



## 2008 Country Reports on Human Rights Practices - South Africa

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Bureau of Democracy, Human Rights, and Labor  
February 25, 2009

South Africa is a multiparty parliamentary democracy in which constitutional power is shared between the president and the parliament. The country has a population of approximately 48.5 million. On September 21, Thabo Mbeki resigned as president following his recall by the ruling African National Congress (ANC) and was replaced by deputy ANC president Kgalema Motlanthe on September 25. Motlanthe will serve until mid-2009 when parliamentary elections are expected to be held and followed by the parliamentary election of a new president. In December 2007 Jacob Zuma was elected president of the ANC. Also in 2007, following so-called floor-crossing periods during which legislators can switch parties while retaining their seats, the ANC increased its representation from 279 to 297 out of 400 seats. The most recent national election in 2004 was generally free and fair. Civilian authorities generally maintained effective control of the security forces.

The government generally respected the human rights of its citizens. However, the government, nongovernmental organizations (NGOs), and local media reported the following serious human rights problems: police use of excessive force against suspects and detainees, which resulted in deaths and injuries; vigilante and mob violence; abuse of prisoners, including beatings and rape, and severe overcrowding of prisons; lengthy delays in trials and prolonged pretrial detention; forcible dispersal of demonstrations; pervasive violence against women and children and societal discrimination against women and persons with disabilities; trafficking in persons; violence resulting from racial and ethnic tensions and conflicts with foreigners; and child labor, including forced child labor and child prostitution.

### RESPECT FOR HUMAN RIGHTS

#### 1. Respect for the Integrity of the Person, Including Freedom From:

##### a. Arbitrary or Unlawful Deprivation of Life

There were no reports of politically motivated killings by the government or its agents; however, police use of

lethal force during apprehensions resulted in a significant number of deaths, and deaths in police custody were a problem. Police efforts to control vigilante violence also resulted in deaths. In some cases, the government investigated and punished the perpetrators.

According to the governmental Independent Complaints Directorate (ICD), there were 792 deaths in police custody or as a result of police action from April 2007 to March 31, 2008; a 13-percent increase from the previous year. Authorities attributed 38 percent of these deaths to natural causes, suicide, or injuries sustained prior to detention.

The ICD reported that shootings accounted for 44 percent of deaths in police custody or as a result of police action, with the majority of shootings occurring during official police operations. However, negligence was cited in six deaths, and domestic violence and off-duty shootings in 60 deaths. The ICD report also expressed concern that three innocent bystanders were killed in crossfire between the police and criminals, and that 70 civilians were killed due to being hit by police vehicles.

There were no confirmed reports of deaths from political conflict among parties, although the Inkatha Freedom Party (IFP) alleged the ANC was responsible for the killings of two IFP supporters in August. Police did not find evidence of political motivation behind the killings.

In 2007 police arrested three persons in connection with the 2006 killings of Estcourt deputy mayor Dolly Dladla and councilor Music Mchunu, both IFP members. There was no further information available by year's end.

Incidents of vigilante violence and mob killing continued, particularly in Gauteng, the Western Cape, Mpumalanga, and KwaZulu-Natal (KZN) in the rural areas and townships. For example, in March in Mpumalanga, a mob stoned a man to death after he was seen burgling a house. Community members reportedly refused to cooperate with the police, who made no arrests. In June vigilantes stoned a man suspected of stabbing another man in KZN. The South African Police Service (SAPS) opened an investigation but reported that townspeople were reluctant to cooperate, and no suspects were arrested. The investigation was ongoing at year's end.

In May xenophobic attacks on foreign African migrants and ethnic minorities by South African civilians escalated, resulting in 62 deaths and the displacement of 80,000 persons.

Killings and other violent crimes against white farmers and, on occasion, their families, continued in rural areas. Despite concern among the farmers that they were targeted for racial and political reasons, studies indicated that the perpetrators generally were common criminals motivated by financial gain. Unlike in previous years, SAPS incorporated farm attacks and killings into overall statistics of violence and homicide, rather than reporting them separately. The Freedom Front Plus, an Afrikaner minority political party, and farmers' unions criticized what they viewed as an inadequate government response to the scale and brutality of farm attacks.

There were reports that persons accused of witchcraft were attacked and driven from their villages in rural communities, and in some cases murdered, particularly in Limpopo, Mpumalanga, KwaZulu-Natal, and the Eastern Cape, where suspicion of witchcraft activity could lead to accusation, assault, forced exile, and killings, particularly of elderly women. Traditional leaders generally cooperated with government educational programs and reported threats against persons suspected of witchcraft. On September 4, two brothers in the Eastern Cape admitted to killing their younger brother, whom they suspected of practicing witchcraft. The court case was postponed until February 2009. In April 2007 a mob in Lusikisiki in the Eastern Cape killed three family members accused of witchcraft. Six persons were arrested. The investigation was ongoing at

year's end.

Ritual killings (Muti killings), especially of children, to obtain body parts for traditional healing remained a problem. Unlike in previous years, SAPS incorporated occult-related cases into its standard crime reporting of killings and assaults and specific muti statistics were unavailable. On November 4, a 41-year-old man in the Eastern Cape survived an attack in which an assailant cut off his nose and genitalia. SAPS believed the attacker was a serial killer, who used body parts for muti purposes, and may have been responsible for multiple muti killings. A police investigation was ongoing at year's end.

In March 2007 eight gang members and a 63-year-old traditional healer (sangoma), who allegedly bought body parts from them, were arrested in Umbumbulu for the alleged muti-related killings and mutilations of nine women from KZN in February 2007. Charges were dropped against seven of the accused, including the sangoma; the remaining two were charged with murder. On October 9, the two were found guilty of assault with intent to do grievous bodily harm. One was sentenced to five years in prison, while the other received a four-year sentence, of which two years were suspended. The judge found insufficient evidence to convict them of murder, and medical testimony did not support the muti allegations.

In August 2007 the South African military court found Air Force Sergeant Philippus Jacobus Venter guilty of raping and murdering a 14-year-old girl while serving as a peacekeeper in Burundi in 2004. He also was found guilty of assaulting a Burundian security guard. Venter was sentenced to 24 years' imprisonment. On October 8, Venter appealed the military court's ruling, claiming his constitutional right to a fair trial was breached, as the arresting military police officer failed to follow proper procedure. The judge reserved judgment on Venter's appeal; the case was pending at year's end.

## **b. Disappearance**

There were no reports of politically motivated disappearances.

## **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution and law prohibit such practices; however, some police officers reportedly tortured, beat, raped, and otherwise abused suspects. Police torture and physical abuse allegedly occurred during interrogation, arrest, detention, and searches of persons' homes. The ICD reported that 24 complaints of rape and 20 complaints of torture were filed against police officers during its 2007-08 reporting period. The ICD report did not indicate the disposition of these complaints.

On October 14, 10 police officers from the Vosloorus Tracing Unit allegedly tortured two brothers suspected of theft. On November 22, a 17-year-old alleged he was beaten and tortured by six police officers from the Diepkloof Police Station. On November 23, Tefo Kgame collapsed and died of unnatural causes after police allegedly beat him at the same station. Relatives filed murder charges, but the implicated officers were not suspended from duty. An ICD investigation was ongoing at year's end.

Incidents of police harassment of foreigners continued, particularly during coordinated police raids in areas where foreign nationals resided. Some state hospitals reportedly refused emergency treatment on a routine basis to indigent foreigners, despite regulations requiring that hospitals provide such treatment.

Asylumseekers claimed that government-contracted security forces outside immigration facilities used excessive force. On September 30 and October 22, security forces forcibly dispersed asylum seekers outside the Nyanga Refugee Reception Centre in Cape Town. The media reported that police fired rubber bullets and that contracted security employees whipped asylum seekers. The Department of Home Affairs (DHA) stated it would investigate and punish the perpetrators; no action had been taken by year's end.

Injuries resulted from vigilante and mob action against suspected criminals, in addition to acts of violence against persons suspected of being witches.

### *Prison and Detention Center Conditions*

The majority of the 237 operational prisons did not meet international standards, and prison conditions did not always meet the country's minimum legal requirements. According to the latest Judicial Inspectorate of Prisons (JIP) report for the period from April 2007, through March 31, 2008, there were 165,987 prisoners in facilities designed to hold 114,559. Of these, 6,615 inmates were foreign nationals, primarily from Zimbabwe and Mozambique. Due to severe overcrowding, many prisoners had less than 13 square feet in which to eat, sleep, and spend 23 hours a day. The unmet norm applied to prisons for floor space per prisoner is approximately 36 square feet for communal space and 60 for single cells. According to the JIP report, there were 1,136 prison deaths in 2007-08, 1,056 of them from natural causes, including HIV/AIDS; the remaining 80 deaths were the result of suicides, assaults, or accidents.

