

South African Human Rights Commission Human Rights – overview of Human Rights Violations 2012-2017

1. Overview

- Human rights are **indivisible, interrelated, and interdependent**.
- The context of the work of the South African Human Rights Commission is one of **systemic racism, poverty, and inequality**.
- **Equality** is and has consistently been the **most reported human rights’ violation** year on year since 2012 – 2017.
- The **right to equality** is thus the **most violated human right** in South Africa.
- Unfair discrimination on the grounds of race remains the highest reported ground of unfair discrimination, with a significant number of these complaints constituting **race based hate speech**.
- **However**, in 2016/17, the number of complaints relating to Economic and Social Rights (Socio-Economic Rights – the right to **health care, food, water, and social security**) ESR **increased dramatically to 75%** of the total number of **equality violations**.
- **Equality** and **Economic and Social Rights** are now the **top two rights’ violations** reported to the Commission in South Africa.
- **Endemic inequality** arises from the **violation and denial** of numerous other basic rights guaranteed by the **Bill of Rights**.

2. TOP 6 HUMAN RIGHTS VIOLATIONS IN SOUTH AFRICA 2016-2017



3. Top five rights’ violations reported to the Commission 2012 - 2017

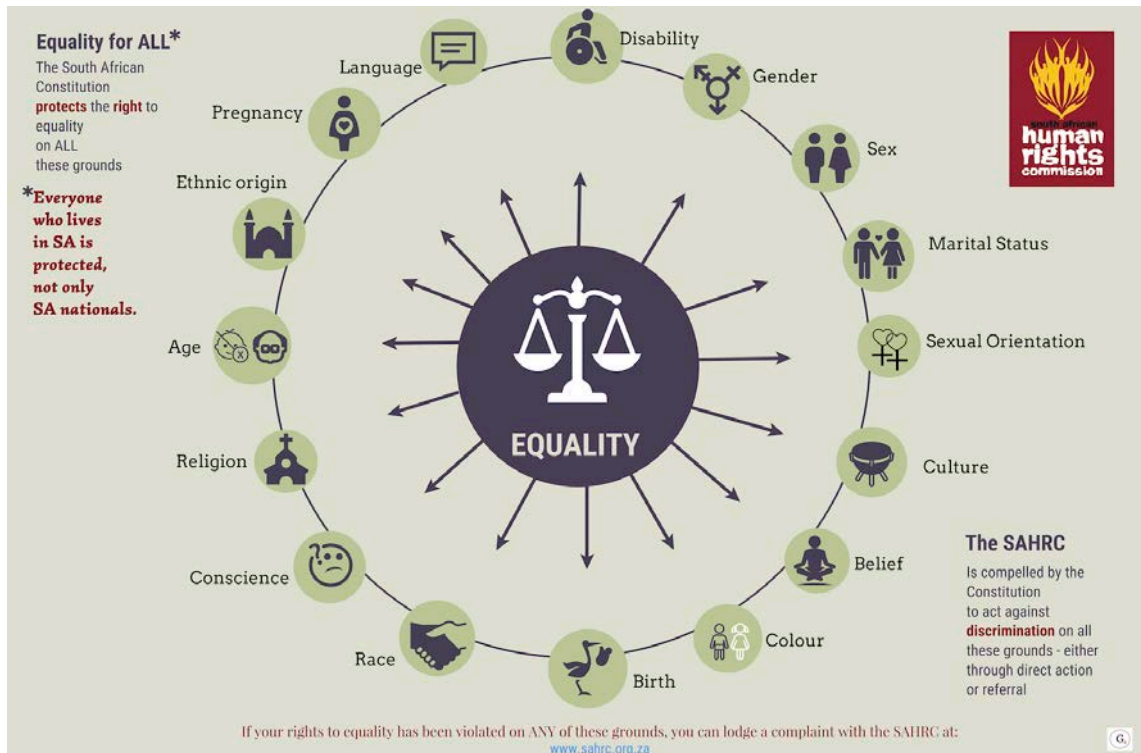
Table 7: Top five complaints per rights’ violations per year

Right/s violations	2012/13	2013/14	2014/15	2015/16	2016/17
Equality	511	556	493	749	705
Health care, food, water and social security (ESR)	236	361	338	428	631
Arrested, detained and accused persons	536	655	473	409	443
Labour relations	574	527	334	440	426
Just administrative action	592	636	366	379	407

4. EQUALITY – VIOLATIONS

Race matters – but it is one of 15 equally important grounds for equality.

