



trends analysis

R E P O R T

SAHRC 2013-14



Bill of Rights to a natural or juristic person in terms of subsection (2), a court -
(a) in order to give effect to a right in the Bill, must apply, or if necessary develop,
the common law, customary law or any other law that is applicable; and
person. Equality Human Dignity
Slavery, Servitude and Forced Labour Pro
Belief and Opinion Freedom of Religion
on, Picket and Petition Freedom of Association Political
Freedom of Movement and Residence
d Profession Environment Property Housing He
Social Security Children Education Language
Linguistic Communities Acc
must
respect, protect, promote and fulfil the rights in the Bill of Rights. (3) The rights
in the Bill of Rights are subject to the limitations contained or referred to in
section 36, or elsewhere in the Bill. APPLICATION: 8. (1) The Bill of Rights
applies to all law, and binds the legislature, the executive, the judiciary and all
organs of state. (2) A provision of the Bill of Rights binds a natural or a juristic
person if the nature of the right or the provision is such that it is applicable to
the right or the provision. (3) A provision of the Bill of Rights binds a natural or a juristic
person if the nature of the right or the provision is such that it is applicable to
provision. (4) A provision of the Bill of Rights binds a natural or a juristic person if
(2), a court must apply, or if necessary develop, the common law, customary law or any
necessar not give
effect to limit the
right, pr). (4) A
juristic p required
by the Equality
Human Dignity
and Forc Servitude
of Expre Freedom of
Association Political Rights Citizenship Freedom of Movement and Residence
Freedom of Trade, Occupation and Profession Environment Property Housing
Health Care, Food, Water and Social Security Children Education Language
Information Just Administrative Action Access to Courts Arrested, Detained



VISION

Transforming society.

Securing rights.

Restoring dignity.

MISSION

The Commission as the independent national human rights institution is created to support constitutional democracy through promoting, protecting and monitoring the attainment of everyone's human rights in South Africa without fear, favour or prejudice.

VALUES

The values of the Commission are:

intergrity, honesty,

respect, objectivity,

Batho Pele Principles,

and equality



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ADR	Alternative Dispute Resolution
ATM	Automatic Teller Machine
CBD	Central Business District
CAPS	Curriculum and Assessment Policy Statements
CCMA	Commission for Conciliation, Mediation and Arbitration
CHP	Complaints Handling Procedures
CRLR	Commission for Restitution of Land Rights
CSG	Chief Surveyor General
DA	Democratic Alliance
DBE	Department of Education
DPW	Department of Public Works
DRDLR	Department of Rural Development and Land Reform
DSD	Department of Social Development
DWCPD	Department of Women, Children and Persons with Disabilities
DOJCD	Department of Justice and Constitutional Development
HRC	Human Rights Commission Act
HOD	Head of Department
JICS	Judicial Inspectorate for Correctional Services
LRMF	Land Rights Management Facility
Legal Aid SA	Legal Aid South Africa
LGBTI	Lesbian, Gay, Bi-Sexual, Transgender, Intersex
LTSM	Learning and Teaching Support Material
LSU	Legal Services Unit
MEC	Member of the Executive Council
NCPR	National Child Protection Register
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
PED	Provincial Department of Basic Education
PEPUDA	Promotion of Equality and Elimination of Unfair Discrimination Act
SAHRC	South African Human Rights Commission
SAPS	South African Police Services

ACRONYMS

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The first Trends Analysis Report of the South African Human Rights Commission (Commission) seeks to provide a substantive analysis of complaints received by the Commission for the 2012/2013 and 2013/2014 financial years. It aims not only to provide statistical information regarding the amount of complaints received, referred and finalised by the Commission, but to further provide a narrative analysis with a view of informing both Parliament and the general public as to the initiatives undertaken by the Commission in addressing such complaints.

In its 2014-2017 Strategic Plan, the Commission notes that in order to achieve maximum impact in addressing human rights violations which occur in South African society, an holistic approach must be adopted. It is hoped that through analysing its complaints statistics, it will not only provide an overview as to the types of human rights violations taking place throughout the country, but will further assist the Commission in adopting an integrated approach as to how it fulfils its mandate through advocacy, research and complaints handling. This Trends Analysis Report has been drafted in order to inform the Commission's operational objectives in terms of fulfilling its constitutional mandate of promoting, protecting and respecting human rights.

Although the quantity of the complaints received, as well as non-compliance with its recommendations by various stakeholders, remains of concern to the Commission, it must also be noted that the Commission has taken great strides in ensuring that these complaints are adequately and effectively addressed and resolved. The Trends Analysis Report therefore constitutes a consolidation of the work undertaken by the Commission in the two financial years under review and serves as a baseline to inform future strategic initiatives.

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In previous financial years, the South African Human Rights Commission's Annual Report regarding the work of the Legal Services Unit (LSU) tended to focus on the provision of statistics relating to the number of complaints dealt with by Provincial Offices for a particular financial year. In so doing, the Commission has attempted to demonstrate to Parliament its improvement in dealing with complaints brought forward by members of the public.

In order to provide substantive content to the statistics provided to Parliament, the LSU has been requested to highlight important complaints that have been dealt with by the Commission in an attempt to identify trends of human rights violations occurring throughout the country. It is hoped that through the identification of such trends, the Commission can continue to adopt a more targeted approach in addressing violations in a meaningful manner, thus contributing to the Commission's overarching goal of increasing its impact in society.

majority of complaints received are in the Western Cape and Gauteng, ...the most densely populated provinces in the country.

While the LSU has been requested to provide a Trends Analysis Report, due to comparisons being made between two financial years only, the report provided will be more of a Comparative Analysis Report, as a comprehensive Trends Analysis Report will require at least five years to identify relevant trends. This notwithstanding, the Commission has provided a quarterly analysis in order to provide a more thorough and detailed analysis of the two financial years under review.

The current report shall therefore constitute a baseline for future Trends Analysis reporting from which the Commission shall be able to determine the impact it is having in society.

In its Strategic Plan for 2014-2017, the Commission acknowledges that this period constitutes important milestones for South Africa, including celebrating 20 years of the country's democracy, as well as 20 years of the Commission's establishment. The Commission therefore aims to enhance the understanding of its constitutional and legislative mandate by extending it beyond Section 184 of the Constitution. It is noted that in order to achieve this objective, an holistic, contextual and purposive interpretation of its mandate will be necessary.¹ In order to achieve this objective, and to consolidate the outcome of the Commission's work throughout its operations, its annual Trends Analysis commencing in 2014 intends to better inform the Commission's future strategic objectives by analysing the variety of human rights complaints received at both national and provincial levels. Analysing these complaints through statistics provides one means to ensure that the Commission adopts a more targeted approach in addressing these complaints, thus ensuring that victims of rights violations obtain access to remedial mechanisms provided for in the Constitution, both in terms of form and substance.

The 2012/2013 and 2013/2014 financial years revealed that despite the 21% complaints backlog carried over to the 2013/2014 financial year from the preceding financial year, the Commission was able to finalise 93% of its complaints. Not only did this exceed the target of 85%, but was a significant improvement on the 79% of complaints finalised during the 2012/2013 financial year. This improvement is largely explained by the Commission's decision to restructure its operational divisions, and employ more professional staff in order to address its backlog in complaints handling. Furthermore, despite the

Commission's decision to vest all complaints in its Provincial Offices as opposed to its National Legal Services Unit, as was the previous structure, the Commission's strategic targets regarding complaints finalisation was still achieved.

The Trends Analysis further reveals that the majority of its complaints received are in the Western Cape and Gauteng, which correlates with the national 2011 Census finding that these provinces continue to be the most densely populated in the country. As such,

the Commission has focussed much of its attention in adequately capacitating these two Provincial Offices to deal with the amounts of complaints received.

In terms of the “Top 5” rights violations registered with the Commission, there are significant commonalities when comparing the 2012/2013 and 2013/2014 financial years. In 2012/2013, the Commission's “Top 5” rights violations included the rights relating to: Equality; Labour; Just Administrative Action; Arrested, Detained and Accused Persons; and Human Dignity. Similarly, in the 2013/2014 financial year, the statistics indicated that complaints relating to the rights to Equality, Labour, Just Administrative Action, and Arrested, Detained and Accused Persons, continue to occur in the Commission's “Top 5” list. As provided for in the Commission's Complaints Handling Procedures, many of these complaints are referred to other bodies, organisations or institutions such as the Commission for Conciliation, Mediation and Arbitration, or the Office of the Public Protector, which are better equipped to handle these complaints more effectively and expeditiously.

However, in the 2013/2014 financial year, there was an increase in complaints relating to accessing Health Care, Food, Water and Social Security. This increase is largely attributed to the Commission's ongoing initiatives in this area, particularly through its Advocacy and Research Units, which has resulted in numerous reports detailing significant gaps and challenges in realising the rights to access water and basic sanitation in particular.

The majority of the violations relating to the right to Equality were race-related. As such, the Commission's statistics for the two financial years under review revealed an increase in litigation taking place in the Equality Courts in particular. The Commission recently conducted research which revealed that South Africa's Equality Courts remain under-utilised, and that while there is large support for its establishment, its effectiveness and success is largely dependent on its utilisation. As the primary custodian of the Promotion of Equality and Elimination of Unfair Discrimination Act (PEPUDA), which effectively established the Equality Courts, the Commission notes with concern that not only do complaints regarding discrimination continue to occur but that the fora established to remedy such complaints are largely ineffective. As such, the Commission has embarked on a targeted strategy to ensure that these courts continue to be utilised as they constitute a vital component of the country's transformation project.

The Commission's statistics further reveal an increase in complaints resolved through Alternative Dispute Resolution (ADR) mechanisms, indicating that the Commission is utilising its remedial mechanisms creatively, and in a manner that is appropriate and desirable to complainants, who may be hesitant to embark on a more adversarial path. Again, through its ADR mechanisms, the Commission is actively contributing towards resolving complaints through dialogue, and assisting in developing a culture of human rights as it is mandated to do.

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...much work needs to be done in order to ensure that future generations are instilled with the values contained in the Constitution.

In terms of the Investigative Reports released, a significant number of these complaints related to access to water and basic sanitation. Despite the amount of work conducted by the Commission in this area since 2010, the Commission notes with concern that: its investigations continue to reveal weak community participation and access to relevant information; weak intergovernmental collaboration and insufficient resource capacity-building, particularly at a local government and municipal level; and inadequate and insufficient sanitation structures, which forces communities to continue to use “pit toilets”, the “bucket system”, or simply relieve themselves in the open. Twenty years into democracy, these direct violations of the rights to equality and human dignity, which continue to affect the majority of the country's people who were previously disadvantaged during Apartheid, hamper the country's progress dramatically.

The Investigative Reports further demonstrate that incidents of discrimination persist, particularly at schools. Children who were born into democracy are being subjected to forms of religious and racial discrimination, in addition to the violations that continue to occur simply for being poor, which are contrary to the ideals of the society envisioned by our Constitution. These incidents are demonstrative of the fissures that continue to exist as a legacy of the country's Apartheid past, and indicate that much work needs to be done in order to ensure that future generations are instilled with the values contained in the Constitution.

During the 2013/2014 financial year, the Commission hosted three National Hearings focusing on the delivery of textbooks in the Limpopo Province; challenges relating to land redistribution; and challenges in realising the rights of Older Persons. The decision to escalate complaints falling in these areas to a national level was based on the Commission's own analysis, in addition to being assisted by the opinions of experts that these violations continue to be systemic in nature and require high-level policy redress. In all three of these Hearings, it was revealed that many of the challenges inherited from Apartheid continue to plague society, and the lack of adopting effective rights-based approaches in addressing these challenges further perpetuates the cycle of poverty and inequality.

The Commission remains committed to ensuring that it continues to fulfil its mandate as specified in the Constitution. Through a thorough analysis of the type and nature of complaints received, it hopes to continue making effective use of the remedial mechanisms available to it, both in terms of the Constitution as well as its empowering legislation. Moreover, it will continue in its endeavours in ensuring that not only are these mechanisms used but that they are utilised in a manner that is effective in ensuring that victims of human rights violations are able to access a remedy that allows them to experience all of the rights enshrined in the Constitution.

4.1 NATIONAL SNAPSHOT

Fig. 1
Year-on-Year Comparison of Caseload

TERM	CASELOAD (ENQUIRIES & COMPLAINTS)		FINALISED		CARRIED OVER/ACTIVE	
		Y-on-Y change				
2011/2012	11363		9851	87%	1512	13%
2012/2013	8919 (7672 new in 2012/13)	-27%	7047	79%	1872	21%
2013/2014	9217 (7345 new in 2013/14)	3%	8550	93%	667	7%

It should be noted that the statistics for the 2011/2012 financial year were extracted from the 2012/2013 financial year. The above table displays the total caseload of complaints and enquiries received during the 2012/2013 financial year and the 2013/2014 financial year. During the 2012/2013 financial year the Commission received 27% less complaints than in the 2011/2012 financial year. Complaints finalised in the 2012/2013 financial year constituted 79% of the entire dataset and 21% were carried over to the next financial year. For the 2013/2014 financial year, we note that the Commission had a 3% increase in its total complaint numbers when compared to the previous financial year. Whilst the statistics demonstrate a reduction of new complaints received in the 2013/2014 financial year to 7345, from 7672 in the 2012/2013 financial year, it should also be noted that the increase in the Commission's total workload reflected in the 2013/2014 financial year includes the backlog carried over from the previous financial years. The Commission made a concerted effort to address backlogs resulting in the total number of complaints finalised reaching 93%. The number of complaints carried over to the 2014/2015 financial year was significantly reduced to 7%.

As at the end of the 2012/2013 financial year, most of the complaints received were at the finalisation stage due to efforts undertaken to eliminate the backlog of complaints that the Commission had to deal with. As these complaints were finalised in the 2013/2014 financial year this would account for the significant rise in the finalisation percentage achieved for the 2013/2014 financial year.

You will note that the actual number of new complaints received for the 2012/2013 financial year was 7672 and for the 2013/2014 financial year the number of new complaints was reduced to 7345.

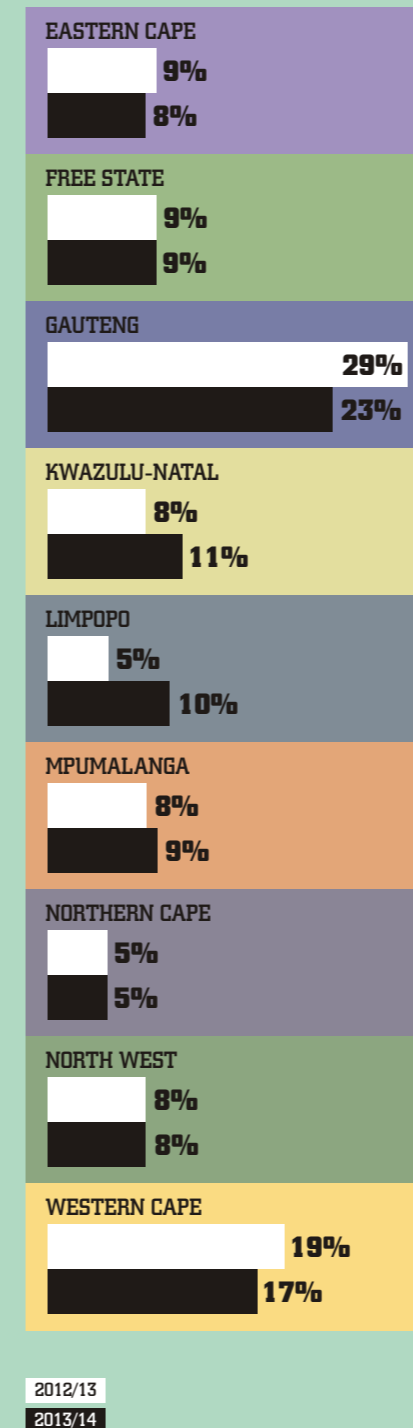
4.2 CUMULATIVE REPORT

According to the statistics obtained from the Commission's database, the total number of complaints received for the 2012/2013 financial year was 4947, and for the 2013/2014 financial year this amounted to 4980. The said totals do not include the number of transfers, as this constitutes complaints that have been transferred internally to other Provincial Offices which would consequently result in duplicates should they be factored into the annual calculation. The target set for finalised

Fig. 2 Cumulative Report
Complaint Totals by Status
from 1 April 2012 to 31 March 2013
& 1 April 2013 to 31 March 2014

STATUS as @ END OF FINANCIAL YEAR	2012/2013	2013/2014
Registration	7	0
Assessment	572	122
Unclear - Steering Committee consideration	1	5
Allocate	7	0
Investigate	1219	449
Litigation - Equality	20	42
Litigation - other	1	2
Negotiation/Conciliation	7	9
Hearing	1	0
Report	20	26
Monitoring report recommendations	10	6
Monitoring direct referral (report/ info. Required)	62	45
Final sign off	17	12
Rejected	680	685
Indirect Referral	1228	1843
Direct Referral	168	419
Resolved	267	470
Closed	660	845
Total complaints from 1st April 2012 & 2013 (Excl Transfers)	4947	4980
Transfer	157	258
Total complaints from 1st April 2012 & 2013 (Incl Transfers)	5104	5238
Enquiries Finalised	3972	4237
Target %	79%	93%

Fig. 3
Complaint Breakdown per Province
% per Financial Year



complaints for both financial years was 85%. Taking into account the national cumulative template (Fig. 2), comprising of statistics from both the 2012/2013 and the 2013/2014 financial years, the LSU achieved this target in the 2013/2014 financial year with a total of 93% of all complaints finalised. For the 2012/2013 financial year, the LSU could only achieve 79% of complaints finalised as at the end of the financial year. This is primarily due to the LSU embarking on a project during the 2012/2013 financial year to finalise all backlog complaints that had been on its reporting system for some time. In respect to the majority of these complaints, prior file handlers were no longer employed at the Commission, resulting in newly appointed file handlers working on complaints afresh and taking more time to finalise the said complaints.

From the table (Fig. 2) it is clear that there was a significant change in the number of complaints that were at the investigation phase in both financial years. At the end of the 2013/2014 financial year there was a difference of 770 complaints that had progressed from the investigation stage. This could be attributed to the creation of new posts and the filling of these posts which capacitated the LSU to investigate more complaints received by the Commission. This explanation can also be attributed to the number of finalised complaints during the 2013/2014 financial year.

Only 61% of the total Complainants recorded their gender in complaints filed for 2013/2014 and of these Complainants, 73% were male, while only 27% were female.

4.3 COMPLAINT BREAKDOWN PER PROVINCE

When reflecting on the breakdown of the total number of complaints dealt with by the Commission over the two preceding financial years, the majority of complaints were received in the Gauteng and the Western Cape Provincial Offices respectively.

For the 2012/2013 financial year, the complaints received in the Gauteng Provincial Office constituted almost one third of the total received at 29% followed by the Western Cape Provincial Office at 19%. The other Provincial Offices handled the following percentage of complaints: Free State and Eastern Cape at 9%; KwaZulu-Natal, Mpumalanga and the North West at 8%; and Limpopo and the Northern Cape at 5%.

For the 2013/2014 financial year we note that the Gauteng Provincial Office received the bulk of complaints with a total of 29%, followed closely by the Western Cape Provincial Office with a total of 19%. The KwaZulu-Natal Provincial Office, received 11% of the total complaints received during this financial year. We further note an increase of complaints received by the Limpopo Provincial Office, where the total percentage of complaints received stood at 10% as at end March 2014. The Mpumalanga Provincial Office received 9% of complaints as well as the Free State Provincial Office. The Eastern Cape and North West Provincial Offices both received 8% of complaints and lastly the Northern Cape Provincial Office received 5% of complaints as at end March 2014.

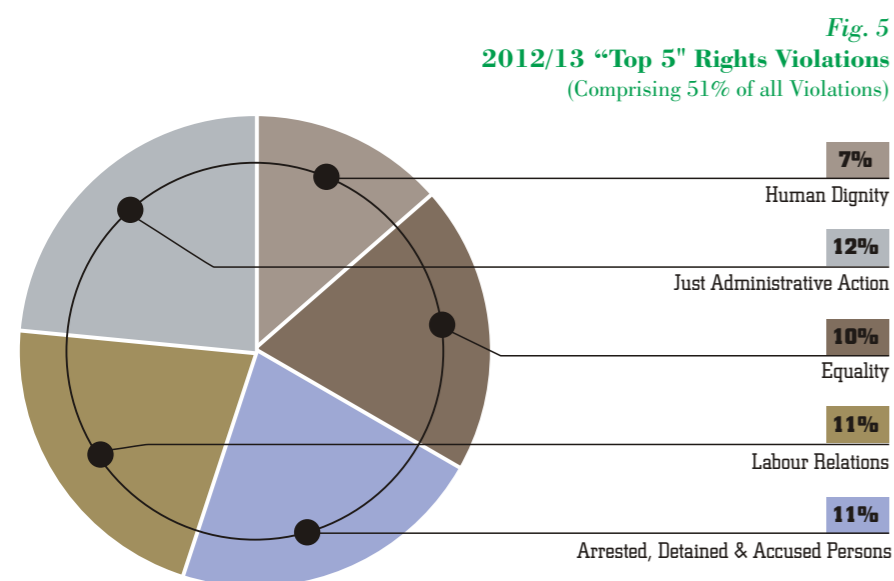
The high volume of complaints recorded by the Gauteng Provincial Office over the two financial years under review can be attributed to the decision taken prior to the

Commission's restructure, where it was resolved that all complaints handling should be vested in the Provincial Offices rather than the Commission's Head Office. Consequently, the Gauteng Provincial Office inherited all complaints that were recorded and dealt with by the Commission's former Legal Services Unit based at Head Office. Furthermore, the large number of complaints recorded by the Gauteng and Western Cape Provincial Offices can be attributed to the location of these Provincial Offices in the Central Business Districts (CBD) of the respective provinces, making them easily accessible to commuters who either work in the CBD or are users of the various transport services required for them to reach their places of employment. It is also noteworthy that these percentages reflected across the Commission's Provincial Offices generally correlate with the population density as detailed in the Census 2011 Report produced by Statistics SA.

4.4 COMPLAINTS BREAKDOWN

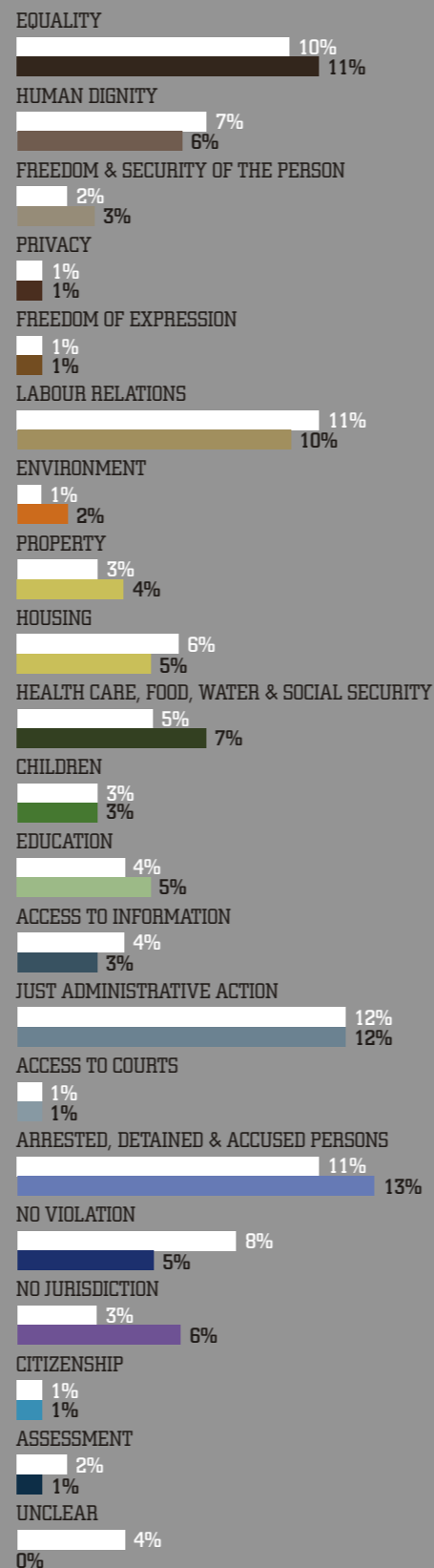
From the bar graph (Fig. 4), one notes that there is a trend developing in the rights violations registered by the Commission in the past two financial years. Four types of rights violations are prominent when looking at the graph (Fig. 4) and these are: Equality; Labour Relations; Just Administrative Action; and Arrested, Detained and Accused Persons. For the 2012/2013 financial year, complaints relating to Just Administrative Action ranked high with a total percentage of 12% and the fifth lowest complaints received during the 2012/2013 financial year related to Human Dignity with a total percentage of 7%. For the 2013/2014 financial year, we note that violations of Arrested, Detained and Accused Persons rights had the highest percentage of complaints received with a total of 13%, and the fifth lowest percentage of complaints received related to Health Care, Food, Water and Social Security.

For the rights violations breakdown per province refer to Appendix A.



During the 2012/2013 financial year, the following "Top 5" rights violations were identified in descending order in terms of all the complaints received nationally by the

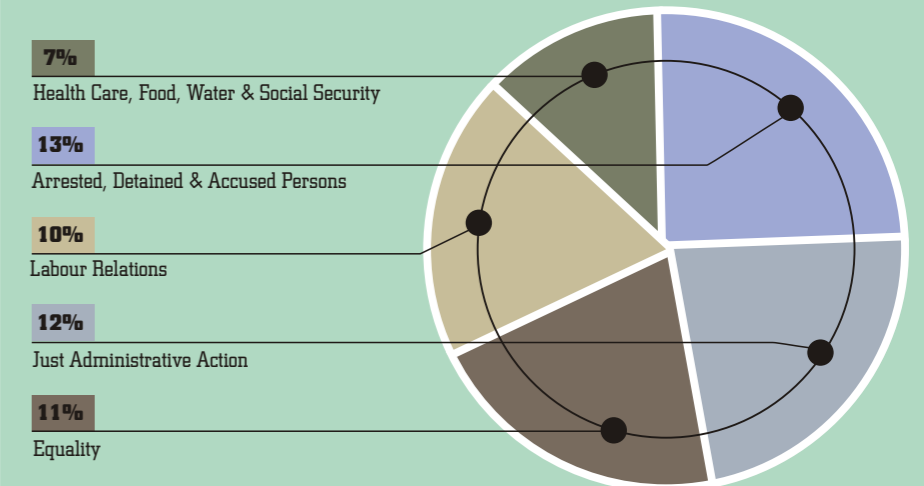
Fig. 4
Complaints Breakdown per Right(s) Violated
% per financial year



2012/13
2013/14

Commission, namely, Just Administrative Action² constituting 12% of the total; Labour Relations³ and Arrested, Detained and Accused Persons⁴ both at 11%; Equality⁵ constituting 10% and Human Dignity⁶ at 7%.