A 2008 Department of Correctional Services (DCS) study on HIV/AIDS indicated 19.8 percent of sentenced prisoners between the ages of 15 and 49 were HIV-positive. However, NGOs working on HIV/AIDS in prisons believed that the percentage of HIV-positive prisoners was higher than that of the general population's 25 percent. The DCS had 16 centers dispensing antiretroviral (ARV) therapy to approximately 3,500 sentenced prisoners during the year.

According to the 2007-08 JIP report, there were 1,498 complaints of assault by inmates on inmates and 1,004 complaints of assault by staff on inmates. There were several reports of physical and sexual abuse by both prison officials and prisoners. Some detainees awaiting trial reportedly contracted HIV/AIDS through rape.

Corruption remained a problem within prisons, although in most cases correctional services officials were either suspended or fired following an investigation. According to the JIP report, there were 392 complaints of corruption during the annual reporting period. In November 2007 President Mbeki ordered the Special Investigating Unit (SIU) to look into allegations of tender abuse in the DCS. On May 20, SIU briefed the Parliamentary Portfolio Committee on Correctional Services. Investigations, which remain ongoing, had raised procedural concerns, identified irregularities in 23 contracts, and recommended 433 officials for discipline. On August 20, the DCS national commissioner launched an investigation into allegations of malfeasance in tendering for contracts in which funds were allegedly awarded unlawfully to a catering company.

There were allegations of corruption and abuse of detainees by officials at the overcrowded Lindela Repatriation Center, the country's largest detention facility for undocumented immigrants. Officers from Lindela were among those convicted by the DCS of corruption or abuse. Following the recommendations made by the presidentially mandated Jali Commission in 2006, DHA assigned more staff to redress the shortfall at the Lindela center, and new legislation shortened the deportation process to less than a month, significantly reducing strain on center operations.

Although the government operated 13 youth detention facilities, the JIP reported that 1,692 children under the age of 18 were held with adults because they needed to be close to the courts; 867 of them had not been sentenced at the end of the reporting period. There were credible reports that these youths were vulnerable to sexual exploitation, including rape.

Pretrial detainees generally were held with convicted prisoners. The government permitted independent

monitoring of prison conditions, including visits by human rights organizations to 83 percent of facilities. In total the JIP received and recorded 158,362 complaints from prisoners.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention, and the government generally observed these prohibitions; however, prolonged pretrial detention was a problem, and police arbitrarily arrested demonstrators.

##### *Role of the Police and Security Apparatus*

The SAPS, under the Department of Safety and Security, has primary responsibility for internal security. The South African National Defense Force (SANDF), under the Department of Defense, is responsible for external security but also has domestic security responsibilities. During the year the president ordered elements of the SANDF to be deployed into townships to assist the SAPS after xenophobic violence broke out in May. Major cities, including Johannesburg, Durban, Pretoria, and Cape Town, also maintained metropolitan police forces under local control.

The NPA's Directorate of Special Operations (DSO), known as "the Scorpions," was used to coordinate efforts against organized crime and official corruption. The DSO was in the process of being disbanded under an initiative launched by the ANC. Legislation to amalgamate the DSO with the SAPS was passed by parliament in October. The political opposition and general public criticized the legislation, charging that the disbandment was retaliation for DSO investigations of high-ranking ANC officials, including party president Jacob Zuma.

During the year the ICD received 2,101 allegations of criminal offenses committed by police, a 3-percent increase over the previous year, and 2,770 complaints of police misconduct, a 3-percent decline from the previous year.

To address problems of crime and misconduct, SAPS provided its officers with comprehensive training in corruption prevention, human rights, and ethics, and with access to social workers, psychologists, and chaplains to enhance psychological well-being. The ICD investigated reports of police misconduct and crime; during the reporting period, nine officers were found guilty of murder and sentenced to imprisonment, while eight officers were found guilty of culpable homicide and sentenced to imprisonment, suspended sentences, and/or fines.

Following a presidentially mandated review of the criminal justice system in August, Deputy Justice Minister Johnny de Lange announced the need for major reforms. De Lange commissioned 10 task groups to recommend reform strategies. Their work was ongoing at year's end. SAPS continued efforts to professionalize; however, it remained ill equipped, overworked, underpaid, and poorly trained. Although SAPS made efforts to improve coverage in rural and township areas, the majority of law enforcement activities remained focused on wealthy residential and business areas.

##### *Arrest and Detention*

The law requires arrest warrants based on sufficient evidence and issued by a magistrate or judge and provides that all detainees be informed promptly of the reasons for their detention, and of their right to remain silent and the consequences of waiving that right. Detainees must be charged within 48 hours of arrest, held in conditions respecting human dignity, allowed to consult with legal counsel at every stage of their detention, and permitted to communicate with relatives, medical practitioners, and religious counselors. Courts and police generally respected these rights. Detainees must be released (with or without bail) unless the interests

of justice require otherwise; however, bail for pretrial detainees often exceeded what suspects could pay. According to the annual JIP report, 11,941 prisoners remained in detention as of March 31 because they were unable to post bail. Some schoolchildren spent more than a year in detention because their families could not post bail.

Human rights groups, judges, and judicial scholars continued to express concern about the Criminal Procedure Second Amendment Act, which mandates minimum jail sentences and prohibits bail in certain cases.

Lengthy pretrial detention was a problem. According to the JIP annual report, detainees waited an average of three months, but some as long as two years, before a trial. The report found that 48,729 prisoners were awaiting trial as of March 31, an increase from 45,079 prisoners from the previous year.

#### **e. Denial of Fair Public Trial**

The constitution and law provide for an independent judiciary and the government generally respected judicial independence in practice. However, the judiciary was understaffed and underfunded, and there were reports that legal documents used in trials were lost. In April files pertaining to the case of suspended Ekurhuleni police chief Robert McBride disappeared.

##### *Trial Procedures*

The bill of rights provides for due process, including the right to a fair public trial within a reasonable time after being charged, and the right to appeal to a higher court. It also gives detainees the right to state-funded legal counsel when "substantial injustice would otherwise result"; however, a general lack of information for accused persons regarding their rights to legal representation and the government's inability to pay for these services remained problems.

There is a legal presumption of innocence for criminal defendants. Judges and magistrates hear criminal cases and determine guilt or innocence. In lieu of juries, the law requires that a panel of lay assessors and a magistrate hear cases involving murder, rape, robbery, indecent assault, and assault leading to serious bodily harm. The two assessors may overrule magistrates on questions of fact. Magistrates also can use assessors in an advisory capacity in adjudicating bail applications and sentences. Defendants have the right to be present in court and can question witnesses in court and present their own witnesses and evidence. Defendants have access to government evidence before going to court. During the year the government operated 57 justice centers that provided legal assistance to the poor in order to speed the administration of justice, reduce the court rolls, and alleviate overcrowding in prisons. However, serious delays continued to be a problem.

##### *Political Prisoners and Detainees*

Since 2005 IFP has maintained there were 384 IFP members in prison for political reasons. In January the IFP petitioned both the president and the justice minister for their release. In February the IFP took the matter to the High Court, where the judge ordered the justice minister to consider all 384 applications for presidential pardons within three months. In April the IFP sent a letter to the NGO Amnesty International (AI) complaining that both President Mbeki and Justice Minister Mabandla had ignored the matter. There were no further developments by year's end.

##### *Civil Judicial Procedures and Remedies*

There is an independent and impartial judiciary in civil matters. There is access to the courts to bring lawsuits seeking damages for, or cessation of, a human rights violation.

## **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution and law prohibit such actions. However, there were allegations of police abuse during sweeps and home searches and criticisms of police and judicial procedures, including that warrants were issued despite minimal evidence.

The law authorizes state monitoring of telecommunications systems, including cellular telephones, the Internet, and e-mail, for criminal investigations. However, opposition parties and many civil society groups opposed the law, and the provisions were not implemented by year's end.

The Promotion of Access to Information Act is intended to assist authorities in obtaining personal information in connection with criminal investigations; however, opposition parties and human rights NGOs objected to its broadly defined provision that enables the government to access an individual's personal information.

