


FIGURE 15 – AVERAGE PERCENTAGE OF TOTAL ACCEPTED COMPLAINTS OVER EIGHT YEAR PERIOD

Figure 15 depicts the total number of accepted complaints by the Commission over the past eight financial years. The trend line illustrates an upward curve in the percentage of accepted complaints by the Commission.

## 2.2.9. Rejected or referred complaints

Rejected or referred complaints are e complaints that the Commission has either (i) determined that it has no jurisdiction over the complaint, or that no human rights violation has occurred; or (ii) has directly or indirectly referred the complaint to another institution or body better suited to handle the complaint.

While the data does not distinguish between referred and rejected complaints, it is likely that most of these complaints would have been referred to as opposed to rejected, as there are limited grounds for rejecting complaints.

The total number of rejected or referred complaints for the four financial years preceding the period under review had steadily declined. 2019/2020 saw an increase in the number of complaints that were rejected or referred. KwaZulu-Natal, the North West and the Western Cape rejected or referred fewer complaints in the 2019/2020 financial year than in the preceding financial year.

Rejected & referred	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	272	262	296	313	259	231	219	274
Free State	281	317	237	344	427	435	373	374
Gauteng	719	732	531	539	390	392	194	242
KwaZulu-Natal	159	298	285	343	230	312	314	303
Limpopo	50	264	248	262	251	198	144	257
Mpumalanga	141	287	130	121	235	143	103	217
Northern Cape	56	84	43	52	79	66	68	76
North West	166	200	105	302	305	277	280	166
Western Cape	294	545	190	257	200	205	252	200
<b>National</b>	<b>2138</b>	<b>2989</b>	<b>2065</b>	<b>2533</b>	<b>2376</b>	<b>2259</b>	<b>1947</b>	<b>2109</b>

FIGURE 16 – TOTAL REJECTED OR REFERRED COMPLAINTS OVER EIGHT YEAR PERIOD

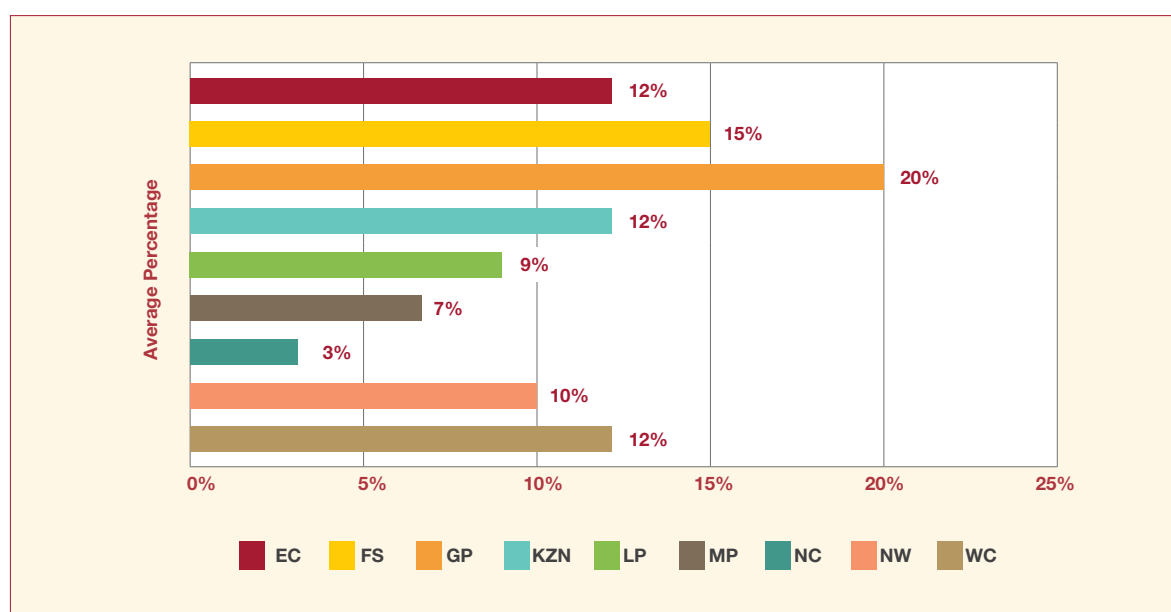


FIGURE 17 – AVERAGE REJECTED OR REFERRED COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD



Figure 17 shows that on average over the past eight years, Gauteng has rejected or referred the highest number of complaints followed by the Free State. The Eastern Cape, KwaZulu-Natal and the Western Cape, on average, rejected or referred 12% of the total number of complaints.

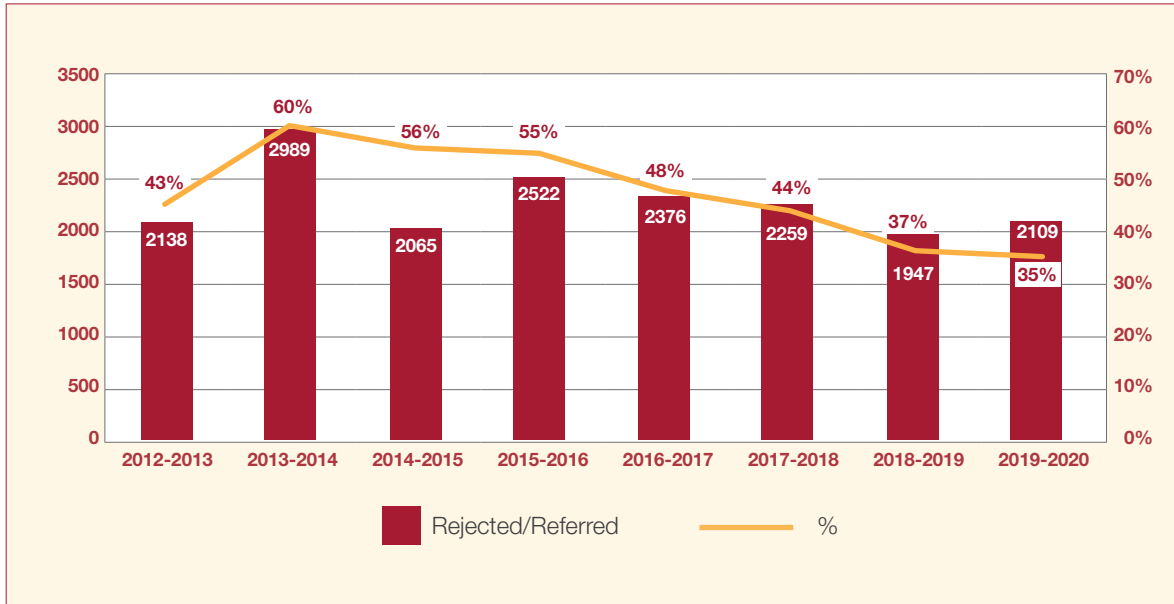


FIGURE 18 – AVERAGE PERCENTAGE OF TOTAL REJECTED OR REFERRED COMPLAINTS OVER EIGHT YEAR PERIOD

Figure 18 depicts the average percentage of the total number of rejected or referred complaints by the Commission over the past eight financial years. The trend line illustrates a downward curve in the percentage of rejected or referred complaints by the Commission. Localities which demonstrate a continued high number of complaints that are rejected or referred to other bodies, may require more concerted effort to increase awareness about the mandates of other rights bodies and the mandate of the Commission, to improve direct access for the public to more appropriate bodies.

## 2.3 NATURE OF COMPLAINTS

### 2.3.1 The Bill of Rights

South Africa's Bill of Rights is a cornerstone of democracy that enshrines the rights of all people and affirms the democratic values of human dignity, equality and freedom. The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state. The primary duty to respect, protect, promote and fulfil the rights in the Bill of Rights lies with the state. Increasingly, the world has seen development projects impact adversely on human rights with private actors violating human rights, often without the framework or mechanism to address such abuses. The Bill of Rights does not only apply vertically, between the state and its citizens, it also applies, where applicable, horizontally between one citizen or private body and another.

All rights within the Bill of Rights are commonly accepted to be human rights, and may therefore be taken to be within the mandate of the Commission as the national human rights body.

The right to equality underpins of all these rights, and:

- a) means that everyone is equal before the law and has the right to equal protection and benefit of the law;
- b) includes the full and equal enjoyment of all rights and freedoms, including positive measures taken to advance and protect people previously disadvantaged by unfair discrimination;
- c) prohibits unfair discrimination on any one or more of the listed grounds.

The Bill of Rights guarantees –

- a) the right to human dignity and the right to life
- b) freedom and security of the person and freedom from slavery, servitude, and forced labour
- c) the right to privacy
- d) freedom of religion, belief, and opinion
- e) freedom of expression
- f) freedom of association, assembly, demonstration, picket, and petition
- g) political participation
- h) citizenship
- i) freedom of movement and residence
- j) freedom of trade, occupation, and profession
- k) the right to fair labour practices
- l) environmental rights
- m) property rights
- n) the right to housing
- o) the right to health care, food, water, and social security
- p) children's rights
- q) the right to education
- r) the right to language and culture and the protection of cultural, religious, and linguistic communities
- s) access to information
- t) just administrative action
- u) access to justice
- v) the rights of arrested, detained and accused persons.



Rights violations	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Equality	511	556	493	749	705	747	783	827
Health Care, Food, Water and Social Security	236	361	338	428	631	492	595	702
Just Administrative Action	592	635	366	379	407	457	452	641
Human Dignity	353	317	175	244	280	389	411	446
Labour Relations	574	527	334	440	426	397	386	457
Education	227	265	221	276	297	382	355	418
Arrested, Detained and Accused Persons	536	655	473	409	443	377	287	351
Children	135	142	155	165	165	206	229	247
Housing	290	285	157	290	289	236	211	269
Environment	74	92	64	94	114	134	199	205
Property	142	189	134	115	129	149	167	202
Freedom and Security of the Person	105	148	94	114	120	167	144	183
Citizenship	31	26	26	41	75	96	131	224
Freedom of Expression	62	77	91	117	150	156	119	131
Access to Information	192	144	110	150	171	157	109	97
Privacy	49	51	42	49	47	47	47	37
Cultural, Religious and Linguistic Communities	16	15	17	15	31	26	27	32
Access To Courts, Independent Tribunals and Forums	50	53	34	33	19	48	25	28
Freedom of Movement, Residence, Passport and to leave the Republic	13	11	9	18	16	20	22	13
Life	27	23	7	9	6	19	18	29
Freedom of Trade, Occupation and Profession	11	14	10	8	17	13	12	11
Freedom of Religion, Belief and Opinion	14	15	17	14	9	14	9	9
Assembly, Demonstration, Picket and Petition	6	7	6	6	3	5	4	8
Freedom of Association	4	4	1	5	3	4	4	3
Language and Culture	5	8	0	1	4	2	2	4
Political Rights	1	1	6	2	5	0	1	1
Slavery, Servitude and Forced Labour	1	1	0	0	1	1	1	1
Under assessment	288	40	10	7	30	81	141	91
No Jurisdiction	145	315	247	382	311	275	303	340
No Violation	414	261	100	103	108	97	109	100
Total	5104	5238	3737	4663	5012	5194	5303	6107

FIGURE 19 – NUMBER OF COMPLAINTS RECEIVED PER RIGHTS VIOLATION OVER EIGHT YEAR PERIOD



### 2.3.3. Top 5 rights violations

Figure 20 depicts the total number of complaints received for the top five rights violations over the previous eight financial years. Three categories of rights violations – equality, just administrative action and ESR – have consistently remained in the top three rights violations reported to the Commission. Equality has remained the right with the highest number of complaints made to the Commission over the past six years.

The category: *arrested, detained and accused persons*, has decreased over the past three financial years, falling outside of the top five rights violations. Similarly, there has been a decrease in the number of violations reported relating to labour relations. This may be because, in the ordinary course of events, complaints of this nature are typically directed to more appropriate bodies that are specifically mandated to address those rights violations. This could include for example, the Judicial Inspectorate for Correctional Services (JICS), Legal Aid South Africa (Legal Aid-SA), the Independent Police Investigations Directorate (IPID), the Commission for Conciliation, Mediation or Arbitration (CCMA) or applicable Bargaining Councils in the context of a labour dispute, unfair dismissal, or workplace discrimination.

It should be noted that the newly established National Preventative Mechanism (NPM), located within the Commission, which has a monitoring function, also receives complaints relating to detained persons, which are redirected to appropriate bodies forming a part of the NPM. The decrease in complaints of this nature may indicate that complainants are increasingly aware of the appropriate bodies to approach. However, the inconsistency in the statistics (beyond the general downward trend) suggests that perhaps complainants continue to approach the Commission for subjective reasons, which could include perception, level of assistance provided OR because of dissatisfaction with the outcomes of the processes of such bodies, resulting in an approach to the Commission as a last resort as the mandated arbiter of equality and human rights.

The rights to health care, food, water and social security which have been in the top five category of complaints to the Commission over a seven-year period commencing in 2013, also demonstrates an increase in complaint volumes. When this category of complaints is considered together with other socio-economic rights categories such as housing (269), and education (418), the total number of socio-economic rights complaints (1,389) far exceeds equality complaints (827) in the 2019/2020 financial year.

Rights violations	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Equality	511	556	493	749	705	747	783	827
Health Care, Food, Water And Social Security rights (ESR)		361	338	428	631	492	595	702
Just Administrative Action	592	636	366	379	407	457	452	641
Human Dignity	353					389	411	446
Labour Relations	574	527	334	440	426	397	386	457
Arrested, Detained and Accused Persons	536	655	473	409	443			

FIGURE 20 – TOP FIVE RIGHTS VIOLATIONS OVER EIGHT YEAR PERIOD

The top five rights violations as represented in Figure 20 are addressed with greater detail and specificity in the next chapter.



## 2.4 ACCESS TO INFORMATION

The following information is drawn from the Commission's annual report on the Promotion of Access to Information Act (PAIA) 2019/2020. Complaints received by the Commission and other trends reported by the Commission which impacts on the observance of the right to access information as envisaged in the Constitution are reflected below.

### 2.4.1 Inquiries

The Commission receives regular PAIA-related inquiries. Given the complexity of PAIA, many inquiries are general in nature, whereas others involve the provision of basic assistance to complete formal PAIA forms for information requests. A concerning number of requests for the contact details of Information Officers and Deputy Information Officers within public and private bodies indicates the need for this information to be made more widely accessible to the public.

A number of inquiries are submitted to the Commission after an initial, unsuccessful, PAIA request had been lodged by the requester. Such requests comprise those which were simply ignored ("deemed refusals"), whereas other requests were responded to outside of the timeframes prescribed by the PAIA. Some requests are explicitly denied, but such denials are not always justified with reference to the grounds for refusal set out in the PAIA. Where records are disclosed, such disclosure is sometimes incomplete. Where records do not exist or cannot be found, the requirements for an affidavit to this effect, as required by section 23 of the PAIA, are seldom supplied. Ultimately, many information holders seem unaware of the obligations imposed on them by the PAIA. In respect of public bodies, Information Officers have a duty to assist requesters, and cannot simply deny a request because it was not made in the correct form.<sup>7</sup>

Inquiries received in respect of public bodies sector, ranged from municipalities and national departments to State Owned Entities (SOEs). For example, an inquiry was received against the Department of Public Works (DPW), and the Department of International Relations and Cooperation (DIRCO) regarding the awarding of a contract which the requester had bid for. Both the departments were responsive, but the records requested were not granted on the basis that the information was not available. DPW had however, not provided the requester with an affidavit required in terms of section 23 of the PAIA (setting out all steps taken to locate the records). The Commission also intervened in a PAIA request submitted to the DPW, when it lodged the request on behalf of community members in respect of a list of properties held in trust. The 30 days response period lapsed due to delays on the part of the Department, after which a formal complaint was lodged. Eventually, incorrect records were granted. The Commission further intervened in other requests by submitting requests on behalf of requesters to eThekweni Municipality and Eskom, respectively.

Municipalities fulfil an imperative constitutional role in the delivery of services. It is often through the conduct of local government that the socio-economic rights guaranteed in the Constitution are realised or denied. It is therefore of concern that PAIA compliance at local government level remains unacceptably low, as such non-compliance has a number of implications for the realisation of this fundamental human right. Where bodies like the Commission is unable to source basic PAIA information in respect of municipalities, it is unlikely that an ordinary member of the public will have greater success in exercising their constitutional right of access to information. There is therefore an urgent need for other branches of government to enforce PAIA compliance at the local government level in the absence of enforcement powers under the PAIA. Once the Information Regulator takes over the PAIA mandate with the addition of investigative and enforcement powers, it is hoped that greater respect will be afforded this fundamental right.