Fig. 6
2013/14 "Top 5" Rights Violations
(Comprising 53% of all Violations)



When reflecting on the nature of complaints received nationally during the 2013/2014 financial year, the following category of violations of rights were identified similarly in descending order, namely, Arrested, Detained and Accused Persons at 13% of the total; Just Administrative Action at 12%; Equality at 11%; Labour Relations at 10% and Health Care, Food, Water and Social Security⁷ at 7%.

It is important to note that the complaints received by the Commission are subject to an assessment by the relevant Manager at the Provincial Office who determines whether the complaint falls within the mandate and/or jurisdiction of the Commission as stipulated in Section 184 of the Constitution.

In terms of its Complaints Handling Procedures, the Commission is entitled to refer matters that may fall within its mandate, but would be dealt with more effectively or expeditiously by another organisation, institution or statutory body. In terms of Article 12 (8) (a) of the Commission's Complaints Handling Procedures:

"If the Provincial Manager makes a finding that the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more effectively or expeditiously by another organisation, institution, statutory body or institution created by the Constitution or any applicable legislation, the complaint must ... be referred to such appropriate organisation, institution or body ... and the complainant must ... be notified thereof, in writing, and be provided with the contact details of such appropriate organisation, institution or body."

A variety of factors may explain why the rights violations reflected (Fig. 5 and 6) constitute the Commission's "Top 5" rights violations, notwithstanding some of them falling outside of the Commission's jurisdiction, either in terms of the Constitution or its

Complaints Handling Procedures. In relation to Labour, for example, a number of complainants have been incorrectly referred to the Commission for assistance, particularly in instances relating to unfair discrimination in the workplace. While the Commission is mandated to deal with matters relating to discrimination as per the Promotion of Equality and Prevention of Unfair Discrimination Act⁸, all issues relating to the workplace, including discrimination are referred to the Commission for Conciliation, Mediation and Arbitration (CCMA), the appropriate Bargaining Council or the Labour Court for determination.

In respect to Arrested, Detained and Accused Persons, which also falls outside of the Commission's jurisdiction, the Commission is often a last resort for many complainants who have approached Legal Aid South Africa (Legal Aid SA) or the Judicial Inspectorate for Correctional Services (JICS) but have not received the assistance requested. Alternatively, complainants may not be aware of the appropriate forum they ought to be approaching for assistance, such as the Office of the Inspecting Judge, for example.

In respect to Just Administrative Action, the violation often concerns non-responsiveness to requests from government departments and inefficiencies concerning public administration. Depending on the nature of the right concerned and the seriousness or urgency of the violation, in addition to its impact on vulnerable groups, the matter will either be referred to the Public Protector for determination, or handled by the Commission itself.

Regarding the right to Equality, the Commission has in recent years received many complaints regarding comments made on social media platforms, in addition to allegations of discrimination in social spaces such as schools and universities, for example. Moreover, complaints relating to a violation of the right to Equality often attract much media attention and publicity, thus creating greater awareness of the Commission's services resulting in more complainants approaching the Commission.

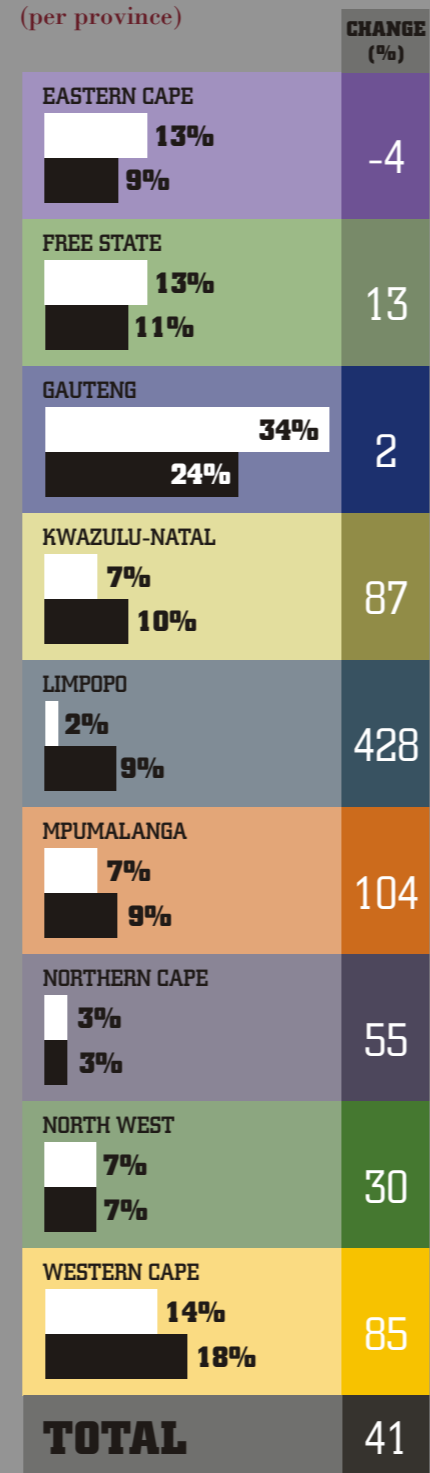
Human Dignity is intrinsically linked to many of the complaints received by the Commission and is often listed as an additional violation. It therefore explains why Human Dignity featured as one of the “Top 5” rights violations in the 2012/2013 financial year.

There was an increase in complaints with regards to the right to access Health Care, Food, Water and Social Security in the 2013/2014 financial year. This could be as a result of these rights forming an active part of the Commission's agenda, particularly in respect to its Research and Advocacy units.

4.5 REJECTED AND REFERRED COMPLAINTS

The total number of complaints rejected and referred by the Commission during the 2012/2013 financial year was 2126 as opposed to the 2013/2014 financial year where 2992 complaints were rejected and referred. This shows an increase of 866 in the number of complaints rejected and referred and a percentage change of 41% between the two financial years.

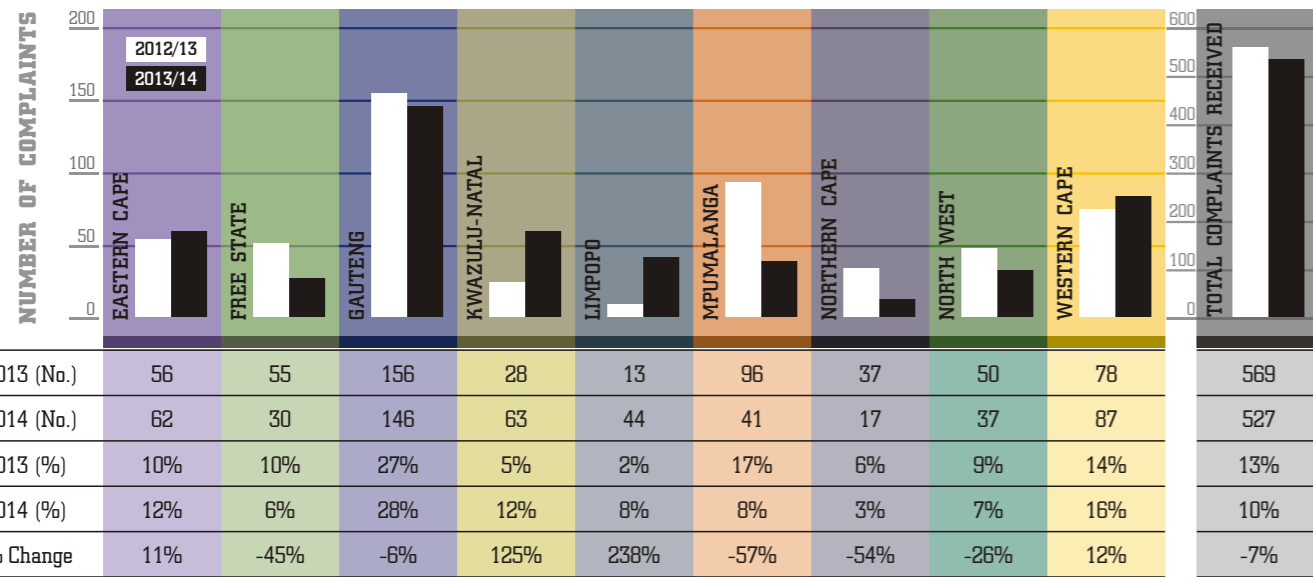
Fig. 7
Rejected and Referred Complaints
(per province)



2012/13
2013/14

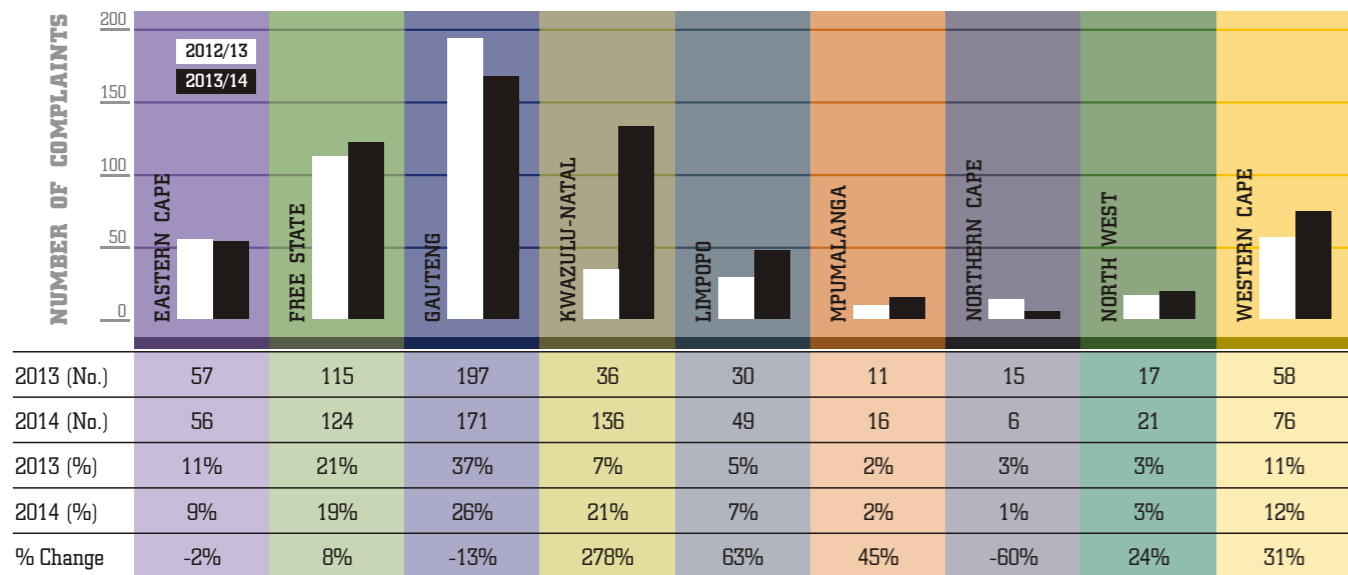
As outlined in Fig. 7, and when reflecting on the “Top 5” complaints the Commission has received during the preceding two financial years, complaints falling in the category of Arrested, Detained and Accused Persons where complainants are requesting assistance in their criminal complaints are generally referred to either Legal Aid SA or JICS, while matters concerning unfair labour practices are generally referred to the CCMA, Labour Court or applicable Bargaining Council for determination. Neither of these rights violations falls within the Commission's jurisdiction to investigate. In order to address this gap, the Commission has directed its attention to focusing on various advocacy initiatives in order to create public awareness about the Constitution and Bill of Rights broadly, as well as the Commission and other public institutions' mandates in addressing human rights violations.

In instances where the matter is of grave concern to the Commission, the Commission may monitor the remedial processes of complaints referred to these institutions, or embark on a joint investigation with the institution concerned. Furthermore, the Commission is monitoring the amount of complaints being referred to other bodies or institutions in order to assess its own advocacy initiatives, as well as embarking on joint projects with the relevant bodies or institutions with a view of further unpacking the root causes leading to violations concerning unfair labour practices or those affecting Arrested, Detained or Accused Persons (this is the case notwithstanding these rights violations not falling within the Commission's jurisdiction).



4.6 LABOUR RELATIONS

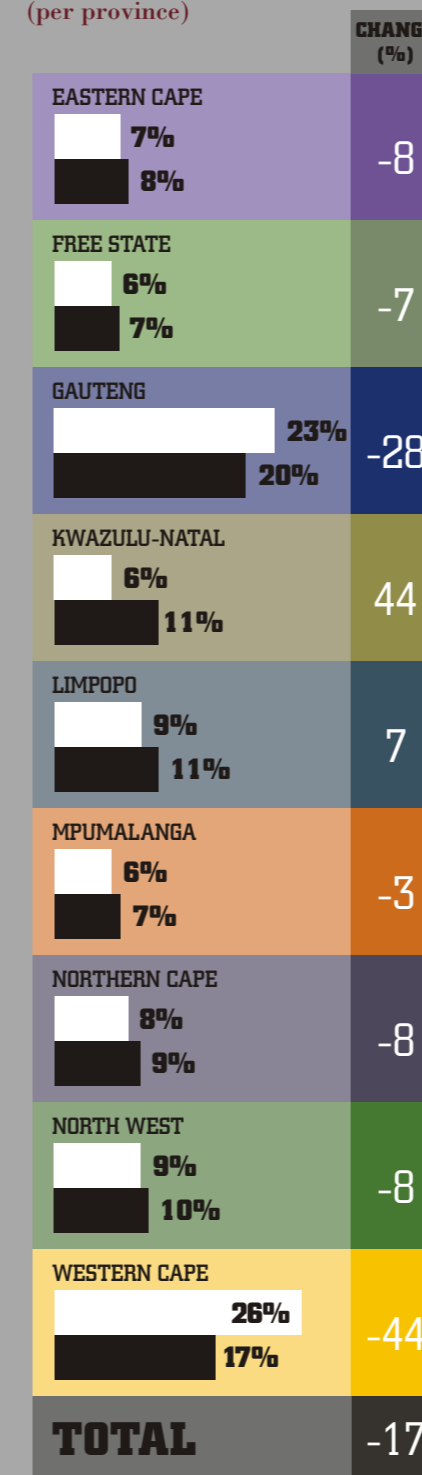
As at the end of March 2013 the number of complaints relating to Labour Relations was 569 and at the end of March 2014 the total stood at 527, showing a percentage decrease of 7%. For the 2012/2013 financial year, Labour Relations complaints received made up 13% of the entire dataset received, and for the 2013/2014 financial year they constituted 10%.



4.7 ARRESTED, DETAINED AND ACCUSED PERSONS

As at the end of March 2013 the number of complaints relating to Arrested, Detained and Accused Persons was 536 and at the end of March 2014 the total stood at 655, showing a percentage increase of 22%. For the 2012/2013 financial year, Arrested, Detained and Accused Persons complaints received made up 11% of the entire dataset received, and for the 2013/2014 financial year they constituted 13%.

Fig. 10
Accepted Complaints
(per province)



4.8 ACCEPTED COMPLAINTS IN 2012/13 AND 2013/14

The total number of complaints accepted by the Commission during the 2012/2013 financial year was 2236, and for the 2013/2014 financial year the total stood at 1861. This shows a decline in the number of complaints accepted of 375 and the percentage change between the two financial years is 17%.

In order to demonstrate the strategy the Commission is using in response to complaints that are systemic in nature, it does not preclude the efforts of the Commission in resolving all complaints that may fall within its mandate but outside of these rights categories. Moreover, the Commission has responded to complaints of national importance falling outside of these categories through a variety of remedial mechanisms available to it both in terms of the Human Rights Commission Act, 54 of 1994 (Human Rights Commission Act), as well as its internal Complaints Handling Procedures.

During the 2013/2014 financial year, for example, the Commission hosted a number of National Hearings discussed in more detail below, including investigating the challenges in delivering textbooks in the Limpopo Province. The Commission's Findings and Recommendations in relation to this investigation can be found in its report entitled the Final Report of the SAHRC: Investigative Hearing Monitoring and Investigating the Delivery of Primary Learning Materials to Schools Country-Wide. In addition, due to its monitoring mandate as articulated in the Constitution, the Commission is also playing a role in the current and ongoing court processes concerning the same matter. Other National Hearings hosted by the Commission in the previous financial year include investigating systemic challenges affecting the land restitution process in South Africa, as well as investigating the human rights challenges affecting Older Persons nationally. The report detailing the Commission's Findings and Recommendations in relation to this National Hearing on Older Persons has yet to be finalised.

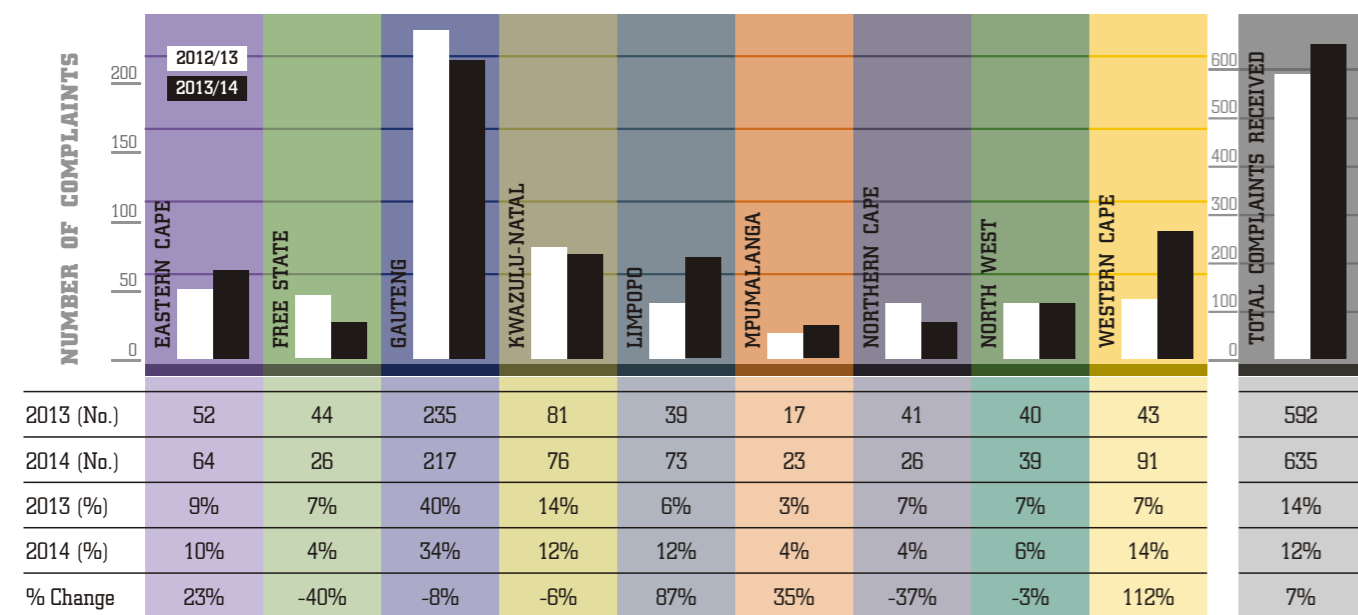
The section below details a selection of noteworthy cases handled by the Commission concerning the identified “Top 5” rights violations specified (Fig. 5 and 6), comprising both the 2012/2013 and 2013/2014 financial years. However, as mentioned previously, these categories exclude matters concerning Arrested, Detained and Accused Persons, as well as unfair labour practices.

5.1 JUST ADMINISTRATIVE ACTION

It must be noted that in both the 2012/2013 and 2013/2014 financial years, complaints regarding Just Administrative Action constituted 12% of the total complaints received by the Commission. In terms of the Promotion of Administrative Justice Act, 3 of 2000 (PAJA), “administrative action” refers to a decision taken, or a failure to take such a decision, by an organ of state in exercising a power assigned to it in terms of the Constitution or any other piece of legislation. It also refers to the exercising of a public power by a natural or juristic person, other than an organ of state, in terms of an empowering provision that enables them to do so.

As at the end of March 2013 the number of complaints relating to Just Administrative Action was 592 and at the end of March 2014 the total stood at 635, showing a percentage increase of 7%. For the 2012/2013 financial year, Just Administrative Action complaints received constituted 14% of the entire dataset received, and for the 2013/2014 financial year they constituted 12%.

Fig. 11
Just Administrative Action
complaints received
in 2012/13 and 2013/14
(per province)



Complaints that have come before the Commission concerning Just Administrative Action include the suspension of a learner from school, without consultation, for failing to shear his dreadlocks, which he grew as symbolic of his religion. In addition, the learner was not provided with an opportunity to appeal this decision, which further violated his right of access to basic education. As part of its recommendations, the

Commission directed the Respondent School to review its Code of Conduct in order to allow for alternative religious views, as well as allowing for exemptions on the basis of religious considerations. Furthermore, the Provincial Department of Education concerned was recommended to conduct an audit of all Codes of Conduct of public schools within the affected Province to determine whether there was reasonable flexibility and accommodation of religious and cultural deviations from mainstream religious practices, as well as providing the Commission with a report detailing the steps it intends to take to eliminate all forms of intolerance and of discrimination based on religion or belief, and reasonable accommodation of religious diversity in public schools in the Province. Such an approach would consequently avoid situations of learners having to undergo disciplinary measures for practicing alternative religions not provided for in a school's Code of Conduct, thus protecting the learner's Constitutional rights to freedom of religion and access to basic education⁹.

While it may be assumed that the right to Just Administrative Action constitutes fair procedure alone, the dire consequences of the failure of implementing such procedures cannot be taken lightly. In late 2011, it was widely reported in the media that four children aged between two and nine years old died in a veld from hunger and dehydration. It was alleged that the children had not received social grants because their mothers, who were unemployed at the time, did not have identity documents and one of the children did not have a birth certificate. Despite the existence of the Child Support Grant, one of the state's driving programmes of social assistance for children living in poverty, administered by the Department of Social Development, amongst the reasons that these children died was because neither they, nor their guardians possessed the necessary documents required for the grants to be claimed. Although the facts of this case show that the mothers of the children never applied for the grant, the depth of awareness raising and information dissemination carried out by the Department of Social Development is a cause for concern. This problem is particularly evident in rural areas with limited access to state institutions, and where there may be little knowledge regarding the relevant processes for claiming such grants.¹⁰

5.2 EQUALITY

As the custodian of the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 (PEPUDA), it is to be expected that the Commission will receive numerous complaints regarding the right to equality. In both the 2012/2013 and 2013/2014 financial years, violations of the right to Equality constituted roughly 10% of the total number of complaints received by the Commission.

As at the end of March 2013 the number of complaints relating to the right to Equality totalled 511 and at the end of March 2014 the total stood at 555, showing a percentage increase of 9%. For the 2012/2013 financial year, Equality complaints received made up 12% of the entire dataset received, while for the 2013/2014 financial year they constituted 11%.

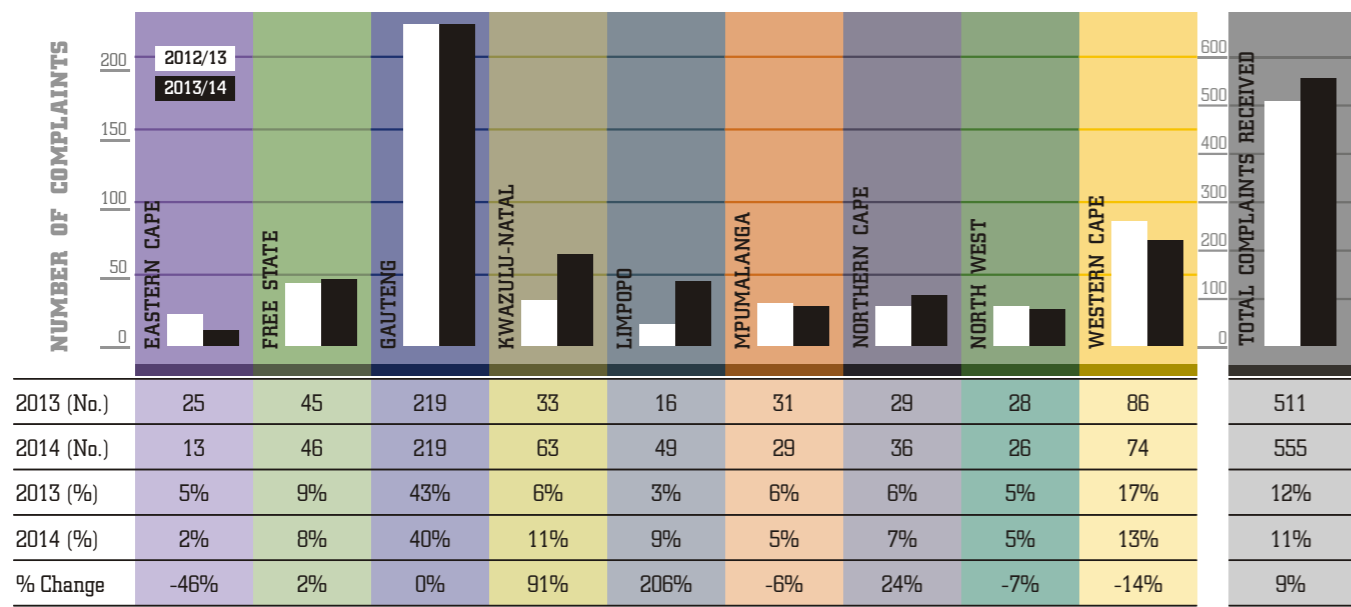


Fig. 12
Equality Complaints Received in 2012/13 and 2013/14 (per province)

While the Commission may not receive complaints relating to all of the grounds listed in the Equality provision articulated in Section 9 of the Constitution, the Commission remains committed to ensuring that discrimination on all of the listed grounds is prevented. As part of an array of strategies to combat discrimination on the grounds of Equality, the Commission frequently makes use of the Equality Courts. It is of grave concern that 20 years after democracy, the Commission still receives complaints regarding discrimination on the basis of race. Of the 555 complaints received during the 2013/14 financial year, 53% related to race. This could be indicative of the country's social reality, alternatively that more people have become aware of their right to Equality, seeking remedial relief when the right has been violated.