Farm owners continued to evict workers legally and illegally. The law requires that evictions be approved by a court; however, less than 1 percent of evictions involved a legal process, according to the Nkuzi Development Association, a domestic NGO. Nkuzi's extensive national eviction survey indicated that farm workers were generally unaware of their right to legal counsel during eviction proceedings. In Limpopo, where several hundred evictions took place, the NGO had only two attorneys and at times lacked funds for litigation.

## **2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The constitution and law provide for freedom of speech and of the press, and the government generally respected these rights. Individuals criticized the government both publicly and privately without reprisal. However, several apartheid-era laws that remained in force posed a potential threat to media independence.

The independent media expressed a wide variety of views, although some journalists expressed concern that the government heavily influenced and tried to control the media. In November 2007 former ANC presidential candidate Tokyo Sexwale launched a successful bid for a 30 percent stake in Johncom Media, which owns the *Sunday Times*, the *Sowetan*, and part of *Business Day*. In November 2007 Koni Media Holdings failed in its bid to buy a controlling stake in Johncom. Koni is owned by foreign affairs spokesperson Ronnie Mamoepa, presidential adviser Titus Mafolo, and former protocol chief Billy Modise, close confidantes of former president Mbeki.

According to the South African Advertising Research Foundation, print media reached 46.4 percent of the population. Nevertheless, the majority received news through radio broadcasts from the government-owned South African Broadcasting Corporation (SABC) and community radio stations.

The SABC broadcast in the country's 11 official languages and owned and controlled the majority of television and radio outlets. The SABC signal reached 92 percent of the population, with a viewership share of 66 percent over the age of 16. SABC estimated that 75 percent of its audience was black, 12 percent white, 10 percent colored, and 3 percent Indian.

The SABC provided news coverage of the government and the leading opposition parties. In December 2007 President Mbeki appointed new members to the SABC board. Supporters of Mbeki's rival, Jacob Zuma, accused the new board of being biased towards Mbeki. The following months saw conflict between the SABC board and Zuma allies on the Parliamentary Portfolio Committee on Communications. On April 30, the committee, led by ANC members and over the objections of opposition parties, passed a vote of no

confidence in the SABC board. On November 13, parliament passed the Broadcasting Amendment Bill, allowing the president to replace any member of the board.

Low-power, nonprofit community radio stations continued to play an important role in informing the mostly rural public; however, they often had difficulty producing adequate content and maintaining staff. Government broadcast regulators regularly issued new community radio licenses and withdrew others for noncompliance with the terms of issuance.

Privately owned E.tv was the second largest channel in the country with a terrestrial signal reaching 80.5 percent of the population. It was also the most-viewed English language channel with a viewership of 38.4 percent over the age of 16. E.tv estimated that 70 percent of its audience was black, with the highest growth segment being viewers from the black middle class; 13 percent was white, 13 percent colored, and 4 percent Indian.

High-ranking government and political officials on occasion reacted sharply to media criticism and accused black journalists of disloyalty and white journalists of racism. Some journalists believed that the government's sensitivity to criticism caused self-censorship in the media.

On April 23, the SABC publicly defended itself against claims it favored the ANC. On November 3, the opposition party United Democratic Movement filed a complaint with the Independent Communications Authority of South Africa, accusing the SABC of granting scant airtime to smaller parties and of cutting a November 2 scheduled interview with five opposition parties in favor of live coverage of an ANC rally. The ANC later filed a complaint with ICASA accusing SABC of favoring a new party that was critical of the ANC.

Several laws remained in effect that permitted the government to restrict the publication of information about the police, the national defense forces, prisons, and mental institutions. There were no reports that these laws were invoked during the year; however, journalists and media managers considered them a threat to constitutional protections.

The Foreign Publication Board reviewed written and graphic materials published in, or imported into, the country. The board had the power to edit or ban books, magazines, movies, and videos, and it regularly exercised that power, mostly regarding pornographic material. Journalists, media houses, and industry associations continued to criticize efforts to extend the board's authority to newspapers and broadcast media.

### *Internet Freedom*

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in peaceful expression of views via the Internet, including by e-mail. A private technology industry survey published in December estimated there were 4.5 million Internet users in the country, representing approximately 9 percent of the population. The study reported an increase in access of 12.5 percent since 2007, attributed largely to small businesses.

### *Academic Freedom and Cultural Events*

There were no government restrictions on academic freedom or cultural events.

## **b. Freedom of Peaceful Assembly and Association**

### *Freedom of Assembly*



The constitution and law provide for freedom of assembly; however, police forcibly dispersed several demonstrations during the year, which resulted in injuries.

Several protests over poor delivery of basic services took place across the country, including violent demonstrations in Western Cape, Gauteng, and North West provinces. Police used batons and rubber bullets to control the demonstrations; several injuries were reported. For example, from January 28 to 31, police in Cape Town used plastic-coated steel bullets and stun grenades to disperse 900 members of the South African Municipal Workers' Union, which was protesting the city's proposed labor restructuring.

### *Freedom of Association*

The law provides for freedom of association, and the government generally respected this right.

### **c. Freedom of Religion**

The constitution and law provide for freedom of religion, and the government generally respected this right in practice.

### *Societal Abuses and Discrimination*

There were occasional reports of desecration and vandalism or verbal or written harassment directed against religious minorities during the year.

The Jewish community was estimated at 75,000 to 80,000, although it was contracting due to the emigration of young professionals seeking economic opportunities. According to the Jewish Board of Deputies, there were 59 anti-Semitic incidents recorded in 2007, down from a record 82 the previous year. Most of these were verbal assaults, often made by occupants of cars passing near synagogues. There were cases of hate mail and offensive anti-Jewish literature and an incident of offensive graffiti in a Jewish book at a school event. Two Johannesburg kosher butcheries received telephone threats of an anti-Israel boycott.

In April the Palestine Solidarity Committee on the campus of the University of the Witwatersrand in Johannesburg launched an anti-Israel campaign. Within 24 hours of the launch, swastikas were spray-painted on school property and anti-Semitic slogans appeared around campus. Jewish students concerned for their safety removed their yarmulkes. University administrators forced the committee to halt the campaign in response to complaints.

On September 14, during Ramadan, unknown assailants broke into a mosque in Potchefstroom, smeared the prayer room with blood and left two pig heads behind. Faith groups, including the Council of Muslim Theologians and the Bishop Desmond Tutu Diversity Trust, condemned the desecration. Police launched an investigation; it was ongoing at year's end.

For a more detailed discussion, see the [2008 International Religious Freedom Report](#).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The government's policy prohibited encampment of foreign asylum seekers and refugees in favor of free movement and integration of documented migrants into local communities, with guarantees for the right to work and access to social services. While this generally offered greater liberty to foreigners, many NGOs criticized government

protection of foreigners as inadequate during the year.

The law does not prohibit forced exile; however, the government did not use it.

### *Internally Displaced Persons (IDPs)*

In mid-May xenophobic attacks against foreign African migrants and ethnic minorities by South African civilians in townships in Johannesburg escalated into a national wave of violence in which 62 people were killed in Western Cape, Gauteng, and KZN provinces. Of these, 21 were South African citizens, 11 were Mozambican, five were Zimbabwean, and three were Somali. The remaining 22 bodies were not identifiable. Fifty-three of the killings took place in Gauteng Province. An estimated 670 persons were seriously injured nationwide. On May 22, SANDF deployed in conjunction with SAPS to areas where violence had occurred.

The perpetrators blamed the immigrants for job and housing losses and increasing levels of crime. Most attacks were perpetrated by small mobs adopting vigilante tactics, in some cases under the influence of alcohol. Some victims were beaten to death, others were stabbed, and their shacks were looted and burned. In one incident on June 14, Mozambican Ernesto Alfabeto Nhamuave was beaten and then burned to death by vigilantes incited to violence by a local pastor.

According to the Department of Justice, an estimated 1,300 citizens were arrested on xenophobia-related charges in the weeks following the attacks. In total 1,446 criminal charges were brought against 421 persons in seven of the nine provinces. Of these, 82 suspects were exonerated by year's end. Only in Western Cape were special courts created to address the cases.

The estimated 80,000 migrants who were displaced by the violence fled to 72 temporary shelters set up by NGOs and the government in the wake of the attacks. Humanitarian organizations raised concerns that government efforts did not adequately meet the UN Guiding Principles on Internal Displacement, which require states to provide food, water, shelter, medical care, and security to displaced persons. The organizations cited a lack of consultation and information-sharing with the displaced, separation of women from their children, hostility from local residents living near the relocation sites, inadequate water, and sanitation and security as serious problems.