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<sup>7</sup> Section 19 of the PAIA.

Regarding PAIA requests lodged with private bodies, the Commission observed that requesters continue to struggle to demonstrate that information sought is “necessary for the exercise or protection of any right”.<sup>8</sup> The difficulty in meeting this evidential requirement is exacerbated by the power imbalance that often exists between requesters and big corporations including commercial banks, private hospitals and telecommunication companies. The Commission has noted requests for assistance in respect of information requests relating to the pharmaceutical industry, and for records of deceased relatives from private hospitals. These requests indicate a heightened need to increase awareness of PAIA and freedom of information in this sector.

In the light of widespread non-compliance with the PAIA, and common failure to understand and correctly apply the legislation, it will be vital for the Information Regulator to enforce the Act for respect and observance of the right to access information. Currently, the only remedy for many<sup>9</sup> unsuccessful requesters is to institute proceedings in court within 180 days of a refusal or deemed refusal. Litigation remains prohibitively complex and expensive for ordinary members of the public and may render the purpose of the right worthless to the public if it is not respected at the outset.

## 2.4.2 Complaints

The Commission received 97 PAIA-based complaints during the 2019/20 reporting period. The Commission's Western Cape provincial office received the highest number of PAIA complaints (41), followed by the Eastern Cape provincial office (15), and the Mpumalanga (10) and North West (10) provincial offices. Often, the constitutional right of access to information is exercised with a view to realising other human rights guaranteed in the Bill of Rights. Denying the right of access to information may also lead to the inability to claim other human rights.

The majority of PAIA complaints received by the Commission related to deemed refusals, otherwise inadequate responses to PAIA requests, or the inaccessibility of a public body's PAIA manual. The Commission was called upon to intervene in relation to various national departments, provincial departments, and municipalities. National departments against which PAIA complaints were lodged include complaints against the Department of Home Affairs (DHA), as well as the Department of Correctional Services (DCS), the Department of Labour (DOL), the Department of Rural Development and Land Reform (DRDLR), the Department of Social Development (DSD), the Department of Defence (DOD) and the Department of Basic Education (DBE). Several complaints were directed at the South African Police Service (SAPS) whereas one complaint was lodged in respect of the Government Employee Pension Fund (GEPF). Complaints were also lodged against two public hospitals. Municipalities complained against include Rustenburg Local Municipality, Enoch Mgijima Municipality, Dr Beyers Naude Municipality, Ephraim Mogale Municipality, Msunduzi Municipality, Beaufort West Municipality and Bitou Municipality.

In respect of private bodies, certain complaints were lodged against medical doctors, and several complaints were lodged against various different mining companies. PAIA complaints against private bodies also include financial services companies and a large telecommunication company as respondents.

Trends apparent from PAIA complaints lodged with the Commission reflect trends in compliance with reporting required in terms of section 32, namely that non-implementation of the PAIA remains endemic. Complaints trends also show that many private bodies lack awareness of the constitutional right of access to information or the legislation that seeks to give effect thereto. In order for South Africa to cultivate a culture of transparency, it is necessary for all information holders to have earnest regard for the crucial importance of a free flow of information.

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**8 Section 50 of the PAIA.**

**9 Certain public bodies have an internal appeal mechanism which should be exhausted prior to the institution of legal proceedings. Section 74 read with the definition of “public bodies” in the PAIA.**



### 2.4.3 Legislative developments

The PAIA Amendment Bill, which aims to supplement the Political Party Funding Act, 6 of 2018, was published for public comment in July 2019. The Commission and Information Regulator separately made submissions on the Bill, and further presented during public hearings before the Portfolio Committee on Justice and Correctional Services in August 2019. The Commission regarded the Bill as an opportunity for the SAHRC, other stakeholders and ordinary citizens to actively engage the draft legislation with a view to recommending measures to improve legislative frameworks in South Africa and ultimately strengthen human rights protection and promotion. However, the PAIA Amendment Bill remained a very limited intervention when it was signed into law subsequent to the current reporting period,<sup>10</sup> and an opportunity for broader legislative reform was thus missed.

In making its written submissions on the Bill, the Commission noted its concerns that the PAIA remains inaccessible for most members of the public. The Commission accordingly reiterated its recommendation that the duty to proactively disclose information be broadened and made compulsory.<sup>11</sup> Given the unique nature of political parties, coupled with the crucial role played by political parties in South Africa's constitutional democracy,<sup>12</sup> the SAHRC recommended that "political parties" be included in the definition of "public body". This suggestion was not incorporated into the eventual PAIA Amendment Act, and "political parties" are instead included in the definition of a "private body". The Commission further submitted that section 15 of the PAIA could be strengthened to require mandatory proactive disclosure by certain bodies including political parties. Furthermore, the Commission made submissions regarding the digital divide in South Africa (almost half the population does not enjoy access to the internet) as well as the fact that the Political Party Funding Act does not cover internal campaign financing records. The Commission made additional submissions on PAIA reform, in respect of offences in the PAIA section 32 reporting requirements, and the need to amend the prohibitively high standard for disclosure currently set by the public interest override.<sup>13</sup>

On 4 October 2019, new rules of procedure for applications to court under the PAIA were published by the Rules Board for Courts of Law, after approval by the Minister of Justice and Correctional Services. In terms of the Rules, legal proceedings can now be instituted in Magistrate's Courts in addition to High Courts.<sup>14</sup>

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**10** The PAIA Amendment Act, 31 of 2019, was signed into law in May 2020.

**11** Section 15 and 52 of the PAIA provide for "voluntary" disclosure by public and private bodies, respectively.

**12** *Ramakatsa and Others v Magashule and Others* 2013 (2) BCLR 202 (CC).

**13** The public interest override is set out in section 70 for private bodies, and section 46 for public bodies:

**46 Mandatory disclosure in public interest**

Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34 (1), 36 (1), 37 (1) (a) or (b), 38 (a) or (b), 39 (1) (a) or (b), 40, 41 (1) (a) or (b), 42 (1) or (3), 43 (1) or (2), 44 (1) or (2) or 45, if-

(a) the disclosure of the record would reveal evidence of-

(i) a substantial contravention of, or failure to comply with, the law; or

(ii) an imminent and serious public safety or environmental risk; and

(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

**14** Government Gazette No. 42740 of 4 October 2019 <https://www.justice.gov.za/legislation/notices/2019/20191004-gg42740rg10991gon1284-PAIA.pdf>.





CHAPTER 3

**Top Rights  
Violations**





# TOP RIGHTS VIOLATIONS

## 3.1 OVERVIEW

It is not surprising that equality and ESR are the top two rights violations reported to the Commission, given South Africa's history of colonialism and apartheid, which institutionalised the denial of rights to the majority black population and entrenched a system of inequality.

Violations of the right to equality on the grounds of race continue to be the highest reported reason of unfair discrimination by a significant margin. A significant number of these complaints are the result of race-based hate speech. This is a strong indicator of the entrenched and routine expression of racism in interpersonal contexts, in the workplace, and on social media platforms. There is still a clear need for increased efforts aimed at social cohesion.

Increasing ESR complaints reflect deep socio-economic disparities in the face of increasing demand which result in increased levels of discontentment and disaffection. While it is heartening that complainants regard the Commission as an effective body to approach to resolve complaints of this nature, this is not an area that the Commission can solve on its own. The systemic nature of such issues require that pro-poor policies are properly implemented by all responsible authorities to alleviate need and suffering.

Studies also indicate a strong correlation between corruption, poverty and inequality. Corruption negatively impacts the enjoyment of all human rights. Concrete steps to fight corruption are required to ensure the protection of human rights.

## 3.2 EQUALITY

Equality complaints continue to constitute the highest number of complaints received by the Commission annually. Of these complaints, most are based on race. It is clear that inequality borne from the legacy of apartheid and colonialism, continues to fuel racial tensions in South Africa. Social media has emerged as a powerful conduit for publishing hate speech as well as unfairly discriminatory expression. Such expression - whether communicated during face-to-face altercations or via social media platforms - result in violations of the right to equality as well as the right to human dignity. Moreover, unfair discrimination and hate speech significantly detract from South Africa's project of achieving social cohesion, as is encapsulated in the National Development Plan. Most complaints are brought by ordinary individuals, although certain interest groups and political parties regularly submit complaints to the Commission in this context.



The majority of these complaints are resolved either through ADR mechanisms or through litigation in the equality courts, as is apparent from chapter 4 and chapter 6.

Province	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	24	13	22	20	18	31	27	33
Free State	45	46	19	57	70	75	83	74
Gauteng	219	219	185	265	257	250	200	155
KwaZulu-Natal	33	63	70	183	98	112	118	106
Limpopo	16	49	43	46	74	44	45	64
Mpumalanga	31	29	25	19	23	34	45	37
Northern Cape	29	36	27	32	30	32	26	36
North West	28	27	12	34	30	34	57	84
Western Cape	86	74	90	93	105	135	182	238
<b>Totals</b>	<b>511</b>	<b>556</b>	<b>493</b>	<b>749</b>	<b>705</b>	<b>747</b>	<b>783</b>	<b>827</b>

FIGURE 21 – TOTAL NUMBER OF EQUALITY COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD

The number of equality complaints lodged with the Commission has steadily increased over the last three financial years. Over the past eight financial years, the Gauteng province recorded the highest number of equality complaints with the exception of the 2019/2020 financial year. Gauteng, the Free State, KwaZulu-Natal and Mpumalanga all reported a decrease in the number of complaints received in 2019/2020 when compared to the previous financial year.

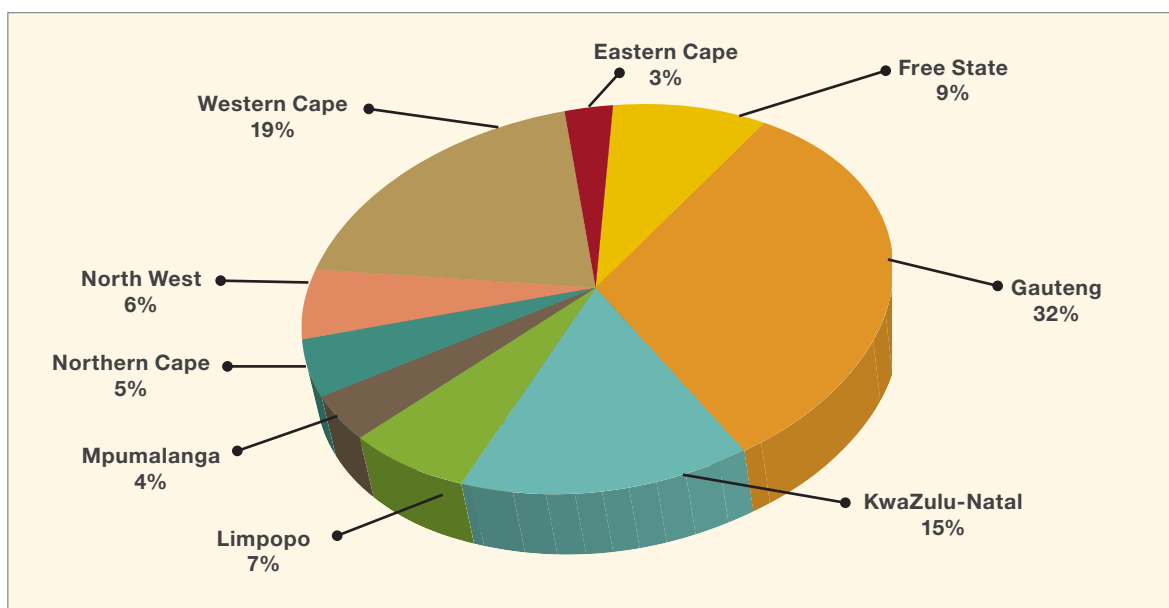


FIGURE 22 – AVERAGE NUMBER OF EQUALITY COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD

On average Gauteng recorded the highest percentage (32%) of equality complaints over the past eight years. The Eastern Cape has recorded the least number of complaints, an average of 3%.



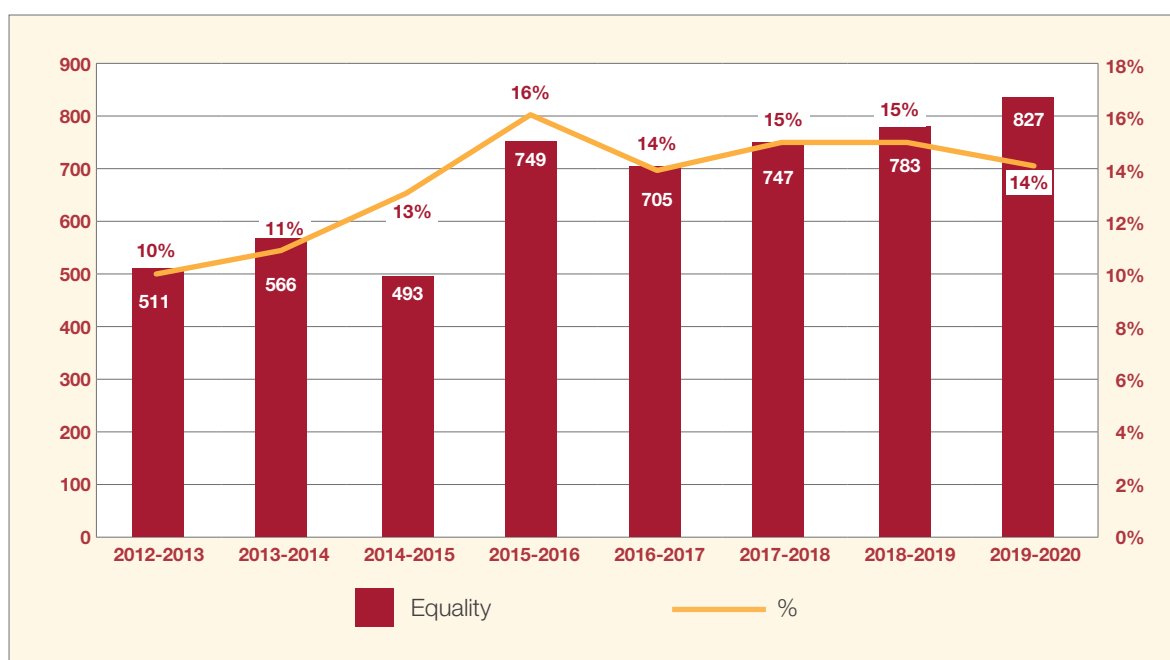


FIGURE 23 – TOTAL NUMBER OF EQUALITY COMPLAINTS OVER EIGHT YEAR PERIOD

Figure 23 indicates the percentage of equality complaints received annually against the total number of complaints received by the Commission. On average, the Commission has recorded **14 - 15%** of equality related complaints per financial year over the past eight financial years.

### 3.2.1 Disaggregated equality complaints over a period of eight years

Race, disability and sexual orientation represent the highest number of equality complaints. The number of complaints concerning unfair discrimination on the basis of sexual orientation has consistently increased over the past three financial years, replacing ethnic or social origin as the third highest equality complaint.

EQUALITY	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Race	208	297	292	505	486	496	509	511
Disability	45	70	62	66	69	80	76	78
Sexual Orientation	14	22	17	26	24	38	50	52
Ethnic or Social Origin	39	55	35	47	27	30	31	35
Religion	17	34	36	22	22	29	35	25
Any other ground	140	17	13	22	21	25	40	82
Gender	12	19	11	18	9	21	16	13
Age	10	20	13	24	21	15	14	13
Language & Birth	4	3	2	7	5	5	3	4
Culture	4	6	8	5	13	3	3	3
Colour	8	1	1	0	3	2	3	6
Sex	4	2	2	3	2	1	1	2
Marital Status	3	6	0	1	1	1	0	0
Pregnancy	1	2	0	1	2	1	1	0
Belief	2	1	1	2	0	0	1	3
Conscience	0	1	0	0	0	0	0	0
<b>Total</b>	<b>511</b>	<b>556</b>	<b>493</b>	<b>749</b>	<b>705</b>	<b>747</b>	<b>783</b>	<b>827</b>

FIGURE 24 – DISAGGREGATED EQUALITY COMPLAINTS OVER EIGHT YEAR PERIOD

### 3.3 HEALTH CARE, FOOD, WATER AND SOCIAL SECURITY

Limpopo, the Northern Cape and Western Cape recorded the highest number of section 27 rights, or ESR complaints, during the period under review. Limpopo and the Northern Cape also recorded the highest increase in these complaints when compared to the previous financial year. Gauteng recorded the least number of ESR complaints for the past two financial years. Overall, the number of ESR complaints has increased over the past two financial years.