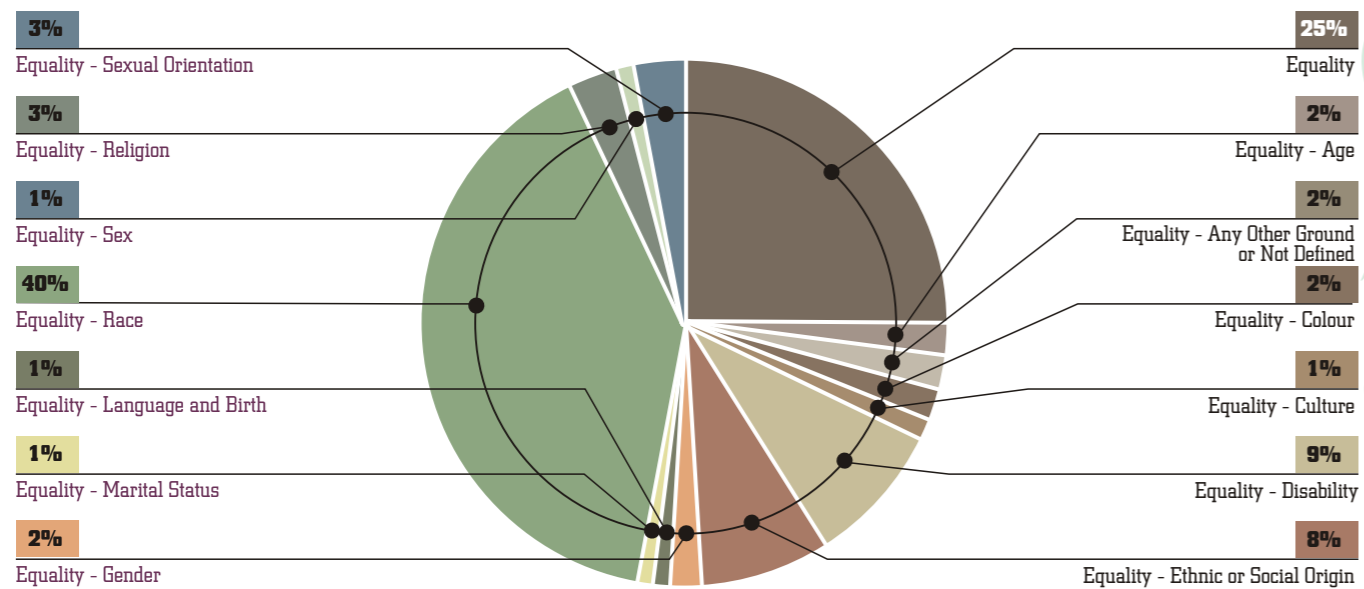
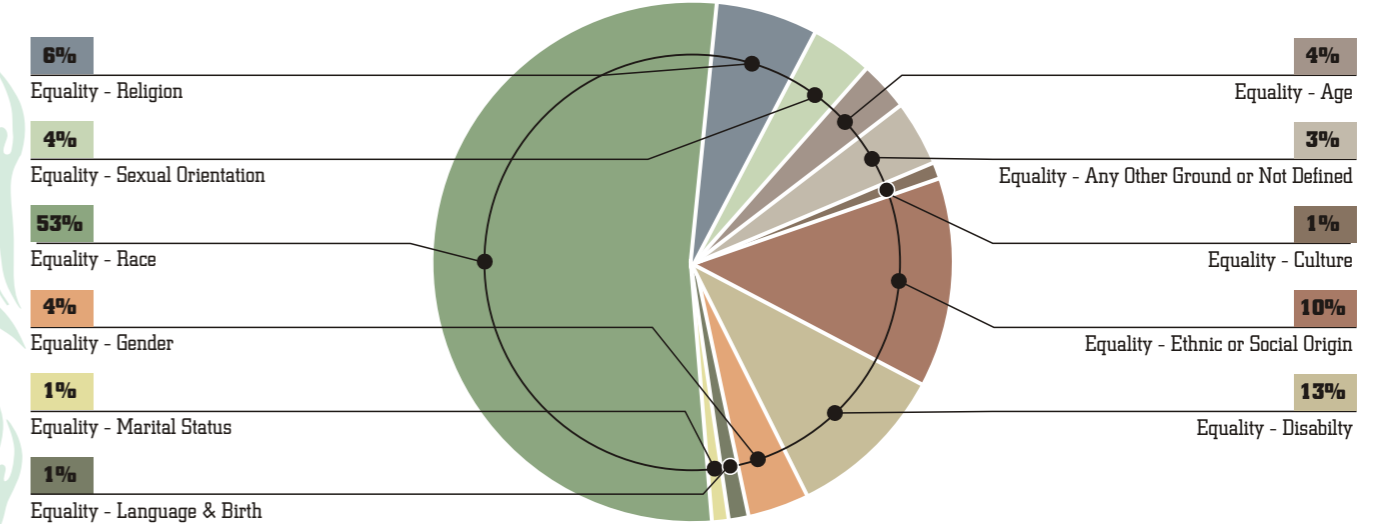


Fig. 13
Types of Equality Complaints Received in 2012/2013

Fig. 14
Types of Equality Complaints Received in 2013/14



The Commission has assisted numerous individuals in having their matters heard at Equality Courts. In most instances where the complaint concerns allegations of racial discrimination, the Respondents are ordered to pay a fine for damages and provide an unconditional apology. As at the end of March 2014, the Commission had 25 complaints that are before the Equality Court. While it is acknowledged that compensation in the form of money cannot restore the harm suffered or the impact that racial discrimination has on one's dignity, monetary compensation can add to the weight of the apology. It also signals to the Respondent that such matters cannot be taken lightly and that social cohesion is paramount to South Africa's democracy.

Apart from issues pertaining to racial discrimination, a large proportion of the complaints received pertained to discrimination on the grounds of disability (11% of the total complaints received during the 2013/2014 financial year). The Commission recently received a complaint regarding the lack of experience of airline staff in sufficiently handling people with disabilities. This matter was settled with the airline concerned through the provision of vouchers as compensation for the harm suffered by the complainant.¹¹

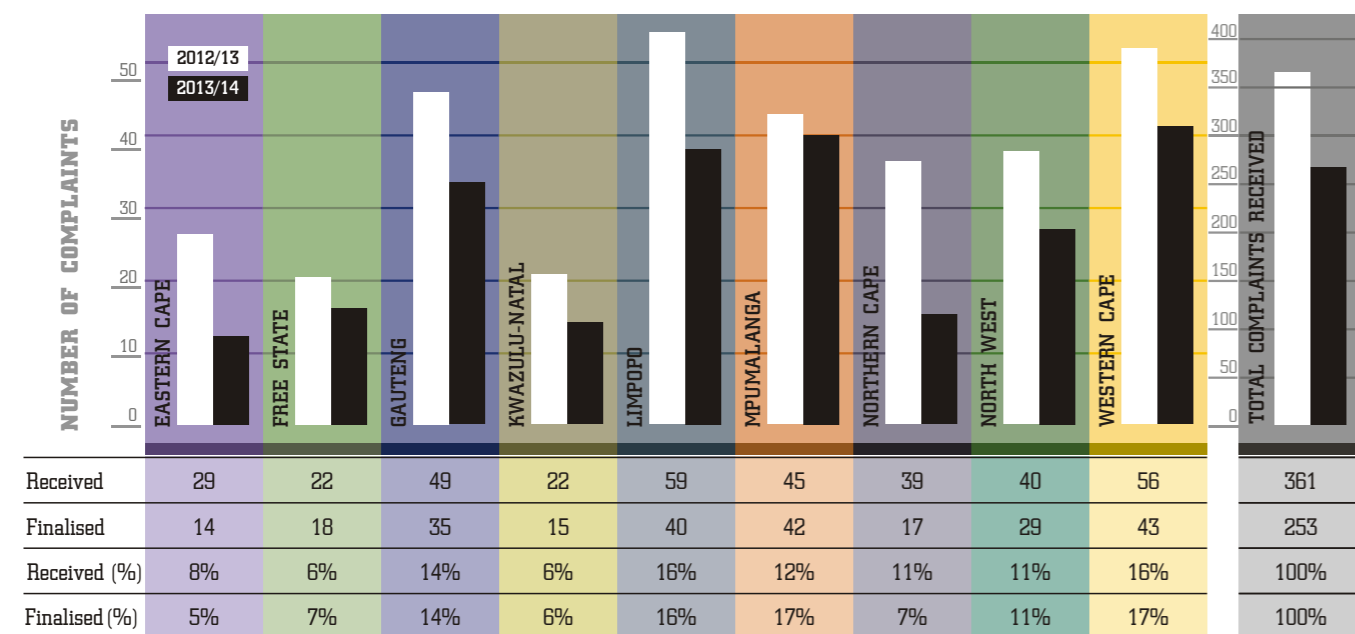
In another matter, the Commission received a complaint from a wheelchair user who was unable to access an Automatic Teller Machine (ATM). Due to the fact that her wheelchair could not fit into the designated queuing space, she was waiting to use the ATM with her husband at the front of the queue. While waiting, another user who assumed that she had skipped to the front of the queue pushed her wheelchair, grabbed her bank card, and told her that she was "not special". The user then proceeded to become violent with the complainant's husband. As a result of this treatment, the complainant's dignity was severely impaired. Essentially, the entire scenario could have been prevented had the banking institution in question provided adequate ATMs for disabled users. During its investigation the Commission noted that the banking institution concerned was in the process of reducing the barriers to disabled people in accessing its ATMs. However, until all of these barriers are identified and eradicated, disabled ATM users will continue to face discrimination. The Commission therefore recommended, inter alia, that the then Department of Women, Children and People

with Disabilities together with the Respondent, the Banking Association of South Africa and other industry specific role players and stakeholders, consult and develop national guidelines which provide acceptable standards to improve accessibility of ATMs. Such an approach would therefore address the concerns of all disabled people in accessing ATMs, regardless of the banking institution they belong to.¹²

5.3 HEALTH CARE, FOOD, WATER AND SOCIAL SECURITY

It is noteworthy that this category of rights violations, articulated in Section 27 of the Constitution, formed part of the Commission's "Top 5" violations only in the 2013/14 financial year and constituted roughly 7% of the total complaints received. This could be attributed to the Commission's national drive drawing attention to the lack of access to water and basic sanitation, which culminated in a report entitled "Water and Sanitation, Life and Dignity: Accountability to the People who are Poor". It can also be attributed to the Commission's overarching institutional theme for the 2013/14 financial year, the Right to Food.

Fig. 15
Complaints Received relating to Health Care, Food, Water and Social Security in 2012/13 and 2013/14 (per province)



Complaints regarding a lack of access to clean water and basic sanitation have been reported throughout the country. These complaints range from a lack of waterborne sanitation facilities, the use of pit toilets, chemical toilets which have been insufficiently cleaned or not at all, water contamination by human waste or pollution caused by mines in surrounding areas, and insufficient access to clean water due to lack of sufficient communal taps.

The frustration caused particularly in urban areas due to a lack of access to clean water and basic sanitation has been widely reported on in the media. However, the challenges experienced in South Africa's rural communities are frequently overlooked. In the Eastern Cape, residents of the Cintsa East/Khayelitsha informal settlement have had to use pit toilets and in some instances, relieve themselves in the nearby forest. They have had to experience faeces spilling out of the municipal sewer and into the streets¹³. In the

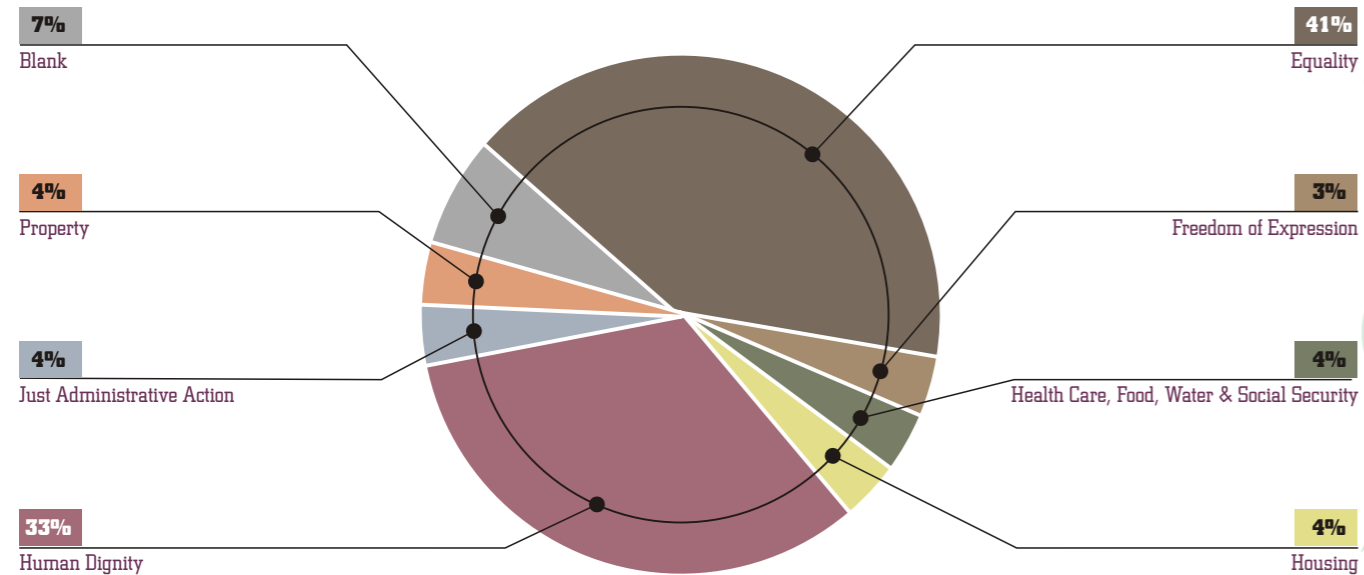
Northern Cape, residents of the Cilliers Informal Settlement have experienced water shortages since 1999 and are still dependent on water tanks which are not refilled frequently enough, resulting in residents often having to endure days without access to sufficient water¹⁴. In the Free State, the lack of adequate water supply to the local clinic in Jagersfontein has had a debilitating impact on the patients' general health and well-being, many of whom are people living with HIV/AIDS. In addition, patients suffer from diarrhoea due to the consumption of contaminated water in the area. Moreover, nursing personnel cannot use sanitation facilities or conduct urine tests due to a lack of water.¹⁵

While the Commission acknowledges that Section 27 constitutes a right that is to be progressively realised, it notes with concern that in many instances, organs of state are not complying with implementing its policies accordingly. As such, multiple communities have had their right to Human Dignity violated in the state's failure to provide safe and sustainable water supply fundamental to living a healthy, productive and dignified life. Furthermore, the Commission found that in many instances residents in communities were not adequately notified about the possible contamination of water, possible health risks, persistent water shortages and maintenance challenges, and the inability to disseminate information about plans to ameliorate their access to basic water services and general lack of information upholds the complaint of violations of both the right to clean environment and access to information.

Moreover, in 2007 the Commission conducted a national inquiry into the state of public hospitals nationally.¹⁶ However, in 2013, the Commission conducted investigations into the state of some public hospitals in Mpumalanga and found that the very challenges identified in its 2007 report continue to persist. These challenges pertain primarily to a lack of effective management structures, infrastructure, adequate access to primary healthcare facilities and sufficient human resources required to deliver quality healthcare services. In addition, the shortage of personnel in hospitals and the delay in the recruitment and appointment of staff still remains a challenge and continues to negatively impact on the provision of healthcare services to the public. In view of the time lapse between the advertisement of the posts and the appointment of staff, the Commission found that the delay was occasioned by maladministration on the part of the Provincial Department of Health.¹⁷

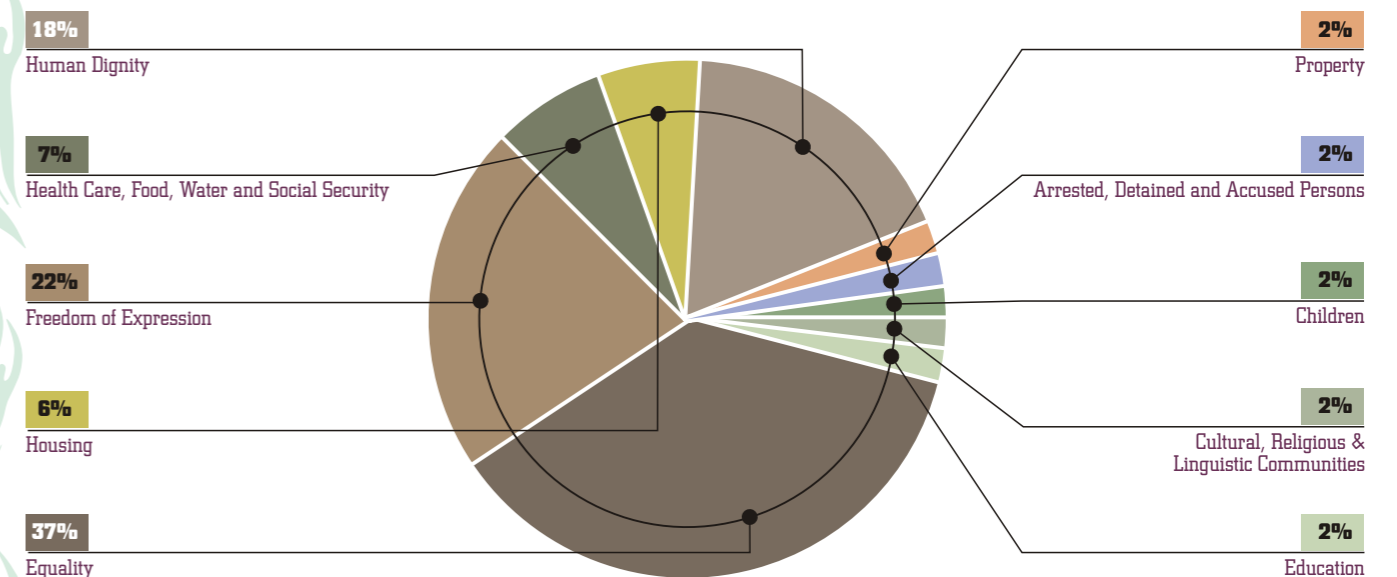
As previously stated, it is of further concern to the Commission that poor and marginalised aspects of South African society, particularly children, continue to die of hunger and malnutrition because of their socio-economic circumstances. Despite the existence of social grants and the establishment of state institutions to administer same, many citizens, and particularly those residing in outlying rural areas, are unable to access these grants. In terms of the Constitution, the state has a duty to put in place effective administrative measures to protect children against neglect. However, notwithstanding the implementation of the Child Support Grant, children continue to suffer due to neglect. On the evidence before the Commission, it appears that there are no clear policies and procedures for advocacy around people living in rural communities to apply for the Child Support Grant. It is also evident that no system exists in the management of information to enable government officials to address the problem of low applications. The sum effect is that the aim and objective of the Child Support Grant is negated, and rendered ineffective.¹⁸

The pie charts (Fig. 16 and 17) illustrate the types of complaints that the Commission received and initiated legal proceeding for, in both the 2012/13 and the 2013/14 financial years. Complaints concerning the right to Equality have been the most prominent complaints that the Commission instituted legal proceedings on for both financial years. This correlates with the high volume of complaints received by the Commission concerning this right in particular. It is also in line with the Commission's strategic objectives to increase its usage of the Equality Courts, as one of the primary custodians of PEPUDA.



The Commission's research has demonstrated that while the introduction of Equality Courts is a measure welcomed by numerous segments of society, it is their utility, effectiveness and accessibility which will ultimately be measures of their success in promoting the right to Equality. The Commission, therefore, undertakes research to examine not simply whether Equality Courts exist and function as per their governing legislation but, also, whether they are effective and accessible forums for reconciliation. The Equality Courts hear matters regarding unfair discrimination on any of the prohibited grounds stipulated in PEPUDA, including publication of information that unfairly discriminates or constitutes hate speech. In 2009, it was reported that several Equality Courts were closing down because of a lack of work, with a total of 100 of these courts closing in the period 2003-2009, a figure which the Department of Justice and Constitutional Development (DOJCD) disputes.¹⁹ The trend of under-usage of Equality Courts has persisted throughout the country. In October of 2013, it was reported that in 46 Equality Courts throughout the Western Cape, there were only 31 cases pending.²⁰ This situation has been attributed to poor public awareness and inadequate promotion of the courts. As a result, the Western Cape DOJCD embarked on a series of publicity and awareness-raising activities.²¹ It should be noted, however, that the recommendation to undertake these awareness activities was put forward by the Commission as far back as 2006. This was re-iterated in the Commission's First and Second Equality Reports as well. Therefore, initiatives to enhance public awareness, while welcomed, are long overdue and require urgent implementation if the State is to fulfil its legislated responsibilities.

Fig. 17
Types of complaints resulting in Litigation in 2013/14



As at the end of the 2012/2013 financial year, the total number of litigation complaints stood at 27 and for the 2013/2014 financial year the number went up to 54 complaints. Twenty litigation complaints recorded in the 2013/2014 financial year were carried over from the previous financial year. As at the end of the 2012/2013 financial year, 3 matters that the Commission took on litigation were finalised and this total made up 11% of complaints litigated on, whereas for the 2013/2014 financial year, 9 matters were finalised and these constituted 17% of litigation matters. Noting that half of the complaints litigated on in the 2013/2014 financial year were carried over from the previous financial year, these complaints could have possibly been at the finalisation stage which would explain the increase in finalised litigation complaints for the 2013/2014 financial year.

The Commission is therefore committed to ensuring that through the various constitutionally mandated mechanisms available to it, which is further articulated in PEPUDA, that it contributes both to creating awareness of the Equality Courts, in addition to ensuring the effective and persistent usage thereof.

7 NEGOTIATION/CONCILIATION/MEDIATION COMPLAINTS

Alternative Dispute Resolution (ADR) is one of the many remedial mechanisms available to the Commission in resolving complaints as per its Complaints Handling Procedures. This is informed by Section 8 of the Human Rights Commission Act which provides that the Commission may, by conciliation, negotiation or mediation, endeavour to resolve any dispute or to rectify any act or omission emanating from or constituting a violation of a human right. The two pie charts (Fig. 16 and 17) comprise of ADR complaints statistics for the two financial years in review. Complaints that the Commission has dealt with that relate to ADR complaints are not that high in numbers. For the 2012/2013 financial year, the Commission dealt with only 11 complaints

Fig. 18 Negotiation/Conciliation/Mediation Complaints - 2012/13 (per province)

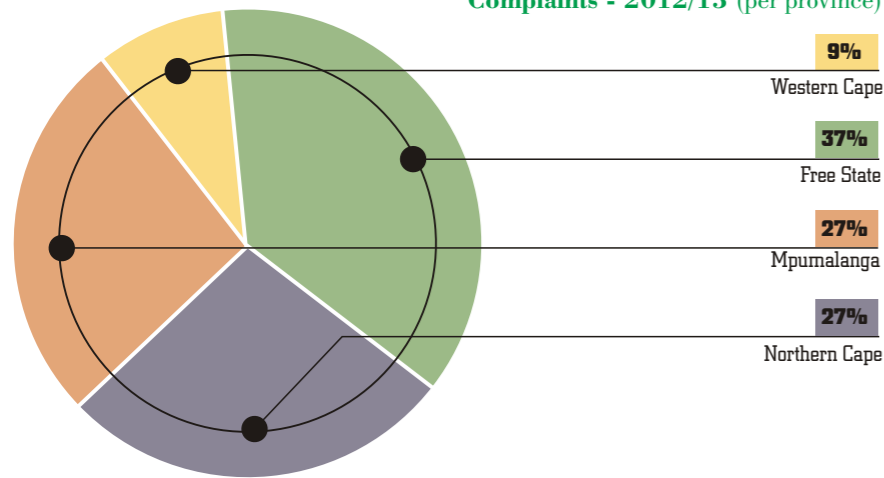
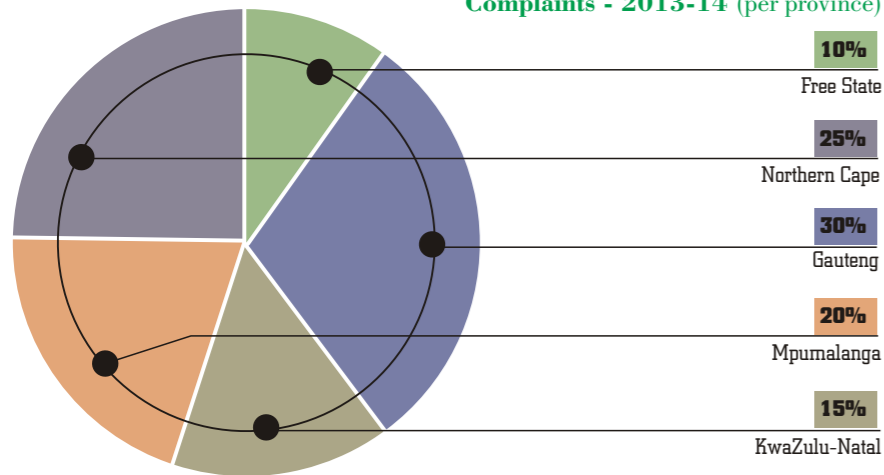


Fig. 19 Negotiation/Conciliation/Mediation Complaints - 2013-14 (per province)

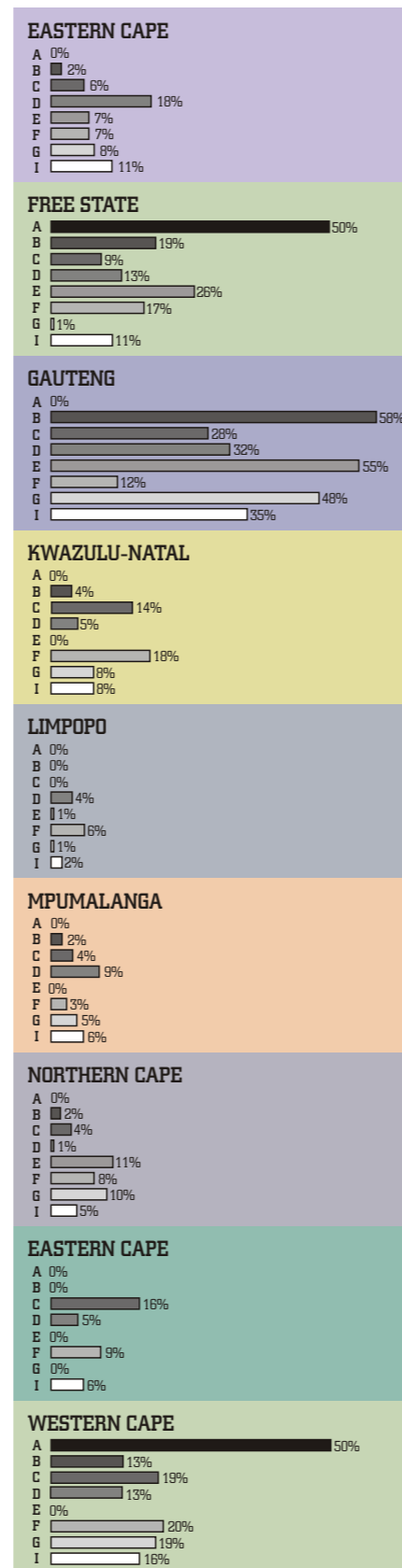


through ADR and resolved 4. The numbers were slightly higher at the end of the 2013/2014 financial year, with 20 complaints recorded and 9 of these resolved through ADR. As such, the total percentage of complaints resolved through ADR at the end of the 2013/2014 financial year was 45%. The percentage change of complaints received from the 2012/2013 financial year to the 2013/2014 financial year showed an 82% increase of complaints to be resolved through ADR processes. A proactive attempt was made to encourage Provincial Offices to make use of ADR as a means to resolve complaints which provides an explanation for the increase from the 2012/2013 to 2013/2014 financial years.