- In South Africa, section 9(3) of the Constitution prohibits **unfair discrimination** on one or more grounds, including **race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.**



- Discrimination on one or more of these grounds is deemed to be **unfair discrimination** unless it is established that **the discrimination is fair.**
- **This distinction is important**, particularly because of South Africa's history of entrenched, systemic racism, and its resultant **inequalities.**
- Apartheid perfected the white supremacy, racism, and oppression (of the colonial era) in a most pernicious way, entrenching **systemic and institutional inequality.**

5. Table: Complaints received on the equality grounds (listed above) from 2012-2017

Equality	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017
Equality – Age	10	20	13	24	21
Equality – Belief	2	1	1	2	0
Equality – Colour	8	1	1	0	3
Equality – Conscience	0	1	0	0	0
Equality – Culture	4	6	8	5	13
Equality – Disability	45	70	62	66	69
Equality - Ethnic or Social Origin	39	55	35	47	27
Equality – Gender	12	19	11	18	9
Equality – Language and Birth	4	3	2	7	5
Equality – Marital Status	3	6	0	1	1
Equality – Pregnancy	1	2	0	1	2
Equality – Race	208	297	292	505	486
Equality – Religion	17	34	36	22	22
Equality – Sex	4	2	2	3	2
Equality Sexual Orientation	14	22	17	26	24
Equality – No specific listed ground	129	0	0	0	21
Totals	511	556	493	749	705

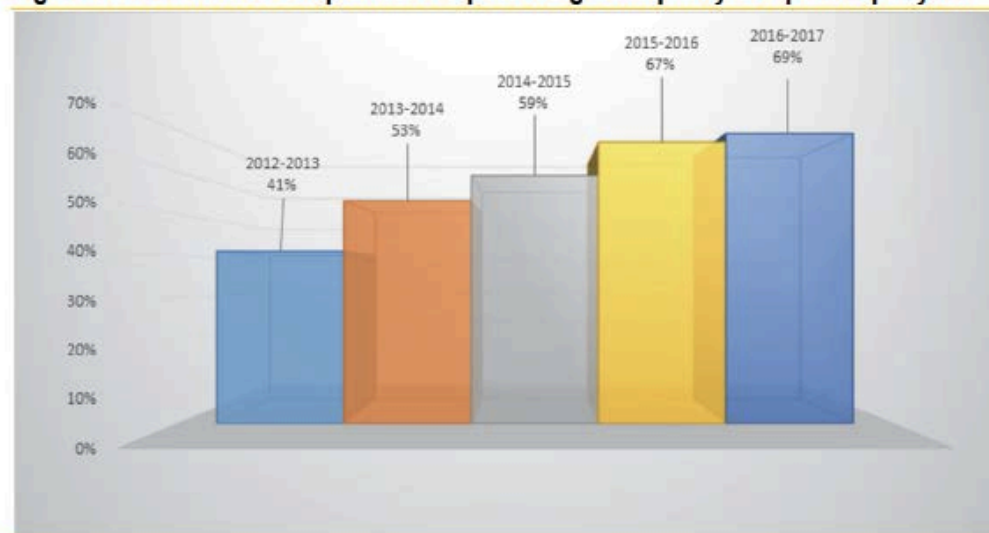
The table above shows that **unfair discrimination** on the grounds of race, disability, and ethnic and social origin (**race, disability and xenophobia**) are the **top three Equality rights complaints** received by the Commission.

- **Equality** related complaints have consistently constituted **the highest number of complaints** received by the Commission between **2012-2017**, which is unsurprising given the historical context set out above.
- Between 2014/15 and 2015/16, equality complaints **jumped** from **493 to 749**, representing an **increase of 34%**, then **dropped** marginally in 2016/17 to **705**.
- **Race related complaints have decreased marginally** from **505** in 2015/16 to **486** in 2016/17, but the numbers remain extremely high, particularly in comparison to the first three financial years under review, which averaged **266** race related complaints a year.
- In **2016-2017** almost **all equality related complaints have decreased** in number, **except for disability**.
- **Disability increased** from 45 in the 2012/13 financial year to 69 in the 2016/17 year and appear to be on an **upward trajectory**.
- **Ethnic and social origin** (“xenophobia”) related complaints have had the most significant **decrease from 47 to 27**, which puts them on par with **sexual orientation (24) and age related (21) complaints**.
- **Endemic inequality** in South Africa results in the **violation** of numerous other **basic rights guaranteed** by the **Bill of Rights**.

6. Equality: Race

- Race based discrimination presents the greatest challenge to the work of the Commission, as evidenced by the extremely high volume and the frequency of race related complaints received by the Commission in 2015/16 and 2016/17.
- Race related complaints comprise the highest percentage of **equality complaints** per year.

Figure 4: Race related complaints as a percentage of equality complaints per year



- Between 2013/14 and 2016/17, the number of **race related complaints** has exceeded the total number of equality complaints by an average of 62% per year.
- The **percentage of race** related complaints **is increasing year on year** and reached 69% in 2016/17.