Province	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	21	29	44	48	49	56	87	69
Free State	25	22	26	34	50	65	65	66
Gauteng	32	49	57	71	74	76	41	36
KwaZulu-Natal	17	22	32	34	48	57	58	76
Limpopo	30	59	62	54	42	57	65	111
Mpumalanga	22	45	18	20	236	22	42	52
Northern Cape	18	39	32	24	30	51	73	103
North West	27	40	24	85	37	37	49	55
Western Cape	44	56	43	58	65	71	115	134
National	236	361	338	428	631	492	595	702

FIGURE 25 – TOTAL NUMBER OF SECTION 27 RIGHTS PER PROVINCE OVER EIGHT YEAR PERIOD

Access to health care and water remain of the top two complaints within the ESR complaints. Common problems relating to water service provision include a lack of access to sufficient potable water, water interruptions and/or shortages, and poor water quality. In many rural areas, particularly in the Eastern Cape, communities do not have access to water at all and rely on open water sources to meet their needs or travel long distances to locate taps to access water. Water and wastewater treatment plants are poorly maintained and there are often complaints of raw sewerage filling streets and sometimes entering homes. Such issues are particularly prevalent in informal settlements.

There was a myriad of complaints on the state of sanitation provision in all provinces, with many communities, particularly informal settlements using pit latrines. In some cases, sanitation was completely absent.

Some interventions of the provincial offices in this regard are detailed below.

The Free State provincial office initiated an investigation into the challenges of access to water in QwaQwa, Maluti a Phofung Local Municipality. Water shortages in the area led to residents drawing water from nearby rivers, resulting in the death of a minor child who drowned while collecting water. As a result of the Commission's intervention, a number of short term measures have been implemented to ensure access to water for the community, while the longer term plan to instal the necessary water infrastructure is under consideration. The Commission continues to monitor the situation. In addition, the Free State office, through Commissioners, initiated ongoing engagements with leadership in the national, provincial and local government spheres regarding the challenges to access to water in the area. Government in response has provided the Commission with an undertaking to attend to the complaint and to ensure interim measures for access is provided.

The KwaZulu-Natal provincial office has seen recent increases in the number of complaints relating to access to water. In a complaint from the Bhamshela community, the Commission established that the area did not have access to water due to various infrastructure challenges and an increase in demand. As a result of the Commission's intervention, the Municipality inspected the existing infrastructure and attended to leaks in the system, and also installed communal taps as an interim measure.



The Gauteng provincial office initiated an investigation into the socio-economic conditions in Kliptown Informal Settlement. After preliminary investigations and an inspection in loco, the Commission observed various socio-economic challenges, including water infrastructure in need of repair, illegal electricity connections that pose a danger to the community, and lack of sewerage infrastructure. The Department of Human Settlements (DHS) and the City of Johannesburg have agreed to attend to the issues identified by the Commission and to provide monthly updates on the various measures being taken to address these issues.

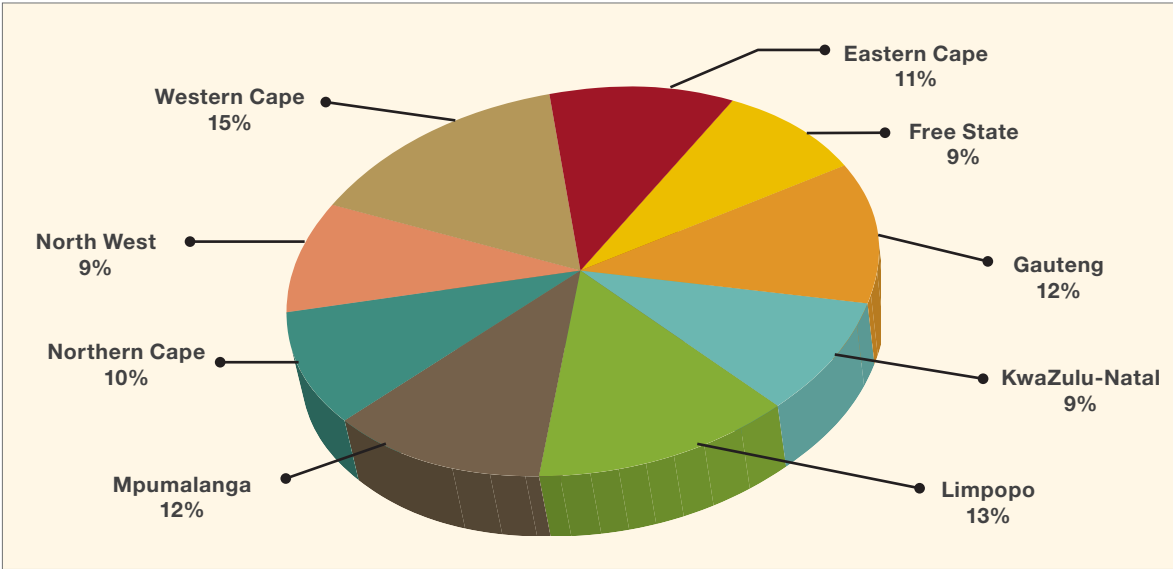


FIGURE 26 – AVERAGE NUMBER OF SECTION 27 RIGHTS PER PROVINCE OVER EIGHT YEAR PERIOD

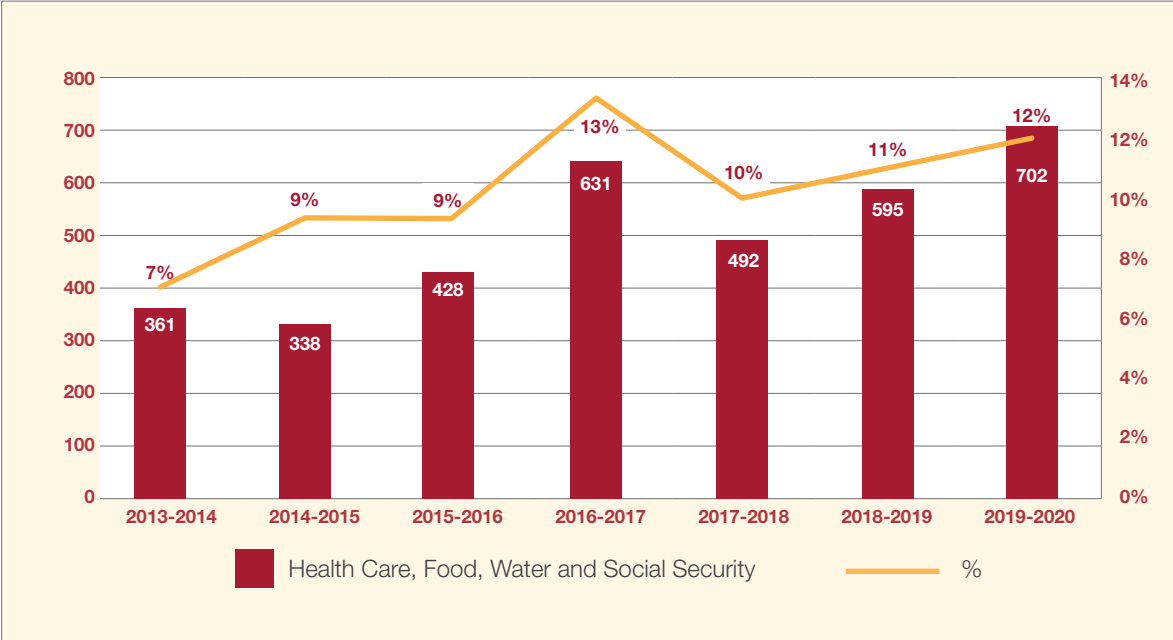


FIGURE 27 – TOTAL NUMBER OF SECTION 27 COMPLAINTS OVER EIGHT YEAR PERIOD

In relation to healthcare, the main complaints centres on poor health facilities and infrastructure, a lack of adequate staff, discrimination and poor treatment at the hands of healthcare workers, and a lack of access to emergency services and equipment.

In August 2019, a Commission delegation headed by Chairperson Majola conducted a provincial visit to Mpumalanga. The Commission found that in all of the healthcare facilities visited there was a common challenge of shortage of staff, especially nurses, doctors and midwives. This has a direct and negative impact on the delivery of and access to public healthcare services (which 88% of the province relies on). There was inadequate maintenance of infrastructure; for example, malfunctioning laundry machines meant that hospitals ran out of clean linen thus compromising disease control and other healthcare services. Furthermore, most healthcare facilities visited did not have enough wards and consultation rooms, particularly so in the maternity and psychiatric wards. These challenges had been previously raised with the Mpumalanga Department of Health and so the continued failure to address them indicated a failure to progressively advance the implementation of the right of access to healthcare services in the province.

The North West, Eastern Cape, and Free State registered social security related complaints in the period under review. These complaints dealt with applications for social assistance that had been refused without reason, and with difficulties accessing social grants.

It is unclear what proportion of the section 27 complaints relate to the right to food. However, provincial reports indicate that such complaints deal mainly with the standard of living of farm labourers and dwellers, particularly their access to services and secure tenure. These complaints are most common in Mpumalanga and the Western Cape.

It is important to note that section 27 covers five of the seven Constitutional economic and social rights and that complaints on the rights to education, housing and environment are also received (see figure 19 above). It is further important to note that economic and social rights impact disproportionately on black African people, women, and people in rural areas. As such, there is strong link between equality and ESR complaints.

### 3.4 JUST ADMINISTRATIVE ACTION

The Western Cape and Gauteng had the highest number of complaints concerning the right to administrative action that is lawful, reasonable and fair. While the number of administrative action complaints increased across all provinces for the period under review, Gauteng saw a substantial increase in these complaints from the previous financial year.

Province	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	52	64	74	101	82	78	38	43
Free State	44	26	2	3	6	36	68	95
Gauteng	235	217	130	104	75	39	29	107
KwaZulu-Natal	81	76	23	11	33	40	47	74
Limpopo	39	73	41	3	1	0	1	5
Mpumalanga	17	23	33	44	76	47	52	70
Northern Cape	41	26	9	7	8	81	28	37
North West	40	39	9	26	47	8	42	47
Western Cape	43	91	45	80	79	128	147	163
National	592	635	366	379	407	457	452	641

FIGURE 28 – TOTAL NUMBER OF ADMINISTRATIVE ACTION COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD

There was a decline in the number of these complaints recorded in the 2014/2015 and 2015/2016 financial years, with a steady increase being recorded since the 2016/2017 financial year. The period under review saw an increase of 189 complaints compared to the previous financial year.

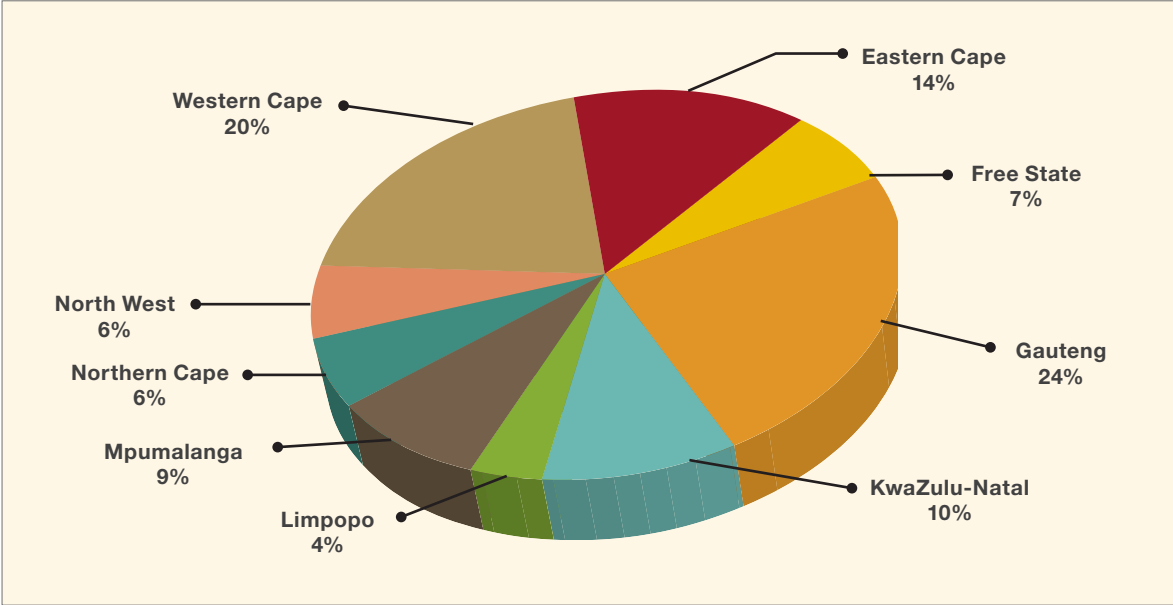


FIGURE 29 – AVERAGE NUMBER OF ADMINISTRATIVE ACTION COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD

Gauteng recorded the highest number of administrative action complaints over the previous eight years, with an average of 24% followed by the Western Cape, with an average of 20%. Limpopo has recorded the least amount of complaints, on average 4%. Overall, the complaints that fall within this category concern non-responsiveness and delays in the provision of services by public bodies. Some complaints concerning non-responsiveness also evidence maladministration and are referred to the appropriate bodies, such as the Public Protector.

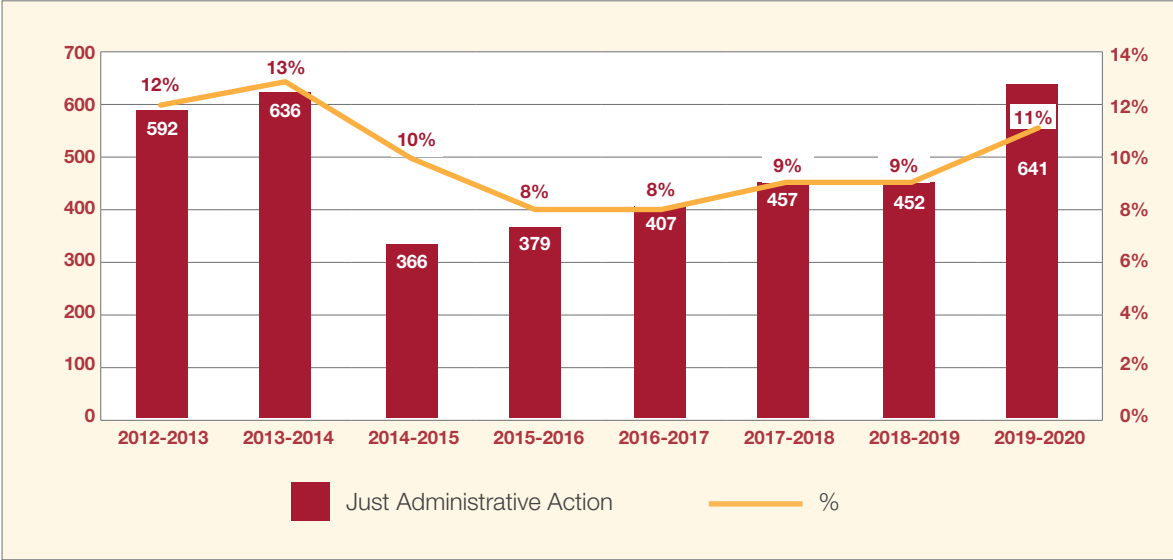


FIGURE 30 – AVERAGE NUMBER OF ADMINISTRATIVE ACTION COMPLAINTS OVER EIGHT YEAR PERIOD



### 3.5 LABOUR RELATIONS

The period under review saw an increase of 71 complaints related to labour relations. This is despite that fact that the previous three financial years saw a consistent decline in the number of complaints received by the Commission. All provinces, with the exception of Gauteng, the Northern Cape and North West, reported an increased number of labour relations related complaints. Many of the complaints received by the Commission relate to unfair discrimination in the workplace, and other matters involving the workplace and employer/employee relations. Such matters are largely referred to the CCMA and DOL where appropriate.

