

# South African Human Rights Commission



south african  
**human  
rights**  
commission

**BEYOND 1994- SOLIDARITAT IN WANDEL DER  
ZEIT**

**COMMISSIONER TSHEPO MADLINGOZI**

***7 NOVEMBER 2024***



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Time of  
Neo-  
Apartheid

Post-Apartheid

Transitional Justice

Final Constitution

“UnFreedom?”

“ If time is an ocean, rather than linear (as white cultural imperialism defines it), then 500 years is simultaneously this minute. The past is the past only for the sake of white’s comfort and safety.” ”

Neo-Apartheid Constitutionalism?

# Context of Human Rights in SA

- ▶ Population of 62 million people living in South Africa
  - ▶ SAHRC with staffing of 198 staff required to service population
- ▶ Inequality: SA Gini coefficient 0.67
- ▶ Political instability at local government
- ▶ Violent protests: July 2021 Unrest

# SAHRC Constitutional mandate

## SAHRC MANDATE Section 184(1) Constitution

Promote **respect** for human rights and a culture of human rights

Promote the **protection, development** and **attainment** of human rights

**Monitor** and **assess** the observance of human rights

# SAHRC methods for mandate

## SAHRC MANDATE realisation Section 184(2) Constitution

**Investigate** and **report** on human rights

**Secure appropriate redress** where rights are violated

**Research and educate**

# SAHRC mandate: Reporting Obligations

- ▶ SAHRC **must** report to Parliament on an annual basis and holds state organs accountable
  - ▶ Investigative reports on human rights issue e.g. of a serious nature
  - ▶ Investigations of human rights and its decisions are to be implemented or can be reviewed by Court of law
  - ▶ Clarity of whether SAHRC's decisions are binding is currently before Constitutional Court

# SAHRC ACT - Legislative powers

- ▶ Examples of **International and regional treaties, covenants and charters monitored by the SAHRC**
  - ▶ African Charter on Human and Peoples Rights
  - ▶ International Covenant on Economic and Social Rights
  - ▶ International Covenant on Civil and Political Rights
  - ▶ Convention on the Rights of Persons with Disabilities
  - ▶ Convention on the Rights of the Child

# Overview of Commissioners

- ▶ Section 5 of the SAHRC Act:
  - ▶ The SAHRC consists of 8 Commissioners:
  - ▶ Must be South African citizens and fit and proper
  - ▶ Have a record of commitment to human rights
  - ▶ Are appointed by the President on recommendation by the National Assembly.
  - ▶ May be appointed either as a Full time or part time Commissioner.
- ▶ SAHRC Commissioner are appointed to serve a 7-year term.
- ▶ A Commissioner can serve more than one term.

# Full time Commissioners



- ▶ Commissioner Tshepo Madlingozi
- ▶ Equality and the Social Harmony National Effort (SHINE)
- ▶ Anti-Racism, Justice & Education

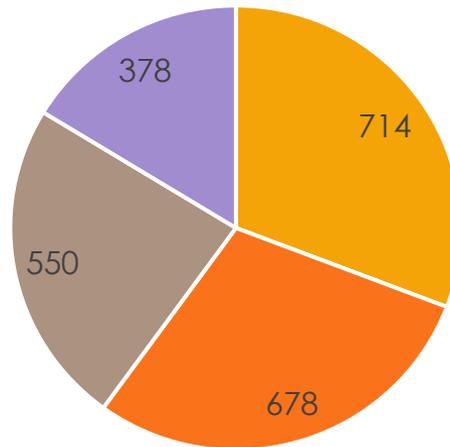


# State of Human Rights in South Africa

1. Human Rights Violations: Over **30 000 complaints** finalised by the SAHRC between 2012-2021.
2. Top human rights violations reported to SAHRC 2012-21: **Equality, Health care, Food, Water and Social Security, Equality, Just administration action, Education and Citizenship**
3. Number of Recommendations and Directives issues by the SAHRC (2020-2023): **102**
4. Response rate of implementation by Government Departments (2020-2023): **less than 40%**

# SAHRC Complaints 2022 – 2023

Public expectations (expectation to actually deliver): Top four complaints



■ Health ■ Equality ■ Just Administrative Action ■ Citizenship

# Summary of Human Rights Issues (Internal SAHRC Reports)

## Some Key Issues Identified by SAHRC Through Its Reports:

- High rates of GBV affecting all rights.
- Large number of children not able to read for meaning by 10 years.
- Sanitation in schools remains a challenge with many schools still affected.
- Mental health challenges remain with SAHRC recommendations not being implemented.
- Equality Courts are not fully functional and while issues of inequality remain high.
- Violence is undermining many rights.
- Issues regarding refugees and illegal migrants remain a major challenge.
- Many youth are facing a bleak future due to fewer opportunities.
- Environmental degradation (increasing and threatening rights).
- Threats to life of human rights activists e.g. whistleblowers.
- The State is not adequately addressing the Concluding Observations to human rights reports by Treaty Bodies.

# SAHRC success and challenges

## **SUCSESSES**

- ▶ Communication on current issues of human rights
- ▶ Respected
- ▶ Investigation of violations

## **CHALLENGES**

- ▶ Numerous human rights challenges in country
- ▶ Large geographic country
- ▶ Limited staff
- ▶ Shrinking resources

# 5 Crises of constitution: no post- colonial “we- ness”

1. Crisis of persisting racial dehumanisation and social invisibility
2. Crisis of re-nativisation
3. Crisis of subservient legality and subjugation of African life-ways
4. Crisis of subjugation of indigenous sovereignties
5. Crisis of entrenchment of settler-native relation

Paradox: *Constitutionalism without constitution*

# 1. Crisis of Racial dehumanisation and social invisibility

- ▶ 2000 social protests every year
- ▶ A state of 'unfreedom/Neo-Apartheid
- ▶ Life sentence: "permanent physical exclusion from society and its cities from the discussions that are taking place in society" (Shackdwellers Movement)

# Citizen and Subject



CONTEMPORARY AFRICA AND  
THE LEGACY OF LATE COLONIALISM

MAHMOOD MAMDANI

PRINCETON STUDIES IN CULTURE/POWER/HISTORY

2. Crisis of  
re-  
'nativisation'

### 3. Crisis of subservient legality and subjugation of African life-ways

- ▶ African law remains subservient to Eurocentric law.
- ▶ This enduring 'inferiorisation' of African jurisprudence is symptomatic of the fact that African lifeways, their epistemologies and systems of social ordering are still deemed inferior in the "new South Africa".



#### 4. Crisis of subjugation of indigenous sovereignties

## 5. Crisis of entrenchment of settler-native relation

- ▶ white South Africans (8% of the population) lord it over 72% of farms and agricultural holdings
- ▶ “Black Africans” (80% of the population) own a measly 4%.

# Neo-Apartheid Constitutionalism or post- conquest constitution

Three constitutional inheritances of  
settler colonialism

1. Colonial state form and the subjugation of indigenous kingdoms
2. A world of apartness and failure to resolve the National Question
3. Subjugation of African epistemologies and legalities



Website: [www.sahrc.org.za](http://www.sahrc.org.za)



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