8 COMPLAINTS HANDLING PROCESSES

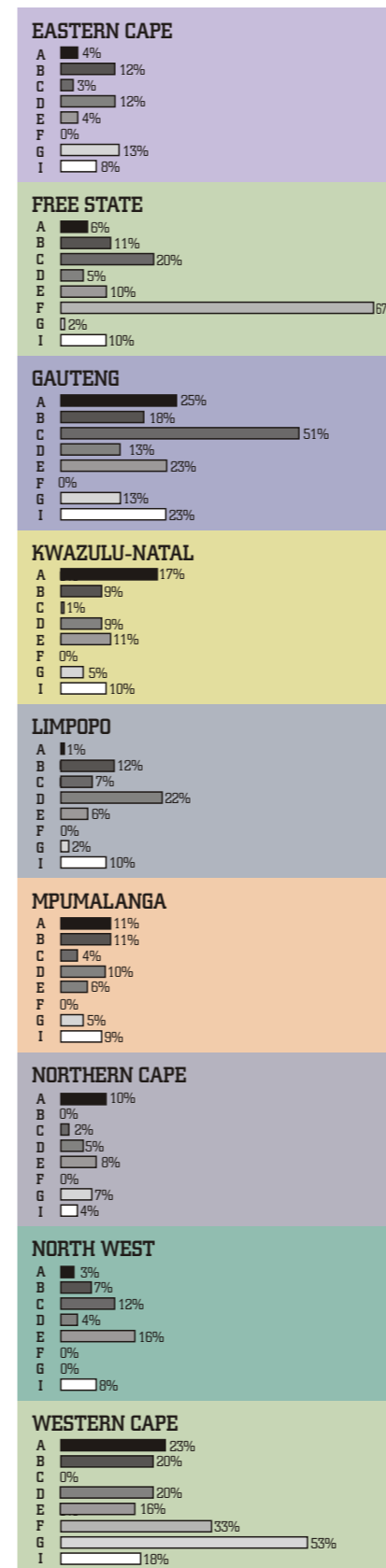
The bar chart (Fig. 20) illustrates all complaints finalised during the 2012/2013 financial year per province. The alphabetic reference of each bar represents the percentage of each finalisation status per province in relation to its entire workload. For instance, rejected complaints are represented by the letter "C". From the bar chart, we note that the Gauteng Provincial Office rejected the most complaints at a total percentage of 28%, and the second highest was the Western Cape Office with 19%. These numbers correlate with these two Provincial Offices recording the highest number of complaints received during the 2012/13 financial year.

Fig. 20 Breakdown of Finalised Complaints - 2012/13 (per province)



A ■ MONITORING REPORT RECOMMENDATIONS
 B ■ MONITORING DIRECT REFERRAL (report/information required)
 C ■ REJECTED
 D ■ INDIRECT REFERRAL
 E ■ DIRECT REFERRAL (finalised)
 F ■ RESOLVED
 G ■ CLOSED
 I ■ FINALISED as at end March

Fig. 21 Breakdown of Finalised Complaints - 2013/14 (per province)

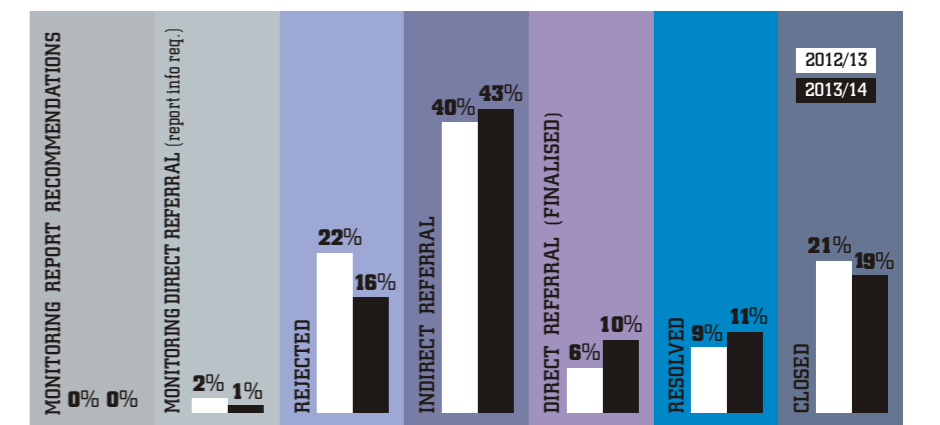


A ■ REJECTED
 B ■ INDIRECT REFERRAL
 C ■ DIRECT REFERRAL (finalised)
 D ■ RESOLVED
 E ■ CLOSED
 F ■ MONITORING REPORT RECOMMENDATIONS
 G ■ MONITORING DIRECT REFERRAL (report/information required)
 I ■ FINALISED as at end March

For the period 1 April 2012 to 31 March 2013, the Legal Services Unit at Provincial Office level processed and reported a total of 4947 complaints. The total number of finalised complaints as at end March 2013 stood at 3075. The bar chart (Fig. 21) illustrates the criteria used for distinguishing finalised complaints and the national distribution. The percentages in the chart illustrate each Provincial Office's contribution to the finalisation of complaints as per modes of finalisation.²² The province with the highest number of complaints finalised as at the end of the 2012/2013 financial year was the Gauteng Provincial Office with the total of 1069 complaints finalised followed by the Western Cape Provincial Office with the total of 479 complaints finalised. The total percentage of complaints finalised by the Gauteng Provincial Office as at the end of the 2012/2013 financial year was 35% and for the Western Cape Provincial Office it was 16% as illustrated in the bar chart by the letter "I". One should note that these percentages related to the workload each Provincial Office contributed to the total number of 3075 complaints finalised nationally. These percentages do not include the total number of enquiries also finalised.

For the period 1 April 2012 to the 31 March 2014, the Legal Services Unit at the Provincial Office level processed and reported 4980 complaints. For the 2013/2014 financial year the number of finalised complaints nationally was 4313 complaints. Fig. 21 illustrates the criteria used for distinguishing finalised complaints and the national distribution. A high number of complaints were finalised by indirect referrals by Provincial Offices. As in the previous financial year, the top 5 complaints received were similar to those received in the 2013/2014 financial year and these were mostly referred to other institutions that were best placed to handle these complaints. We note an increase of 1238 in the total number of complaints finalised during the 2013/2014 financial year when compared to the total number of complaints finalised in the 2012/2013 financial year. This could be due to the fact that most of the carried over complaints from the 2012/2013 financial year had already been investigated and needed to be finalised when the said financial year ended. This could only be done during the 2013/2014 financial year.

Fig. 22 Finalised Complaints - 2012/13 and 2013/14 (per status)



The bar graph above shows us the percentage breakdown of finalised complaints per finalisation status as at the end of each of the two financial years under review.²³ The graph above illustrates that for both financial years, most of the complaints finalised have been via indirect referral. These are mostly complaints that do not fall within the

jurisdiction of the Commission. A large portion of these complaints constitute prisoner-related complaints and labour-related issues. With prisoner-related complaints, we notice a trend of complainants requesting assistance with their appeal matters where they need assistance in getting their court transcripts or requesting assistance with their criminal cases in the form of an attorney. These matters are subsequently referred to Legal Aid SA, JICS or the Registrar of the court as these bodies are the relevant institutions to handle the matters.

With labour-related complaints, the Commission has received complaints that relate to compensation and unfair labour practices or unfair dismissals. These are also complaints that do not fall within the ambit of the Commission - they are referred to relevant bodies such as the CCMA, Department of Labour or relevant Bargaining Councils.

9 APPEALS

9.1 PROCEDURAL APPEALS

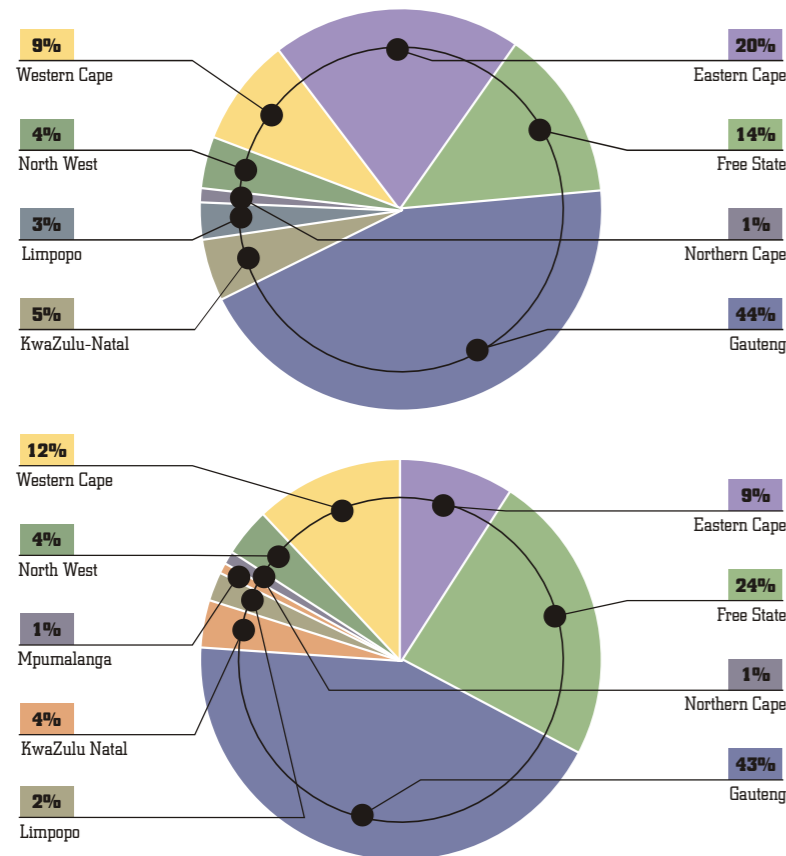


Fig. 23 Procedural Appeals - 2012/13 (per province)

Fig. 24 Procedural Appeals - 2013/14 (per province)

The total number of procedural appeals received during the 2012/2013 financial year was 148, whereas at the end of the 2013/2014 financial year the total was 102. For both financial years we note that the bulk of appeals received originate from complaints finalised by the Gauteng Provincial office. As per the pie chart breakdown in Fig. 23 and 24, it is noted that the Gauteng Provincial Office received the highest percentage

of complaints for the two financial years. This could explain the high percentage of appeals that the Commission has received as illustrated in Fig. 23 and 24. We further note that the number of appeals received by the Commission during the 2013/2014 financial year decreased when compared to the previous financial year. In order to battle the ongoing problem of backlog complaints that were carried over from one financial year to another, the Commission focused its attention on the Legal Services Unit by empowering this unit with extra positions. More time could therefore be spent on conducting thorough investigations other than having to rush in finalising complaints. Complainants received relevant feedback on their complaints and they were directed to relevant institutions that could handle their complaints expeditiously. Provincial Offices such as the Gauteng Provincial Office and the Kwazulu-Natal Provincial Office have had stakeholder engagements with other organisations in order to streamline processes and to create a working relationship in regards to complaints handling, thus making the referral of complaints to other institutions easier.

9.2 SUBSTANTIVE APPEALS

Fig. 25 Substantive Appeals - 2012-2013 (per province)

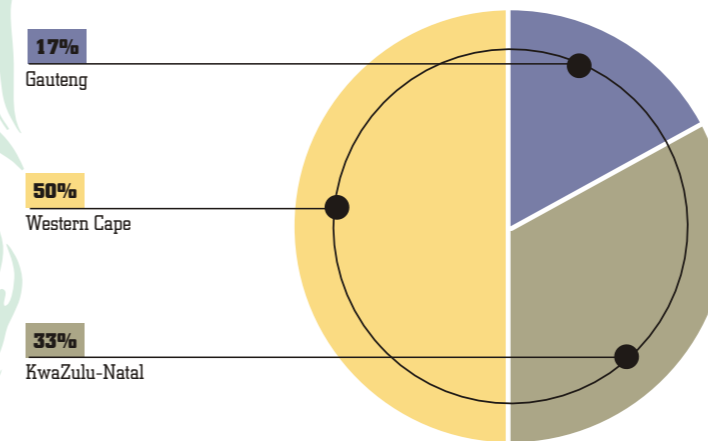
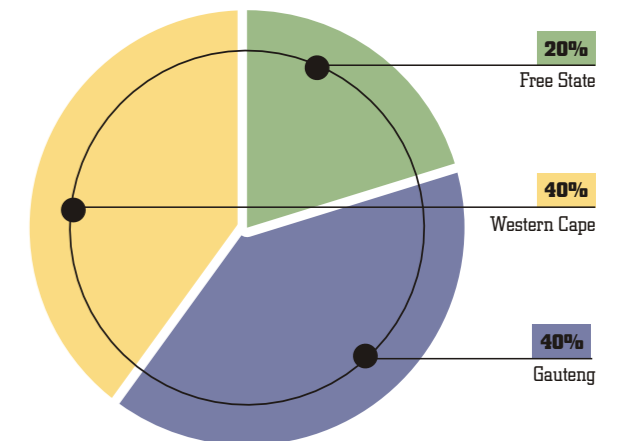


Fig. 26 Substantive Appeals - 2013/14 (per province)



For both financial years we note that substantive appeals are not that high in numbers and we have observed a decrease in the number of substantive appeals recorded by Provincial Offices. One of the reasons for this could be that the appellants do not have the requisite legal knowledge of constructing an appeal letter and tend to list their reasons for appeal around the investigation of their initial complaint. This in itself would render the appeal a procedural appeal. Most of the substantive appeals that the Commission has received have been from appellants who have had the assistance of an attorney and the reasoning behind the appeal would have strong grounds that warrant the Commission to give substantive inputs to the appeal finding.

For both financial years we note that the majority of the substantive appeals received by the appeals section of the Commission have come from the Western Cape Office. However, the Western Cape Provincial Office provides a thorough explanation as to the reasons for their initial findings on their complaints thus giving the complainant reasons to argue when drafting their appeal letters to the Commission. This could also explain why the Gauteng Provincial Office is the other office to have had substantive appeals lodged against its finding for both financial years as well.²⁴

9.3 APPEALS UPHELD vs DISMISSED

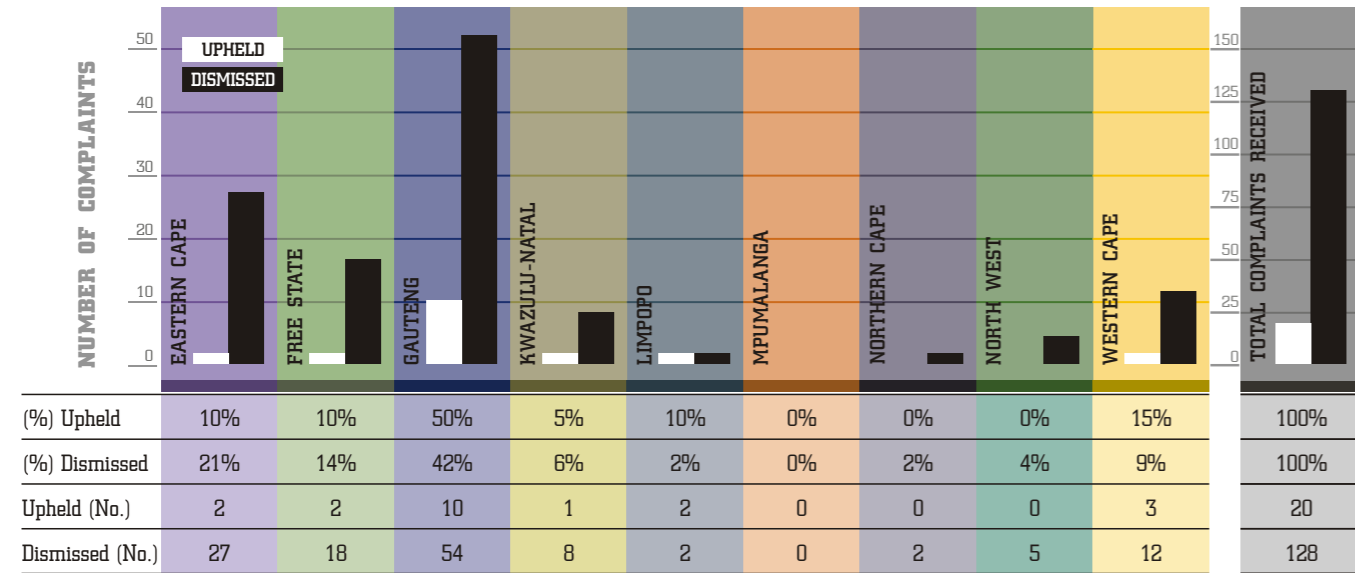


Fig. 27
Breakdown of Appeals Upheld vs Dismissed 2012/13 (per province)

As at the end of the 2012/13 financial year the total number of Appeals received by the Commission amount to 148. Twenty of the appeals received were upheld and returned to the respective provinces to investigate the alleged Human Right/s violations. A total number of 128 of complaints received on appeal were dismissed and the complainants were advised of the right to judicial review. The graph (Fig. 27) illustrates the percentage break down of all appeals received per decision on appeal, as well as the total number of complaints received per province.

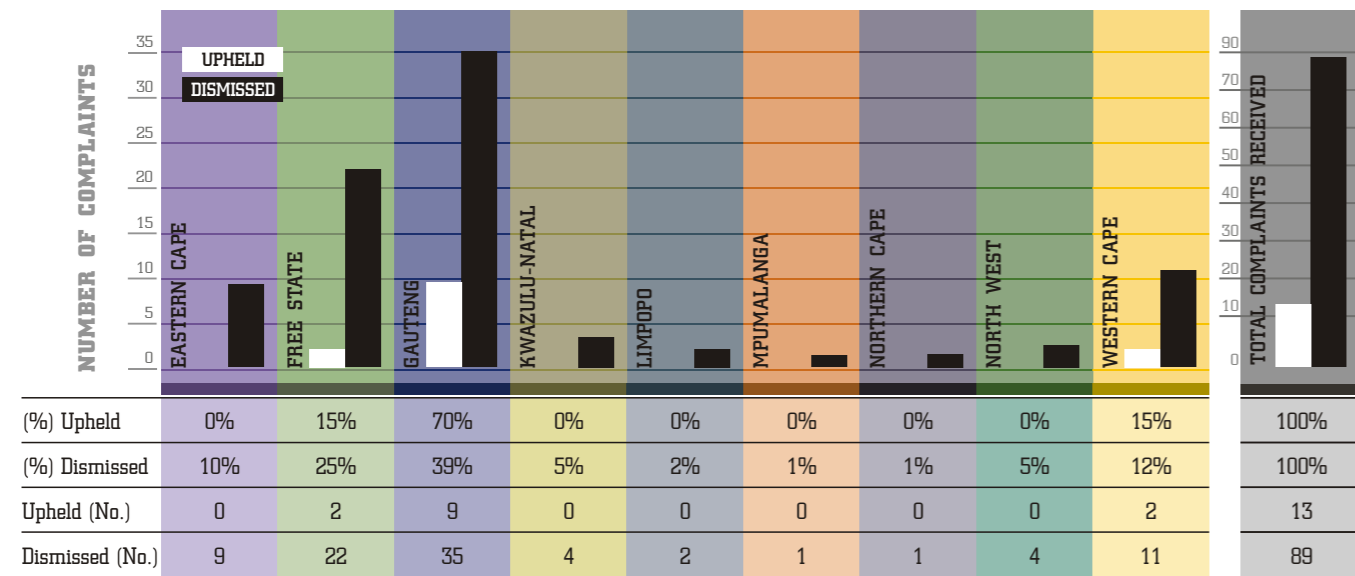


Fig. 28
Breakdown of Appeals Upheld vs Dismissed 2013/14 (per province)

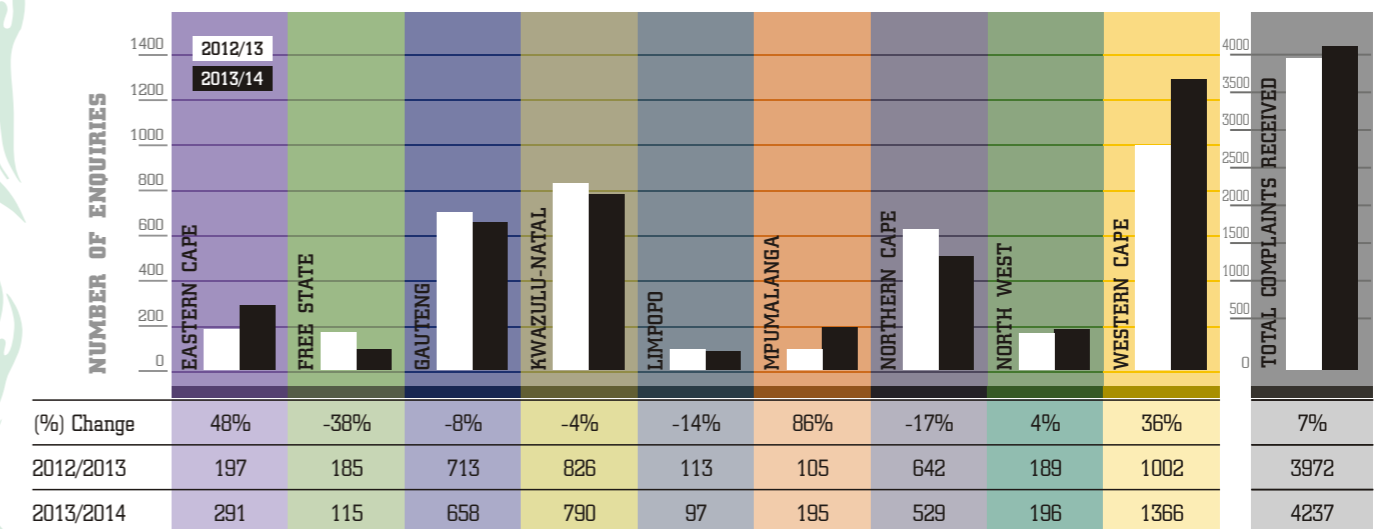
The total number of appeals received by the Commission as at the end of the 2013/2014 financial year amounted to 102. This number shows a drastic decline in the number of appeals when compared to the number of appeals received in the 2012/2013 financial year. During the 2013/2014 financial year the Commission conducted a variety of training initiatives for the Legal Services Unit's staff members at provincial level on complaints handling processes and procedures. The training focused on quality report

writing as well as complaints handling for Legal Officers, Senior Legal Officers and Provincial Managers. With these training initiatives Provincial staff members received a clearer understanding of complaint management and the importance of investigating complaints thoroughly.

10 ENQUIRIES RECEIVED

The graph (Fig. 29) illustrates the number of enquiries received and finalised per Provincial Office for the two financial years in review. As at end March 2013 the total number of enquiries received nationwide stood at 3972 and at the end of March 2014 the number was 4237. The overall percentage change between the 2012/2013 and 2013/2014 financial years shows a 7% increase in the number of enquiries received and finalised. From Fig. 29 we note that this increase can be attributed to four Provincial Offices including the Eastern Cape with a total increase of 94 enquiries and a percentage change of 48%; Mpumalanga is another province which had a significant increase in its numbers, with a total increase of 90 enquiries and a percentage change of 86%. The North West Provincial Office did not have a huge increase when compared to the two aforementioned Provincial Offices as its increase was only 7 enquiries amounting to 4% of its percentage change. The one Provincial Office that recorded a significantly high number of enquiries was the Western Cape Provincial Office as it finalised 364 more enquiries in the 2013/2014 financial year than in the 2012/2013 financial year. A basis for the number of enquiries dealt with by Provincial Offices and the variation in numbers may be due to the familiarity of the physical location of the Provincial Offices and confidence the public have in the Commission to assist them in resolving their matters.