Populations at the shelter sites gradually decreased, as some IDPs returned to their countries of origin (mainly Mozambique, Malawi, and Zimbabwe), while others returned to their former homes or sought safer accommodation in new locations.

On July 31, the Gauteng provincial government announced it would begin closing its temporary shelters by August 15, and the Western Cape followed suit. The closures drew criticism from the UN and assistance organizations, which voiced concern that government efforts to encourage host communities to accept foreigners were inadequate. The provinces argued that migrants were safe to return to the townships. However, following the killings of at least five resettled foreigners in early August, reports that IDPs feared for their lives if they returned to their host communities, and pressure from UNHCR and NGOs, the provinces extended their closure deadlines.

On September 19, the Constitutional Court ruled that all temporary shelters were to remain open until a full hearing could be held on November 20. However, the provinces began closing the sites before the hearing was held. For example, on September 23, an estimated 800 foreign migrants were left without formal shelter after workers contracted by the provincial government in Gauteng removed the army tents at Camp Akasia. On September 30, despite increasing criticism from Office of the UN High Commissioner for Refugees (UNHCR) and NGOs, Gauteng demolished three more camps at Glenanda, Boksburg, and Rand Airport.

UNHCR officers provided small stipends of 500 rand (\$54) or 1,200 rand (\$129) for reintegration.

Citing the constitutional court's ruling requiring the care of asylum seekers and refugees, but not illegal aliens, provincial governments held summary reviews of hundreds of camp residents. Most were deemed not to have valid asylum claims and were thus subject to deportation. All Gauteng sites were officially closed by October 1, while the last shelter in Western Cape closed at the end of November. However, a number of foreigners refused to leave, claiming they feared reprisal if they returned to their host townships. At year's end, small groups of foreign migrants remained at two of the camps despite the lack of piped water, sanitation, or regular food deliveries.

Violence continued against Somalis during the year. On October 3, in Eastern Cape Province, Somali Sahra Omar Fara was stabbed and bludgeoned to death along with her two teenage sons and 12-year-old daughter. Also in October, three other Somali shopkeepers were killed. On October 7, UN High Commissioner for Human Rights Navi Pillay and AI condemned the killings and called on the government to do more to stop the xenophobic violence.

### *Protection of Refugees*

The law provides for the granting of asylum and refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and the government has established a system for providing protection to refugees. The law also provides for a broader definition of refugee status to be granted if a person satisfies the definition in the 1969 Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa.

In practice, the government generally provided protection against the expulsion or return of those recognized as refugees. However, refugee advocacy organizations charged that police and immigration officials abused refugees and asylum seekers and that they repatriated asylum seekers from throughout Africa immediately upon their arrival at airports without giving them the benefit of formal asylum processing. Daily deportations of undocumented Zimbabweans continued, even though some may have had a valid fear of persecution based on ongoing political violence in Zimbabwe. Applicants for asylum and NGOs assisting refugees also reported that immigration authorities sought bribes from those seeking permits to remain in the country. The DHA adopted anticorruption programs and imposed sanctions on officials or contracted security officers found to be accepting bribes.

On some occasions there was concern about the expulsion or return of refugees to countries where their lives or freedom would be threatened. According to the NGO Lawyers for Human Rights (LHR), 750 documented refugees were transported to Lindela repatriation center from the Rifle Range safety site for IDPs. LHR launched an urgent application in the Pretoria High Court to prevent the refugees from being deported. The 750, mainly Congolese, were released and squatted near a highway. A few days later, 208 men were arrested and detained. After charges against them were withdrawn, they were sent back to Lindela, despite having valid documents. Most of the group ultimately returned to their home countries.

Due to the growing economic and political problems in neighboring Zimbabwe, the number of Zimbabweans seeking employment in the country continued to increase. While no official statistics were released, reports by independent organizations such as UNHCR asserted that as many as 20,000 Zimbabweans entered each month. In June the UNHCR and DHA reported an increase in Zimbabwean asylum applications to an estimated 40,000. DHA struggled to keep up with processing; however, in June DHA began an operational overhaul to enable same-day adjudication of asylum claims.

Unlike in the previous year, there were no reported incidents of white farmers adopting vigilante tactics in an

attempt to stem the flow of Zimbabwean migrants. Some white farmers were accused of hiring Zimbabweans at below-minimum wages at the expense of local workers.

The government cooperated to some degree with the UNHCR and other humanitarian organizations in assisting recognized refugees and asylum seekers. The government also offered temporary protection to some individuals who may not have qualified as refugees under the 1951 convention or the 1967 protocol. From April 2007 through March 2008, DHA, in collaboration with UNHCR, issued 1,117 UN Convention Travel Documents. DHA issued 8,322 refugee identity documents and considered 58,584 asylum applications, of which 41,684 were rejected and 9,727 were approved.

### **3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution and law provide citizens with the right to change their government peacefully, and citizens exercised this right through periodic, free, and fair elections based on universal suffrage.

#### *Elections and Political Participation*

The country held a largely peaceful national election in 2004; Mbeki was elected to a second five-year term as president and head of state. The 2004 election was marred by a few incidents of political violence in KZN. The IFP registered complaints with the Independent Electoral Commission, including of excessive numbers of absentee ballots and incidents of political intimidation. The IPF challenged the election in KZN but later withdrew its court action and accepted the results. The ANC increased its parliamentary strength from 266 seats to 279 out of 400. Floor crossing by members initially elected as representatives of other parties increased the ANC's seats to 297 at the end of 2007. Three small parties lost their parliamentary representatives to other parties in 2007, reducing the number of parties with parliamentary representation to 15.

On September 21, Mbeki resigned the presidency following a September 20 statement by the ANC National Executive Committee recalling him. On September 23, Deputy President Phumzile Mlambo-Ngucka and a third of Mbeki's cabinet ministers and deputy ministers resigned in solidarity with Mbeki, although 18 ministers ultimately retained their positions. On September 25, parliament elected ANC Deputy President Kgalema Motlanthe as interim president until elections anticipated in 2009. Speaker of Parliament Baleka Mbete was named the new deputy president.

Incidents of violence among rival factions of the ANC occurred. On June 12, at an ANC rally in the Western Cape, ANC Provincial Secretary Mcebisi Skwatsha was stabbed in the neck by another ANC member, who was arrested and charged with attempted murder. On August 25, the case was reassigned to a regional court and was ongoing at year's end.

On June 16, ANC Youth League President Julius Malema's vow to kill for ANC president Jacob Zuma provoked widespread alarm and criticism from political circles and civil society groups. On July 13, following the ANC North West provincial conference, two ANC members were stabbed by five suspended ANC members who were barred from attending the provincial conference.

Prior to the recall of President Mbeki and subsequent reshuffling of ministers, women held 11 of 28 ministerial positions, including the ministerial portfolios of health and foreign affairs, and nine of 21 deputy ministerial positions. There were 135 women in the 400-seat National Assembly and 22 women among the 54 permanent members of the National Council of Provinces (NCOP). Women occupied three of four parliamentary presiding officer positions, including the speaker and deputy speaker of the National Assembly and deputy chair of the NCOP.

Also prior to the recall, there were an estimated 142 members of minorities (non-black citizens) in the National Assembly. There were 18 minority members among the 54 permanent members of the NCOP. The cabinet included seven members of minority groups.

### *Government Corruption and Transparency*

The law provides criminal penalties for official corruption, and the government generally implemented these laws effectively. Public officials were subject to financial disclosure laws, and the government continued its efforts to curb corruption; however, corruption remained a problem. The public perception of widespread official corruption, particularly in the police and the DHA, continued despite government assurances that the issue was being addressed.

The government's anticorruption actions included ongoing investigations into the alleged misconduct of public officials. At least 10 agencies were engaged in anticorruption efforts. Some, like the Public Service Commission, the Office of the Public Prosecutor, and the Office of the Auditor-General, are constitutionally mandated. SAPS had a unit dedicated to anticorruption activities.

The SIU investigated corruption in government departments and identified civil servants alleged to have improperly received state housing subsidies. The government took administrative action to recover these subsidies. The SIU investigated 31,000 public servants and prosecuted 3,800 for fraud. Of the remainder, 443 who admitted guilt were allowed to keep their jobs if they agreed to reimburse the stolen money.

The Office of the Public Protector investigated government abuse and mismanagement and served as the office of last resort for citizens reporting unfair treatment by government entities. The office handled an increasing number of complaints but was hampered by severe resource constraints.

There were no developments in the trial, postponed since 2006, of Bloemfontein's former mayor, Pappie Mokoena, municipal manager, chief operating officer, and nine other city officials on charges of corruption and fraud.