Province	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	56	62	35	59	41	24	41	47
Free State	55	30	24	58	48	72	82	97
Gauteng	156	146	101	83	62	39	21	7
KwaZulu-Natal	28	63	49	58	52	89	58	76
Limpopo	13	44	40	38	38	25	21	30
Mpumalanga	96	41	25	27	36	24	19	34
Northern Cape	37	17	7	2	15	39	39	30
North West	55	37	20	52	57	6	14	5
Western Cape	78	87	33	63	77	79	91	131
National	574	527	334	440	426	397	386	457

*FIGURE 31 – TOTAL NUMBER OF LABOUR RELATIONS COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD*

On 2 April 2019, the Mpumalanga provincial office subpoenaed the Chief Director of the provincial Department of Labour to appear before it and to answer questions regarding a complaint. It was alleged in the complaint that a claim for unemployment benefits was declined by the Department of Labour on the basis that the complainant had previously claimed unemployment benefits in 2015, making his 2018 claim a second claim within a four year cycle.

This decision was taken by the Department of Labour on the basis of section 13(3) of the Unemployment Insurance Act 63 of 2001 (“**UI Act**”), which was previously interpreted to mean that a UIF contributor could only claim for unemployment benefits once in every four year cycle. The UI Act was however amended in 2016 by the Unemployment Insurance Amendment Act 10 of 2016 (“**UI Amendment Act**”). The UI Amendment Act categorically states that “unemployment benefits must be paid to the unemployed contributor regardless of whether or not the contributor has received benefits within that four year cycle, if the contributor has credits.” These amendments came into effect on 19 January 2017. Accordingly, from 19 January 2017, the Department of Labour could no longer decline claims for unemployment benefits on the basis that the contributor had previously claimed for benefits within the same 4 year cycle.

This notwithstanding, the Chief Director conceded during the subpoena proceedings that since 19 January 2017, the Department had continued to decline claims for unemployment benefits on the basis of the old provisions of UI Act, as nationally, their systems had not yet been aligned with the legislative amendments which came into effect on 19 January 2017. The Chief Director assured the Commission, however, that all claims that had previously been declined on the basis of the old legislative provisions would be paid retrospectively. The Chief Director further assured the Commission that the Department and the Unemployment Insurance Fund have been doing everything in their power since January 2017 to sensitise members of the public about the legislative amendments.



The intervention highlighted the need for urgent action in aligning the operations of the Department of Labour with the UI Amendment Act.

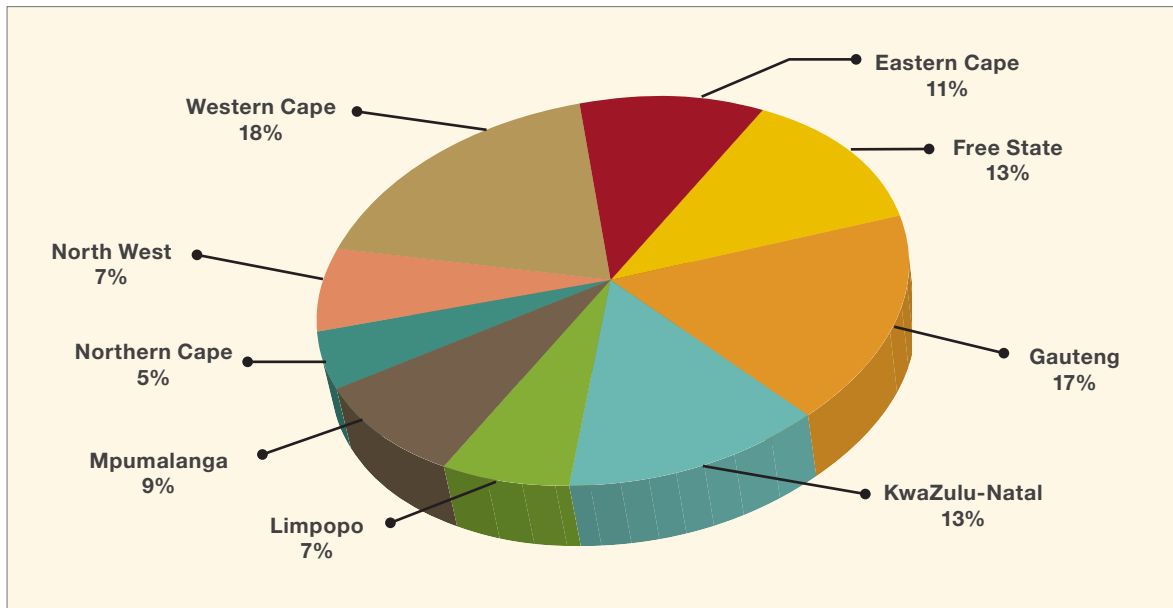


FIGURE 32 – AVERAGE NUMBER OF LABOUR RELATIONS COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD

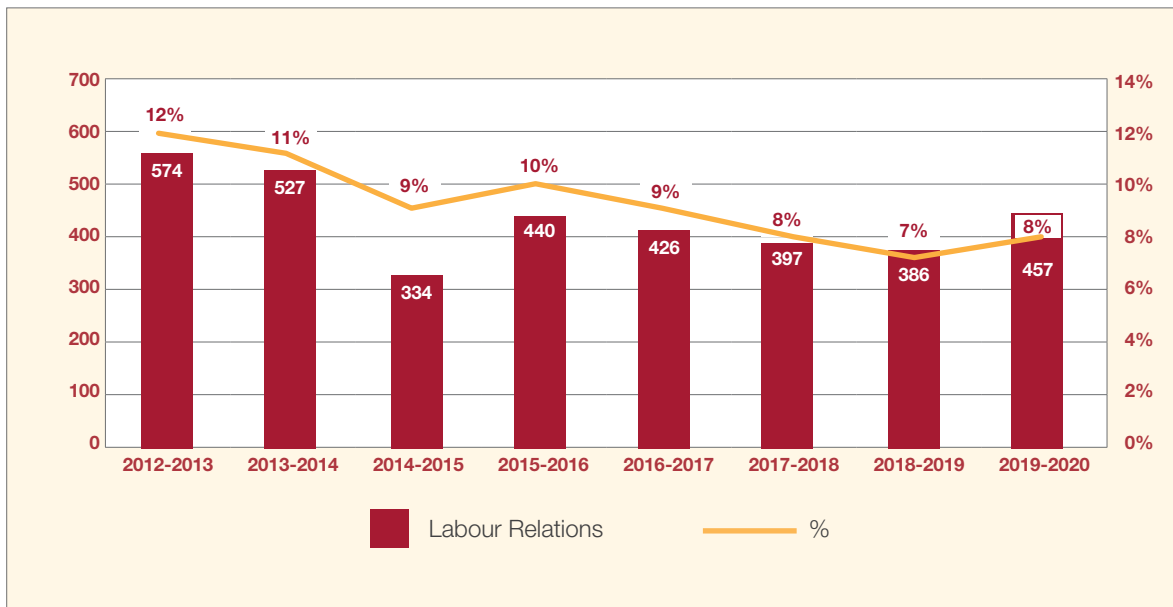


FIGURE 33 - AVERAGE NUMBER OF LABOUR RELATIONS COMPLAINTS OVER EIGHT YEAR PERIOD

### 3.6 Arrested, Detained and Accused Persons

Complaints relating to arrested, detained and accused persons have increased over the past two financial years. Despite the increase, section 35 rights have not formed part of the top five rights violation from the 2016/2017 financial year onwards.

The increase in complaints over the past two financial years may be due to increased monitoring of places of detention by the Commission. These monitoring activities form part of the Commission's role as part of the NPM, established in 2019. This is illustrated by the increase in complaints registered in Limpopo in response to NPM visits and monitoring of eight police stations in the province, and similar trends in the Western Cape in response to the monitoring of two police stations, during the period under review.

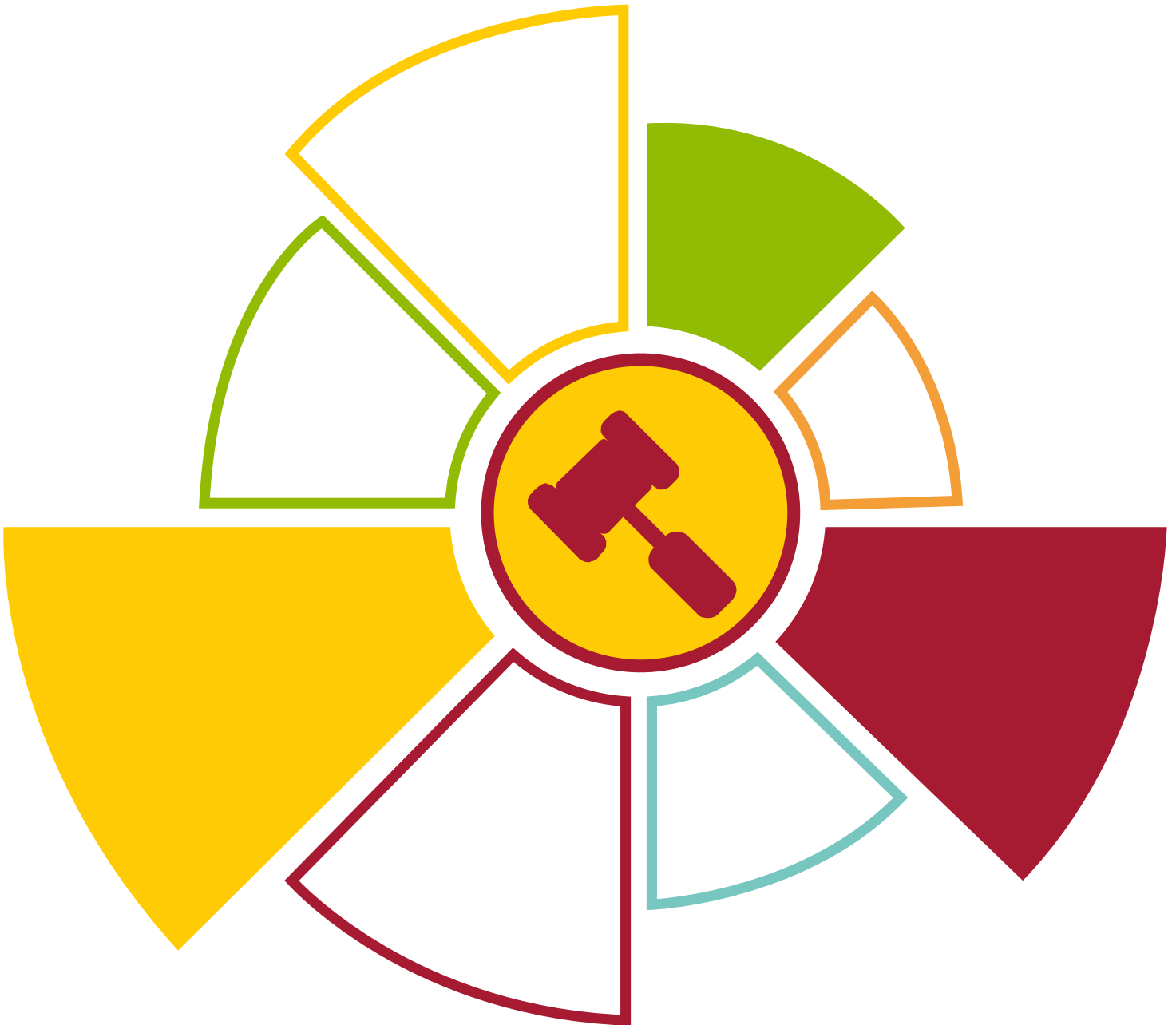
Province	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2016-2017	2018-2019	2019-2020
Eastern Cape	57	56	48	53	58	28	29	49
Free State	115	124	113	99	118	49	54	42
Gauteng	197	171	55	49	41	70	62	45
KwaZulu-Natal	36	136	67	55	40	83	71	64
Limpopo	30	49	43	44	45	21	17	34
Mpumalanga	11	16	16	9	6	30	14	22
Northern Cape	15	6	12	9	15	24	41	43
North West	17	21	44	16	50	9	10	11
Western Cape	58	76	75	75	70	75	113	136
<b>National</b>	<b>536</b>	<b>655</b>	<b>473</b>	<b>409</b>	<b>443</b>	<b>389</b>	<b>411</b>	<b>446</b>

FIGURE 34 – TOTAL NUMBER OF SECTION 35 RIGHTS COMPLAINTS PER PROVINCE OVER EIGHT YEAR PERIOD



CHAPTER 4

**Litigation**





# LITIGATION

## 4.1 OVERVIEW

The Commission institutes strategic litigation as a tool to secure appropriate redress for human rights violations. Section 13(3)(b) of the SAHRC Act provides that the Commission is competent to bring proceedings in a competent court or tribunal in its own name, as may reasonably be required for the effective exercising of its powers and performance of its functions. Section 20(1)(f) of the Equality Act expressly permits the Commission to institute proceedings (to assist complainants) in equality courts.

The Commission litigates in a variety of ways. It brings strategic impact litigation in its own name to secure appropriate redress for rights violations. It also litigates on behalf of complainants in equality courts. The Commission may in addition represent complainants, as an attorney of record, where appropriate. The Commission has, from time to time, resisted challenges to human rights through its role as a friend of the court to influence jurisprudence and to support the work of civil society actors who rely on litigation-based advocacy to promote respect for the rule of law and human rights in in South Africa.

Litigation is a vital means through which accountability for human rights may be tested, the substance of human rights protections provided in the Bill of Rights expanded, and through which polarized power relations in the country may be progressed toward greater equality. Although a powerful tool, litigation has its limitations. Not only is litigation time consuming, with frequent delays, it is also resource intensive (requiring human and financial resources).

The Commission recognises the important role played by civil society and public interest organisations in the protection of rights through strategic impact litigation. Where possible, the Commission forms partnerships with these institutions to reduce costs and prevent duplication. A number of interventions by these organisations resulted in judgments protecting and enforcing human rights during the period under review, including:

- In July 2019 a full bench of the Johannesburg High Court approved the settlement of the silicosis and tuberculosis class action suit. This was the result of more than 15 years' work to achieve redress for mineworkers who contracted silicosis working on South African goldmines.

- A successful constitutional challenge to provisions of the Matrimonial Property Act to the extent that it maintained and perpetuated the discrimination created by the Black Administration Act (now repealed) in that marriages of Black couples, entered into before 1988 are automatically out of community of property.
- The Constitutional Court declaring section 1(1)(b) of the Intimidation Act unconstitutional in that it unjustifiably limits the right to freedom of expression. The Constitutional Court also confirmed the SCA's order declaring section 1(2) of the Intimidation Act unconstitutional as it breaches an accused person's right to remain silent.

The Commission also directs its focus to assisting complainants in equality court litigation at the provincial level as an effective tool in the fulfilment of its mandate.

This chapter explores litigation trends at both the national and provincial levels of the Commission. While general trends are reflected, only selected litigation is reported on in more detail. The selection of particular cases is informed both by practical considerations relating to length of this report and more importantly, on account of the legal significance of the selected litigation. In the period under review, the Commission used litigation to ensure the protection and promotion of a range of civil, political and socio-economic rights. Some of the matters reported under this period of review involved litigation initiated in the years preceding the period under review. Further, some matters reported are still the subject of ongoing litigation in the form of appeals before superior courts.

## 4.2 LEGAL SERVICES UNIT / NATIONAL LITIGATION

The majority of strategic impact litigation matters are undertaken through the national Legal Services Unit (LSU) of the Commission, in collaboration with the provincial offices and Commissioners. An overview of the litigation undertaken through the LSU during the period under review is provided below.

### 4.2.1 Matters instituted or heard during the period under review

Below a summary is provided of new matters instituted by the Commission (or judgments handed down) during the period under review.

#### 4.2.1.1 Nelson Mandela Foundation Trust & the SAHRC v Afriforum NPC & Others

The Nelson Mandela Foundation Trust and the Commission brought separate applications seeking an order that any display of the pre-1994 South African flag that does not serve any genuine journalistic, academic or artistic purpose in the public interest (i.e. 'gratuitous display') constitutes hate speech, unfair discrimination and harassment prohibited by the Equality Act. The Commission further sought, in the alternative, an order declaring section 10 of the Equality Act unconstitutional and invalid to the extent that it restricts the type of expression which may constitute hate speech to words only. The applications were consolidated before a joint High Court and Equality Court hearing in April 2019.