Fig. 29
Enquiries Received and Finalised for 2012/13 and 2013/14 (per province)



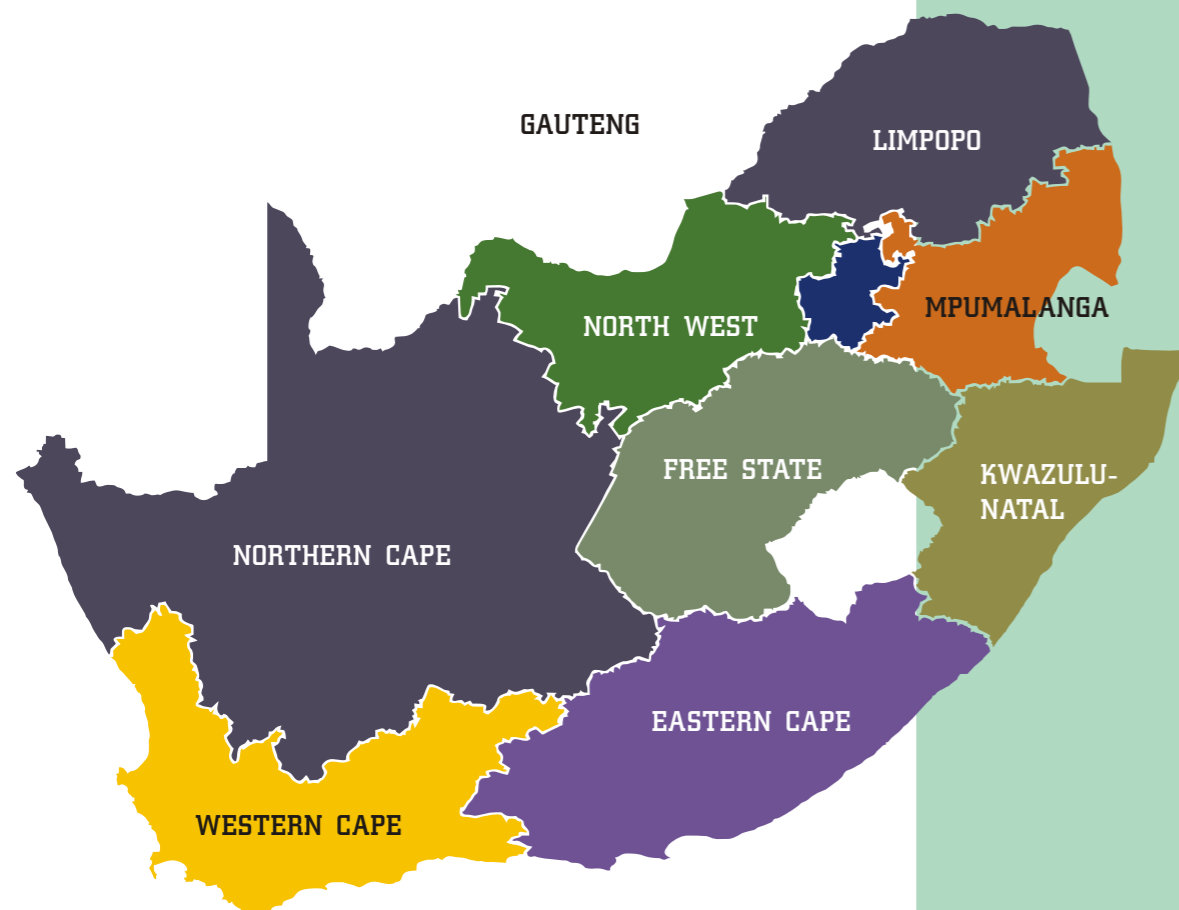
NOTES

1. SAHRC (2014) “*Strategic Plan 2014 to 2017 – Annual Performance Plan 2014/2015*”.
2. Section 33 of the Constitution
3. Section 23 of the Constitution
4. Section 35 of the Constitution
5. Section 9 of the Constitution
6. Section 10 of the Constitution
7. Section 27 of the Constitution
8. 2 of 2000
9. Mokgatla, Vumile Ernest / Hodisa Technical Secondary School (FS/2012/0103)
10. Martha Mmupele // National Department of Home Affairs / South African Social Security Agency (NW/2011/0212)
11. Howiston // SAA / SA Express (Gauteng Provincial Office – GP/2008/0620 / GP/1314/0043/KC)
12. Bulelwa Memani / Standard Bank of South Africa (GP/2011/0372)
13. Dacre Haddon, DA (On behalf of Cintsa East // Khayelitsha Informal Settlement residents) / Amathole Municipality (EC/1213/0279)
14. Senobia Booysen on behalf of the Residents of Cilliers Informal Settlement / KhaiGariieb Municipality (NC/1213/0105)
15. Patricia Kopane MP (DA) / Kopanong Local Municipality (FS/1213/0283)
16. SAHRC (2009) “*Public Inquiry: Access to Health Care Services*”.
17. SJ Masango, MP (DA) / Mpumalanga Department of Health (MP/1213/0160)
18. Martha Mmupele // National Department of Home Affairs / South African Social Security Agency (NW/2011/0212)
19. IOL News. (2009). *Equality courts are here to stay – department*. Accessed October 11, 2013 from <http://www.iol.co.za/news/south-africa/equality-courts-are-here-to-stay-department-1.449317#.Ulebq-QjKqY>
20. Davids, N. (2013). *Equality courts are short of wrongs to set right*. Accessed October 17, 2013 from <http://www.timeslive.co.za/thetimes/2013/10/16/equality-courts-are-short-of-wrongs-to-set-right>
21. Meyer, W. (2013). *Equality courts 'crying out for work'*. <http://www.iol.co.za/news/crime-courts/equality-courts-crying-out-for-work-1.1591639#.UI-EB-QjKqY>
22. See appendix “B”
23. See appendix “B” for definitions of the terms used in Fig. 22.
24. See appendix “A” and “B”

summaries of investigative reports

NARRATIVE REPORTING OF
COMPLAINTS RECEIVED IN
2012/2013 AND
2013/2014

The narrative below represents an overview of complaints handled by the Commission which resulted in the production of Investigative Reports. The reports highlight systemic issues that remain of concern to the Commission, and which will require further intervention in order to achieve the appropriate redress. A large number of the reports reflect the Commission's concerted effort to bring to the fore the lack of access to adequate and clean water, as well as basic sanitation still experienced by the large majority of poor South Africans. The Commission's reports reflect that discrimination on the basis of race and religion, particularly at schools still frequently occurs. This is of deep concern, especially as South Africa celebrates twenty years of its democracy, and reflects that an inculcation of a culture of human rights is yet to be achieved. The summaries of Investigative Reports provided below have been limited to those reflecting the 2012/2013 and 2013/2014 financial years in their reference numbers as a representative sample of complaints dealt with by the Commission in these two financial years. It therefore excludes matters recorded in previous financial years but finalised within these two financial years. It also highlights selected key findings and recommendations contained in the various reports.



Eastern Cape

1. SAHRC (acting in the Complainant interests of Bulugha Farm School) / Eastern Cape Department of Education (EC/1213/0387)

FACTS:

On or about 13 March 2013 the print media (*Daily Dispatch*) published an article titled “Toilet proposal infuriates DA”. According to the article the Democratic Alliance (DA) has criticised the Provincial Department of Education after it allegedly told a school with no toilet facilities to shorten teaching hours to make toilets unnecessary. The article further reports that pupils are forced to relieve themselves in the bush.

FINDINGS:

Taking into consideration that the school is situated in an area that has a scarcity of running water, the Commission found that the type of toilets built by the Respondent and the sponsor to be proper and adequate. The Commission further found that the number of toilets built to be appropriate to cater for the number of learners enrolled at the School. However, the Commission noted that there were no toilets that cater for the disabled and that the distance between the School and the toilets was approximately between 15 -20 metres. Furthermore, although the School was equipped with water tanks, there were no water taps or tank situated nearby the toilets to enable the learners to wash their hands.

RECOMMENDATIONS:

The Eastern Cape Provincial Office recommended that while the Commission was satisfied that the Respondent had complied with the Commission's request to address the issue of sanitation at the School, the Respondent should look into addressing the lack of toilets that caters for disabled people within three (3) months of its report. Moreover, the Commission recommended that the Respondent must provide the School with water tanks/taps in close proximity to the toilets, within three (3) months of its report.

2. Dacre Haddon, DA (On behalf of Cintsa East/Khayelitsha Informal Settlement residents)/ Amathole Municipality (EC/1213/0279)

FACTS:

This complaint was referred to the Commission by Democratic Alliance member, Mr Dacre Haddon MPL acting on behalf of the Cintsa East/Khayelitsha informal settlement residents in the Eastern Cape. The Complainant alleged that there were no waterborne sanitation facilities in the area; residents were provided with only 6 (six) temporary toilets to be shared by a community constituting approximately 400 households; the Municipality had failed to provide adequate sanitation to the community residing in this informal settlement, and as such residents are forced to use pit toilets or go to the nearby forest to relieve themselves; there was no provision of adequate water to the residents, who still rely on communal taps shared amongst

approximately 400 households, and some have to walk over 200 metres to get to the taps; and that the Municipality had failed to provide inhabitants of the area with access to adequate housing.

FINDINGS:

The Commission's Eastern Cape Provincial Office found that the Respondent had violated the residents' rights to human dignity, privacy, and a clean environment by its failure to connect toilets to a water supply system thereby leaving residents with no alternative, but to use pit toilets; the Respondent had failed to provide the residents with adequate water forcing residents to walk distances over 200 metres to reach communal taps, which is not in accordance with the Compulsory National Standards and Measures to Conserve Water; the structure of the toilets provided was inadequate to assist people with disabilities due to a lack of support required for assistance when using the toilet; factors such as heavy rains coupled with the pit toilets not having been properly installed or structured pose a danger to women, children and people with disabilities who use them; and the Respondent had not complied with the Water Services Act and its actions or lack thereof fell short of the provisions of the Water Service Act by failing to adhere to the minimum standards of basic sanitation. The Water Services Act is explicit that the prescribed minimum standard of basic sanitation services is for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste-water and sewerage from households, including informal settlements.

RECOMMENDATIONS:

The Commission recommended that the Respondent ensure that: there was provision of adequate water in the area within two (2) weeks of receipt of its recommendations; that the Respondent ensures that the water connection and supply is such that no resident has to walk more than 200 metres to access a water point; the Respondent was required to furnish the Commission with a phased plan on how it intends to progressively eradicate the water supply challenges in this area within 6 (six) weeks from the date of its report, demonstrating in particular the interim measures to be taken for the provision of adequate water and sanitation; and how it intends to address operational shortcomings of the Municipality. The Respondent was further recommended to develop effective structures and platforms to ensure improved consultation and dissemination of information between the Municipality and the residents on the issue of water and sanitation.

Eastern Cape

Free State

1. SAHRC (On behalf of Sasolburg residents) / Metsimaholo Local Municipality (FS/2012/0320)

FACTS:

On Monday, 26 March 2012, the attention of the Free State Provincial Office of the Commission was drawn to media reports that residents of Sasolburg in the Free State Province had been using pit latrines as toilets. The media coverage of this incident coincided with the Commission's Human Rights Month Campaign themed "Water and Sanitation in South Africa – A question of Accessibility". These media reports were preceded by similar reports a few months prior, of pit toilets in the Makhaza and Rammulotsi areas of the Western Cape and the Free State Province, respectively.

FINDINGS:

The Commission's Free State Provincial Office made the following findings: that the unhygienic conditions of pit toilets, the lack of hand washing facilities and water borne sanitation, in addition to the lack of health education upheld the complaint of violations to the right to health, water and a clean environment. The lack of privacy and security at makeshift sanitation facilities further upheld the complaint of violations to the right to privacy and dignity. With regard to operational efficiency of the Respondent, the Commission found the Respondent to be weak in a number of operational competencies which include leadership and management. The Respondent failed to construe its role and responsibility in the provision of basic sanitation services and to substantively engage with the relevant National and Provincial Governments on budget and capacity challenges. Furthermore, the Respondent failed to ensure adequate public participation and consultation around sanitation and infrastructural challenges.

RECOMMENDATIONS:

It was recommended that in order to progressively realise the rights of the residents, each member of the community was entitled to have access to at least a minimum level of basic services. In order to achieve this, the Commission recommended that the Respondent earnestly procure funding from the National Treasury for capital costs of infrastructural development. In addition, the national Departments of Human Settlements and Water Affairs were to urgently prioritise and allocate grants to the Respondent to address water supply and sanitation backlogs. The National and Provincial Governments were recommended to provide more support in terms of institutional and technical expertise for implementation of sanitation programmes. Moreover, and in line with the Promotion of Access to Information Act 2 of 2000 (PAIA), active community participation should be encouraged by not only consulting with the community, but also allowing and promoting community participation in decision-making. Finally, the Respondent was required to provide the Commission with a progress report at least every three (3) months detailing the following: clear bottom-up planning; budget and implementation plans; an Interim Business Plan to upgrade informal settlements; structures put in place to ensure improved consultation and dissemination of information around development in the municipality; and action steps taken by the Provincial Departments of Human Settlements, Cooperative Governance and Water Affairs to ensure uninterrupted basic sanitation rollout in the Free State Province. The Ministry of Human Settlements was further to provide the Commission with a report on a yearly basis in terms of Section 184 (3) of the Constitution regarding

the status of the universal access to decent, affordable and safe sanitation across the Republic of South Africa in line with the Constitutional imperatives.

2. Mokgatla, Vumile Ernest / Hodisa Technical Secondary School (FS/2012/0103)

FACTS:

The Complainant in this matter, a Grade 11 pupil at a public secondary school in the Free State Province (having attained the age of majority at the time of lodging the complaint), alleged that he was directed by the Respondent school to shear his dreadlocks. The Complainant was subscribed to the Rastafarian religion, and growing one's dreadlocks forms part of the religion. The Complainant further alleged that in implementing its Code of Conduct, the Respondent suspended him from the school for failing to comply with its grooming requirements and further ordered him to shave off his dreadlocks prior to being allowed to return to the school. The Complainant also alleged that in effecting the suspension, he was not provided with an opportunity to be heard, nor was allowed to appeal this decision.

FINDINGS:

The Commission found that the Respondent's Code of Conduct constituted an unreasonable limitation to, and a violation of, the Complainant's right to practice his religion. The directive of the Respondent to the Complainant to shear his dreadlocks not only constituted a violation of the Complainant's right to human dignity but to do so as a precondition to access education which constituted a violation of the Complainant's right to education. The further failure of the Respondent to consult with the Complainant prior to arriving at the administrative decision to suspend the Complainant also constituted a violation of the Complainant's right to administrative justice. The failure of the Respondent to provide the Complainant with an opportunity to appeal the decision of the Respondent constituted a further violation of the Complainant's right to administrative justice.

RECOMMENDATIONS:

The Free State Provincial Office recommended that: the Respondent Governing Body review and amend the School Code of Conduct within a period of three (3) months from date of its report, specifically demonstrating reasonable accommodation of religious- and culturally-based deviations, in addition to setting out the procedure for applying and possibly granting such exemptions. The Free State Provincial Department of Education was requested to conduct an audit and review of the Codes of Conduct of other public schools in the Province, within twelve (12) months from date of the report, to determine whether there was reasonable flexibility and accommodation of religious and cultural deviations from mainstream religious practices. The Free State Provincial Department of Education was further recommended to issue revised Public School Guidelines on religious diversity in all public schools in the Province within a period of eighteen (18) months from date of the report, and to provide the Commission with a report of the steps it intends to take to eliminate all forms of discrimination and intolerance based on religion or belief, including reasonable accommodation of religious diversity in public schools.

Free State

Free State

3. Deputy Minister of Justice and Constitutional Development/Creare Training Centre (FS/1213/0338)

FACTS:

This complaint was referred to the Commission by then Deputy Minister of Justice and Constitutional Development, Honourable Andries Nel, MP. The Complainant requested the Commission to investigate whether the Creare Training Centre had violated Section 9 of the Constitution and the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA), by unfairly discriminating against people on the basis of their sexual orientation. It was alleged that the Creare Training Centre had published a document which stated *inter alia* that it believes “...in the principle of relationships fundamental to personal sexual orientation being founded on that of heterosexuality...any person wanting to pursue a lifestyle contrary...will not be permitted to continue further studies or lecture. We offer ministry to help people that want to change their sexual orientation i.e. Homosexuality and Lesbianism to heterosexuality”.

FINDINGS:

The Commission's Free State Provincial Office made the following findings: the Respondent's provision in the prospectus relating to relational etiquette constitutes a violation of the LGBTI community's right to equality; and that due to the fact that homosexual people have been victims of past patterns of discrimination that has led to systemic disadvantage, the relational etiquette of the Respondent could have the effect of perpetuating discrimination against LGBTI people. The Commission further rejected the justification offered by the Respondent for including the exclusionary provision, constituting it as a violation of the LGBTI community's right to human dignity. This kind of discrimination may lead to psychological harm and force individuals within the LGBTI community to conceal their true identities and thus affecting their confidence, dignity and self-esteem.

RECOMMENDATIONS:

It was recommended that the Respondent review and amend the Training Centre Constitution and Prospectus within a period of three (3) months from date of the finding, demonstrating in particular reasonable accommodation for diversity and an affirmation that difference should not be the basis of exclusion. The Institution for Reconciliation Studies at the University of the Free State, in collaboration with the South African Council of Churches, was to engage the Respondent (including its leadership and associated institutions) in a series of Sensitisation Workshops, and report in writing to the Commission on the progress achieved thereby no later than six (6) months from the date of this finding.

4. Theunissen Forum/Masilonyana Local Municipality (FS/2012/0077)

FACTS:

The Complainant alleged that a water crisis in Masilonyana Municipality resulted in the Respondent violating the constitutional rights of Theunissen residents to access an adequate water supply. It was further alleged that the water provided was discoloured, contaminated with visible debris and unsafe for human consumption. The Complainant

further alleged that it had attempted to engage with the Respondent on several occasions but that the Respondent had either failed and/or neglected, and/or refused to adhere to its request. The Complainant alleged that the Respondent had further failed to provide the residents with the necessary information on the steps it was taking to address the Complainant's concerns.

FINDINGS:

The Commission made the following findings: that the Respondent, albeit for a limited period of time, violated the Complainant and the surrounding community's right to access to adequate drinking water. However, based on laboratory findings of the University of the Free State, the Respondent did not violate the right of the residents of Theunissen to safe drinking water. This notwithstanding, based on the patent observation of water samples taken from the area by the Investigation Team, whilst the water supplied by the Respondent was safe for consumption, it was nonetheless contaminated and contained micro-organisms that constituted a nuisance at the very least.

RECOMMENDATIONS:

Based on the finding that the Respondent had fallen short of the required threshold for the indicators of both 2011 and 2012 Blue Drop Reports, of its standards and quality guidelines, the Commission recommended that the following steps be taken: the Respondent provide the Commission with a Report indicating interim measures that they have put in place to address access to water challenges for residents of the Municipality, especially women, children and other vulnerable groups; the Report must set out the immediate measures that the Respondent is taking to remove impurities, discolouration and micro-organisms from the water supply to residents of the Municipality; the Department of Water Affairs continue to monitor water supply condition as well as the water supply facility infrastructural conditions on a regular basis, and take regular water samples from the Municipality for testing to ensure that water supply is of a safe and clean quality; the Department of Water Affairs provide the Commission with a detailed report in respect of measures put in place to ensure that the challenge of adequate supply of water is progressively resolved; and the Department of Water Affairs provides the Commission with a bi-annual report indicating the progress that has been made towards the progressive realisation of the right to adequate water supply to residents of the Theunissen Municipality.

5. Lindiwe Mazibuko (DA) on behalf of Brandfort residents/Masilonyana Municipality (FS/2012/0319)

FACTS:

The thrust of this complaint was that the Respondent had failed to provide the Brandfort residents with an adequate, safe and clean water supply. The complaint was lodged at the Commission on behalf of the residents by Ms. Lindiwe Mazibuko of the Democratic Alliance. The inadequate water supply to the residents of this Municipality also received widespread media coverage in the Free State. It was alleged that as a result of this failure: residents have to walk approximately 3.5 kilometres to collect water from the waterworks; that the local clinic had at one stage been out of water for as long as four weeks resulting in nurses being hesitant to treat patients because they could not wash

their hands; and that in 2011, the army was required to deliver water to residents after they had been without water for one week.

FINDINGS:

The Commission's Free State Provincial Office made the following findings: that the Respondent had violated the residents' right to water in failing and/or neglecting to take reasonable steps to provide the residents with an interim supply of clean and safe water for domestic purposes; that in failing to notify the residents about the possible contamination, and not providing and implementing sufficient emergency relief the Respondent has violated the residents right to a clean environment in that it had failed and/or neglected to take reasonable steps to provide the residents with an adequate supply of clean and safe water; the Respondent, by facilitating the provision of emergency relief such as portable water which resulted in the residents having to walk 3km every day alternatively to be left without water to bath, cook or for sanitation purposes, had violated the right of the residents to human dignity; and the lack of effective communication between the Respondent and the community and the inability to disseminate information about plans to ameliorate their access to basic water services and general lack of information upheld the complaint of a violation of the right to access to information.

RECOMMENDATIONS:

The Free State Provincial Office recommended that the Respondent furnish the Commission with an operations and maintenance plan required to run water supply in an efficient, effective and sustainable manner to address access to basic water challenges facing residents of the Municipality, especially women, children and other vulnerable groups within a period of 3 months from date of its finding. The Respondent was further required to enhance community participation and demonstrate some level of transparency in its governance by convening regular feedback sessions every 3 months relating to the supply of water to residents. The Department of Water Affairs was required to furnish the Commission with a report on capacity building support provided to the Respondent relating to the supply of uncontaminated water to residents of the Municipality within 6 months from date of the finding, and was further directed to continue to monitor the water supply and infrastructural improvement programmes of the Respondent by taking regular water samples for testing to ensure supply of safe and clean water.

6. Craig Thiem/Lenard MacKay/Principal of Wilgehof Primary School/Chairperson of the School Governing Body, Wilgehof Primary School (FS/1314/0083)

FACTS:

During or about May 2013, the Commission received a complaint from Mr Craig Thiem, the Complainant. The Complainant alleged that his two minor children who attend Wilgehof Primary School in Bloemfontein had repeatedly complained to him about a white male teacher with a racist attitude towards black learners at the school. The school is attended by predominantly black learners and run by a majority of white teachers. The Complainant alleged further that this particular white male teacher and

HOD in the school, displayed a full-sized Apartheid flag in the front of his classroom, and had a poster on the class wall that depicted black people as having monkey-like primitive brains who can only make confusing noises. The flag and poster had been in the classroom since his children first attended the school in May 2012. The teacher also often referred to black people as 'Kaffirs' in front of the children in class, and had recently walked around the classroom with a mirror placing it in front of a black child's face and asked, 'what do you see?' When the child said, 'I don't know, sir,' the teacher responded by saying, 'A baboon . . . you see a baboon!'. The Complainant further furnished the Commission with evidence of intimidation by the School Principal and his close associates to withdraw the complaint, in addition to the assault charges against the First Respondent. The Complainant was further excommunicated from the circle of Christian fellowship to which the close associates of the School Principal belonged for refusing to succumb to the aforesaid request.

FINDINGS:

The Free State Provincial Office made the following findings: The First Respondent's crude racist remarks perpetrated against black learners constituted a clear incident of hate speech as defined by the PEPUDA, violating both the rights to equality and human dignity of the learners. The First Respondent's conduct of administering corporal punishment was in clear violation of the South African Schools Act, violating the learners' right to be free from all forms of violence from either public or private sources and not to be treated or punished in a cruel, inhuman or degrading way as stated in Section 12 of the Constitution. The First Respondent's conduct of exposing learners to a learning environment that was harmful, including harmful behaviours such as the display of racist imagery and the old South African flag is a violation of both the right to education and the rights of the child. Such display therefore exceeds the limits of rightful free expression and borders on the insinuation of racism.

RECOMMENDATIONS:

The Commission recommended that the First Respondent be subjected to a disciplinary process in terms of Employment of Educators Act, 76 of 1998. In this respect, the Free State Department of Basic Education was urged to consider approaching the court to declare the First Respondent in terms of Part B of the National Child Protection Register (NCPR) and in accordance with the Children's Act, 38 of 2005 as a person unsuitable to work with children; or alternatively undergo an intensive race sensitisation, tolerance and anger management programme. The First Respondent was directed to offer an unconditional apology to all learners and educators at Wilgehof Primary School and the South African community at large. The Free State Provincial Department of Basic Education was recommended to issue public schools with guidelines on dealing with racism in all public schools in the Province within a period of eighteen (18) months from date of the finding, and to provide the Commission with a report on the steps it intends to take to eliminate all forms of racial intolerance and discrimination based on race, ethnicity or social origin in public schools. The Free State Department of Basic Education was further directed to provide training to teachers at the school on diversity management and tolerance and provide the Commission with a report on the outcomes of the training within six (6) months of the date of the finding. The Free State Department of Basic Education was further directed to probe the conduct of the School Principal and review his competence to lead the school, in

addition to other allegations of impropriety and misappropriation of school funds. The Department of Women, Children and Persons with Disabilities was also directed to commission a study on racism and corporal punishment and its impact on the health and well-being of children in South Africa and provide the Commission with a report within eighteen (18) months of the date of the findings.