The government suspended prosecutions in "Travelgate," the 2004 controversy involving misuse of official funds by parliamentarians and their travel agents. In May the liquidators of Bathong Travel, the agency at the center of the scandal, announced that the parliamentary probe had been terminated. Opposition parties asked parliament to explain why all civil actions against members of parliament (MPs) were abandoned. Parliament responded that internal parliamentary proceedings against 11 implicated MPs were still ongoing. One of the MPs identified for prosecution, Mnyamezeli Booï, was recently appointed as the ANC's chief whip in the National Assembly.

The National Prosecuting Authority (NPA) continued its investigation into corruption charges against ANC President Jacob Zuma. In December 2007 the NPA indicted Zuma on 16 counts of racketeering, corruption, money laundering, and fraud. In July Zuma lost his Constitutional Court appeal to have the warrants used by the DSO to search his properties ruled invalid. On September 12, Pietermaritzburg High Court Judge Chris Nicholson dismissed the corruption charges against Zuma, ruling that the government had mishandled the case and that Zuma had been wrongly denied a chance to give his side of the story to investigators before being charged. In his ruling, Nicholson stated he was not convinced that Zuma "was incorrect in averring political meddling in his prosecution," an inference that led the ANC to recall President Mbeki.

In his resignation speech, Mbeki disputed Nicholson's characterization and denied using the NPA to undermine Zuma. On November 12, Mbeki lost an appeal against the Nicholson ruling to the Constitutional Court, but he planned to appeal to the Supreme Court.

Separately, the NPA made two appeals to the Supreme Court. The first was regarding the Nicholson ruling. On November 28, the Supreme Court reserved judgment on this appeal until 2009. The NPA's second appeal to the Supreme Court, which opposed Mbeki's appeal, was also pending at year's end.

The law provides for access to government information; however, the government did not always comply with the law. If a government department refuses to provide information, the requester can launch an internal appeal. If this also fails, the requester may appeal a decision to the High Court, a lengthy process that excludes groups or individuals who cannot afford it. The Open Democracy Advice Center (ODAC) continued to report that many requests for information went unanswered or were answered outside the period provided for in the legislation. However, ODAC's 2007 annual report noted that many requests were unclear or poorly drafted, making a response difficult.

#### **4. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to their views. Many organizations participated in governmental bodies that gathered information and developed policies related to human rights. International and domestic NGOs and UN agencies spoke out against xenophobic violence in the country during the year and criticized the government's response.

The South African Human Rights Commission (SAHRC), which was created by the government but operated independently, was responsible for promoting the observance of fundamental human rights at all levels of government and throughout the general population. The SAHRC also has the power to conduct investigations, issue subpoenas, and hear testimony under oath. SAHRC enjoyed support from the government without interference, and the government reacted positively towards SAHRC reports. During the year the SAHRC issued reports on xenophobia, crime, refugees, human rights, and democracy.

The SAHRC investigated several complaints during the year, including those prompted by ANC Youth League President Julius Malema's public oath at a Youth Day rally on June 16 that he would kill for ANC President Jacob Zuma. Malema ignored SAHRC's deadline for a public apology, but he agreed not to use the term "kill." Congress of South African Trade Unions Secretary General Zwelinthini Vavi was similarly investigated for incendiary remarks at a funeral on June 21. Although Vavi did not apologize, he did meet with the SAHRC and agreed not to use the phrase "shoot to kill."

#### **5. Discrimination, Societal Abuses, and Trafficking in Persons**

The constitution and law prohibit discrimination on the grounds of race, disability, ethnic or social origin, color, age, culture, language, sex, pregnancy, sexual orientation, or marital status. However, entrenched attitudes and practices sometimes restricted these rights in practice.

##### *Women*

Rape, including spousal rape, is illegal but remained a serious problem. According to the 2007-08 SAPS annual report, the reported incidence of rape from April to December 2007 decreased 8.8 percent from the comparable nine-month period in 2006. However, over 4,000 rapes were reported on average each month, alongside 750 additional cases per month of assault.

Further, the Medical Research Council estimated that only one in nine rapes was reported to SAPS, as in most cases the attackers were friends or family members of the victims, who therefore were afraid or

reluctant to press charges. This estimate implies that half a million women suffered sexual violence. The NGO Treatment Action Campaign reported that one in three South African women would be raped in her lifetime.

A poor security climate and societal attitudes condoning sexual violence against women contributed to the problem. On February 17, Nwabisa Ngcukana was stripped and sexually assaulted by men at a taxi rank in KZN who claimed her attire was indecent; she was wearing a miniskirt. In April the Taylor Nelson Sofres Research Survey found 29 percent of black men nationwide believed a woman wearing revealing clothes was asking to be raped.

Although judges in rape cases generally followed statutory sentencing guidelines, women's advocacy groups criticized judges for using criteria such as the victim's behavior or relationship to the rapist as a basis for imposing lighter sentences.

Allegations of rape, sexual assault, and sexual harassment of black and foreign female farm workers by farm owners, managers, and other farm workers were common.

In December 2007 parliament passed amendments to the Sexual Offences Act that broadened the physical definitions of rape and indecent assault, included males as victims, and restricted admission of victims' sexual histories as evidence in court in an effort to improve the government's capacity to punish perpetrators and protect victims. Victims' rights groups were critical, however, of the law's conditional provision of post-exposure prophylaxis only to victims who filed charges with SAPS or reported the alleged offenses to designated health establishments.

The government operated 64 sexual offenses courts throughout the country that included designated waiting rooms and counseling for victims. The NPA's Sexual Offences and Community Affairs Unit (SOCA) operated 20 Thuthuzela Care Centers (TCC), which specialized in rape care management and streamlined a network of existing investigative, prosecutorial, medical, and psychological services in the hospitals where they were located.

According to a 2008 study by SAPS and the Centre for the Study of Violence and Reconciliation, only 4.1 percent of reported cases resulted in convictions. One in every eight suspects was under the age of 17. In rape cases involving victims under the age of 16, one of every 10 cases resulted in a conviction.

Domestic violence was pervasive and included physical, sexual, emotional, and verbal abuse, as well as harassment and stalking by former partners. The Domestic Violence Act of 1998 defines victims of domestic violence (including persons who are not in legal or common-law marriages), facilitates the serving of protection orders on abusers, requires the police to take victims to a place of safety, and allows police to seize firearms at the scene and to arrest abusers without a warrant. Violating a protection order is punishable by a prison sentence of up to five years, or 20 years if additional criminal charges are brought.

According to NGOs, about one in four women were in abusive relationships, but few reported it. TCC counselors also alleged that doctors, police officers, and judges often treated abused women poorly.

The government financed 39 shelters for abused women, but more were needed, particularly in rural areas. The SAPS continued converting Child Protection Units to Family Violence, Child Protection, and Sexual Offences Units (FCS). FCS investigating officers and some other police officers received annual training in gender sensitivity. The government continued to conduct domestic violence awareness campaigns.

Prostitution is illegal but was widespread and practiced openly. Women were trafficked to, from, and within the country for exploitation in prostitution.

The law prohibits sexual harassment; however, sexual harassment remained a widespread problem. The government left enforcement primarily to employers, with criminal prosecution a rare secondary step at the initiative of the complainant. The Department of Labor (DOL) issued guidelines to employers on how to handle workplace complaints, which allowed for dismissal in some circumstances. Tougher punishments could be generated for assault, which carries a range of penalties depending on the severity of the act, but only if the complainants press charges.

Discrimination against women remained a serious problem despite their equal rights under the law governing inheritance, divorce, and child custody. Women experienced economic discrimination in areas such as wages, extension of credit, and ownership of land. For example, township housing transfer schemes favored existing titleholders, who tended to be men.

Many rural areas were administered through traditional patrilineal authorities, such as a chief or a council of elders, who did not grant land tenure to women, a precondition for access to housing subsidies. A constitutional court ruling in June upholding a tribe's decision to allow Tinyiko Shilubana to succeed her father as chief was criticized by traditional authorities who said the verdict contravened African custom.

Women, particularly black women, typically had lower incomes and less job security than men. Most women were engaged in poorly paid domestic labor and microenterprises, which did not provide job security or benefits. The Department of Trade and Industry provided incentive grants to promote the development of small and medium-size businesses and microenterprises for women, young persons, and persons with disabilities.