In judgment handed down on 21 August 2019, Mojaelo DJP held that in terms of section 21(1) and (2) of the Equality Act, the display of the old national flag of South Africa at the 'Black Monday' demonstrations on 30 October 2017 constituted, and that any display of the old flag (subject to the proviso in section 12 of the Equality Act) constitutes:

- i) hate speech, in terms of section 10(1) of the Equality Act,
- ii) unfair discrimination on the basis of race, in terms of section 7 of the Equality Act, and
- iii) harassment, in terms of section 11 of the Equality Act.

The Court said that the matter turns essentially on two things – the old flag and hate speech. These were the two main topics discussed in the judgment in order to answer the question whether the display of the flag constitutes hate speech. If it does, the Court said that the final question is whether such display is an expression that is protected by the provision of the Constitution which guarantees freedom of expression.<sup>15</sup>

The Court undertook a thorough analysis of the old flag, interpreted against its history and meaning to ascertain its objective meaning and to assess the effects of its display on the rights to dignity and equality. It considered the meaning of the flag, according to the parties and its international perspective. The Court held that the dominant meaning attributable to the old flag, both domestically and internationally, is that it is:<sup>16</sup>

*“For the majority of the South African population a symbol that immortalises the period of a system of racial segregation, racial oppression through apartheid, of a crime against humanity and of South Africa as an international pariah state that dehumanised the black population.”*

The Court found the old flag to be associated with the shameful apartheid policy with which, most peace-loving South Africans, of all races, do not wish to be associated.<sup>17</sup>

The Court then considered hate speech in South Africa, and, against the history and meaning of the old flag, to determine whether a gratuitous display of the flag constitutes hate speech. After a discussion of the applicable principles with regard to the legal interpretative framework, the Court held that the literal interpretation that Afriforum sought to rely on failed to have regard to those relevant principles of interpretation. Instead, the Court found that the reference to ‘words’ in section 10(1) of the Equality Act must be given a generous and wide meaning going beyond mere verbal representations. Consistent with the principle-based interpretative framework, the Court held that the prohibition in section 10 applies to all expression of hateful ideas, whether by words or conduct.<sup>18</sup> The prohibition against hate speech in section 10(1) applies to and regulates the waving of the old flag.<sup>19</sup>

A consideration of the old flag’s dominant meaning, coupled with the wide meaning attributed to ‘words’ in section 10(1), led to the inevitable conclusion that the gratuitous display of the old flag constituted, as against black people, the publishing, propagating, advocating or expression of hatred based on prohibited grounds.<sup>20</sup> The gratuitous display of the old flag was also held to constitute harassment and unfair discrimination against black people.<sup>21</sup>

In view of the Court’s finding on the correct interpretation of section 10(1), it was not necessary for the Court to consider the unconstitutionality of section 10(1), if construed restrictively (as excluding non-verbal expressions).<sup>22</sup>

#### 4.2.1.2 Centre for Child Law & Others v Minister of Basic Education & Others

The Commission was admitted as *amicus curiae* in this matter on 2 July 2019. The Commission intervened primarily to make submissions on the proper interpretation of the Immigration Act, 2002 in relation to the right to a basic education. This strategic intervention was based on the Commission’s interest and ongoing work on children’s rights, including the rights to basic education, to dignity and equality.

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**15 Nelson Mandela Foundation Trust & the SAHRC v Afriforum NPC & Others 2019 (6) SA 327 (GJ) at para 26.**

**16 Nelson Mandela Foundation Trust & the SAHRC v Afriforum NPC & Others 2019 (6) SA 327 (GJ) at para 89.**

**17 Nelson Mandela Foundation Trust & the SAHRC v Afriforum NPC & Others 2019 (6) SA 327 (GJ) at para 92.**

**18 Nelson Mandela Foundation Trust & the SAHRC v Afriforum NPC & Others 2019 (6) SA 327 (GJ) at paras 128-135, 163-165.**

**19 Nelson Mandela Foundation Trust & the SAHRC v Afriforum NPC & Others 2019 (6) SA 327 (GJ) at para 163.**

**20 Nelson Mandela Foundation Trust & the SAHRC v Afriforum NPC & Others 2019 (6) SA 327 (GJ) at para 165.**

**21 Nelson Mandela Foundation Trust & the SAHRC v Afriforum NPC & Others 2019 (6) SA 327 (GJ) at paras 189-195.**

**22 Nelson Mandela Foundation Trust & the SAHRC v Afriforum NPC & Others 2019 (6) SA 327 (GJ) at para 188.**



The matter involved a constitutional challenge to clauses 15 and 21 of the admission policy for Ordinary Public Schools, as well as to sections 39 and 42 of the Immigration Act. Clause 15, which applies mainly to nationals, makes the admission of national children to public schools conditional upon the production of a birth certificate within three months, failing which the child of the defaulting parent will be excluded from enrolment. Clause 21 requires of learners classified as ‘illegal aliens’ to prove that they have applied to legalise their stay before they can be admitted to public schools. A full bench of the Eastern Cape Division of the High Court held that clause 15 and clause 21 constitute severe limitations to rights enshrined in the Constitution for the protection of children, namely the right of children to have their best interests considered paramount, the right to dignity, and the right to equality.<sup>23</sup> The Court found clauses 15 and 21 of the admission policy to be unconstitutional, in that they unjustifiably limit the rights under sections 9(1), 10, 28(2) and 29(1)(a) of the Constitution.<sup>24</sup>

The Department of Home Affairs, supported by the Department of Education, argued that sections 39 and 42 of the Immigration Act prohibit schools from providing basic education to children who are illegal foreigners. Section 39 prohibits a learning institution to knowingly provide training or instruction to an illegal foreigner. Section 42(1) makes it an offence for any person to assist, enable or in any manner help an illegal foreigner or a foreigner in a manner that violates their status, including by providing training or instruction to him or her. In determining the proper interpretation to be given to sections 39 and 42 of the Immigration Act, the Court agreed with the Commission’s submission that the interpretation hinges on an invocation of:<sup>25</sup>

- a) the requirement in section 39(2) of the Constitution that all legislation be interpreted to promote the spirit, purport and objects of the Bill of Rights;
- b) the principle enunciated in section 233 of the Constitution requiring that legislation be interpreted in conformity with international law; and
- c) the presumption that legislation does not intend to change the law more than is necessary, and that Parliament knows existing law when it legislates.

The Court said that:<sup>26</sup>

*“ss 39 and 42 of the Immigration Act fall to be interpreted in a way that does not prohibit children from receiving basic education from schools. This interpretation is consistent with the right to basic education as enshrined in s 29; every child’s rights under s 28(2) to have their best interests taken into account in matters concerning them; international conventions’ emphasis on providing education to all children, irrespective of their status, and the existing obligation in the Schools Act placed on parents and schools to ensure that all learners receive basic education.”*

The Court held that, interpreted through the prism of the Bill of Rights, sections 39 and 42 do not prohibit schools from providing basic education to children who are illegal foreigners, and that it was unnecessary for the Court to enquire into the constitutionality of the sections.<sup>27</sup>

The Court adopted the approach contended for by the Commission that nothing militates against the grant of an order that gives clear direction to the respondents to conduct themselves within the bounds of their constitutional obligation to provide access to the right to basic education. The assistance given to the Court by the *amici curiae* was specifically noted by the Court as having assisted it in arriving at the conclusion that it did.<sup>28</sup>

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**23 Centre for Child Law & Others v Minister of Basic Education & Others 2020 (3) SA 141 (ECG) at paras 73-93.**

**24 Centre for Child Law & Others v Minister of Basic Education & Others 2020 (3) SA 141 (ECG) at paras 94-101.**

**25 Centre for Child Law & Others v Minister of Basic Education & Others 2020 (3) SA 141 (ECG) at para 111.**

**26 Centre for Child Law & Others v Minister of Basic Education & Others 2020 (3) SA 141 (ECG) at para 127.**

**27 Centre for Child Law & Others v Minister of Basic Education & Others 2020 (3) SA 141 (ECG) at para 128.**

**28 Centre for Child Law & Others v Minister of Basic Education & Others 2020 (3) SA 141 (ECG) at paras 129, 133.**



#### 4.2.1.3 Zulu v Minister of Police & Others

The Commission assisted Mr Zulu, a whistle-blower who gave testimony about political killings in KwaZulu-Natal to the Moerane Commission. This matter is significant because it concerns an area of protection not previously dealt with by the Commission. It also involves a lacuna in the current legal framework for the protection of witnesses and whistle-blowers. The matter was brought on an urgent basis, following Mr Zulu's various failed attempts to be provided with urgent protection despite an attempted assassination and two state law enforcement agency threat assessments indicating that Mr Zulu's life was indeed under threat and in need of protection. The matter required cautious handling on account of these factors and the fact that Mr Zulu was in hiding.

The Commission's initial attempts to engage the SAPS on Mr Zulu's behalf to secure the required protection did not yield a satisfactory response or outcome.

As a result, the Commission brought an urgent application that was heard before the Gauteng Division of the High Court on 16 March 2020. The Court ordered the Minister of Justice and Correctional Services to provide witness protection to Mr Zulu, in terms of the Witness Protection Act 1998.

Based on Mr Zulu's experience and the various shortfalls that have been identified, the Commission is in the process of considering a challenge to section 205 of the Constitution, which relates to the objects of the SAPS.

### 4.2.2 Updates on matters instituted before the period under review

A summary is provided below of developments during the period under review for ongoing litigious matters.

#### 4.2.2.1 The President & Another v Women's Legal Centre Trust 2020 ZASCA 177

This matter concerns a challenge against the lack of recognition of Muslim marriages and whether there is a constitutional obligation on the state to enact legislation in recognition thereof. The Commission was admitted as the eighth respondent in the High Court, Western Cape Division and made submissions from an international law perspective, which submissions were endorsed by the High Court. A full bench of the high court consolidated and heard three separate applications all bearing on legislative recognition of Muslim marriages. In a detailed order handed down by the High Court, it was declared that the state is obliged by the Constitution to enact and bring into operation legislation to recognise Muslim marriages as valid marriages and to regulate the consequences of such recognition.

The President and Minister of Justice were granted leave to appeal to the Supreme Court of Appeal (SCA) and the Women's Legal Centre and Mrs Esau were granted leave to cross-appeal. The Commission and Mrs Faro opposed the appeal by the President and Minister.

The matter was heard in August 2020.

#### 4.2.2.2 SAHRC & Another v Qwelane, CCT13/20

On 20 July 2008, Mr Qwelane penned an article titled "Call me names – but gay is not okay". In the article, Mr Qwelane compared gay and lesbian people to animals and postulated that they were responsible for the rapid degeneration of values in society. The Commission received over 350 complaints that the article constituted hate speech and contravened section 10(1) of the Equality Act. The Commission brought proceedings against Mr Qwelane in the Equality Court. Mr Qwelane, in response, instituted a constitutional challenge to section 10(1) of the Equality Act in the High Court. The proceedings were consolidated for hearing and the matter was heard in March 2017.



The High Court dismissed Mr Qwelane’s constitutional challenge, held that Mr Qwelane’s impugned statements constituted hate speech and ordered that Mr Qwelane tender a written apology to members of the LGBTI+ community and pay the costs of the proceedings.

Mr Qwelane appealed the judgment to the SCA. In a unanimous judgment handed down on 29 November 2019, the SCA upheld the appeal.<sup>29</sup> The SCA dismissed Mr Qwelane’s argument that section 10(1) of the Equality Act is unconstitutional on the basis that it extends the prohibited grounds beyond the ones listed in section 16(2)(c) of the Constitution. However, it upheld the overbreadth challenge on the basis that section 10(1) of the Equality Act limits freedom of expression beyond section 16(2)(c) of the Constitution (as it assessed hate speech on a subjective test, contrary to section 16(2)(c), which imposes an objective test). It also held that section 10 limits section 16(1) by prescribing that mere communication of words based on prohibited grounds which could reasonably be construed to demonstrate a clear intention to be “hurtful” is sufficient for liability to attach and for sanction to follow. Regarding the vagueness challenge, the SCA found that the proviso in section 12 of the Equality Act does not narrow the limitation of freedom of expression caused by section 10(1). Rather, the proviso in section 12 is difficult to understand, in particular, if one has regard to the concluding part of it. Ultimately, the SCA found that section 10 of the Equality Act cannot be saved by an interpretative exercise and constitutes an unjustifiable limitation of section 16(1) of the Constitution. For these reasons, the SCA declared section 10 of the Equality Act to be inconsistent with section 16 of the Constitution and therefore unconstitutional and invalid. In addition, the SCA ordered an interim reading-in that largely mirrors section 16(2)(c), but includes the prohibited ground of “sexual orientation”. The SCA dismissed the hate speech complaint against Mr Qwelane.

The Commission appealed against the findings of the SCA. The Commission contends that section 10(1) of the Equality Act is capable of a constitutionally compliant interpretation if regard is had to the purpose and objects of the Equality Act. The Commission claims that the primary objective is to ensure that human dignity and equality are not sacrificed in the name of freedom of expression, and seeks to ensure that these rights coexist. While the Commission accepts that section 10(1) of the Equality Act is a limitation of section 16(1), it submits that it is a reasonable and justifiable one in terms of section 36 of the Constitution. The Commission criticises the SCA’s finding in relation to the vagueness challenge, and in turn submits that section 12 of the Equality Act adds nothing more than what is already contained in section 16(1) of the Constitution.

The matter generated much interest with seven *amici curiae* being admitted and was heard on 22 September 2020.

This case is significant not only for the importance of the much needed clarity on the proper interpretation of section 10, but also for the effect it (and the SCA judgment) has had on various other matters pending before various equality and high courts. For instance, in ***Masuku & Another v SAHRC obo the South African Jewish Board of Deputies (SAJBD)***,<sup>30</sup> the Commission’s appeal to the Constitutional Court against the judgment of the SCA has been held in abeyance pending the Court’s decision about the constitutionality of section 10 of the Equality Act in *Qwelane*. The Commission’s grounds of appeal in *Masuku* include that the SCA failed to observe the principle of subsidiarity, relying instead directly on the Constitution and not on the enabling statute (the Equality Act). Similarly, the matters of ***Afriforum NPC v SAHRC & Others; Frederik Willem de Klerk N.O. & Others*** have been held in abeyance pending the Constitutional Court’s decision in *Qwelane*. In these matters, Afriforum and the FW de Klerk Foundation seek to review and set aside the decision of the Commission that statements made by Mr Malema do not constitute hate speech.<sup>31</sup>

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<sup>29</sup> *Qwelane v South African Human Rights Commission & Another 2020 (2) SA 124 (SCA)*.

<sup>30</sup> *2019 (2) SA 194 (SCA)*.

<sup>31</sup> The decision can be accessed at: <https://sahrc.org.za/index.php/sahrc-publications/findings> under “2019: Findings regarding certain statements made by Mr Julius Malema and another member of the Economic Freedom Fighters, March 2019”.



#### 4.2.2.3 Nedbank Limited & Others v Thobejane & Similar Matters

As detailed in the Trends Analysis Report 2017 – 2019, the full bench of the High Court Gauteng Division held that access to justice is better served when civil actions and/or applications falling within the jurisdiction of the Magistrates' Courts are heard by the Magistrates' Courts. Consistent with the submissions by the Commission on the approach of international and foreign law on access to justice, the Court held that access to justice is a vital component for the rule of law and that Courts are duty bound to guard against a court system that negatively impacts the rights of impecunious litigants from accessing justice.

Consequently, the Court ordered that as from 2 February 2019, in civil actions and/or applications where the monetary value claimed is within the jurisdiction of the Magistrates' Courts, such matters are to be instituted in the Magistrates' Court having jurisdiction, unless the High Court has granted leave to hear the matter in the High Court. The Court further held that the High Court has the power to transfer a matter to another court if it is in the interest of justice to do so.

Standard Bank appealed the High Court's judgment to the SCA. The Commission resolved to participate in the appeal as *amicus curiae* to be heard in 20 August 2020.

### 4.3 Provincial Offices litigation

The majority of litigation undertaken at the provincial level consists of equality court matters. Many of these matters are based on complaints received about hate speech and/or unfair discrimination on the basis of race, sexual orientation and disability. Generally matters will be instituted in the equality courts when ADR mechanisms fail, or when the matter is so egregious that ADR is not considered appropriate.

An overview of the matters pending before the Courts per provincial office for the period under review, as well as the preceding seven years, is provided in the table below.