7. SAHRC/Groenpunt Correctional Centre (FS/1213/0350)

FACTS:

On Wednesday, 9 January 2013, the Commission's attention was drawn to media reports that hundreds of inmates at the Groenpunt Maximum Security Correctional Centre in Deneysville, Free State Province had staged a riot. According to media reports, more than 700 prisoners participated in the riot, smashing walls with home-made weapons and setting cells and offices alight. It was reported that nine warders and 50 prisoners were injured. Media reports further highlighted that the prisoners staged the riot following complaints they had lodged concerning the quality of the food that they were being provided with. The prisoners were further reported to have demanded that one of the unit heads at the centre be fired.

FINDINGS:

The Commission made the following findings: the Respondents failed to adequately and timeously address inmates' complaints and grievances, which ultimately led to the riots that took place. The complaint of violations to the right to human dignity and the rights of arrested, detained and accused persons is upheld.

RECOMMENDATIONS:

It was recommended that the Department of Correctional Services and the Management of the Correctional Centre must ensure that inmates have access to rapid health treatment and to social and psychological services within 12 months from date of the finding. Further, the Department of Correctional Services and Management of the Correctional Centre must, with immediate effect, monitor how food and supplies are distributed, and to this end they must ensure that all inmates get basic necessities, rations and that these are not intercepted by other inmates and/or staff. The Department of Correctional Services and the Management of the Correctional Centre were directed to improve patrols by having systems where inmates can raise the alarm about corruption and irresponsible behaviour of officials, regular patrols to the cells and unannounced visits to cells, rapid access to the cells in the event of incidents and during lock-up. Proper developmental and rehabilitative programmes were required to be developed and implemented in line with the departmental policies and regulations. The complaints/grievances from inmates must be responded to timeously and handled appropriately with immediate effect. The Commission shall regularly monitor the implementation of the recommendations made and the Head of the Correctional Centre was directed to submit written progress reports at least every 6 months to the Commission until all recommendations had been implemented.

8. SAHRC (On behalf of Henneman Residents) / Matjhabeng Local Municipality (FS/1213/0324)

FACTS:

The Commission initiated this investigation after it was reported in the media that violent service delivery protests had erupted in the area of Phomolong, Hennemann in the Free State. Residents were demanding the delivery of basic services.

FINDINGS:

The Commission made the following findings: the Respondent had failed to adequately conceptualise, plan and implement its project, which resulted in the residents being forced to live in an undeveloped area with no municipal services and infrastructure; the complaint concerning violations of the rights to dignity, privacy, a clean environment, housing, children and access to information were thus upheld; the Provincial and National Government Departments had not adequately monitored the work of the Respondent or intervened in respect of their legislative and Constitutional obligations.

RECOMMENDATIONS:

It was recommended that the Respondent be required to complete the installation of toilets in Phomolong to allow for proper usage and enable the residents to have their right to dignity protected and their basic sanitation needs met. The Respondent was further required to provide a proper system of waste removal that has a proper outfall sewer thus ensuring that people are able to flush their toilets without the waste running into the streets. To this end the Respondent was required to furnish the Commission with a progress report at least every 6 months from the date of the finding, demonstrating in particular the Respondent's implementation and budgetary plans, and interim measures for the provision of sanitation to the residents. Furthermore, special attention was to be given to the needs of vulnerable groups such as women, children and people with disabilities. The Respondent was required to provide the Commission with the framework stipulating the manner in which meaningful and ongoing consultation with the community would be undertaken. The Free State Provincial Department of Cooperative Governance and Traditional Affairs together with the Department of Human Settlements were directed to provide the Commission with a detailed plan on strategies intended to deal with challenges, as well as a report outlining clear time frames for the resolution of the municipality's operational capacity shortcomings.

9. SAHRC (On behalf of Senekal Residents) / Setsoto Local Municipality (FS/1213/0305)

FACTS:

This complaint, initiated by the Commission, focussed on the rights of the residents of the Senekal community, specifically in relation to water and basic sanitation, in addition to human dignity, privacy, clean environment, health, and access to information.

FINDINGS:

The Commission found that the Respondent had violated the rights to dignity and a clean environment by installing toilets that did not comply with minimum standards. The Respondent had failed to consult with the community regarding the conceptualisation, planning and implementation of its sanitation projects. In allowing residents to use outdoor toilet facilities, the Respondent had violated the residents' rights to privacy and security of the person. In failing to provide adequate waste removal systems, the Respondent had violated the rights of residents to a clean and healthy environment. Moreover, the provincial and national arms of government had not adequately monitored the work of the Respondent and failed to intervene as per their legislative and Constitutional obligations.

RECOMMENDATIONS:

The Commission recommended that the Respondent complete the installation of toilets in the community to allow for proper usage in order to restore the residents' rights to dignity and basic sanitation. To this end, the Respondent was required to furnish the Commission with a report demonstrating in particular the Respondent's implementation and budgetary plans, and interim measures for the provision of sanitation to the residents. Furthermore, special attention was to be given to the needs of vulnerable groups such as women, children and people with disabilities. The Respondent was required to provide the Commission with the framework stipulating the manner in which meaningful and ongoing consultation with the community would be undertaken. The Free State Provincial Department of Cooperative Governance and Traditional Affairs together with the Department of Human Settlements were directed to provide the Commission with a detailed plan on strategies intended to deal with challenges, as well as a report outlining clear time frames for the resolution of the municipality's operational capacity shortcomings.

10. SAHRC (On behalf of Dr Viljoen Combined School Learners) / Dr Viljoen Combined School (FS/1314/0073)

FACTS:

During May 2013, the Commission was drawn to a media report alleging that learners at the Respondent school were being exposed to dehumanising and racist treatment meted out to them by the school's staff. According to the media report, learners at the school had alleged that teachers called them by racist, derogatory and belittling names like kaffirs, baboons and monkeys. Moreover, teachers had not made an effort to inspire them, but rather scolded them regularly. They were often told to go back to the black schools in the location (township) because their parents could not afford to pay school fees. Teachers had repeatedly told learners that they do not like them and do not see why they keep coming to school, because they have a dark future.

FINDINGS:

The Commission found that the racist remarks made by the staff members of the Respondent against black and coloured learners constituted an incident of hate speech as defined by the PEPUDA, violating the learners' rights to equality and human dignity. The Respondent failed to create a conducive learning environment free from harmful

elements such as racist utterances and demeaning remarks, which constituted a violation of both the right to education and children's rights.

RECOMMENDATIONS:

The Respondent was directed to establish policies and guidelines which clearly articulate principles and procedures to counter racism, including clear procedures for the resolution of complaints of racism at the school within a period of twelve (12) months of the date of the finding. A copy of the policy and guidelines were to be submitted to the Commission for review. In collaboration with the Provincial Department of Education, the Respondent was directed to develop a curriculum and resources which challenge racist attitudes and behaviours, and increase teachers and learners' understanding of racism. The Free State Provincial Department of Education was further required to develop system-wide procedures for monitoring and reporting on initiatives to counter racism in public schools within a period of eighteen (18) months of the date of this finding. The Department was also required to monitor the participation of staff in training programmes designed to counter racism.

Free State

Gauteng

1. Lynette Nel/Lynwood Ridge Primary School (GP/1213/0782)

FACTS

On 8 February 2013 the Commission received a complaint from Ms Lynette Nel, against Lynwood Ridge Primary School. The Complainant alleged that on 7 February 2013 two students from the school were involved in an altercation with each other. The white child called the black child a “kaffir” as a result thereof. The matter was reported to educators at the school.

FINDINGS:

The Commission's Gauteng Provincial Office made the following findings: The incident between the learners amounted to a violation of child Y's rights in terms of Section 9 and 10 of the Constitution, as well as Section 10 of PEPUDA; the incident reflected a malaise marking South African society rooted in our history of inequality and learned prejudice; the Respondent acted promptly, reasonably and fairly in responding to this matter; the Respondent used this incident as an opportunity to further educate students on the harmful effects and offensive nature of racism; and the Respondent, in line with jurisprudence, promoted the spirit of ubuntu as well as restorative justice in its attempts to reconcile the children with each other.

RECOMMENDATIONS:

The Gauteng Provincial Office recommended that the Commission note the clear discriminatory practices in this matter. In ensuring the realisation of constitutionally entrenched rights, the Commission is greatly desirous of ensuring that such incidents do not occur in the future. The Commission resolved to monitor the prevalence of racism in the school going forward by interviewing other children and parents regarding this issue in the course of three (3) months subsequent to the issue of its report. Should prevalence of racism be noted in this exercise, the Commission will proceed forthwith to report the matter, and make the recommendation that appropriate sensitisation workshops be convened so as to address any incidents such as the one highlighted in this complaint.

2. Mike Waters MP / National Department Of Social Development (GP/2012/0309)

FACTS:

On 7 August 2012 the Commission received a complaint from Mr Mike Waters, a Member of Parliament, against the National Department of Social Development (DSD) regarding the implementation of the National Child Protection Register (CPR). The complainant alleges that the DSD is failing to properly implement the CPR and that by failing to enforce the CPR, Section 28 of the Bill of Rights of the Constitution, which reads as follows: “every child has the right to be protected from ... neglect, abuse or degradation,” is being violated. As a result the Commission was requested to investigate whether the CPR was being fully implemented.

Gauteng

FINDINGS:

The Commission's Gauteng Provincial Office made the following findings: having established that the Child Protection Register (CPR) is a mechanism created by statute as a measure designed to prevent and protect children from abuse and neglect, and to realise the constitutional protections afforded to children, the resulting failure to adequately maintain and populate the CPR violated the rights of children in terms of Section 18 of the Constitution. Based on the information submitted by the Department of Social Development (DSD) and stakeholders, the responsible departments had been aware of challenges with the updating of the CPR for a period of time. In light of the contextual considerations of the extreme vulnerability of children, high levels of abuse and neglect of children in South Africa, as well as data captured by the South African Police Service (SAPS), the CPR thus cannot be accepted as a true reflection of crimes committed against children, or to constitute an accurate record of persons found unsuitable to work with children. The State, insofar as the CPR is concerned, was therefore not fulfilling its objective of protecting children from abuse and neglect. Moreover, current information management processes including the collation of submissions, receipts and recording of data insofar as the CPR is concerned is inadequate within the DSD as well as between departments. Furthermore, the training of all relevant officials for the purpose of fulfilling obligations and responsibilities did not appear to have taken account of needs being planned for, or sustained in any co-ordinated form or manner. Current means of monitoring, evaluating and general oversight of implementation needed to be developed further to ensure a cooperative, integrated and cohesive approach to fully implement the CPR in terms of the duty of cooperation between public bodies as prescribed by the Act itself as well as the Constitution.

RECOMMENDATIONS:

The Gauteng Provincial Office recommended that the DSD is required to put in place urgent measures to ensure the CPR is accurately and fully populated with available information. This recommendation was made on the basis that the DSD had demonstrated a capacity to increase the capturing of data on Part B of the CPR by more than 100% since the date of the Commission's initial request in September 2012. The DSD was further required to conduct an urgent and comprehensive audit of challenges and needs across relevant business units to inform its needs within the 3 months after the Commission released its report. A report of the audit was to be provided to the Commission on completion thereof. It was also recommended that the Department of Women, Children and Persons with Disabilities increase its frequency in monitoring implementation of the CPR. The Department of Justice & Constitutional Development was required to develop a comprehensive programme for training and sustained awareness of all relevant court officials regarding their duties under the Act to facilitate and support the accurate, timely updating of the CPR. In light of the pending review of the Act, the Commission further recommended that the DSD as the leading department in this regard, consult on possible reforms to the Act with a view of increasing practical efficiencies, accuracy and accessibility.

Gauteng

3. Nomonde Bozwana / North West Department of Education (GP/1213/0705)

FACTS:

On 28 January 2013, the Commission received the following complaint from the Complainant that on 22 January 2013, the complainant visited Polonia Primary School (the school) situated in Makaw Village in Garankuwa. Upon inspection, she observed that the toilets used by the pupils were in a deplorable condition and as a result of the above, the pupils at the school were subjected to extremely unhygienic and unsafe conditions on a daily basis.

FINDINGS:

The Commission's Gauteng Provincial Office found that the Respondent did not take reasonable steps to ensure that the sanitation facilities at the school were of an acceptable standard. In this respect, the Respondent failed to adequately monitor the condition of the toilets on a regular basis with a view of ensuring that an acceptable standard of sanitation was adhered to and by so doing, failed to comply with its Constitutional obligations. Upon receipt of a complaint firstly from the Complainant and thereafter from the Commission, the Respondent took steps (albeit inadequate in some respects) to remedy the alleged violation by *inter alia* emptying the old septic tank, delivering portable toilets to the school and implementing a process for the appointment of a contractor for the construction of a new septic tank. In failing to ensure the delivery of an adequate number of portable toilets pending the construction of a new septic tank and failing to ensure that the portable toilets could immediately be used for their intended purpose, the Respondent continued to violate the rights of the learners and continued to expose them to potential negative health risks. The Respondent also failed to adequately respond to the Commission's request for a formal report. In this respect the Commission received informal, brief and in some respect, inadequate responses from the Respondent notwithstanding the urgency of the matter and the severe prejudice suffered by a vulnerable group of society i.e. children. Consequently, the Commission's finding in this matter is that the Respondent violated the following human rights of the learners (and in some instances, the educators) at the school: Section 10 (dignity), 24 (environment), 27 (water and sanitation), section 28 (best interests of the child) and 29 (education).

RECOMMENDATIONS:

The Gauteng Provincial Office recommended that the Respondent visits the school to re-assess the condition of the septic tank; establish whether the amount of water seeping out of the septic tank is of an acceptable standard and will remain acceptable despite seasonal changes; assess the impact that such seepage will have on the environment and learners; assess and implement measures to ensure that the affected area is cordoned off to prevent access by children; re-assess the number of available toilets in the new toilet facilities taking into account the number of children at the school; and access the cistern system currently installed in the new toilet facilities to ascertain whether such system is appropriate for the constant use of toilets attendant with the number of learners at the school. The Respondent was to provide the Commission with a report setting out its findings within 6 weeks from the date of the visit to the school and that such report indicates any shortcomings which may have

become evident and the measures to be put in place to address same, together with applicable timeframes. The Principal was further directed to allow the children to use the basins in the toilet facilities to ensure that they wash their hands immediately after using the toilet facilities. Moreover, the Respondent was directed to ensure that the general health of the learners is monitored over the short term, in collaboration with local health care facilities and that confirmation thereof is provided to the Commission within 2 months from date of receipt of its report.

4. Violet Mfobo/City of Johannesburg Metropolitan Municipality (GP/1213/0412)

FACTS:

The Complainant, a resident at Helen Joseph Women's Hostel (the Hostel), submitted a complaint alleging a lack of proper water, sanitation and sewerage at the Hostel; lack of electricity supply; removal of male children aged seven years and older from their mothers; lack of transparency and consultation; issues around the redevelopment of the Hostel; and general issues, including but not limited to concerns about rentals, management of the cleaning contract, gender discrimination in respect of access to the Hostel and occupancy levels.

FINDINGS:

A number of the issues dealt with in this investigation related, whether directly or indirectly, to the yet to be completed redevelopment of the Hostel (and development of the new site in Extension 52). However, the reasonableness of the steps already taken, and still to be taken, as well as the unreasonably long period of time that had elapsed since plans for redevelopment were first conceived, had led to and will continue to lead to, the violation of a number of human rights of the residents at the Hostel. Consequently, the Commission's finding in this matter was that the Respondent had violated a number of human rights of the Residents of the Hostel, including the rights to dignity; access to health care, food, water and social security; housing; children; environment; and Just Administrative Action (and by implication, Section 32 – Access to information).

RECOMMENDATIONS:

The Commission emphasized the need for full and meaningful consultation and active participation throughout the implementation of its recommendations by the Respondent. Against this background and based on the above findings, the Commission recommended that the Respondent conduct an audit and review of all placement processes, guidelines and criteria. Processes for placement are to be developed in consultation with residents to ensure some measure of choice regarding occupation of rooms, number of occupants; and the implementation of a suitable monitoring and dispute resolution relating to placements is to be developed, implemented and clearly communicated to all residents. The Respondent was further required to consult with residents no less than 6 (six) weeks from the date of its findings regarding their current living conditions and their complaints and needs in respect thereof. It was recommended that the Respondent desist with immediate effect from any intended action which would result in the removal of women with male children from

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the Hostel and to consult with the Department of Women, Children and Persons with Disabilities (DWCPD) around viable options and interim measures that can be implemented with a view to ensuring that affected families are not forced to vacate the Hostel but are instead, for example, accommodated with their mothers in specifically allocated areas of the Hostel. The Respondent was recommended to ensure that adequate measures are put in place to ensure that pending the finalisation of the redevelopment of the Hostel, appropriate interim relief is immediately provided in respect of the upkeep and maintenance of the water, sanitation, and sewerage supply to the Hostel.

5. Sundrika Madurai / MEC for Education in Gauteng / Parkdene Primary School / School Governing Body of Parkdene Primary School (GP/1213/0384)

FACTS:

The Commission received a complaint from the Complainant alleging that during 2012, her minor child, who was 9 years old at the time, had been victimised by an educator as well as the Principal at the Parkdene Primary School (the School), on the basis of his religion. The alleged victimisation included being chased out of class by the educator as a result of wearing a holy string; being forced to wear a jersey at all times to cover up the holy string; and being called a “coolie” by the educator. The victimisation had a traumatic effect on the minor child to the extent that he began to exhibit signs of depression and wanting to avoid school. In this regard the child had intentionally hurt his hand to avoid attending school.

FINDINGS

The Commission found that the educator and principal's conduct constitutes an unreasonable limitation, and a violation of the minor child's right to practice his religion and human dignity. The Respondent acted with due diligence in addressing the matter through available labour dispute mechanisms. The appropriateness of sanctions correctly falls to be determined by the Respondent insofar as the contract of employment is concerned and may be subject to review by a court of law. It remained for the Commission to consider reforms aimed at protecting and preventing the impugned conduct in the future. It had done so by bringing to bear a focus on the human rights of the Complainant's child and addressing opportunities to allow for reform of the particular school environment. A consideration of the School's Code of Conduct had provided one such opportunity to protect basic rights of learners, deepen understanding and increase tolerance, respect and protection for all in the school community. As with parents and learners, educators must be equally informed of measures relating to reasonable accommodation to empower them to safeguard the basic constitutional rights of the children under their care and subject to their authority at school.

RECOMMENDATIONS:

The Commission recommended that the School Governing Body consult, review and amend the School's Code of Conduct within a period of three months from date of its finding. The reviewed School Code of Conduct is to be provided to the Commission on completion, together with records indicating level of consultation and compliance with

policy and statutes. The amended School Code of Conduct must furthermore be made accessible and widely communicated to all within the school community i.e. the teachers' body as well as members of the School Governing Body, to receive sustained training on its application. The Commission further recommended that the Respondent conduct an audit *and* review of the School Codes of Conduct of other public schools in the Gauteng province to determine whether there is reasonable flexibility and accommodation of religious and cultural deviations from mainstream religious practices. In addition, the Commission recommended that the Respondent conduct a social cohesion workshop for educators at the School, specifically focusing on principles of equality and the best interest of the child.

**6. Johannes Theunis Kotze & Another / Avalon Association
(GP/2011/0303; GP/1213/0851)**

FACTS:

During 2011, the Commission received an anonymous complaint from an external third party on behalf of certain residents at the Respondent. The anonymous complainant alleged that residents were being victimised by the management of the Respondent and that they were being threatened with eviction because of arrear rentals owed to the Respondent. In addition, it was alleged that white residents received preferential treatment from the management of the Respondent in that only black residents were threatened with eviction. During February 2013, the Commission received a further complaint from Johannes Theunis Kotze, a resident at the Respondent. Mr Kotze alleged that he was being victimised by the management of the Respondent, and that certain conditions at the Respondent fell below an acceptable standard, thereby violating his right to live a dignified life.

FINDINGS:

On consideration of broad international normative standards and domestic legislation and frameworks as against the facts of the complaints lodged with it, the Commission found that the Respondent has not contravened Section 9 of the Constitution or the provisions of PEPUDA in respect of the treatment of residents who fail to meet their rental payments. Further, taking into account normative guidelines found in international and national frameworks, the Commission finds that the Respondent ought to put in place measures to improve not only the general living conditions of residents but also the social dynamics amongst residents, between residents and the management of the Respondent. Necessary improvements will ensure that the Respondent meets not only broader international standards but also the guiding principles set out in Section 27 and Section 10 of the Constitution and specific national policies such as the Policy Guidelines on Residential Facilities for People with Disabilities and Minimum Standards on Residential Facilities for Persons with Disabilities.

RECOMMENDATIONS:

The Commission recommended that the Respondent reviews its current policies and procedures related to engagement/admission practices and relevant employees are trained to meet the specific standards of service delivery. Reviewed policies must

ensure that people with disabilities are received and orientated in a dignified manner and in a climate which is caring and safe, minimising trauma and maximising developmental opportunities. A copy of the complaints procedure must be provided to all residents in a manner that takes into account a specific resident's disability and in a language understood by the resident and should be clearly explained.

7. Bulelwa Memani / Standard Bank of South Africa (GP/2011/0372)

FACTS:

The Complainant, who has a disability and is therefore a wheelchair user, attended the Standard Bank Automatic Teller Machines (ATMs) at Cresta Mall in Johannesburg. While waiting with her husband at the front of the queue, but to the side, and because her wheelchair did not fit in the designated queuing area, persons standing in the queue allowed her to move ahead of them and use the ATM. A white male client was upset that the Complainant had "jumped" the queue, he pushed her wheel chair, grabbed her bank card and told her that she was "not special", and then became violent with the Complainant's husband. Two bank officials came out of the bank to assist with the disagreement. However, the Complainant alleged that her dignity was impaired by the manner in which she was treated by the unknown man and by the manner in which the matter was dealt with by Standard Bank, particularly because such violations were made likely due to Standard Bank not having facilities that were accessible to persons with disabilities.

FINDINGS:

In light of the investigation undertaken by the Commission, it had been established that a number of discrepancies exist between the various ATMs in operation by the Respondent. These ATMs, including the ATMs central to the complaint, create barriers to ease of access and use by persons with disabilities. In the circumstances the Commission was satisfied that the rights of the Complainant to access the Respondent's ATM had been violated. The obligation on persons in wheelchairs to use ATMs that are inaccessible to them over a period of time constitutes unfair discrimination against the Complainant, and wheelchair-bound persons. Furthermore, the current physical dimensions of some ATMs oblige persons with disabilities to a position of increased vulnerability in that they are unable to maintain the privacy of their transactions and experience reinforced feelings of discrimination. In the circumstances persons such as the Complainant experience a violation to both their rights to privacy and dignity. In light of the obligations imposed on government in terms of the Convention on the Rights of People with Disabilities, and through its mandate, the Department of Women, Children and Persons with Disabilities, must adequately promote, coordinate and facilitate sector specific compliance measures with regard to the access by persons with disabilities to ATMs.

RECOMMENDATIONS:

The Commission recommended that the Department for Women, Children and Persons with Disabilities, together with the Respondent, the Banking Association of South Africa, the Banking Ombudsman, and other industry specific role players and stakeholders, consult and develop national guidelines which provide acceptable

standards to improve accessibility of ATMs, and for persons with disabilities in particular. Furthermore, accessibility considerations are not limited to persons in wheelchairs, but taking into consideration the broad spectrum of persons with disabilities and their subsequent needs, it was also recommended that the Respondent develop and implement personnel sensitisation programs on the rights of persons with disabilities for all personnel within a period of 1 year of the date of the finding.

Gauteng

KwaZulu-Natal

1. SAHRC / Savannah Park Combined School (KZ/1213/0132)

FACTS:

The Commission's KwaZulu-Natal Provincial Office was approached by the Department of Basic Education, expressing concern about allegations placed before it by various governing body and educator informants against the Respondent school. Broadly, allegations centred around acts of racial discrimination by Indian educators toward black learners; acts of racial discrimination by black parents and black members of the school governing body against Indian educators; acts of hate speech by Indian educators against black learners; acts of sexual harassment toward black learners by Indian educators; and absenteeism, attrition and expulsion of a number of educators at the school. Furthermore, it was alleged that the administration of the school had ordered black learners to be subjected to bodily searches by Indian teachers and students and that these searches were conducted exclusively on black learners only. Further to these complaints, the Department of Basic Education advised that it had established a Special Investigative Task Team to investigate the allegations of sexual harassment at its own instance. However, the Department resolved to refer the aspects of the complaint that dealt with allegations of racial discrimination and hate speech to the Commission as it was best placed, in terms of its mandate, to investigate these aspects.

FINDINGS:

The Commission found, *inter alia*, that although it was unable to determine conclusively that the poor representation of African educators on the school governing body was a result of a deliberate act of discrimination against African counterparts, the preference of the school's management to appoint Indian educators demonstrated in terms of its "effect", a number of key factual conclusions, namely: that there exists a dissonance between the admission and employment policies and practices of the school and the community it serves; the employment practice of the school does not serve the advancement of a staff compliment to reflect the demographics of the students and the community the school serves; and that the school was, by omission, unwilling to strive to achieve constitutional and legislative goals of racial diversity, transformation and integration. There is an obligation upon the State, including State-funded educational institutions to take reasonable steps to provide education to previously marginalised racial and economic groups. There is also an obligation on State-funded educational organisations to take steps to ensure that the education provided to learners is culturally compatible. However, regarding the bodily searches of learners at the school, it was found that on the facts that the explanation advanced by the school for conducting the search (to establish whether learners were carrying cell phones) was reasonable and acceptable in the circumstances. This notwithstanding, the manner in which the searches were carried out extended to body cavities of learners, no adult witness was present during the search, and the search was done in view of other learners. Consequently, there was a violation of the right to privacy and the right to freedom and security of the person. With regard to the availability of education at this school, the Commission observed from evidence that there had been a mass resignation of 7 (seven) educators from the school over a short period of time, and only replaced by 2 (two). Clearly, this affected the availability of teachers during this time and the educator : learner ratio fell below its minimum requirements. Furthermore, there were a

disproportionate number of Indian learners admitted to the school as compared to the number of African learners, which lent credibility to the argument that the administration of admission policies was geared at attracting a higher number of Indian learners from surrounding communities than African, alternatively, excluding African learners from admission to the school. This conclusion was principally based on the demographics of the surrounding communities, which would point to the reverse; namely, a higher percentage of African children as compared to Indians. Finally, the Commission found that the school administration had not succeeded in creating an atmosphere in the school of racial diversity and integration. To the contrary, the atmosphere was one that condoned the use of hate speech by educators and learners alike; and that further condoned sexual harassment of learners by educators.