According to the Businesswomen's Association 2008 census, the number of women in top leadership positions grew in recent years. Nevertheless, women held only 25.3 percent of executive-level and 14.3 percent of director-level positions. According to the presidency's Development Indicators Report for 2008, which cited 2006 data, women held only 27.4 percent of senior management and 21.6 percent of top management positions. The government's Labor Force Survey published in March indicated unemployment among women was higher than among men, at 26.7 percent versus 20 percent.

Female farm workers often experienced discrimination, and their access to housing often was dependent on their relationship to male farm workers. Female farm workers on maternity leave who could not obtain timely compensation via the Unemployment Insurance Fund often had no choice but to return to work shortly after giving birth, according to NGOs working with farm workers in Limpopo Province.

A number of governmental bodies, particularly the Gender Commission and the presidential Office of the Status of Women, and numerous NGOs monitored and promoted women's rights.

### *Children*

The government was generally committed to children's rights and welfare. However, registration of births was inconsistent, especially in remote rural areas or among parents who were foreign nationals and themselves unregistered. This resulted in lack of access for children to public services such as education, health care, and financial grants. According to a Social Security Agency report, more than 8.2 million children received social welfare grants. The government's 2008 budget extended child support grants from age 14 to 15; however, it was sometimes difficult for children, particularly those in rural areas or without documentation, to obtain access to health care facilities and other programs.

The law provides for increased access to education for disadvantaged children – traditionally black children – through a uniform system for the organization, governance, and funding of schools. It mandates compulsory



education from ages seven to 15 and ensures that children cannot be refused admission to public schools due to a lack of funds. However, public education is fee-based and the government does not fully subsidize education. Even if children qualified for fee exemptions, low-income parents had difficulty paying for uniforms, books, and supplies. Some children, therefore, were enrolled in school but did not attend.

According to the December 2007 School Realities Report published by the Department of Education, 98 percent of grade 1-12 school-age children were enrolled in school. Those not enrolled tended to be children with special needs. Most children attended school until the age of 15, when eligibility for the Child Support Grant ends. There were an equal number of boys and girls in grades 1-12, with boys slightly outnumbering girls in primary school (grades 1-7), but 8 percent more girls than boys were in secondary school (grades 8-12).

There continued to be reports of rape, sexual abuse, sexual harassment, and assaults of girls at school by teachers, students, and other persons in the school community. The law requires schools to disclose sexual abuse to the authorities; however, administrators often concealed sexual violence or delayed disciplinary action. The level of sexual violence in schools also increased the risk for girls of contracting HIV/AIDS or other sexually transmitted diseases, as well as unwanted pregnancies.

Although the law prohibits corporal punishment in schools, there were reports that teachers used physical violence to discipline students. Student-on-student violence, including racially motivated violence, continued to be a major concern of educational authorities and parents. Teacher organizations, parents, and police worked together in the "Safe Schools Program" to address these problems. Many schools implemented "Adopt-a-Cop" programs inviting SAPS officers into their schools for training and security.

HIV/AIDS activists, physicians, and opposition parties continued to criticize the government for failing to provide ARV therapy to all pregnant and breastfeeding women and thereby protect young children from HIV/AIDS transmission. In March the government issued new guidelines, consistent with those of the World Health Organization, to provide dual therapy, instead of nevirapine alone, to HIV-positive women nationwide to prevent mother-to-child HIV transmission; however, the new program reached only an estimated 30 percent of targeted women during the year. The government expanded the number of prenatal clinics but was not able to keep up with the rapidly growing number of children affected by HIV/AIDS, including both infected children and AIDS orphans.

Violence against children, including domestic violence and sexual abuse, remained widespread. While there was increased attention to the problem, a lack of coordinated and comprehensive strategies to deal with violent crimes continued to impede the delivery of needed services to young victims. According to the 2007-08 SAPS report, 16,068 children were raped between April and December 2007, 1,410 were murdered, 19,687 were assaulted with intention to do grievous bodily harm, and 3,517 were subjected to indecent assault. Observers believed that these figures represented a small percentage of the actual incidence of child rape, especially since most cases involving family members were not reported. According to the NGO Childline, girls have a one-in-four risk, and boys a one-in-five risk, of being raped before age 16. The country had a low conviction rate for rape and child abuse. The law states that no child under the age of 12 can consent to any sexual activity and sets 16 as the lowest age for consensual sex with another minor. Statutory rape is defined as sexual intercourse between anyone under 18 and an adult more than two years older. The statutory sentence for rape of a child is life in prison; however, the law grants judges discretion to issue more lenient sentences.

The high incidence of HIV/AIDS resulted in an increase in the number of child-headed households. These children sometimes turned to prostitution to support themselves and their siblings. Other children have been trafficked and forced into prostitution. NGOs provided shelter and medical and legal assistance for children in

prostitution and a hotline for victims of child abuse. The government donated land and buildings for shelters for such children, as well as other victims of sexual abuse, street children, and orphans.

AIDS activists alleged that children in prostitution were often highly sought after because of the widely held belief that sex with a virgin provided a cure for HIV/AIDS. SAPS officials, however, said that under questioning perpetrators usually admitted they knew this claim was false.

Despite outreach programs to discourage the practice, ritual circumcision of males, including children, usually by medically unqualified practitioners, was still a prevalent initiation tradition in various areas. Circumcision was considered a precondition for adult status, enabling marriage, inheritance, and other societal privileges. The House of Traditional Leaders attempted to address unsafe initiation practices and designed strategies to prevent deaths and the spread of diseases, such as HIV/AIDS. However, discussing the practice was taboo in many communities where it was considered a matter for chiefs to decide, and some traditional leaders spoke out against state interference.

Five boys died in Limpopo Province as a result of botched circumcisions, the same number as in 2007, despite legislation passed in 2001, regulating initiation schools. The Department of Health in the Eastern Cape provided surgeons, health officials, and vehicles during the June initiation season to monitor initiation practices. Nonetheless, 22 circumcision-related deaths at the hands of unmonitored practitioners were reported in the Eastern Cape during the June initiation period, according to press reports. From 2001 through 2007 the Eastern Cape recorded nearly 2,600 hospital admissions, 156 genital mutilations or amputations, and 232 deaths due to dehydration and infection from unsafe and nonsterile procedures. Illegal traditional surgeons were arrested and charged with culpable homicide.

### *Trafficking in Persons*

The government is limited to the use of piecemeal provisions of various laws to prosecute traffickers. The Prevention of Organized Crime Act of 1998 can be applied to trafficking, as can specific laws against child labor and forced labor. The Sexual Offences Act of 2007 makes interim provisions outlawing trafficking for purposes of sexual exploitation, in addition to creating new or expanded statutory offenses applicable to all forms of sexual violation of children and the mentally disabled and provisions for prosecutions of extraterritorial sexual exploitation. The 2005 Children's Act prohibits "the recruitment, sale, supply, transportation, transfer, harboring or receipt of children, within or across the borders of the Republic." The law also prohibits the commercial sexual exploitation of children, sexual intercourse with children under 16, or permitting a female under 16 to stay in a brothel for the purpose of prostitution. The maximum penalty for violations of the law is 20 years in prison. The Children's Amendment Act of 2007 addresses unlawful child labor in extreme forms such as slavery and commercial sexual exploitation. However, until the completion of regulations governing the act's implementation, the provisions on child trafficking cannot take effect.

The country was a source, transit, and destination for the trafficking of persons, including children, from other countries in Africa, Asia, and Europe for prostitution and forced labor. Domestic and international organized crime syndicates trafficked women in and out of the country for use in the sex industry, and girls were exploited for sex or domestic servitude. Young men were trafficked internally and across borders chiefly for agricultural work, but also for street vending, crime, begging, and prostitution.

The precise extent of trafficking operations was unknown, but a substantial number of persons were believed to be trafficked annually both internally and across borders. Of the 252 victims directly assisted by the International Organization for Migration (IOM) from 2004 through October 2008, most were Thai (140), Congolese (35), South African (22), Indian (12), Chinese (11), Mozambican (9) and Zimbabwean (9).

Trafficked women and children forced to work in the commercial sex industry often lived with other trafficked victims in segregated areas. They were frequently under constant surveillance; usually had no money or identifying documents; were often in debt to the agents who arranged their travel; often worked long hours – in some cases up to 18 hours each day and on weekends and when ill; and sometimes were fined by their traffickers for infractions of arbitrary rules. Young men trafficked for forced agricultural labor were often subjected to violence and food rationing.

Children were especially vulnerable to trafficking and in practice remained relatively unprotected from exploitation for sexual and labor purposes. The government did not address the growing problem of child sex tourism, for which girls and boys were trafficked internally and across borders. The trafficking of Mozambican, Malawian, and Zimbabwean children for agricultural labor resulted in the children's deportation as illegal aliens without appropriate protections.