Province	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Eastern Cape	0	0	3	5	5	3	9	9
Free State	1	0	3	7	12	8	8	6
Gauteng	6	0	7	6	7	12	14	14
Kwazulu-Natal	0	0	1	2	3	5	4	4
Limpopo	3	1	8	7	11	4	6	10
Mpumalanga	6	12	17	17	17	18	13	7
Northern Cape	0	10	9	7	4	2	5	6
North West	10	5	1	1	2	0	5	7
Western Cape	1	14	13	2	1	2	2	6
<b>Totals</b>	<b>27</b>	<b>42</b>	<b>62</b>	<b>54</b>	<b>62</b>	<b>54</b>	<b>72</b>	<b>69</b>

FIGURE 35 – OVERVIEW OF LITIGATION PER PROVINCE OVER EIGHT YEAR PERIOD



### 4.3.1 Eastern Cape

During the period under review, the Eastern Cape provincial office initiated three new matters in the equality court concerning unfair discrimination on the basis of race, disability and sexual orientation.

Of the six matters that the office had previously instituted and were pending, four matters were finalised during the period under review. In one matter in which the office represented the complainant, judgment was granted in favour of the complainant and the respondent was ordered to tender a written apology and to pay R15,000 in damages for calling the complainant “a monkey”. Three other matters were settled by the parties and the settlement agreements were made an order of court. These matters concerned the right to equality, one on the basis of sexual orientation and the other two on the basis of race.

### 4.3.2 Free State

The Free State Provincial office currently has six matters pending before various equality courts. These matters relate to allegations of unfair discrimination and/or hate speech on the basis of race, gender and sexual orientation. Those matters relating to hate speech and the proper interpretation of section 10 of the Equality Act have been postponed by agreement, pending the decision of the Constitutional Court in the *Qwelane* matter.

### 4.3.3 Gauteng

Reflecting the same trend as the other provincial offices, litigation instituted in the Gauteng provincial office concerned, in the majority, matters of hate speech on the basis of race.

Two matters instituted in the equality court concerning allegations of hate speech on the basis of race were settled between the Commission and the respondents. In the first instance, Angelo Agrizzi unconditionally apologised for hate speech in a recording where he refers to Black people as kaffirs and agreed to donate R200,000 to a charity identified by the SAHRC. Adam Catzavelos was recorded referring to black people as kaffirs while on holiday in Greece. He also unconditionally apologised and agreed to donate R150,000 to a charity identified by the SAHRC.

The Gauteng provincial office assisted Mrs Strydom in an equality court application against Black First Land First (BLF), to declare certain speech made by members of the BLF and written statements/slogans used by the BLF as hate speech on the basis of race. Judgment was handed down on 6 May 2019, where the Court held that the written statement used by the BLF “Land or Death” constitutes hate speech and ordered the BLF to remove the slogan from its official documentation, website and merchandise. The BLF was also ordered to delete any social media postings that it had made using the slogan, and to render an apology to be published on the Commission’s website for the period of one month.

### 4.3.4 KwaZulu-Natal

The majority of litigation instituted in the KwaZulu-Natal provincial office relates to unfair discrimination or hate speech on the basis of race or religion, impacting on the right to equality and to human dignity. There were two notable developments for pending litigation in the province during the period under review.

Judgment on the merits was handed down in the matter of **SAHRC & Others v Mfeka & Others**<sup>32</sup> on 16 April 2019, where the Court held an open letter written by Mr Mfeka and published in a local newspaper in May 2013, as well as utterances made in an article titled “Forum blames Indians for economy downfall” to constitute hate speech on the basis of race. In a sanction handed down on 15 July 2019, the Court interdicted the respondents from perpetuating hate speech on the basis of race directed at the Indian community. The Court directed that the respondents pay R42,000 in damages to Isibani Sethemba, an NGO chosen by the applicants.

<sup>32</sup> Durban Magistrates’ Court, Equality Court, 40/2014, 16 April 2019.



A settlement agreement was reached and made an order of court in the matter of **Kaliprasadh v Hundred Acres School & Another**.<sup>33</sup> The KwaZulu-Natal provincial office instituted proceedings in the Equality Court after a learner at the Hundred Acres School was expelled for wearing a religious pendant, symbolic of the Hindu faith. Initially the School attempted to rely on its constitution and status as an independent Christian school but later approached the Provincial Office to discuss a possible settlement. In terms of the settlement agreement, it was agreed that the conduct of the respondents constituted unfair discrimination on the basis of religion and culture, the respondents issued an unconditional written apology, agreed to pay R40,000 in damages and to complete 168 hours of community service at the Aryan Benevolent Home for the Elderly in Chatsworth. The School and all of its staff also underwent diversity and equality training, conducted by the provincial office.

#### 4.3.5 Limpopo

During the period under review, the Limpopo provincial office instituted six matters in various equality courts, with 4 ongoing matters previously instituted.

The matters related to allegations of hate speech and/or unfair discrimination on the basis of race, sexual orientation and disability. Five matters were settled and the settlement agreements were made an order of court.

#### 4.3.6 Mpumalanga

The Mpumalanga provincial office instituted two new matters in the equality court. All matters relate to hate speech and/or unfair discrimination on the basis of race or sexual orientation.

In one matter, the Equality Court found that the respondent committed hate speech when he called the complainant a kaffir and ordered the respondent to apologise. The matter was postponed for a determination on an appropriate sanction. The parties settled on the sanction to be imposed prior to the hearing, and the respondent agreed to pay R35,000 to the complainant as compensation.

In another matter where the respondent called for racial cleansing of all white people in a Facebook post, the parties settled the matter on the basis that the respondent issue a public apology, attend a race sensitisation programme and pay R20,000 to the complainant as compensation.

#### 4.3.7 North West

The North West provincial office had seven matters before various equality courts during the period under review. The vast majority of these matters related to hate speech on the basis of race, particularly where the respondent called the complainant a kaffir.

Three matters were ultimately settled between the parties, after proceedings had been instituted in the equality court. In the matter of **French obo NSPCA v Kotze**,<sup>34</sup> the respondent made the following comment on work WhatsApp group: *"I wish all kaffirs die a horrible suffocating death"*. The Commission brought the matter before the Equality Court, the respondent admitted liability and signed a settlement agreement that was made an order of court. In terms of the order, it was agreed *inter alia* that:

- the statement constitutes hate speech in terms of section 10 of the Equality Act;
- the respondent was interdicted and restrained from publishing, propagating, advocating or communicating hate speech as defined in the Equality Act;
- the respondent is to issue an unconditional apology, to be pre-approved by the Commission;

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**33** Pinetown Magistrates' Court, Equality Court, 02/2018, 4 July 2019.

**34** Klerksdorp Magistrates' Court Equality Court, EC01/2018.

The respondent is to undergo sensitivity training, within one month of the order, at an accredited institution that provides training on diversity, anti-racism and the promotion of racial equality.

#### 4.3.8 Northern Cape

Following the same unfortunate trend, the Northern Cape provincial office's pending matters before various equality courts related to allegations of hate speech on the basis of race. During the period under review, the Provincial Office had six matters pending before the equality court.

#### 4.3.9 Western Cape

During the period under review, the Western Cape provincial office had four matters pending before various equality courts. The office also brought urgent proceedings in two matters to stay the execution of eviction orders where the eviction would have resulted in homelessness due to the failure of the local municipality to provide alternative accommodation.

In the matter of **SAHRC v Pastor Bougardt**,<sup>35</sup> the provincial office recently instituted an application to enforce a contempt of court order and to obtain a warrant of arrest for Pastor Bougardt. This follows the contempt of court order obtained against Pastor Bougardt due to his failure to comply with a court order interdicting him from making statements that are discriminatory and/or incite hatred or harm to persons on the basis of sexual orientation.

In the matter of **Matubatuba & the SAHRC v the Minister of Defence and Military Veterans**,<sup>36</sup> the Court found that the respondent had discriminated against Mr Matubatuba on the basis of his HIV status. The respondent was ordered to apologise to Mr Matubatuba and to reconsider his deployment at sea. The respondent was also ordered to provide the Commission with its policies to prevent discrimination against HIV positive members in its employ together with all data regarding HIV positive employees.

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<sup>35</sup> Western Cape High Court (sitting as an Equality Court), EC13/2013.

<sup>36</sup> Western Cape High Court (sitting as an Equality Court) EC27/2017.







CHAPTER 5

**Investigative  
Hearings and  
Inquiries**





# INVESTIGATIVE HEARINGS AND INQUIRIES

## 5.1 OVERVIEW

The SAHRC Act confers wide powers on the Commission for the purposes of providing appropriate redress where rights have been violated and to make recommendations to public bodies for the strengthening of protections of human rights. In terms of section 15(1) of the SAHRC Act, the Commission is empowered to conduct an investigation, by way of hosting a hearing where it may require a person or persons to appear before a presiding commissioner to answer questions under oath or affirmation. The conduct of hearings have additional implications relating to the mandate of the SAHRC in that hearings offer the opportunity for both research and the advocacy of human rights.

Hearings and enquiries are convened by the Commission generally in respect of human rights concerns, which are complex in nature, and affect large numbers of persons. The Commission adopts hearing formats where for example, it seeks to establish the root causes of violations and where such root causes are multidimensional and nuanced. Most often hearings and enquiries are undertaken in response to human rights vulnerabilities and situations as these unfold, with a view to assisting responsible authorities and stakeholders implement corrective actions to halt violations, and to prevent further future violations relating to the concerns giving rise to violations.

As will be seen in the summaries of the investigative hearing reports provided below for the period under review, a diverse array of rights themes were considered in the course of hearings - both those conducted at the national level and those conducted at provincial levels. This diversity of themes not only reflect the Commission's capaciousness to address and respond to rights violation from multiple and varied quarters of society, but it also stands as testament to the Commission's acute awareness of vulnerabilities which differ in range and scale in communities.

Hearings are a powerful tool in the arsenal of the Commission but they are however a limited mechanism for the effective eradication of violations, as the convening of such hearings are subject to the vagaries of time and resources. Methodological deficiencies include limitations that must be brought to bear on the actual hearings both in respect of the scope of hearings, the time available for the hearing, and the level and range of participation that may be provided to stakeholders. Some solutions to resolve these deficiencies include considerations involving the identification of key stakeholders, clear terms of reference, and the identification of technical experts who serve on hearing panels together with the Commission. Procedurally, hearings aim to be thorough, fair, democratic and inclusive. These objectives are for the most part met but have implications for the speed with which the Commission can issue its determinations and recommendations to stakeholders.

The forum of convening investigative hearings is highly effective and democratic in that it allows for multiple voices to weigh in on the, often contentious, political and legal aspects of investigations and to assist the Commission in formulating functional, inclusive and effective responses to rights violations. A consistent feature of the hearings has been the intimate involvement of multiple key stakeholders, government and civil institutions by way of attendance and submissions at the respective hearings in addition to their commitment to cooperate with the recommendations of the Commission. It is evident from the considered findings of the Commissioners and conveners that the Commission benefits immeasurably from the views, information and expertise of stakeholders, government and civil institution. This collaboration with interested parties is also exemplary of the results that are achievable - with respect to the mandate to uphold and protect human rights in general and across different functionalities - when key role players practise, between them, the principles and values of civil corporation, governance as well as constitutional and democratic accountability.

## **5.2 NATIONAL INVESTIGATIVE HEARINGS OR INQUIRIES**

One national investigative hearing was held, and two national hearing reports were released during the period under review. These are detailed below.

### **5.2.1 National inquiry on violent attacks targeted towards non-national long distance truck drivers**

On 10-12 March 2020, the Commission convened an inquiry on violent attacks targeted towards non-national long distance trucks drivers. An objective of the inquiry was to determine what steps government departments have taken to protect long distance non-national truck drivers from attacks, and to prevent the attacks from taking place. The inquiry also sought to follow up on progress made by different government departments in implementing the SAHRC's 2010 recommendations in response to xenophobic attacks that took place in 2008.

The first day of hearings focused on the violent attacks of non-national long distance truck drivers. The session comprised of presentations by delegates from the Department of Home Affairs, Department of Transport, the SAPS, Road Freight Association, African Diaspora Forum, and the All Truck Drivers Foundation. Day 2 and 3 focused on the implementation of the Commission's 2010 recommendations, with presentations by delegates from the Department of Justice and Constitutional Development (DoJCD), the National Prosecuting Authority (NPA), Legal Aid-SA, DSD, DHS, and the Office of the Premier for Gauteng and the Western Cape.

A draft report has been prepared with the Commission's findings and recommendations.



## 5.2.2 Public Inquiry on the Impact of Rural Land Use and Ownership Patterns on Human Rights

In March 2018, the Commission held a public hearing into the impact of rural land use and ownership patterns on human rights in South Africa. The Commission held the hearing in recognition of the fact that land continues to be a prominent and emotive human rights issue in South Africa. The country's history of colonialism, violent conquest, dispossession, forced removals and racially skewed distribution has left it with a complex and difficult legacy. The investigative hearing sought to explore three broad, interrelated and overlapping themes related to the impact of rural land use and ownership patterns on human rights, specifically civil and political rights; economic and social rights and the right to equality. Given the magnitude and complexity of the land issue in South Africa, the hearing was intended to serve as the basis for further in-depth research to be conducted by the Research Unit of the Commission and as a platform for further engagement with responsible government departments.

The hearing sought to explore questions regarding the impact of rural land use and ownership patterns on human rights by engaging with, in addition to several others, the following questions:

- What is the impact of slow land reform on civil and political rights, with particular reference to forced rural evictions and 'land grab'?
- What is the role of the state, civil society, and the private sector in implementing rural land reform?
- To what extent has the state adopted reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis, in terms of section 25(5) of the Constitution?
- Why has land policy and legislation not succeeded in addressing the urgent concerns of the majority of (landless) South Africans thus far?

A number of important submissions were made at the hearing provoking robust engagement. The Commission found that rural land policy had failed largely because of a lack of political will to effectively prioritise land reform. In particular, land reform had assumed a lesser priority to that of achieving a non-racial society, irrespective of the circumstances of the landless. The Commission recognized that the implications of slow land reform perpetuates poverty, inequality and landlessness, thus reinforcing skewed national disparities. A number of inequalities rooted in the slow pace of land reform, result in related violations to human rights which are not always readily apparent or effectively measured. These skewed patterns of distribution vastly reduce effective participation and the full enjoyment of basic rights. Compounded adverse impacts to rights are noted for vulnerable groups within the wider group affected by slow land reform measures.

Most significantly, the Commission identified key sectors which require attention for land reform measures to be taken. In its advisory recommendation directed to Parliament, the Commission requested that priority be given to ensuring that meaningful legal protection is provided to vulnerable communities faced with external mining or other investment projects that are likely to negatively impact on such communities' land rights. In that regard, the Commission highlighted the need for legal reforms and recommended that the Mineral and Petroleum Resources Development Act, 2002 and Interim Protection of Informal Land Rights Act, 1996 be strengthened to protect vulnerable communities against land grabs.

The Report was issued in September 2019.

### 5.2.3 Report of the National Hearing on Racism and Social Media in South Africa

Due to the consistently high numbers of complaints to the Commission involving racism, particularly via social media, the Commission hosted a national investigative hearing on racism and social media in South Africa in 2017. Race relations in the country continue to be an area of significant contention, and have resulted in spontaneous conversations about race, including through the media. Social media, however, remains relatively uncharted territory and is largely self-regulated.

The purpose of the hearing was to convene policy-makers, regulatory bodies, civil society organisations, researchers, academics, and social commentators to inform both the Commission and the general public on the complexities of addressing racism and racial discrimination in the context of social media. The intention was not to address the root causes that lead to outbursts of alleged racial discrimination on social media platforms, or to pronounce on the legitimacy of current legislation or policies that aim to give effect to the right to equality, but rather to gain further insight and understanding as to why challenges in advancing substantive equality continue to occur notwithstanding the laws and policies currently in place.

Respondent stakeholders were formally invited to make written submissions and appear before the hearing panel. Stakeholders were identified based on the role that they play as implementing authorities of legislation or the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia, and Related Intolerances (NAP) aimed to strengthen social cohesion or pertinent roles that they have played in the context of social cohesion, freedom of expression, and social media.

The hearing convened policy-makers, regulatory bodies, civil society organisations, researchers, academics, and social commentators. It demonstrated a need to engage more fully on the use of social media as a platform through which vital expression may continue to flourish, but which can also be embraced to encourage respect for basic rights. Such platforms should serve as dynamic tools, through which all sectors of society are able to engage on issues that are regarded as sensitive or controversial in the realm of engagement.