RECOMMENDATIONS:

The KwaZulu-Natal Provincial Office recommended that the Department of Basic Education develop concrete strategic plans to provide support to schools and governing bodies to improve racial transformation in governing and administrative structures of the Respondent School. The Department was further recommended to improve administrative capacity and processes, particularly with a focus on management of racial diversity. In particular, the School should be assisted to develop an Employment Equity Plan, and to report to the Department of Basic Education on an annual basis on its progress towards meeting the set targets. It was further advised that the school principal be provided with short-term professional coaching interventions to enhance staff cohesion; staff and learner disciplinary processes; administrative capacity; diversity and cultural sensitivity training and stakeholder management (in respect of the school-community relationship). Moreover, the school governing body, in conjunction with the principal, was directed to develop clear written policies on learner possession and use of cellphones within the school premises; clear written guidelines and protocols for the conduct of searches and seizures on learners and their property; clear admission policies that are based on learner demographics and to reflect the right of all children, irrespective of race, to access education; and conduct information sessions to sensitise parents and educators on the objective criteria for admission. It was further recommended that the Commission's KwaZulu-Natal Provincial Office conduct sensitisation workshops for educators, parents and community members in the Savannah residential community on equality, diversity and racial tolerance.

1. Desiree Van Der Walt, Democratic Alliance / Department of Education (LP/2012/0159)

FACTS:

During September 2012, the Commission received a complaint alleging that the Respondent had violated the Complainant's Constitutional right to access information, as set out in Section 32 of the Constitution. The Complainant alleged that by failing to provide her with a policy/directive applicable on the shredding of learning materials, the Respondent was in contravention of the Promotion of Access to Information Act 2 of 2000. The Complainant approached the Commission for assistance after an unsuccessful attempt to obtain the aforesaid information through the processes as per Section 18 (1) of PAIA.

FINDINGS:

The Commission found that the Respondent neglected to adhere to its legislative duty to timeously respond to the Complainant's request for information. Moreover, the Respondent neglected to furnish the Complainant with grounds for refusal. The nature of the information requested by the Complainant was easily accessible to the Respondent and could have been furnished through following the appropriate procedures contained in PAIA. By neglecting to avail itself of its duty under national legislation, the Respondent violated the right of the Complainant to have access to information held by the State, as stipulated in Section 32 of the Bill of Rights.

2. Hendrick Motsekoleng / Department of Social Development (LP/1213/181)

FACTS:

On the 16th of November 2012, the Commission received a complaint alleging that the Respondent had violated his niece's Constitutional right to family care, as set out in Section 28 of the Constitution. The Complainant alleged that by removing the minor child from the care of her grandparents without following proper procedure, the Respondent was in contravention of not only Section 28 of the Constitution, but also the Children's Act 38 of 2005.

FINDINGS:

The Commission found that the designated social worker removed the child in line with processes set out in the Children's Act, and that a court order confirmed the removal of the child based on the child being in need of care and protection. As a result, the Commission made no adverse findings against the Respondent in this matter.

1. Mr BM obo Minor Child X / Mr B obo Minor Child Y / Laerskool Bergland Mpumalanga Department of Education (MP/1213/0086)

FACTS:

The Commission received a complaint from a minor child's (Minor Child X) father that while at school, she was called the “K-word” by other children at the school. It was further alleged that the child was also attacked with a cricket bat by the same group of children. Upon hearing the allegations, the Complainant immediately returned to the school and reported the allegations to Minor Child X's class teacher. Subsequent to this incident, Minor Child X reported a number of further incidents where Minor Child Y had again uttered the K-word with reference to her, and had uttered the same K-word in reference to Minor Child X's mother. The Complainant subsequently wrote a letter to the Principal of the school making him aware of these allegations of continuous use of the K-word by Minor Child Y. The Principal reportedly indicated that a disciplinary hearing would be instituted against Minor Child Y, and that the Complainant would be called as a witness but would not otherwise be present during the disciplinary hearing. However, the Complainant was dissatisfied with the outlined disciplinary process, thus the Complainant lodged the complaint with the Commission.

FINDINGS:

The Mpumalanga Provincial Office found that Minor Child Y violated the rights of Minor Child X to her right to equality as well as her right to dignity enshrined under Sections 9 and 10 of the Constitution respectively. Furthermore, the use of the “K-word” within an educational environment has a potential to cause hatred amongst learners and consequently disrupt schooling. However, the Commission found that the steps taken by the second Respondent school to address this violation were both substantively and procedurally adequate to discharge the duty of the School and Department to uphold the values of the Constitution within the school environment.

RECOMMENDATIONS:

While the Commission was satisfied with the school's conduct, the Commission recommended that the school provide the SAHRC with a quarterly evaluation report of the impact of the implementation of the Social and Cultural integration programme and anti-bullying campaign respectively, on racial tolerance amongst learners in the School.

2. Anthony Benadie, Democratic Alliance / Volksraad Verkiesing Kommissie (VVK) (MP/1213/0024)

FACTS:

On 5 June 2012, the Complainant lodged a complaint with the Commission based on the brutal murder of a five month old baby boy (child) and his 66-year-old day care mother (mother) on 22 May 2012 at the “de Goede's” residence in Delmas, Mpumalanga Province. The Complainant alleged that following the incident and on 31 May 2012, “some hundreds of protestors who represented “Die Volksraad Verkiesing Kommissie (VVK) and other “far-right” groups launched a protest in Delmas” in condemnation of the murder.

Further, the Complainant alleged that some of the protestors displayed placards containing hateful statements such as:

- i. “Bring my R4”.
- ii. “Black corwards- leave our women and children alone”.
- iii. “Steal, rape and murder: Ons is klaar met swart Suid Afrika”.
- iv. “Barbarians leave our children alone”.
- v. “Volksraad: Ons volg julle na ons eie staat”.
- vi. “VVK Volksraad Vryheid”.
- vii. “FW de Klerk die vark in die verhaal”.

The Complainant viewed these statements as intentionally hateful and created a generalised impression of all black persons. Further, the Complainant viewed these statements as inflammatory and, as a consequence, submitted that they violate the Bill of Rights as they amounted to discrimination and incited hate speech against black South Africans. In view of the above complaint, the Complainant requested the Commission to investigate and determine the nature and extent (if any) to which the Bill of Rights has been violated by these statements.

FINDINGS:

The Commission's Mpumalanga Provincial Office found that the statements contained in the placards, and read together within the context of the protest, cannot be protected by the provisions of the right to freedom of expression enshrined under section 16 of the Constitution as they extended to advocacy of hatred that is based on race in contravention of Section 10 of PEPUDA read with Section 16 (2) (c) of the Constitution. Furthermore, these statements constituted hate speech which cannot be justified under Section 36 of the Constitution. Further, the manner in which the Respondent reacted during the protest displayed resentment which, if ignored for a long time, may spread and ultimately lead to racial violence between white and black communities. Moreover, the statements contained in the placards, and read together within the context, further violated the right to human dignity of the black people in the country.

RECOMMENDATIONS:

The Mpumalanga Provincial Office recommended that the Respondent retracts the statements and issue an unconditional written public apology in a local newspaper with sufficiently wide distribution to the black community within two weeks of receipt of the report. However, the Respondent is free to raise issues relating to governance directly with the Office of the President. The Commission reserved the right to take this matter to the applicable Equality Court should there be non-compliance by the Respondent in the matter.

3. SJ Masango, MPL (Democratic Alliance, Mpumalanga) / The Department of Health, Mpumalanga (MP/1213/0160)

FACTS:

During November 2012, the Commission received a complaint against the Respondent alleging that the Respondent had failed to provide health care services in public hospitals in the province and thus violated patients' rights to health care services as

well as their right to dignity enshrined in Section 27 and 10 of the Constitution respectively. The Complainant submitted that Mpumalanga hospitals had a critical shortage of doctors and nurses, in addition to a lack of proper infrastructure. According to media reports, some hospitals were struggling to cope with more than 5000 (five thousand) patients visiting the hospital monthly. In other instances, hospitals had poor infrastructure and malfunctioning equipment, and possessed a shortage of health professionals and crucial medicines. The Complainant referred the Commission to copies of the 2011/12 Department of Health Annual Report (AR) and highlighted the impact that the Department's moratorium on the appointment of staff during the 2011/12 financial year had on the accessibility of health care to patients. According to the AR, the Respondent slashed about 25 000 health department posts during the 2011/12 financial year. Furthermore, the AR reflected a failure of the respondent to implement roughly 119 of its 221 targeted programmes. Moreover, the AR reflected gross under-spending of the Department's infrastructure grants.

FINDINGS:

The Commission found that the challenges highlighted in its 2007 National Inquiry into the state of public hospitals persist. These challenges pertain primarily to a lack of effective management structures, infrastructure, adequate access to primary healthcare facilities and sufficient human resources required to deliver quality health care services. Furthermore, the shortage of personnel in hospitals and the delay in the recruitment and appointment of staff still remains a challenge and continues to negatively impact on the provision of health care services to the public. The Commission also found that the reasons for the implementation of the moratorium, namely over-spending during previous financial years, were symptoms of mal-administration of financial and human resources by the Respondent. The centralisation of procurement and recruitment functions within the Provincial Department of Health is still a concern and continues to cause unnecessary delays in the provision of health care services. Consequently, the Respondent had violated the right of the public to have access to health care services and dignity.

RECOMMENDATIONS:

It was recommended that the Respondent formulate and submit a well-coordinated programme aimed at dealing with and addressing the above mentioned infrastructural, administrative and other challenges that undermine the right to have access to health care services in all Mpumalanga public hospitals. The programme must stipulate timeframes within which the Respondent plans to resolve the said challenges. The Respondent was further required to report on the steps it intends taking to address undue delays in the recruitment process and the procurement of services.

Mpumalanga

Northern Cape

1. Senobia Booyesen on behalf of the Residents of Cilliers Informal Settlement / KhaiGarieb Municipality (NC/1213/0105)

FACTS:

During November 2012, the Commission's Northern Cape Provincial Office received a complaint alleging that households in the Cilliers informal settlement have no access to sufficient water. The complainant further alleged a complete lack of access to basic sanitation causing residents to defecate in the bush, thus violating their right to privacy. Furthermore, the informal settlement did not have access to electricity.

FINDINGS:

The Commission found that the Respondent had violated the right to dignity by failing to provide access to sufficient water and access to basic sanitation facilities to the residents of the Cilliers informal settlement. The Respondent had further failed to take the necessary measures to achieve the progressive realisation of the right to water and sanitation.

RECOMMENDATIONS:

The Respondent was directed to provide the Commission with the measures adopted to ensure that the community of Cilliers informal settlement has sufficient access to clean water and decent sanitation facilities, thereby enabling the residents to have their right to dignity restored. The Respondent was further directed to furnish the Commission with a progress report as least every six (6) months from the date of the finding of the progress made in respect of achieving the progressive realisation of the right of access to clean water and basic sanitation in the Cilliers informal settlement. The report to the Commission must demonstrate implementation and budgetary plans, as well as interim measures for the provision of safe and clean water and adequate toilets to the residents.

1. Social Justice Coalition / City of Cape Town (WC/1314/0095)

FACTS:

During May 2013, the Commission's Western Cape Provincial Office received a complaint alleging that the Respondent contracted with a company known as Mshengu Services to supply and service portable chemical toilets in various areas around Cape Town, including Khayelitsha, for a total cost of approximately R165 million. Over the week of April 22 to 27 2013, the Complainant conducted an exercise referred to as a "social audit," which consisted of counting portable chemical toilets supplied by Mshengu Services in four areas of Khayelitsha, namely RR Section, CT Section/Taiwan, Greenpoint and Emsindweni; observing the state of portable chemical toilets in the four areas, specifically with regard to cleanliness, accessibility, door functioning and stability; asking residents in all four areas about their experiences in using the portable chemical toilets; and asking residents how many people use each chemical toilet. A total of 256 toilets were counted in the four areas (89 in CT Section, 52 in Emsindweni, 23 in Greenpoint and 92 in RR Section). Of the 256, 138 had waste overflowing, locked doors, no doors, extreme uncleanliness, instability, or severe damage. Residents reported that 32% of the toilets had not been emptied. In the week prior to the social audit, none of the toilets were cleaned on a daily basis. Residents also raised issues regarding the locations where toilets were situated and reported that they were not consulted before services were instituted.

FINDINGS:

The Commission found that the Respondent's programme for provision of basic sanitation services in the four areas at issue in this complaint was inadequate and unreasonable for the following reasons: the Respondent's use of temporary sanitation technology such as chemical toilets as a type of long-term solution was not a reasonable component of a programme for realisation of the right to basic sanitation; the Respondent's use of the Emergency Housing Programme guidelines to determine levels of sanitation provision in non-emergency circumstances was not reasonable; the Respondent's use of fixed ratios and servicing schedules rather than a context-specific assessment of whether actual services provided satisfy set definitions of basic sanitation services was not a reasonable component of a programme for realisation of the right to basic sanitation; and the Respondent's failure to ensure that the service provider meaningfully engaged with communities where services were to be provided or to independently engage meaningfully with those communities was unreasonable. Consequently, the Respondent violated the right to basic sanitation of the residents of the informal settlements where chemical toilets were deployed on a long-term basis. Use of the long-term contracts for provision of chemical toilets in informal settlements within the City of Cape Town significantly and adversely affected black African people (who make up the majority of the occupants of informal settlements) in comparison with white, Indian and coloured persons. This violation indirectly unfairly discriminates against persons of the specified racial group. The Respondent's institutionalisation of disparate, inadequate basic sanitation service provision to residents of informal settlements violated residents' right to dignity. The Respondent's conceptualisation of informal settlements as temporary living conditions despite the reality of their long-term existence and the characterisation of life in informal settlements as equivalent to a constant state of crisis ignored the reality of the residents and their humanity and therefore violated the residents' right to dignity.

Western Cape

Western Cape

RECOMMENDATIONS:

Based on the findings above, the Commission recommended that the Respondent immediately cease its use of the guidelines set out in the Emergency Housing Programme of the National Housing Code to inform the provision of basic sanitation in informal settlements and develop norms and standards for basic sanitation that are not based upon the guidelines set out in the Emergency Housing Programme portion of the National Housing Code within 6 (six) months. These norms and standards should instead incorporate human rights principles and take into account the social context and lived reality of the persons who will be provided with services. Specifically, these norms and standards must ensure that services are available, accessible, acceptable to users, and of appropriate quality. In addition, the Commission recommended that the Department of Water and Sanitation and the South African Local Government Association provide training and/or materials designed to assist municipalities with devising such norms and standards. In addition, the National Department of Human Settlements should define and regulate the acceptable extent of the use of the Norms and Standards for Municipal Engineering Services in Temporary Settlement Areas set out in the Emergency Housing Programme and monitor compliance by municipalities. Furthermore, the National Department of Human Settlements should develop and monitor compliance with norms and standards for sanitation in settlements that are not temporary settlement areas as defined in the Emergency Housing Programme; that are not informal settlements suitable for upgrading but that are also not permanent formal housing. The current lack of such norms and standards for such settlements creates a policy vacuum in which violations such as those seen in this complaint can easily occur. Moreover, the Respondent should take significant measures to reinforce provisions relating to community engagement in its sanitation-related tenders, and revisit the language of its "Conditions Pertaining to Targeted Procurement: Major (Over R2 million)" to ensure compliance with human rights standards and principles. Finally the Respondent should review its current programme of realising the right to basic sanitation, to ensure that it complies with the requirements of progressive realisation, as defined by the Constitutional Court. A copy of the report would also be forwarded to the Office of the Public Protector.



National Hearings

During the 2013/2014 financial year, the Commission hosted three National Hearings in order to address complaints that it identified as being systemic in nature, requiring them to be escalated and investigated at a national level rather than following its standard procedure of producing Investigative Reports as described above. In terms of Section 184(2) of the Constitution, the Commission is tasked with, inter alia, investigating and reporting to Parliament on the observance of human rights and taking steps to secure appropriate redress where human rights have been violated. Sections 184(2)(c) and (d) of the Constitution afford the Commission authority to carry out research and to educate on human rights related matters. In addition Section 9(1)(c) of the Human Rights Commission Act, 54 of 1994 empowers the Commission to convene a Hearing. The aforementioned sections forms the basis of initiating the Commission's intervention in respect to National Hearings. The nature of the Hearing process is generally inquisitorial, as opposed to accusatorial, as its primary objective is to enlighten the Commission as to the challenges confronting Respondents and stakeholders in addressing systemic human rights violations.

EDUCATION

During April 2013, the Commission convened a National Hearing as an “own initiative investigation” with the purpose of monitoring and investigating the delivery of Primary Learning Materials to schools country-wide. The Commission's research has found that historically, South African learners have not enjoyed adequate access to learning materials. A study by the Southern and Eastern Africa Consortium for Monitoring Educational Quality (SACMEQ III) found that, in 2007, the average Grade 6 learner was in a school where 45% of the learners had Reading books and 36,4% had Mathematics textbooks.²⁵ A number of studies indicate that provision of appropriate textbooks can dramatically improve educational outcomes.²⁶ Moreover, a further study indicates that, where textbooks of the appropriate quality are not provided, systemic inequalities and social exclusion may actually be perpetuated.²⁷ In October 2009, the National Department of Basic Education (DBE) published the Report of the Task Team for the Review of the Implementation of the National Curriculum Statement, which introduced the Curriculum and Assessment Policy Statements (CAPS) to facilitate the development and distribution of new textbooks and workbooks, broadly termed Learning and Teaching Support Material (LTSM). In accordance with CAPS, the relevant materials were to be introduced to schools in the following order: 2011: Grades 1-3 and Grade 10; 2012: Grades 4-6 and Grade 11; 2013: Grades 7-9 and Grade 12. In an affidavit submitted in the case of *Section 27 and Others v Minister of Education and Another*, curriculum expert B J Wilson-Thomas indicates that:

*The CAPS curriculum was introduced in response to teachers' requests for more clarity and detail ... The intention of the CAPS curriculum is to provide clear pacing and sequencing of the curriculum content and more explicit elaboration of content to support a richer interpretation of broad curriculum statements.*²⁸

The implementation of the new curriculum has been beset with considerable difficulties arising from lack of delivery or late delivery of textbooks and workbooks to learners, or the delivery of the incorrect learning materials. The right to education is one of the central focus areas for the Commission's work, as evidenced by previous work undertaken on the subject, including the Charter on Children's Basic Education Rights. As such, the challenges in the delivery of primary learning materials have been of interest and concern to the Commission. In 2012, media reports suggested that there were major shortcomings in textbook delivery in the Limpopo Province. Following these media reports, a civil society campaign led to litigation and several court orders, and a number of task teams investigating and reporting on the matter were set up. Following these reports and an enquiry from Parliament that requested information on whether the Commission was investigating this matter, the Commission decided to investigate whether similarly-situated schools in the other provinces were having the same challenges. The Commission proceeded to engage with its Provincial Offices to obtain reports on the status of delivery of learning materials. However, the information received from the relevant provinces was not consistent due to challenges associated with data collection. The Commission determined that a uniform approach which addressed conditions in each province should be undertaken. A decision was taken that the Commission would convene a hearing in terms of Section 9(1)(c) of the HRC Act to gather more information. The purpose of these proceedings was to obtain relevant

information from public officials to determine whether this component of the right to basic education was being realised across the country.

The Commission, acting in terms of its enabling legislation, undertook an investigative hearing into the delivery of primary learning materials across the nine provinces of the country. The hearing, which was inquisitorial in nature, requested that the Members of the Executive Councils (MECs) of the respective Provincial Departments of Basic Education (PEDs) appear before the Commission, make submissions and present documentation to assist the Commission to establish the extent of the challenges related to the provision of LTSM, leading to findings and recommendations to redress shortcomings. The investigation was undertaken in the knowledge that the Commission did not have the resources to conduct any direct survey of schools although some individual school reports and information through separate site visits added to the knowledge of the panel. The information provided by the MECs and PEDs was therefore not subjected to any independent verification.

The submissions requested from PEDs were set out in a schedule of seven key questions. These included requests for data on:

- a. The number of schools in the province, including the number of section 21 (or self-governing) schools;
- b. The process employed by schools in the procurement of primary learning materials;
- c. The success of the method employed;
- d. Major challenges faced in the delivery of primary learning materials;
- e. The steps taken by the PED to overcome these challenges;
- f. The mechanisms employed by the DBE and the PED to monitor and assess the delivery of primary learning materials; and
- g. Any steps taken to address the interests of learners with disabilities.
- h. The need for the Commission to further invoke its powers in securing the co-operation of the North West Province.

The panel received submissions and heard oral testimonies from representatives of the DBE, and the PEDs from the Western Cape, Northern Cape, Mpumalanga, KwaZulu-Natal, Gauteng and the Free State. Given that the Eastern Cape and the Limpopo Provinces are under National Administration in terms of section 100(1) of the Constitution, the Commission indicated that the representatives from the DBE would present on their behalf, although the offices of these MEC's were invited to attend and supplement this testimony. There was one non-compliant party in this matter, namely, the office of the MEC for Basic Education in the North West Province. They did not appear before the Commission despite being given no less than three opportunities to do so. They also failed to submit documents until after the proceedings had been closed. The information that was eventually submitted was also disparate and ultimately did not assist the Commission in its investigation.

In order to ensure that the findings of the Panel represent a balanced view of the issues, a resolution was taken that an interim report would be drafted and released to the public and the parties to the hearing before the Commission made conclusive findings. The report was also sent to the Portfolio Committee for Justice and

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Education

Constitutional Development. Following the release of the interim report, the Commission allowed submissions from three interested parties: EduSolutions, The Teacher's Union of South Africa (OUSA) and Section 27. The Commission elected to convene a final sitting of the panel and hear oral testimony from these parties.

The panel sought to both identify key areas of concern and to make recommendations where appropriate. The investigation was not intended to be retrospective in nature (that is, looking at the mistakes made in procurement processes past), but constructive, with a view to ensure that, going forward, the right to basic education can be realised.

Though the scope of this investigation was limited to the procurement and delivery of primary learning materials to schools, it became apparent that a number of the challenges were more systemic in nature. A good example of this is the issue of poor communication between government and other relevant stakeholders. This meant that, while the panel's recommendations addressed specific challenges, larger contextual and organisational issues require further attention.

The Commission's recommendations included the following: That a national independent audit be undertaken to determine precisely where lapses in service delivery lie and that such an audit may need to be repeated; that a separate investigation be undertaken with regard to learners with disabilities particularly in the context of 'mainstreaming' children with disabilities into regular schools; that the creation of a uniform system for electronic tracking is facilitated and that it is ensured that such a system is capable of providing on-going monitoring and a national overview for comparative purposes. It should also be ensured that the intellectual property rights involved in the development of the system reside with the DBE; that all circulars and other documents be sent out well in advance so as to deal with issues of lack of consensus between schools and government; that external service providers be monitored closely in order to ensure accountability and transparency.

LAND REDISTRIBUTION

During November and December 2013, a National Hearing, convened by the Commission as an “own initiative investigation” looked into monitoring and investigating the systemic challenges affecting the Land Restitution Process in South Africa. According to the Commission's research land ownership in South Africa has long been a source of conflict. Its history of conquest and dispossession, of forced removals and a racially skewed distribution, has left it with a complex and difficult legacy. The Restitution of Land Rights Act (Restitution Act)²⁹ was passed in 1994 at the advent of democracy in South Africa and amended at the end of 1998. Its stated objective is:

“To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.”

The Restitution Act empowers the Minister to make awards to restitution claimants where he or she is satisfied that there is a valid restitution claim, by restoring the lost land, awarding alternative land at state expense, and awarding financial compensation or other appropriate relief.

In addition, Section 25(7) of the Constitution of the Republic of South Africa, 1996 (the Constitution) provides:

A person or community dispossessed of property after June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

By the cut-off date for the lodging of claims, 63,455 claims had been lodged, and by 2000 only 4,925 had been settled, with the majority of the settlements being cash payments, and only 162 involving restoration of land.³⁰ By 2006, according to the Centre for Development Enterprise, validated land claims for restitution numbered nearly 80,000, with most of it being urban land (81% urban while 19% was rural).³¹

While the thousands of land claims settled by cash payments in South Africa are lauded, this did not attend to some of the potentially more complex cases involving 'land restitution' in the literal sense of the term i.e. a process by which land and other property that was forcibly removed through discriminatory laws is restored to the rightful owner. The land restitution process has faced a number of challenges including the apparent unawareness of many people that the deadline for lodging restitution claims was set at the end of 1998. Late registration was not permitted. In many of the restitution cases that were lodged on time, the primary beneficiary has died and consequently their children and grandchildren have become joint

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Land Redistribution

beneficiaries. Worn down by endless bureaucracy, and countless delays, many have opted for cash payments in lieu of the valuable land from which they were forcibly removed.³² (There is now a Restitution of Land Rights Amendment Bill that could see the new deadline being pushed to 31 December 2018).

The SAHRC receives a number of complaints and queries on a regular basis relating to land restitution and broader Section 25 rights. As at August 2013, the SAHRC had 193 Section 25³³ complaints nationally. Sixty percent of these complaints were at the investigation phase, 37% at assessment phase, and 3% at litigation phase. While the issue of the 1998 deadline has been identified as one of the concerns, there appear to be a number of challenges that have made the resolution of existing claims difficult and/or severely delayed.