According to the NPA, which leads government efforts to combat trafficking, Chinese traffickers made Johannesburg a regional hub for collecting victims from Lesotho, Mozambique, and Swaziland for exploitation locally and in other cities. Nigerians based in the country sold Malawian women into Europe. Russian and Bulgarian women were exploited in private men's clubs. Local women were sent to Hong Kong and Macau, while Thai women were brought into the country's port cities.

In most cases traffickers lured foreign women with promises of employment, marriage, or educational opportunities abroad. Traffickers often lured the children of poor families with promises of jobs, education, or a better way of life. Victims, who might have been kidnapped or forced to follow their traffickers, were subjected to threats of violence, withholding of documents, and debt bondage to ensure compliance.

The government continued to arrest and prosecute victims of human trafficking for unlawful acts committed as a direct result of their being trafficked. In addition, extensive pretrial delays caused some trafficking victims not to testify at the trials of their alleged traffickers.

In January the NPA's SOCA office established the Human Trafficking Unit to revive a defunct interagency task force and formulate a new strategy for dealing comprehensively with trafficking in persons. The NPA enlisted IOM to conduct training workshops for hundreds of social workers and government officials to improve recognition of trafficking victims, care and attention to victims, and referrals of cases to authorities. The government, IOM, and NGOs continued to expand awareness-raising activities.

The NPA maintained a witness protection unit headed by a special director of public prosecutions, but it relied heavily on NGOs to provide witness protection for trafficking victims. Some domestic victims of trafficking were placed in government facilities for the sexually abused. The government continued to fund private shelters that provided short- and long-term health care, counseling, and legal support to trafficking victims. However, the government continued to arrest, prosecute, convict, and deport trafficking victims for crimes they committed as a direct result of being trafficked.

Corruption within the police, immigration, customs, and private services at the international airports impeded interdiction efforts. Traffickers reportedly bribed officials to help them move victims out of transit areas to avoid detection. During the year DHA dismissed several immigration officers for involvement in trafficking and for petty corruption relating to trafficking. The border police, SAPS, and judicial officials received additional antitrafficking training during the year, but confusion between smuggling and trafficking remained a problem. Although the country had 64 sexual offenses courts with authority to handle trafficking cases, the lack of clear and complete antitrafficking legislation inhibited prosecutions.

In March SAPS arrested 27 Chinese women along with seven men accused of transporting them into the

country and trafficking them into the sex trade. A police spokesperson indicated the women entered the country illegally and, despite their status as victims of trafficking, would be deported.

In May Mozambican Aldina dos Santos was charged with child trafficking and forced labor for subjecting three girls to sexual exploitation and domestic servitude. The case was ongoing at year's end.

In June in Durban, a Sierra Leone national was arrested for selling girls aged eight to 12 into prostitution; the case was pending at year's end. From November 8 to 10, five Nigerian men were arrested for allegedly trafficking Nigerians through the country. On December 3, they were charged with human trafficking under the Sexual Offences Act of 2007 and drug-related offenses. In April 2007, 22 Thai women and two Thai traffickers pleaded guilty to violation of the Immigration Act, following their 2006 arrest in Durban. All 24 received suspended sentences and were deported to Thailand. Three local citizens involved in the case faced charges of racketeering; there was no further information available.

See also the State Department's [2008 Trafficking in Persons Report](#).

### *Persons with Disabilities*

The law prohibits discrimination on the basis of both physical and mental disability; however, government and private sector discrimination in employment existed. The law mandates access to buildings for persons with disabilities, but such regulations were rarely enforced, and public awareness of them remained minimal. General responsibility for the rights of persons with disabilities fell within the Department of Health, with individual organizations tending to particular handicaps such as blindness.

The law provides persons with disabilities with protection from harassment and, in conjunction with the Employment Equity Act, also provides guidelines on the recruitment and selection of persons with disabilities, reasonable accommodation for persons with disabilities, and guidelines on proper handling of employee medical information. Enforcement of this law was limited. The law also requires employers with more than 50 workers to create an affirmative action plan with provisions for achieving employment equity for persons with disabilities. Persons with disabilities constituted 5.9 percent of the general population, but only an estimated 0.02 percent of the public service workforce. The law does not allow persons with mental disabilities to vote.

In April 2007 allegations of sexual abuse surfaced at the Cullinan Care and Rehabilitation Center for intellectually and physically disabled persons in Pretoria. Following a media report exposing conditions at the center, the Department of Health intervened in September 2007. Several staff members were disciplined but were allowed to continue working at the facility.

### *National/Racial/Ethnic Minorities*

The law requires employers with 50 or more employees to ensure that previously disadvantaged groups, legally defined as "Blacks" (including "Africans," "Colored," and "Asians," and collectively constituting more than 90 percent of the country's population) are represented adequately at all levels of the workforce. Notwithstanding the country's antidiscrimination legislation, however, the DOL 2007 Employment Equity Analysis reported that Blacks remained underrepresented, particularly at the professional and managerial levels. According to the report, only 22.2 percent of top management positions, and approximately 36.5 percent of professional positions, were held by Blacks, and Black women remained by far the most disadvantaged group in number and quality of management or skilled jobs. Employers cited a lack of training and development, poor recruitment processes, and an antagonistic corporate culture as the main impediments to affirmative action.

In June the Pretoria High Court ruled in favor of the Chinese Association of South Africa's petition that

ethnically Chinese South African citizens be defined as Black in legislation benefiting previously disadvantaged groups such as the Broad-Based Economic Empowerment Act and the Employment Equity Act.

The continued killings of mostly white farm owners by black assailants created concern among white farmers that they were being targeted for racial and political reasons, although studies showed perpetrators were generally common criminals motivated by financial gain. There also were reports that white employers abused and killed black farm laborers, and complaints that white employers received preferential treatment from the authorities.

### *Indigenous People*

The Khoikhoi, indigenous nomadic herders of cattle and sheep, were dispossessed of their native lands and dispersed throughout the country in the 1970s. Today only a few thousand Khoikhoi remain, some of whom work as farmers or as farm laborers. Under the law, the Khoikhoi have the same political and economic rights as other citizens; however, the government did not always effectively protect those rights. Their participation was limited due to fewer opportunities, minimal access to education, and relative isolation.

### *Other Societal Abuses and Discrimination*

The post-apartheid constitution outlaws discrimination based on sexual orientation, and in 2006 the country legalized same-sex marriage. There were no reports of official mistreatment or discrimination. However, in its annual Social Attitudes Survey released on November 24, the Human Sciences Research Council found widespread public intolerance of homosexuality, which was commonly labeled "unAfrican," with 80 percent of respondents believing sex between two same-gender persons was "wrong."

Rights groups reported that homosexuals were subject to societal abuses including hate crimes, gender violence targeting lesbians, and killings. The NGO People Opposed to Women Abuse reported that attacks increased during the year and estimated that a lesbian was killed every three months in the country's townships. On April 28, Eudy Simelane, a former player on the national women's soccer team and well-known lesbian activist, was allegedly gang-raped and then stabbed to death east of Johannesburg. Five men were arrested; four were charged with murder, robbery, and rape. The case was pending at year's end.

On December 5, following at least 16 postponements, testimony began in the trial of seven men accused of the 2006 murder of a lesbian woman in Cape Town. The case was pending at year's end.

In July 2007 lesbian activist Sizakele Sigasa and her partner Salome Masooa were raped and shot to death in Soweto; no arrests were made. Two weeks later in July, Thokozane Qwabe, a lesbian, was killed in KZN, prompting an outcry from rights groups.

With availability of life-saving ARV treatments, civil society activities such as the Treatment Action Campaign, and government campaigns to reduce discrimination against persons with HIV/AIDS, the social stigma associated with HIV/AIDS began to decline but remained a general problem.

In May the soldiers' South African Security Force Union (SASFU) sued the SANDF for allegedly discriminatory HIV/AIDS policies. On May 17, the Constitutional Court ruled that SANDF must conduct individualized health assessments of members of the armed forces and SANDF could not exclude HIV positive persons from recruitment, external deployments, or promotions.

## **6. Worker Rights**

### **a. The Right of Association**

The law allows all workers with the exception of members of the National Intelligence Agency and the Secret Service to form and join unions of their choice without previous authorization or excessive requirements, and these laws were applied. A labor court and labor appeals court enforced these rights. There were slight gains in union membership during the year, which were attributed to global economic growth and a halt in government privatization, despite most job creation being in nonunionized service sectors. As of March, trade union membership was approximately 3.4 million, or approximately 35 percent of the population employed in the formal sector.