Table 10: Number of equality complaints per province per year

Equality - Race	Eastern Cape	Free State	Gauteng	KwaZulu-Natal	Limpopo	Mpumalanga	Northern Cape	North West	Western Cape	Totals
2012/13	1	0	105	16	5	25	17	4	35	208
2013/14	4	37	100	40	28	23	28	12	25	297
2014/15	6	17	109	50	24	20	20	6	40	292
2015/16	11	42	183	163	24	10	23	13	36	505

Equality - Race complaints per provincial office

- In the five year period, the **Gauteng** provincial office recorded the **highest number of race** related complaints (**183**).
- In three of the four financial years, the KwaZulu-Natal provincial office recorded the second highest number of race related complaints. The number of complaints in this category has **increased in KwaZulu-Natal year on year**.
- **The Free State** province which increased from **0** equality/race based complaints in 2012 to **42** complaints during 2015/16.

7. Freedom of Expression/Hate Speech

- The right of freedom of expression is one of the cornerstones of a democratic society. However, the **vitriolic levels of racist abuse and hate speech**, now commonly expressed on social media, is a growing challenge.
- The use of the “**K**” **word is endemic**. These incidents of racial discrimination take place at schools, universities, businesses, and in the workplace.
- They are **not limited to verbal abuse**, but often also entail further violations, including physical violence, intimidation, sexual harassment or assault, and being physically excluded or removed from establishments or businesses.
- The public exposure of many racist incidents can be attributed to the growing popularity and use of various **social media** platforms (particularly Facebook and Twitter).
- Social media platforms are increasingly used to express derogatory comments, intended to **denigrate the intelligence, humanity, appearance, and beliefs** of black people, including the use of racist remarks and demeaning epithets like “baboon”, “monkey”, “aap” “hotnot”, and “coolie”.
- The Commission has litigated on a number of high profile hate speech related cases in the Equality Courts and the high courts.
- The courts have found that these **expressions of racism amount to hate speech**.
- **Racism is systemic** and **racist attitudes** remain largely **unchanged**.
- For many **poor black people**, for example, farm and domestic workers, in South Africa, **racism is a part of the daily fabric** of their lives, and they remain vulnerable to racist treatment and name calling, and race based attacks.

8. Economic and Social Rights (Socio-Economic Rights)

Health, food, water and social security = Economic and Social Rights

Table 11: Health care, food, water and social security complaints per financial year

Financial year	Complaints per financial year	Health care, food, water and social security per financial year	%
2012/13	5 104	236	5
2013/14	5 238	361	7
2014/15	3 737	338	9
2015/16	4 663	428	10
2016/17	5 012	631	13

- Socio-economic rights have **consistently been in the top five complaints** reported to the Commission.
- There has been a **significant increase** in the number of complaints relating to **economic and social rights**.
- The **2016/17 figures** illustrate a **complete shift in the hierarchy of complaints**, with the number of ESR related complaints **increased dramatically to 75%** of the total number of equality violations.
- ESR related complaints **increased drastically** between 2015/16 and 2016/17, from 428 to 631 respectively, an increase of 203 complaints (more than 30%).
- However, when ESR complaints (631) **plus other socio-economic rights** complaints - housing (297), education (289) – brings the total number of socioeconomic rights complaints to **1 217**.
- The high number of ESR complaints in 2016/17 (together with housing and education) is an indication of a number of factors: **higher levels of poverty**, the **slow pace of service delivery** at local, provincial and national levels, and **ineffective or dysfunctional local governance**.
- If complaints classified as housing and education related are added, it becomes clear that, collectively, **these socio-economic rights' violations represent some of the most pressing challenges facing South Africa**.
- **Economic and social rights** therefore **exceed Equality** complaints (705) by 512 in the 2016/17 year.
- **Equality (705)**. and **Economic and Social Rights (631)** (health care, food, water, and social security) are the **top two rights' violations** reported to the Commission in South Africa.
- It is not surprising that **ESR complaints have increased significantly**, given the **high levels of poverty and inequality** in South Africa.
- Lack of or inadequate access to socio-economic rights and service delivery affects the **majority of people** in South Africa.
- Poor communities have limited or **no access to basic rights** such as **housing, water and sanitation**, and these matters are not adequately addressed by local municipalities.
- Lack of access to socio-economic rights provides the clearest reflection of the levels of **systemic poverty, unemployment, and inequality** in South Africa and demonstrates the persistent recurrence of the cycle of poverty.
- The severely disproportionate gap between poverty experienced between the white population group and the coloured and black African population groups starkly illustrates the **persistence of structural inequality** and the **intersection of race and socio-economic disadvantage**.
- Most **poor people do not break out of the cycle of poverty** in their lifetimes, and such poverty is **perpetuated for generations**, with its attendant social ills.
- These are the **challenges** faced by the **equality project** of our constitutional democracy.