In addition to issues of redress and accountability, the SAHRC is of the view that the land restitution process in South Africa is also aimed at the progressive realisation of socio-economic rights. The SAHRC acknowledges that the process of restitution in the country has moved very slowly with regard to existing land claims and continues to be beleaguered by a number of challenges that shadow the desired effect of equitable redress and socio-economic empowerment. It is in the interests of the SAHRC's ability to fulfil its mandate, for a holistic view of these challenges to be attained. To this end, an investigative hearing was convened to address the systemic challenges affecting the land restitution process in South Africa.

While recognising that the issue of exclusion of claims that came about through the 1998 lodgement cut-off is one of the matters raised with the SAHRC that may be addressed should the Restitution of Land Rights Amendment Bill [B35-2013] (introduced in May 2013 to revise the cut-off date for lodging a claim) become law, this issue was not intended to form the central part of the investigative hearing. Instead the hearing aimed to obtain a better understanding of why existing claims remain unresolved nearly two decades after the Act became law. However, a number of the submissions did centre on the potential implications of the re-opening of the claims lodgement process.

The hearing, which was inquisitorial in nature, requested that the national Departments and other parties having a direct relationship to the State's implementation of the land restitution process make submissions to the SAHRC. These included national Departments mandated to initiate or implement South Africa's integrated rural development programme, provide equitable redress to victims of racially motivated land dispossession, resolve restitution claims and provide post-settlement support. The parties were also requested to present documentation to assist the SAHRC to establish the extent of the challenges relating to the land restitution process. In part, the decision by certain parties to focus on the proposed Restitution of Land Rights Amendment Bill enabled the panel to make findings that related to whether the proposed amendments would address current challenges and shortcomings.

The submissions requested from the parties were set out in the issues for discussion. These included requests for data on:

- a. The mandate of the relevant body and its role in terms of land restitution;
- b. The challenges experienced by that body in relation to land restitution;
- c. The steps taken to address such challenges;
- d. How the Department of Rural Development and Land Reform relates to the Commission for Restitution of Land Rights in terms of the monetary compensation awarded for land restitution;
- e. The amounts that have been paid to compensate communities that claim land from which they had forcibly been removed;
- f. On what basis the Department for Rural Development and Land Reform is able to realistically budget for land claims and how such budget is informed;
- g. An outline from the Department of Rural Development and Land Reform on what forms of “equitable redress” it has used in the past;
- h. To what extent the Department of Public Works has a comprehensive record of all of the land that belongs to the State, including at a local government level, and to what extent the Department knows how much land is owned by parastatals;
- l. The number of gazetted claims;
- j. The number of finalised claims that involved compensation, and the number that involved land being returned;
- k. The manner in which the Commission for Restitution of Land Rights (CRLR) deals with a situation when a claim is under review that is on a piece of land that is being disposed of for other developments;
- l. The manner in which the Chief Surveyor General records title in terms of land claimants in urban areas where there are disputes and the title is not properly recorded, and how this is managed in rural areas in terms of succession in title;
- m. The number of claimants the Land Rights Management Facility is representing; and the number of claims it has assisted to reach a point of resolution;
- n. The number of claims that are on state land;
- o. Major challenges faced by the parties with regard to land restitution; and
- p. The steps taken by the parties to overcome these challenges.

The panel received submissions and heard oral testimonies from representatives of the Department of Rural Development and Land Reform (DRDLR), the Department of Public Works (DPW), the Commission for Restitution of Land Rights (CRLR), the Chief Surveyor General (CSG), and the Land Rights Management Facility (LRMF). The SAHRC also sought the inputs of the Land Claims Court – Acting Judge President Yasmin Meer participated in the hearing and contributed to the issues for discussion.

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Land Redistribution

The DPW failed to submit documents but gave oral submissions at the hearing.

The panel sought to understand the systemic challenges affecting the land restitution process and to make recommendations where appropriate. The investigation was both retrospective in nature (that is, looking at past mistakes made in the handling and processing of land claims), and constructive, with a view to gaining a better understanding of the challenges and the steps that have been taken to overcome these challenges.

Due to the systemic nature of the challenges affecting the land restitution process in the country, larger contextual and institutional issues require further attention. The Commission found, inter alia, there are significant challenges in relation to the calculations and determination of the value of land from which individuals and communities were historically dispossessed but which today have to be seen in the context of subsequent developments and uses. Policy and possibly legislation is needed to provide greater certainty in this regard. The issue of the losses that communities face from their exclusion from the benefits of the mineral resources in and under their land, which have also rendered their surface rights to the land impossible, is also something that needs to be more clearly addressed. It does not seem right that geographic dispossession results today in a perpetuation of wealth exclusion in a democratic South Africa. To this extent, the characterisation of the restitution process by the CRLR submitted during the investigative hearing as a “political problem” has validity. However, the restitution process is also a judicial one and cannot be contingent on departmental policies that undermine the need for a just and equitable remedy of past rights violations as envisaged in the Constitution.

It is the Commission's hope that the outcomes of these, and future National Hearings, in the form of findings and recommendations will assist Parliament in making the necessary policy decisions in order to ensure that a rights-based approach is not only applied in policy making, but more importantly, in its implementation, thus ensuring that all South Africans are able to live the promises as enshrined in the Constitution.

NOTES

25. Kindly note Appendix “C” and “D”
 26. Molo, MQ and Chetty, M. (2010). *The SACMEQ III Project in South Africa: A Study of the conditions of schooling and the quality of education*. Pretoria: Department of Basic Education/SACMEQ.
 27. See Fuller, B. (1986). *Raising School Quality in Developing Countries: What Investments Boost Learning?* The World Bank, Washington D.C. and Lockheed, ME & Hanushek, E. (1988). *Improving Educational Efficiency in Developing Countries: What Do We Know? Compare* 18, 1 : 21-38.
 28. Glewwe, P, Kremer, M & Moulin, S. (2007). *Many Children Left Behind? Textbooks and Test Scores in Kenya. Working Paper of the National Bureau of Economic Research*.
 29. Expert Affidavit of B J Wilson Thomas in Section 27 and Others v Minister of Education and Another 2013 (2) SA 40 (GNP)
 30. Restitution of Land Rights Act No. 22 of 1994
 31. Mngxama, A., “*South Africa: Land Reform blocked*”, Green Left Weekly, 24 May 2000, <https://www.greenleft.org.au>.
 32. 'Land reform in South Africa: Getting back on track', Centre for Development Enterprise, 2008, <http://www.cde.org.za>.
 33. A new Restitution of Land Rights Amendment Bill was passed by the National Assembly on 25 February 2014 with the aim of re-opening the claims process for a further 5 years i.e. to 2019.
 34. Section 25 guarantees property rights in the Constitution of the Republic of South Africa Act 108 of 1996.
- SAHRC (2014) “Strategic Plan 2014 to 2017 – Annual Performance Plan 2014/2015”

In its previous strategic cycle between the 2011-2014 period the Commission's primary focus was on its protection mandate, with a view that this was a key factor that distinguished it from civil society organisations that conduct human rights promotion and monitoring activities. In its 2014-2017 strategic cycles, the Commission has changed focus slightly to allow for a more integrated approach in delivering on its mandate, with greater emphasis on focussing on each component of its mandate equally thereby contributing towards a more holistic culture of human rights generally. The Commission therefore aims to enhance the understanding of its Constitutional and legislative mandate by extending its mandate to beyond Section 184 of the Constitution. It is noted that in order to achieve this objective, a holistic, contextual and purposive interpretation of its mandate will be necessary.³⁴

It is hoped that this Comparative Analysis Report constitutes the beginning of developing an adequate baseline in order to effectively identify future trends to combat human rights violations, thus contributing toward the Commission's overarching goal of transforming South African society and embedding within it a sustainable culture of human rights. In order to achieve this goal, the Commission remains determined to continue making use of all of the mechanisms available to it in ensuring that victims of human rights abuses are able to access the appropriate and desirable remedy both in terms of form and substance. These remedial mechanisms include those contained in the Commission's CHP, in addition to various forms of litigation. Moreover, the Commission will continue to conduct various advocacy initiatives informing communities of their rights and processes to be followed should they experience a violation, as well as sensitisation sessions with a view of contributing towards transformative processes.

Importantly, the Commission will continue to advise Parliament of its duties in terms of adopting sufficient rights-based approaches both to policy-making and implementation, in addition to engaging with high-level stakeholders to better inform its position on how to do so. As such, the Commission remains firmly committed to its mandate in ensuring that the Constitutional objectives of a society based on equality and human dignity is realised for all South Africans.



APPENDIX A

**rights
breakdown
per province**

Eastern Cape

RIGHT(S) VIOLATED	COMPLAINTS RECEIVED		COMPLAINTS RECEIVED (%)		% CHANGE (Y-ON-Y)
	2012/13	2013/14	2012/13	2013/14	
Access to information	74	39	16	9	-47
Arrested detained and accused persons	57	56	13	13	-2
Children	16	12	4	3	-7
Citizenship	1	0	0	0	-100
Cultural religious and linguistic communities	3	0	1	0	-100
Education	36	50	8	12	39
Environment	5	6	1	1	20
Equality	24	13	5	3	-46
Freedom and security of the person	11	16	2	4	45
Freedom of expression	7	13	2	3	86
Freedom of trade, occupation & profession	1	0	0	0	-100
Health care, food, water and social security	21	29	5	7	38
Housing	36	16	8	4	-56
Human dignity	6	11	1	3	83
Just administrative action	52	64	12	15	23
Labour relations	56	62	12	14	11
Life	1	3	0	1	200
No jurisdiction	1	0	0	0	-100
No violation	7	3	2	1	-57
Property	36	30	8	7	-17
Unclear	1	0	0	0	-100
Freedom of movement, residence, passport and to leave the republic	0	1	0	0	100
Privacy	0	1	0	0	100
	452	425	100	100	-6

Free State

RIGHT(S) VIOLATED	COMPLAINTS RECEIVED		COMPLAINTS RECEIVED (%)		% CHANGE (Y-ON-Y)
	2012/13	2013/14	2012/13	2013/14	
Access to courts, independent tribunals & forums	2	5	0	1	150
Access to information	17	10	4	2	-41
Arrested, detained and accused persons	115	124	25	27	8
Assembly, demonstration, picket & petition	2	1	0	0	-50
Children	10	9	2	2	-10
Citizenship	15	11	3	2	-27
Cultural religious and linguistic communities	1	0	0	0	-100
Education	16	11	4	3	-31
Environment	15	13	3	3	-13
Equality	45	46	10	10	2
Freedom and security of the person	10	9	2	2	-10
Freedom of movement, residence, passport & to leave the republic	2	1	0	0	-50
Freedom of religion, belief and opinion	1	2	0	0	100
Health care, food, water and social security	25	22	5	5	-12
Housing	14	14	3	3	0
Human dignity	25	23	5	5	-8
Just administrative action	44	26	10	6	-41
Labour relations	55	30	12	7	-45
No jurisdiction	13	55	3	12	323
No violation	26	34	6	7	31
Political rights	1	0	0	0	-100
Property	14	12	3	3	-14
Unclear	0	1	0	0	100
Privacy	0	1	0	0	100
	468	460	100	100	-2

Gauteng

RIGHT(S) VIOLATED	COMPLAINTS RECEIVED		COMPLAINTS RECEIVED (%)		% CHANGE (Y-ON-Y)
	2012/13	2013/14	2012/13	2013/14	
Access to courts, independent tribunals & forums	9	18	1	1	100
Access to information	28	26	2	2	-7
Arrested, detained and accused persons	197	171	13	13	-13
Assessment	1	0	0	0	-100
Children	46	40	3	3	-13
Citizenship	1	0	0	0	-100
Cultural, religious and linguistic communities	3	2	0	0	-33
Duplicate	3	0	0	0	-100
Education	45	66	3	5	47
Enquiry	1	0	0	0	-100
Environment	6	6	0	0	0
Equality	219	219	14	16	0
Freedom and security of the person	21	13	1	1	-38
Freedom of expression	18	25	1	2	39
Freedom of movement, residence, passport & to leave the republic	8	2	1	0	-75
Freedom of religion, belief and opinion	6	7	0	1	17
Freedom of trade, occupation and profession	9	10	1	1	11
Health care, food, water and social security	32	49	2	4	53
Housing	117	95	8	7	-19
Human dignity	53	38	4	3	-28
Just administrative action	235	217	15	16	-8
Labour relations	156	146	10	11	-6
Language and culture	3	6	0	0	100
Life	7	0	0	0	-100
No jurisdiction	58	151	4	11	160
No violation	96	8	6	1	-92
Privacy	24	21	2	2	-13
Property	2	4	0	0	100
Unclear	140	0	9	0	-100
Assembly, demonstration, picket and petition	0	1	0	0	100
Freedom of association	0	2	0	0	200
Political rights	0	1	0	0	100
	1544	1344	100	100	-13

KwaZulu-Natal

RIGHT(S) VIOLATED	COMPLAINTS RECEIVED		COMPLAINTS RECEIVED (%)		% CHANGE (Y-ON-Y)
	2012/13	2013/14	2012/13	2013/14	
Access to courts, independent tribunals & forums	3	0	1	0	-100
Access to information	3	3	1	1	0
Arrested, detained and accused persons	36	136	9	24	278
Assembly, demonstration, picket & petition	1	0	0	0	-100
Children	12	13	3	2	8
Cultural, religious and linguistic communities	2	3	0	1	50
Education	16	18	4	3	13
Environment	3	8	1	1	167
Equality	33	63	8	11	91
Freedom of expression	3	2	1	0	-33
Freedom of religion, belief and opinion	1	1	0	0	0
Health care, food, water and social security	17	22	4	4	29
Housing	4	8	1	1	100
Human dignity	17	32	4	6	88
Just administrative action	81	76	20	13	-6
Labour relations	28	63	7	11	125
Life	1	1	0	0	0
No jurisdiction	55	77	13	13	40
No violation	31	17	8	3	-45
Privacy	4	5	1	1	25
Property	1	8	0	1	700
Transfer	1	0	0	0	-100
Unclear	58	0	14	0	-100
Assessment	0	21	0	4	100
Freedom and security of the person	0	1	0	0	100
	411	578	100	100	41

Limpopo

RIGHT(S) VIOLATED	COMPLAINTS RECEIVED		COMPLAINTS RECEIVED (%)		% CHANGE (Y-ON-Y)
	2012/13	2013/14	2012/13	2013/14	
Access to information	18	19	7	4	6
Arrested, detained and accused persons	30	49	12	10	63
Assembly, demonstration, picket & petition	1	3	0	1	200
Assessment	1	3	0	1	200
Citizenship	4	8	2	1	100
Cultural, religious and linguistic communities	3	3	1	1	0
Education	16	23	7	5	44
Environment	12	10	5	2	-17
Equality	16	49	7	10	188
Freedom and security of the person	7	23	3	5	229
Freedom of association	1	0	0	0	-100
Freedom of expression	1	1	0	0	0
Freedom of religion, belief and opinion	2	1	1	0	-50
Freedom of trade, occupation and profession	1	2	0	0	50
Health care, food, water and social security	30	59	12	12	97
Housing	3	9	1	2	200
Human dignity	29	47	12	10	62
Just administrative action	39	73	15	15	87
Labour relations	13	44	5	9	238
Life	3	3	1	1	0
No jurisdiction	1	9	0	2	800
No violation	10	3	4	1	-70
Privacy	1	0	0	0	-100
Property	6	24	2	5	300
Registration	7	0	3	0	-100
Access to courts, independent tribunals & forums	0	1	0	0	100
Children	0	13	0	3	100
Freedom of movement, residence, passport and to leave the republic	0	1	0	0	100
	255	480	100	100	88

Mpumalanga

RIGHT(S) VIOLATED	COMPLAINTS RECEIVED		COMPLAINTS RECEIVED (%)		% CHANGE (Y-ON-Y)
	2012/13	2013/14	2012/13	2013/14	
Access to courts, independent tribunals & forums	1	5	0	1	400
Access to information	6	10	1	2	67
Arrested, detained and accused persons	11	16	3	4	45
Children	2	4	1	1	100
Citizenship	7	6	2	2	-14
Education	10	18	3	4	80
Environment	9	15	2	4	67
Equality	31	29	8	7	-6
Freedom and security of the person	7	2	2	0	-71
Freedom of association	2	1	1	0	-50
Freedom of expression	1	1	0	0	0
Freedom of movement, residence, passport & to leave the republic	2	4	1	1	100
Health care, food, water and social security	22	45	6	11	105
Housing	52	62	14	15	19
Human dignity	26	24	7	6	-8
Just administrative action	17	23	5	5	35
Labour relations	96	41	26	10	-57
No violation	1	6	0	2	500
Privacy	3	6	1	2	100
Property	66	90	17	21	36
Slavery, servitude and forced labour	1	1	0	0	0
Cultural, religious and linguistic communities	0	2	0	0	200
Freedom of religion, belief & opinion	0	1	0	0	100
Freedom of trade, occupation and profession	0	1	0	0	100
Life	373	419	100	100	12

Northern Cape

RIGHT(S) VIOLATED	COMPLAINTS RECEIVED		COMPLAINTS RECEIVED (%)		% CHANGE (Y-ON-Y)
	2012/13	2013/14	2012/13	2013/14	
Access to information	2	6	1	2	200
Arrested, detained and accused persons	15	6	7	2	-60
Assessment	1	0	0	0	-100
Children	5	4	2	2	-20
Cultural, religious and linguistic communities	2	3	1	2	50
Education	17	18	7	7	6
Environment	1	2	0	1	100
Equality	29	36	13	15	24
Freedom and security of the person	3	1	1	0	67
Freedom of expression	1	0	0	0	-100
Freedom of religion, belief and opinion	1	0	0	0	-100
Health care, food, water and social security	18	39	8	16	117
Housing	1	6	0	2	500
Human dignity	27	30	12	12	11
Just administrative action	41	26	18	11	-37
Labour relations	37	17	16	7	-54
Language and culture	1	1	0	0	0
No jurisdiction	7	0	3	0	-100
No violation	14	46	7	19	229
Privacy	1	0	0	0	-100
Property	9	6	4	2	-33
Citizenship	0	1	0	0	100
	233	248	100	100	6

North West

RIGHT(S) VIOLATED	COMPLAINTS RECEIVED		COMPLAINTS RECEIVED (%)		% CHANGE (Y-ON-Y)
	2012/13	2013/14	2012/13	2013/14	
Access to courts, independent tribunals & forums	2	1	1	0	-50
Access to information	12	10	3	3	-17
Arrested, detained and accused persons	17	21	4	6	24
Assembly, demonstration, picket & petition	1	2	0	1	100
Assessment	1	0	0	0	-100
Children	13	14	3	4	8
Citizenship	1	0	0	0	-100
Education	9	11	2	3	22
Environment	10	20	2	5	100
Equality	28	27	7	7	-4
Freedom and security of the person	4	9	1	2	125
Freedom of religion, belief and opinion	1	1	0	0	0
Health care, food, water and social security	27	40	6	10	48
Housing	29	28	7	7	-3
Human dignity	71	71	17	18	0
Just administrative action	40	39	10	10	-3
Labour relations	55	37	13	10	-33
Life	10	5	2	1	-50
No violation	74	21	18	6	-72
Older person's right	2	0	1	0	-100
Privacy	5	7	1	2	40
Property	7	12	2	3	71
Unclear	1	0	0	0	-100
Freedom of association	0	1	0	0	100
Freedom of expression	0	2	0	1	200
Freedom of movement, residence, passport and to leave the republic	0	1	0	0	100
Freedom of trade	0	1	0	0	100
No jurisdiction	0	3	0	1	300
Cultural, religious & linguistic communities	0	1	0	0	100
	420	385	100	100	-8

RIGHT(S) VIOLATED	COMPLAINTS RECEIVED		COMPLAINTS RECEIVED (%)		% CHANGE (Y-ON-Y)
	2012/13	2013/14	2012/13	2013/14	
Access to courts, independent tribunals & forums	33	23	4	3	-30
Access to information	32	21	3	3	-34
Arrested, detained and accused persons	58	76	6	9	31
Assembly, demonstration, picket & petition	1	0	0	0	-100
Assessment	90	15	10	2	-83
Children	31	33	3	4	6
Citizenship	2	0	0	0	-100
Cultural, religious and linguistic communities	2	1	0	0	-50
Duplicate	1	0	0	0	-100
Education	62	50	7	6	-19
Environment	13	12	1	1	-8
Equality	86	74	9	8	-14
Freedom and security of the person	42	55	5	6	31
Freedom of association	1	0	0	0	-100
Freedom of expression	31	33	3	4	6
Freedom of movement, residence, passport & to leave the republic	1	1	0	0	0
Freedom of religion, belief and opinion	2	2	0	0	0
Health care, food, water and social security	44	56	5	6	27
Housing	34	47	4	5	38
Human dignity	97	41	10	5	-58
Just administrative action	43	91	5	10	116
Labour relations	78	87	8	10	12
Language and culture	1	1	0	0	0
Life	5	5	1	1	0
Missing - report to follow	1	0	0	0	-100
No jurisdiction	4	10	0	1	150
No violation	136	123	14	14	-10
Privacy	11	10	1	1	-9
Property	1	3	0	0	200
Transfer	5	10	1	1	100
	948	880	100	100	-7

APPENDIX B

complaints handling definitions

Complaints Handling Definitions

Accepted complaints

the notification of the complainant of the finding that the complaint is accepted, in writing

Appeal

the process of lodging an appeal by any party to proceedings, who feels aggrieved by any determination, decision or finding, save for a finding made at a hearing.

Appellant

a person who lodges an appeal as contemplated in Chapter 9 of these Procedures against a determination, decision or finding made in terms of the Procedures

Assessment

the process of determining a complaint by the PM to confirm jurisdiction & make an initial determination whether to reject, refer, accept or send the complaints to the steering committee for guidance

Association

a group of persons organised for a joint purpose

Allocate

to appoint a SLO or LO, depending on the complexity of the matter, to investigate the complaint

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 established by section 181 of the Constitution

Complainant

any person, group or class of persons, association, organisation or organ of state as contemplated in article 6 of these Procedures

Complaint

any person, group or class of persons, association, organisation or organ of state as contemplated in article 6 of these Procedures

Conciliation

the process of reconciling a matter between parties

Day

any calendar day excluding Saturdays, Sundays & public holidays

Direct Referral

that the complaint is referred directly to another organisation, institution or statutory body because the Provincial Manager has found that the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more efficiently or expeditiously by that other organisation, institution or body.

Note: 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 Monitoring direct referral below

Enquiry

an oral, written or electronic communication which can be established at point of entry into the Commission that the matter is clearly not about a human rights violation, is not within the jurisdiction of the Commission.

NOTE: if it is not possible to easily establish if there has been a human rights violation, the matter should be registered as a complaint – for screening and assessment by the Provincial Manager

Finalised complaints

is a collective term for the final stage of all complaints which are rejected, referred (indirectly or directly), resolved or closed

Final sign off

matters which have been approved by steering committee and submitted to Commissioner/LCM for sign off

Finding

a conclusion reached after an assessment or investigation of a complaint or an inquiry or a hearing regarding an alleged violation of or a threat to a fundamental right

Fundamental rights

the fundamental rights contained in sections 9 to 35 of Chapter 2 of the Constitution

Hearing a formal investigation

contemplated in section 9(1)(c) read with section 9(1)(d) of the Act, taking on the nature of a hearing as contemplated in Chapter 7 of these Procedures

HRCA

the Human Rights Commission Act, 1994

Indirect Referral

to notify the complainant, in writing; & provide the contact details of the organisation, institution or body to pursue the alternative option himself or herself; & advise the complainant to contact the Commission again should he or she not get a response from the organisation, institution or body. This does not preclude the Commission from writing to the institution on behalf of the Complainant.

NOTE: the term indirect referral is also used when complainants are assisted with their referrals to the alternative organisation, institution or body but where the Commission does not intend to monitor the status of that complaint

Investigation

an investigation as contemplated in section 9 of the 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, 2000 (Act No. 3 of 2000);

LO/delegated staff member

the person who receives & registers a complaint or an appeal

Litigation

when a matter is either filed or lodged at court. The complaint remains at this status until the matter is concluded

Mediation

the process of 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, institution or body with a standard covering letter. A standard letter is also sent to the complainant. The Commission then monitors the status of the complaint in respect of prima facie violations of fundamental rights through reports received from the organisation, institution or body.

Monitoring – report recommendations

to monitor the implementation of any recommendations made in a report in which a finding was made.

Negotiation

the process of conferring with the parties in order to reach an agreement

Organisation

means an organised body, including a business, political party, trade union & charity

Organ of state

bears the meaning assigned to it in section 239 of the Constitution

Panel

the panel of the Commission as contemplated in article 21 of these Procedures

Person with a mental disability

a person aged 18 years or older whose cognitive ability appears to be comparable to that of a child or appears to render such person vulnerable & in need of assistance or protection

Referred complaint

the Commission does not have jurisdiction. Complaints can be either directly referred or indirectly referred.

NOTE: Direct referrals must be to legislated bodies

Rejected complaint

there was no human rights violation; the violation took place before 1994; or the matter is currently before another legal forum

Rejected complaint

there was no human rights violation; the violation took place before 1994; or the matter is currently before another legal forum

Report

a written account given 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, hearing); where the parties agree to end the process; or the complainant is satisfied with the outcome of the intervention of the SAHRC.

Respondent

any 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

Sheriff

a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), & also a person appointed in terms of section 5 & section 6 of that Act as an acting sheriff & a deputy sheriff, respectively

Steering Committee

the committee tasked, inter alia, to oversee the programme, unit or division responsible for the provision of legal services & to provide support & quality assurance, consisting of the following members–

- (I) the Chief Operations Officer (Programme Support), as chairperson;
- (ii) the Chief Financial Officer (Corporate Services);
- (iii) the Head of Strategic Support & Governance;
- (iv) the Head of the Commissioners' Programme; & all Pms.

Transfer

the internal transfer of a complaint from one provincial office to another

The Act

the Human Rights Commission Act, 1994 (Act No. 54 of 1994)

Unclear – refer to the Steering Committee the provincial office is uncertain of what the assessment outcome should be in a complaint and thus refers it to the SC for guidance and advice