Labor laws extend to farm workers. The National African Farmers' Union received no complaints of harassment of union representatives. The DOL and unions enlisted the cooperation of AgriSA, the national farmers' organization, to educate farmers about workers' rights and to improve working conditions. According to Cosatu's 2006 report, only 10 percent of the workers in the agricultural labor force were unionized, a decline that some observers attributed to the 2005-06 droughts and poor harvests.

The law provides for the right to strike, and workers exercised this right, although workers considered to be providing essential services were prohibited from striking. Essential services were those deemed vital to the public's safety or health, such as police and military, prison wardens, firefighters, and emergency health workers. Disputes between workers in essential services and their employers that are not resolved through collective bargaining, independent mediation, or conciliation are referred to arbitration or the labor courts. Despite the prohibition, NPA prosecutors staged silent protests in August and were reportedly considering work stoppages over nonreceipt of pay increases promised a year earlier.

#### **b. The Right to Organize and Bargain Collectively**

The law allows unions to conduct their activities without interference. The government protected these rights and workers exercised them. Collective bargaining is protected by law. The law prohibits employers from discriminating against employees or applicants due to past, present, or potential union membership or participation in lawful union activities. There were no lawsuits filed for antiunion discrimination.

There are no export processing zones.

#### **c. Prohibition of Forced or Compulsory Labor**

The law prohibits forced or compulsory labor, including by children; however, there were reports that such practices occurred in the context of human trafficking, including prostitution, agricultural labor, and domestic servitude.

#### **d. Prohibition of Child Labor and Minimum Age for Employment**

Child labor is prohibited by law; and the Children's Amendment Act signed into law on March 13 defines and prohibits the worst forms of child labor. However, child labor was widespread in informal and agricultural sectors, particularly in the former homeland areas. The law prohibits employment of a child less than 15 years of age. Children over 15 but under 18 are also prohibited from work that places at risk the child's wellbeing, education, physical or mental health, or spiritual, moral, or social development. The government generally enforced child labor laws in the formal sectors of the economy. Underage children were allowed to work in the performing arts if their employer received DOL permission and agreed to follow specific guidelines.

The HIV/AIDS epidemic contributed to the number of households headed by children who supported themselves and often younger siblings. However, in its 2007-08 Child Gauge Report, the Children's Institute at the University of Cape Town stated that there was little evidence of recent rapid growth in the orphan population due to HIV/AIDS. Citing the government's 2006 General Household Survey, which estimated that

child-headed households accounted for 0.7 percent of all children and 0.5 percent of all households, the Children's Institute noted that the levels had remained relatively stable since the survey began in 2002.

According to the 1999 *Survey of Activities of Young People*, issued by the DOL in 2002, approximately 800,000 of the country's children older than 10 were working as laborers, either in or outside the home. The study stated that nearly 270,000 children reported having difficulty in school because of work obligations, while 80,000 children reported missing school completely. Among those who claimed that work was damaging their school performance, approximately 21,000 children said they were doing paid labor or working in a family business. Of all child laborers, roughly 92,000 were doing work that violated the country's labor laws. Child laborers, including some from Zimbabwe and Mozambique, worked illegally in the country on commercial farms, for the taxi industry, or as domestic servants.

During the year the DOL employed approximately 1,000 labor inspectors to investigate reports of violations and to enforce existing policies. Violation of laws regulating child employment is punishable by a maximum prison sentence of three years or a fine of 15,000 rand (\$1,613). In some cases, DOL inspectors opted to resolve child labor cases by counseling of employers, parents, and children, or by enlisting the services of professionals in the welfare and education departments. There were reports that inspectors had difficulty gaining access to farms where child labor was reported.

The government's Child Labor Program of Action integrated the priorities of government ministries to combat child labor. However, the single largest factor in reducing child labor remained the Child Support Grant, which was nearly 200 rand (\$22) per month and covered children up to 15 years old.

#### **e. Acceptable Conditions of Work**

There was no legally mandated national minimum wage, although the law gives the DOL authority to set wages by sector. Minimum wages were established for the retail sector, farm laborers, domestic workers, and taxi (minibus) drivers. The minimum wage for farm workers was approximately 1,041 rand (\$112) a month in urban areas and 989 rand (\$106) a month in rural areas. The minimum monthly wages for domestic workers employed more than 27 hours per week ranged from 1,067 rand (\$115) to 1,167 rand (\$125). Depending on the province, compliance with the minimum wage rate generally ranged from 65 to 90 percent, according to 2007 DOL figures. Minimum wages did not provide a decent standard of living for a worker and family; the government undertook other actions to alleviate poverty, including annual above-inflation mandatory wage increases for farm workers, exemptions from school fees, and improved access to health care.

In July textile manufacturer Tai Yuen Textile was fined 17 million rand (\$1.8 million) for underpayment of workers in KZN. This was the highest fine ever imposed on a company for exploitation of employees.

Annual negotiations between employers and employee associations or unions set wage rates on an industry-by-industry or plant-by-plant basis for unionized workers in the formal economy. Such negotiated wages were generally sufficient to provide a decent standard of living for a worker and family; however, this was not the case in sectors where workers were not organized sufficiently to engage in collective bargaining. As a result, many unskilled or rural workers were unable to provide an adequate standard of living for themselves and their families.

The law establishes a 45-hour workweek, standardizes time-and-a-half pay for overtime, and authorizes four months of maternity leave for women. No employer may require or permit an employee to work overtime except by agreement, and overtime may not be more than 10 hours a week. The law stipulates rest periods of 12 consecutive hours daily and 36 hours weekly, which must include Sunday. The law allows for adjustments

to rest periods by mutual agreement. These standards were effectively enforced, as labor unions and labor courts focused on compliance. A ministerial determination exempted businesses employing fewer than 10 persons from certain provisions of the law concerning overtime and leave. Farmers and other employers could apply for variations from the law by showing good cause.

The law protects both foreigners and immigrant workers. On March 28, the Commission for Conciliation, Mediation, and Arbitration (CCMA) ruled in favor of a foreign employee whose employment contract had been terminated by Discovery Health Limited when the employee's temporary work permit had expired. The CCMA's ruling established that foreign workers are included and protected by the Labor Reform Act.

The government set occupational health and safety standards through the Department of Minerals and Energy (DME) for the mining industry and through the DOL for all other industries. Occupational health and safety issues were a top priority of trade unions, especially in the mining, construction, and heavy manufacturing industries where processes were dangerous and sometimes deadly. The law provides for the right of mine employees to remove themselves from work deemed dangerous to health or safety. The law prohibits discrimination against an employee who asserts a right granted by the law and requires mine owners to file annual reports providing statistics on health and safety incidents for each mine. In addition, a tripartite mine health and safety council and an inspectorate of mine health and safety were responsible for enforcing the law and monitoring compliance with its provisions.

In January the DME launched an inspection of all 2,800 mines in the country. August press reports stated audit results were finalized and due for release; however, by year's end the report was still unreleased, and opposition parties had filed actions to force its issuance. There were 85 mine deaths during the year's reporting period, down 22 percent compared to the same period in 2007.

On November 19, parliament passed amendments to the Mine Health and Safety Act, making employers liable for heavy fines or imprisonment for serious injury, illness, or death of employees due to unsafe mine conditions. The amendments provide for mine inspectors to enter any mine at any time to interview employees and audit records.

Outside the mining industry, there were no laws or regulations that permitted workers to remove themselves from work situations deemed dangerous to their health or safety without risking loss of employment; however, the law provides that employers may not retaliate against employees who disclose dangerous workplace conditions.

In February an explosion at the Assmang ferromanganese smelter killed six workers. The DOL launched an investigation into reports that Assmang was warned of a malfunctioning furnace two days prior to the incident and advised that it be switched off immediately. The National Union of Mineworkers called for the prosecution of Assmang's chief executive.

While labor conditions had improved on large commercial farms, they remained harsh, especially for small holdings' workers, most of whom were black. Many owners of small farms did not measure working hours accurately. Twelve-hour days were common during harvest time, and few farmers provided overtime benefits. In February 2007 Human Rights Watch reported low wages, a lack of basic services in farm workers' housing, and inadequate education for workers' dependents. Farm owners continued to evict workers legally and illegally. There was a lack of compliance with labor legislation and significant violence and crime against farm workers and farm owners. Health and safety regulations often were not observed when chemicals were used in agricultural work.



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