By engaging with the submissions made through the hearing process, recommendations were formulated in the following areas:

- initiatives to advance social cohesion;
- self-regulation and education;
- strengthening mechanisms of accountability; and
- monitoring and data collection.

In October 2019, in light of the delays taken in finalising the national hearing report, the Commission resolved to host a stakeholder dialogue to release its report and at the same time to engage with stakeholders on racism and social media. The aims of the roundtable were, among others, to:

- highlight legal, economic, social, and political developments influencing racism in social media;
- identify key priority areas for intervention; and
- provide reasoned, considered recommendations on the way forward.

The following actions were agreed upon:

- A Social Media Charter be developed in consultation with experts, industry role players, civil society, and policy-makers as a mechanism to promote and protect rights, before the end of the 2020/2021 financial year. The Charter would provide normative standards to the public and to service providers.
- The Commission will continue to strengthen the constitutional environment for the fullest possible exercise of basic rights and freedoms.
- A key point of entry to combatting racism in social media is human rights education at all levels in the country, including through basic education at schools and institutions of learning.



## 5.3 PROVINCIAL INVESTIGATIVE HEARINGS OR INQUIRIES

### 5.3.1 Gauteng inquiry into allegations of racial discrimination by medical aid schemes

The Gauteng Provincial Office lodged an own accord investigation following media reports of unfair discrimination by the medical aid schemes against Black, Indian and Coloured medical practitioners. The Provincial Office called for written submissions from aggrieved medical practitioners. After receiving written submissions, a preliminary inquiry was held on 3 July 2019, with medical practitioners and executives from medical aid schemes making oral submissions and responding to questions from the panel.

Previously, the Gauteng Office suspended its investigation when the Council for Medical Schemes (CMS) announced its investigation into allegations of racial profiling by medical aid schemes. The CMS led investigation will probe the allegations of racial profiling, blacklisting for payments, blocked payments, bullying and harassment, coercion, entrapment and other allegations.

### 5.3.2 Gauteng inquiry into socio-economic conditions in Alexandra

The Gauteng Provincial Office in partnership with the Office of the Public Protector convened an inquiry into the socio-economic conditions in Alexandra, the impact on fundamental rights and whether it amounts to maladministration, abuse of power, corruption or improper conduct. The inquiry is as a result of weeks of service delivery protests in early-2019. The Office of the Public Protector is investigating allegations of mismanagement and corruption, separate to the Commission's investigation.

The public hearings were hosted on 3 – 6 June 2019 and 27 July 2019. Oral submissions were made by the Department of Cooperative Governance and Traditional Affairs; the Department of Water and Sanitation; the Inter-Ministerial Task Team on Alexandra; the City of Johannesburg Forensics Unit; the Office of the Premier, Gauteng; the National Commissioner of the South African Police Service; the Auditor-General and the leadership of the Economic Freedom Fighters.

*In camera* sessions were held over 18 – 22 November 2019. The aim of these sessions were to receive statements from and ask questions of persons who previously held positions of oversight in relation to the Alexandra Renewal Project (ARP).

A draft report was prepared and the preliminary findings were shared with the City of Johannesburg's forensic unit. The City undertook to appoint a forensic firm to investigate the ARP. The Commission is in the process of preparing an impact assessment of the investigation, which will be made public when completed.

### 5.3.3 Report of the North West Provincial Investigative Hearing into the lack of safety and security measures in schools for children with disabilities

The Report of the North West investigative hearing into the lack of safety and security measures in schools for children with disabilities was launched in August 2019.

The provincial hearing was held in March 2018. The hearing was inquisitorial in nature. Respondents were invited to make written and oral submissions. Where oral submissions were made, the respondents did so after taking the prescribed oath or affirmation. Submissions made by respondents were in response to questions posed by the Commission in the written invitation to participate. The panel<sup>37</sup> received written and oral submissions from a number of stakeholders including government departments, schools and civil society organisations and also had an opportunity to ask further questions of clarity pertaining to the submissions.

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**37 The hearing panel was comprised of Angie Makwetla, Commissioner; Advocate Bokankatla Joseph Malatji, Commissioner; Professor Ann Skelton, Director: Centre for Child Law, Chair in Education Law in Africa: United Nations Educational, Scientific and Cultural Organisation (UNESCO), and member of the United Nations Committee on the Rights of the Child (CRC).**

Not only did the hearing reveal that numerous special needs schools in the province were characterised by significant infrastructural inadequacies, it also identified that the current state of the infrastructure, particularly hostels, poses a direct and imminent threat to the health and safety of learners with disabilities. Overall, the hearing highlighted the state's failure to implement the policy of inclusive education. The Panel made a number of factual findings as a result of which it found that the rights contained in section 9, 10, 11, 24, 28 and 29 of the Constitution of children with disabilities attending residential Special Schools in the North West province are being infringed.

Detailed recommendations were made to address the Panel's findings. Recommendations were made to the DBE, the North West Department of Education and Sport Development, Dr Ruth Segomotsi Mompati District Municipality and Rustenburg Local Municipality. These parties are required to provide a detailed written report to the Commission in six months, and again in 12 months from the date of the release of the final report.

It was recommended that urgent interim emergency mechanisms be implemented at the schools, pending the provision of permanent safety and security solutions, so that the immediate threats to learners in Special Schools are eliminated. It was also recommended that the DBE promulgate legally binding regulations in terms of section 61 of the South African Schools Act regulating all aspects of safety and security in residential hostels at Special Schools.

Noting the differing responsibilities within the remit of departments triggered by its findings, the Commission called for collaboration between the departments of Education, Health and Social Development to secure the necessary support staff required at such Special Needs Schools.

#### **5.3.4 Limpopo Provincial Investigative Hearing into the status of public healthcare facilities**

The Limpopo provincial office resolved to hold a provincial investigative hearing into the status of public healthcare facilities due to the high number of complaints received against the Limpopo Department of Health. The investigative hearing was held from 3 – 10 July 2018. The provincial office identified and invited six hospitals, as well as union and labour representatives, to make submissions to the Commission. These parties shared their views on the challenges experienced in the health sector in the province. After these presentations, the HoD of the provincial department of health provided further information to the Commission.

The Commission found overwhelming evidence that the Limpopo Department of Health; by failing to address key concerns raised throughout the hearing process, had violated the right to health and the right to dignity of patients. The Commission provided a preliminary report to the Department and allowed it an opportunity to respond to the findings and recommendations contained therein.

The Department did not provide adequate evidence indicating that the concerns expressed were being addressed and resolved in the interests of patients. Despite its acknowledgment of a lack of human resources; adequate infrastructure; sufficient number of specialists; and adequate funding to address the systemic issues in the province, such as maintenance of equipment the Department denied that it had violated the right to health and the right to dignity of patients. .

The issues identified remain deeply concerning and have the potential to adversely impact large numbers of health care users. In view thereof it is necessary for the Department to give them urgent attention. The final report is yet to be released.

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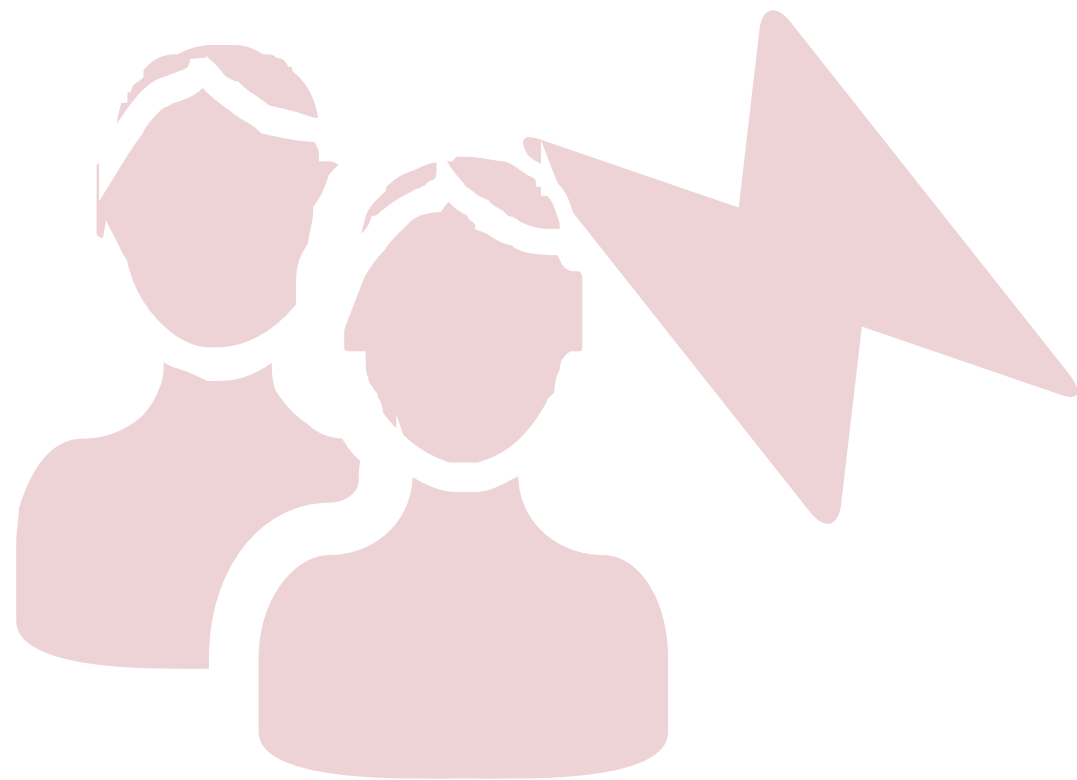
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CHAPTER 6

**Alternative  
Dispute  
Resolution**





# ALTERNATIVE DISPUTE RESOLUTION

## 6.1 OVERVIEW

The significant role mediation plays in the South African context as well as its numerous advantages has long been recognised by the judiciary.<sup>38</sup>

The advantages of a swift and inexpensive resolution of disputes through mediation as an alternative to the delays and expense of the ordinary court processes has resulted in an amendment to the Uniform Rules of Court. Uniform Rule 41A provides for mediation as a dispute resolution mechanism with effect from 9 March 2020. The rule makes it mandatory for parties to consider mediation at the outset of any contemplated litigation.<sup>39</sup> The appreciation of ADR as an effective mechanism for the resolution of human rights-based complaints extends to a number of national human rights bodies globally. The United Nations and other international bodies promote the use of ADR by NHRIs.<sup>40</sup>

Section 14 of the SAHRC Act allows the Commission to resolve any dispute or to rectify any act or omission, emanating from or constituting a violation of or threat to any human right by mediation, conciliation or negotiation. The Commission strongly advocates for the use of ADR methods as the first means of complaint resolution where appropriate. The success rate for ADR during the period under review was 63%, with 38 out of the 60 ADR initiated cases successfully mediated. A summary of the number of ADRs initiated per provincial office as well as the number of successful interventions is included below.

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**38** *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at paras 41-42; *MB v NB* 2010 (3) SA 220 (GSJ).

**39** It requires the applicant or the plaintiff, in every new application or action proceeding, to serve a notice together with the notice of motion or summons, indicating whether the applicant or plaintiff agrees to or opposes referral of the dispute to mediation. A defendant or respondent is required to serve a notice in response indicating whether s/he agrees to or opposes referral of the dispute to mediation. The notices of each party are required to indicate the reasons for each party's belief that the dispute is or is not capable of being mediated. The rule also provides for a judge or case management judge to direct the parties to consider that the matter be referred to mediation, and also for the parties at any stage before judgment is granted, to refer the matter to mediation, provided that where proceedings have commenced, the parties shall obtain the leave of the court to do so.

**40** United Nations OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No 4, 93 (2010); Commonwealth Secretariat, *Comparative Study on Mandates of National Human Rights Institutions in the Commonwealth* 27 (2007); Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights Nairobi, Kenya, 21-24 October 2008, *The Nairobi Declaration* (24 October 2008).

PROVINCIAL OFFICE	NUMBER INITIATED	SUCCESSFUL
Eastern Cape	8	8
Free State	7	7
Gauteng	7	3
KwaZulu-Natal	5	5
Limpopo	4	2
Mpumalanga	10	3
North West	7	5
Northern Cape	4	3
Western Cape	8	2
TOTAL	60	38

FIGURE 36 – OVERVIEW OF ADR PER PROVINCE OVER EIGHT YEAR PERIOD

## 6.2 PROVINCIAL OFFICES

In the sections that follow an overview of the complaints that were finalised through ADR per provincial office is provided, which includes key highlights and/or notable interventions.

### 6.2.1 Eastern Cape

The Eastern Cape provincial office successfully mediated eight complaints during the period under review.

Three complaints were concerned with access to education. In the first matter, the learner was expelled from school because of her parents' inability to pay the school fees. Following the successful mediation, the school agreed to reinstate the learner for the remainder of the academic year and the parents agreed to pay the outstanding debt owed to the school in affordable monthly instalments. In another matter, a learner had been expelled because of the school policy disallowing dreadlocks. Following the successful mediation, the learner was allowed to return to school and the policy was amended to no longer automatically disallow dreadlocks and instead to allow natural hair styles, within the ambit of the amended school policy. The provincial office also assisted a learner who was being racially victimised by other learners. Following mediation, it was agreed that:

- the school will amend its policies to prevent any form of discrimination and to include sanction for such conduct (i.e. disciplinary hearings with suspension or appropriate sanction);
- the school would take appropriate steps against the perpetrators;
- a psychologist from the Department of Education would meet with the complainant and the perpetrators to create awareness regarding the consequences of such conduct; and
- the Commission would continue to monitor the situation and receive feedback from all parties.

### 6.2.2 Free State

The Free State provincial office successfully resolved 12 complaints through ADR mechanisms in the period under review. ADR was used to resolve a range of complaints ranging from hate speech on the basis of race to access to education, health care and basic services.

The successful mediation of two disputes with the Department of Home Affairs resulted in the protection of children who were at risk of deportation and in assisting them with the provision of necessary documentation.

### 6.2.3 Gauteng

The Gauteng provincial office initiated seven ADR mechanisms during the period under review, of which three were successful.

Following media reports of a video showing a patient at the Mamelodi Hospital chained underneath a bench the Gauteng office intervened to assist the patient. Mrs Marais had been chained to the bench, while waiting to receive medical treatment at the hospital. The provincial office facilitated a settlement agreement between the parties with Mrs Marais being compensated by the Gauteng Department of Health. Mrs Marais was also provided with counselling.

The Gauteng provincial office met with representatives from the clothing retailer H&M following an advertisement featuring a black child wearing a hoodie jacket with the words “Coolest Monkey in the Jungle”. The advertisement sparked public outcry, forcing H&M to remove it and to issue an apology. After meeting with the Commission, H&M agreed that it would:

- appoint managers on the basis of diversity and inclusiveness, at the national and global level;
- train managers and staff on transformation and racism;
- submit its internal policies regarding equality to the Commission; and
- provide progress reports and meet with the Commission (on a quarterly basis) to discuss the implementation of its equality policies.

H&M also undertook to ensure that offensive garments are not manufactured under its name again. The Commission continues to monitor the implementation of the mediated agreement.

### 6.2.4 KwaZulu-Natal

The KwaZulu-Natal provincial office successfully resolved five complaints through ADR mechanisms during the period under review.

The provincial office intervened in a matter that had come to its attention through a post on Facebook, alleging that a visually impaired patron had been denied access to a bridal and evening wear boutique because she was accompanied by her guide dog. The boutique’s policy at the time was that it did not allow any dogs onto its premises. Following mediation, the boutique –

- i) rendered an apology for refusing entry to the visually impaired patron,
- ii) confirmed that its 24 premises would provide appropriate access for all persons with disabilities,
- iii) undertook to train all of its staff to ensure that they are equipped to assist persons with disabilities, and
- iv) ensured that signage was placed at its 24 premises indicating that guide, service and support dogs would be allowed onto the premises.

### 6.2.5 Limpopo

The Limpopo provincial office resolved three complaints through ADR mechanisms during the period under review. Two of the mediations have been concluded, a draft settlement agreement has been prepared and is awaiting signature.

The third mediation successfully resolved disruption of schooling in Zebediela in the Capricorn District Municipality. In July 2019, the Limpopo Department of Education notified the provincial office of service delivery protests that were disrupting the school year. Upon intervention, the Commission identified the Lepelle-Nkumpi Local Municipality and the Limpopo Department of Public Works as the cause of the protest action. Through mediation, the community concluded a settlement agreement with the Local Municipality and the Department of Public Works on the provision of services to the community, which resolved the protests and stopped the disruption of schooling.

The provincial office reported that the low number of disputes resolved by way of ADR was due to the voluntary nature of ADR mechanism and because complainants preferred to have their complaints resolved through litigation.

### **6.2.6 Mpumalanga**

The Mpumalanga provincial office also reported a lower number of matters being finalised through ADR mechanisms during the period under review. Five complaints were successfully resolved through mediation, out of 13 attempts. Three of the attempted mediations were ultimately litigated.

Two complaints that were mediated concerned hate speech on the basis of race. In both instances, the respondent apologised and paid the complainant an agreed monetary compensation.

Two complaints were brought by neighbouring farming communities against mining companies conducting mining operations on or near the farms upon which the communities reside. In the first matter, the mediated settlement resulted in the affected family being relocated and the mine paying monetary compensation to the family for the relocation. In the second instance, the mine agreed to provide water for the complainants (by pumping borehole water) and also assisted with the installation and provision of electricity to the farm.

### **6.2.7 North West**

During the period under review, the North West provincial office undertook 13 ADR processes of which six were successful. Eight of the 13 complaints related to allegations of hate speech, with three being mediated successfully. One of the successful mediations resulted in the respondent rendering an apology, agreeing to pay compensation and to participate in a sensitisation programme to be arranged by the Commission. The unsuccessful mediations were referred to the Equality Court.

The profile of complaints subject to ADR processes accords to the fact that violations of the right to equality on the basis of race are the highest reported ground of unfair discrimination by a large margin. The provincial office also dealt with equality related complaints relating to allegations of discrimination on the basis of sexual orientation, gender, ethnicity and social origin.

### **6.2.8 Northern Cape**

The Northern Cape provincial office successfully resolved four complaints through ADR mechanisms during the period under review.

A complaint regarding service delivery, particularly about the lack of infrastructure to deal with increased demand on the sewerage infrastructure, was successfully mediated. The overflow of waste was a health hazard and danger to the surrounding community. The quality and supply of water to the community was also of concern. The provincial office facilitated discussions between the community and the municipality, which resulted in commitments being made by each party. The community agreed to do its part by not placing objects in drains and toilets that could lead to blockages and breakages. The Municipality submitted a plan and program for renewal of the infrastructure. The provincial office continues to monitor the progress.

### **6.2.9 Western Cape**

During the period under review, the Western Cape provincial office undertook five ADR processes of which three were successful. ADR interventions successfully addressed complaints regarding access to education, violations of the right to equality, children's rights and the right to human dignity. Two ADR interventions by the provincial office resulted in the resumption of schooling following disruptions caused by protests related to service delivery or allegations of corruption.

A complaint was successful mediated between a visually impaired commuter and the Passenger Rail Agency of South Africa (PRASA). The commuter was mistreated by security officers in the employ of PRASA, who prevented him from boarding a train, made comments that he was 'on drugs' and 'looked weird', as a result of which he was laughed at by other commuters. The parties settled the matter through mediation and PRASA agreed to pay the commuter R10,000 in compensation.



CHAPTER 7

**An Overview  
of International  
and Regional  
Interventions**





# AN OVERVIEW OF INTERNATIONAL AND REGIONAL INTERVENTIONS

## 7.1 OVERVIEW

This chapter provides an overview of the international and regional interventions undertaken by the Commission to advance the protection of human rights during the period under review. It includes strategic interventions and engagements by the Commission with international human rights bodies and other NHRIs. South Africa's ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the establishment of the National Preventative Mechanism is also discussed below.

## 7.2 THE NATIONAL PREVENTATIVE MECHANISM ESTABLISHED UNDER THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (OPCAT)

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT or Optional Protocol) was adopted by the United Nations General Assembly came into force on 22 June 2006.<sup>41</sup> The Republic of South Africa signed the OPCAT on 20 September 2006, but did not ratify the instrument until 2019.<sup>42</sup> In efforts by the Commission and other stakeholders to lobby the state to ratify the instrument, it became apparent that one of the reasons for delay in ratification was that consensus was required on the structure of its National Preventive Mechanism (NPM) before it could formally ratify the instrument.

<sup>41</sup> Adopted on 18 December 2002 at the Fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199. Entered into force on 22 June 2006.

<sup>42</sup> Note verbale dated 26 April 2007 from the Permanent Mission of South Africa to the United Nations addressed to the President of the General Assembly.



Under Article 3 of the OPCAT, South Africa is obliged to establish, designate or maintain an NPM to monitor and prevent torture and other cruel, inhuman or degrading treatment or punishment among others, through regular visits to places of deprivation of liberty.<sup>43</sup> However, OPCAT gives some discretion about the particular NPM model that each state Party adopts. The activities of the NPM include making announced and unannounced visits to places of deprivation of liberty and thereafter report on findings and make recommendations to the relevant authorities. The Preamble to the OPCAT states that ‘the protection of persons deprived of their liberty - can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention’. Therefore, the core of the OPCAT lies in its preventive nature which is designed to realise systemic change as opposed to a reactive and remedial system. At a global level, these visits to places of deprivation of liberty are also undertaken by the SPT.

It is largely believed that a system of regular and unannounced visits to places of deprivation of liberty provides an opportunity for NPM officials to appreciate the real condition and situation in such a places, without authorities preparing in advance to avert the detection of violations to human rights standards.<sup>44</sup> In a constitutional democracy, there are also constitutional guarantees that are imperative for the protection of an individual’s right even in a place of deprivation of liberty.<sup>45</sup> Preventive visits are part of an ongoing and constructive dialogue with relevant authorities, providing concrete recommendations to improve the detention system over the long-term. Article 4 (1) and (2) of the OPCAT provides a definition of ‘places of deprivation of liberty’ as well as some guidance on what deprivation of liberty means. Through the NPM’s systemic analysis before, during and after monitoring visits (as well as follow-up visits), the NPM can identify trends, improvement or deterioration of the conditions of detention and provide recommendations to implement protective measures as underlined by domestic, regional and international human rights norms and standards.

After more than a decade of national discussions,<sup>46</sup> consultation and comparative jurisdictional analysis, the government of South Africa designated a multiple body NPM to be coordinated and functionally led by the SAHRC with other oversight bodies contributing to its work. These bodies include the Judicial Inspectorate for Correctional Services (JICS or Judicial Inspectorate), Independent Police Investigative Directorate (IPID), Military Ombudsman, and the Health Ombudsman.

Preliminary consultations with the bodies referred to above indicated general concerning trends in places of detention usually for criminal offenders and awaiting trial detainees which the NPM will be probing more closely. Information shared by bodies such as JICS indicate that over-crowding in South African prisons remain significantly above acceptable levels. The NPM has also had complaints from incarcerated persons involving inability to access health care, and sanitation amongst others. The observations by the NPM conducted through its visits will be included in its first report to United Nations Committee Against Torture during 2020.

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**43 Articles 1, 3 and 17 of the OPCAT.**

**44 See rule 57(3) of the Mandela Rules: “allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71”.**

**45 See sections 12 and 35 of the Constitution.**

**46 In 2006, an ad hoc committee, the “Section 5 Committee”, (now Section 11) was established within the SAHRC to promote the OPCAT ratification and implementation. In 2008, the Centre for the Study of Violence and Reconciliation (CSVR) also published a review of national existing mechanisms for torture prevention and investigation, whose findings and recommendations were debated among national and international actors. Several workshops were also held over the years, involving the SAHRC, national and international non-governmental organisations (NGOs) and various government departments, such as the Department of Justice and Constitutional Development (DoJCD), the Department of International Relations and Cooperation (DIRCO), the Department of Home Affairs (DHA), the Department of Police and the Department of Correctional Services (DCS).**



## 7.3 OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

The Commission engaged with various human rights bodies within the OHCHR during the period under review. These engagements are highlighted below.

### 7.3.1 Call for input on Human Rights Council Resolution 38/11 “the promotion and protection of human rights in the context of peaceful protests”

In October 2019, the Commission responded to a call from the OHCHR for information regarding Resolution 38/11 on the impact of new technologies in the context of peaceful protests.

The Commission discussed the use of social media platforms and technologies to advocate for peaceful assembly and protest in South Africa. Examples of such platforms facilitating mass protest action were provided, including against gender-based violence (#MenAreTrash) and the lack of access to tertiary education institutions and universities (#FeesMustFall).

The Commission noted that freedom of assembly and peaceful protest has long played a role in shaping the trajectory of South Africa’s democracy, providing significant insight to the needs and frustrations of the country’s majority. The Commission also emphasised the need for improved partnerships between all stakeholders, including civil society and national government, in developing and enforcing policy and legislation that creates and maintains a safe and enabling environment in which civil society can operate and contribute to the promotion and protection of civil, political, economic, social, and cultural rights.

### 7.3.2 Human rights treaty bodies: the Committee on Economic, Social and Cultural Rights

In September 2017, the SAHRC submitted the List of Issues report to the Committee on Economic Social and Cultural Rights (CESCR) (in anticipation of South Africa’s first review before the Committee). In September 2018, the SAHRC provided an NHRI Response to the state’s List of Issues response. In October 2018, the SAHRC held a private briefing with the CESCR committee members via videoconference. Many of the SAHRC’s recommendations were considered and incorporated into the Committee’s Concluding Observations.

The CESCR’s Concluding Observations relate to various rights enshrined in the International Covenant on Economic Social and Cultural Rights (ICESCR) as well as the Constitution. In accordance with the Commission’s monitoring and assessment mandate, read in conjunction with its mandate relating to socio-economic rights as set out in section 184(3) of the Constitution, it is accordingly incumbent on the Commission to monitor government’s implementation of the Concluding Observations. This function should be fulfilled in partnership with the DoJCD (as coordinator for responsible national departments) and in conjunction with the special role the Commission should play as a NHRI in respect of implementation of the Sustainable Development Goals.

A process of engagement is also in line with the following recommendation made by the CESCR in its Concluding Observations:

*“The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, including at the national, provincial and municipal levels, in particular among parliamentarians, public officials and judicial authorities, and that it informs the Committee in its next periodic report about the steps taken to implement them. The Committee encourages the State party to engage with the South African Human Rights Commission, non-governmental organisations and other members of civil society in the follow-up to the present concluding observations and in the process of consultation at the national level prior to the submission of its next periodic report.”<sup>47</sup>*

<sup>47</sup> Committee on Economic, Social and Cultural Rights Concluding Observations E/C.12/ZAF/CO/1 (12 October 2018) para 82.



The Commission, in collaboration with the DoJCD, accordingly responded to calls by the CDESCR and CSOs to meaningfully engage on an on-going basis regarding progress and challenges experienced by government in implementing the recommendations contained in the Concluding Observations. The Research Unit convened a seminar on the CDESCR Concluding Observations in November 2019,<sup>48</sup> and a monitoring workshop with state Departments and civil society in February 2020.

### **7.3.3 Special Procedures of the Human Rights Council: United Nations Special Rapporteur on the situation of Human Rights Defenders**

In April 2019 the UN Special Rapporteur on the situation of Human Rights Defenders, Michel Forst, issued a call for information about the situation of impunity faced by human rights defenders for human rights violations and abuses against them, and to provide recommendations to advance due diligence to investigate such acts.

In response, the Commission referenced its 2018 research brief on the Status of Human Rights Defenders in South Africa. The brief highlighted the landscape and environment for human rights defenders in South Africa, and the importance of ensuring that the work of human rights defenders receives the necessary promotion and protection from state and non-state actors.

The brief made key recommendations aimed at ensuring that the rights of human rights defenders are adequately promoted and protected.

The Commission also raised concerns regarding the delays in investigations and prosecutions of human rights violations or abuse committed against a human rights defender, various unresolved investigations of human rights abuses, and the lack of training of police officials regarding the treatment of human rights defenders.

## **7.4 SA-EU DIALOGUE ON ESTABLISHING THE INDEPENDENT MONITORING MECHANISM TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

In April 2019, the Commission initiated a project to establish the independent monitoring mechanism (IMM) under article 33 of the Convention on the Rights of Persons with Disabilities (CRPD). The aim of the project is to initiate the process to ensure the implementation of the recommendation of the CRPD Committee in its concluding observations on South Africa's initial state report. The Committee recommended that government should expedite the designation of IMM, proposing the Commission as the most suitable institution.

The Commission has since collaborated with the government and organisations representing persons with disabilities in conducting a study tour in Spain, Ireland and Belgium to gather information on best practices in relation to the function and operation of an IMM, and the inclusion of persons with disabilities in the monitoring of the implementation of the CRPD.

Following the study tour, the Commission hosted a workshop and webinar to provide feedback to representatives of the disability sector in South Africa on the findings of the study tour. The Commission also sought to create awareness about the mandate and work of the Commission, the function of the IMM, and to engage the sector on the proposed model for inclusion of persons with disabilities in the monitoring activities of the IMM. The Commission also received inputs from government departments and the OHCHR. Input was consolidated into draft terms of reference for the proposed Disability Advisory Committee (DAC). The Commission seeks to establish the DAC for purposes of monitoring the implementation of the CRPD.

In parallel, the Commission conducted monitoring activities at the provincial level. Four provincial visits were conducted in the Free State, North West, Mpumalanga and Northern Cape to assess the implementation of the CRPD. The main places of focus included special and mainstream schools, facilities for mental health care and facilities for persons with disabilities and older persons. Through the monitoring activities it was determined that future initiatives at national level should focus on the Department of Public Works in terms of inclusion, and on the Department of Basic Education in terms of the provision of inclusive education.

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**48 Keynote speakers were CDESCR Vice Chair Prof Sandra Liebenberg and Deputy Minister of Justice Honourable John Jeffrey.**



## 7.5 LEARNING EXCHANGE STUDY TOUR WITH THE KENYAN HUMAN RIGHTS COMMISSION

The Commission participated in learning exchange study tour with the national Kenyan Human Rights Commission from 2 – 4 March 2020. The head of Information, Communication and Technology from the Kenyan Human Rights Commission, Mr John Gathairu, held internal seminars with the Commission on staff on the use of technology to harness the mandate of the SAHRC.

Following the learning exchange, the Commission convened a national workshop on the *Fourth Industrial Revolution and Human Rights: Challenges and Opportunities for National Human Rights Institutions*, with 120 key stakeholders from 5 – 6 March 2020.



CHAPTER 8

**Conclusion**





## CONCLUSION

The Commission aims to utilise the various tools at its disposal in an effective and efficient manner to ensure compliance with its constitutional mandate. Trends observed in the nature of complaints submitted to the Commission as well as the appropriateness of the mechanisms utilised to handle these complaints, over an eight-year period, provide valuable insights to the Commission in the execution of its mandate going forward.

The 2019/2020 TAR illustrates the usefulness of the various tools available to the Commission. Changing trends, such as the increased use of hearings and inquiries at the provincial level, allow the Commission to reflect on past work and to plan for future interventions. During the year under review, the Commission secured redress for human rights violations through ADR mechanisms, investigations and equality court litigation. Strategic impact litigation ensured access to justice and the protection of dignity and equality. The year also saw increased use of enforcement mechanisms available to the Commission, including the subpoena process and contempt of court applications. Learning from past experience, the Commission is constantly working to adapt to internal and external changes. One part of this adaptation is a review of its CHP. The review is aimed at further strengthening the procedures and processes of the Commission to optimise its effectiveness and efficiencies. Lessons from past challenges provide an opportunity for the Commission to strengthen its internal processes and to enhance the quality of work through appropriate checks and balances. The Commission undertakes a constant process of self-reflection and review on the work it undertakes in the fulfilment of its mandate.

South Africa's ratification of OPCAT and the establishment of the NPM was a success for the Commission and other stakeholders indicative of sustained advocacy interventions – at the domestic and international level. It also highlights the importance of long-term collaboration and partnerships with key stakeholders. Over the past 25 years, the Commission has established itself as an 'A' status NHRI and has created a network of stakeholders – locally and internationally – that it works with in advancing South Africa's constitutional democracy.

In general, the Commission has sought to use its operational arms to fulfil its constitutional mandate. It is the intention of the Commission that the TAR serves as a platform for further engagement and debate both externally amongst the Commission's stakeholders, internally within the Commission but also between the Commission and its stakeholders as a means to identify scope for future collaboration. The Commission acknowledges the tireless efforts and work by civil society and communities in advancing and protecting human rights. The Commission engages these important stakeholders on their experiences in an effort to further develop how the Commission can use its resources and statutory powers to fulfil its mandate.











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