

# **SOUTH AFRICA 2016 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

South Africa is a multiparty parliamentary democracy in which constitutional power is shared among the executive, judiciary, and parliament branches. On August 3, the country held largely free and fair municipal elections, in which the ruling African National Congress (ANC) received 53.9 percent of the vote. In May 2014 the country held a largely free and fair election in which the ruling ANC won 62.2 percent of the vote and 249 of 400 seats in the National Assembly, which re-elected Jacob Zuma to a second term as the country's president.

Civilian authorities maintained effective control over the security forces.

Principal human rights problems included police use of lethal and excessive force, including torture; prison overcrowding and abuse of prisoners, including beatings and rape by prison guards; and vigilante and mob violence.

Other human rights problems included arbitrary arrest; prolonged pretrial detention and lengthy delays in trials; forcible dispersal of demonstrators; abuse of refugees and asylum seekers; corruption; pervasive violence against women and children; sexual harassment and societal discrimination against women; abuse of children; societal discrimination against persons with disabilities, lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons, and persons with albinism; trafficking in persons; attacks on foreigners; and forced labor, including by children.

Although the government investigated and prosecuted officials who committed abuses, whether in the security services or elsewhere in the government, there were numerous reports of impunity.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary Deprivation of Life and other Unlawful or Politically Motivated Killings**

There were reports that the government or its agents committed arbitrary or unlawful killings.

Police use of lethal and excessive force, including torture, resulted in numerous deaths and injuries, according to the Independent Police Investigative Directorate

(IPID), Amnesty International, and other nongovernmental organizations (NGOs). Politically motivated killings increased prior to the August 3 municipal elections. The country had a high crime rate, and criminals were often well armed. The government recorded more than 20,000 killings (or homicides) in the 12-month period ending March 31. The National Prosecuting Authority (NPA) did not publish statistics on the number of murderers prosecuted, but watchdog groups estimated the conviction rate for all crimes reported was as low as 10 percent.

According to the 2015-16 IPID annual report, 366 persons died in police custody or due to police action during the 12-month period ending March 31. IPID recommended prosecution in 23 of the 366 cases.

During the year IPID received 5,519 complaints ranging from killings to assault, recommended prosecution in 983 cases, and arrested 189 police officers. Of the cases recommended for prosecution, the NPA prosecuted 84, resulting in one guilty verdict, dropped 118, and left 751 pending at year's end. IPID referred 877 disciplinary cases to the South African Police Service (SAPS); 144 cases referred resulted in disciplinary action.

A death resulting from police action was defined as a death that occurred while a police officer attempted to arrest, prevent an escape, or defend himself/herself or another. It also covered collisions involving one or more SAPS or municipal police vehicles as well as mass actions where police officers were present. IPID did not track deaths resulting from torture, which it classified as murders. Watchdog groups noted deaths in custody often resulted from physical abuse combined with a lack of medical treatment or neglect (see section 1.c.).

Although media and NGOs disputed the figure, government officials and observers considered fewer than 30 killings during the year to be politically motivated; most appeared to be a result of intra-ANC disputes.

On May 15, alleged ANC members ambushed and injured approximately 40 members of the Economic Freedom Fighters (EFF) party who were campaigning at Sethokga Hostel in Ekurhuleni. Two of the injured died in the hospital from their injuries. On August 18, an unknown assailant shot and killed a Democratic Alliance (DA) ward councilor in the Northern Cape; the DA claimed the councilor intended to form a coalition government with a minor local party to wrest control of the municipality from the ANC. Some members of the EFF believed the assassination was politically motivated.

In 2015 a Chinese Central Television Broadcasting Company camera crew in Krugersdorp, near Johannesburg, filmed three SAPS officers allegedly shooting and killing a disarmed and injured robbery suspect who was lying prone on the ground. IPID arrested the three officers and a fourth, who assisted in a cover-up of the incident. The three, who were denied bail, were charged with murder and defeating the ends of justice. A court subsequently convicted one officer of murder and one of assault; both were awaiting sentencing at year's end. The court acquitted the third officer of all charges.

Incidents of vigilante violence and mob killings occurred, particularly in Gauteng, Eastern Cape, and KwaZulu-Natal Provinces (see section 6).

Xenophobic attacks on foreign African migrants resulted in deaths, injuries, and displacement (see section 6).

Killings and other violent crimes against white farmers and, on occasion, their families, continued in rural areas (see section 6).

Ritual ("muthi") killings to obtain body parts, particularly of persons with albinism, persisted; perpetrators believed the body parts enhanced traditional medicine (see section 6).

### **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, but police officers reportedly tortured, beat, raped, and otherwise abused suspects. Amnesty International corroborated cases of torture, including the use of electric shock and suffocation. Police also assaulted detainees with batons, fists, and booted feet. To force confessions, police sometimes moved a nonviolent suspect under interrogation into the cell of violent criminals. Police allegedly ignored activities in the cell as the violent criminals intimidated, beat, or raped the suspect, after which police continued the interrogation. Police torture and physical abuse allegedly occurred during house searches, arrests, interrogations, and detentions and sometimes resulted in death (see section 1.a).

Residents of the Glebelands Hostel, a South Durban housing complex, filed 14 reports of police torture during the year. For example, in March a resident alleged that members of the SAPS National Intervention Unit placed a plastic bag over his head and pulled it from behind while simultaneously beating him until he became unconscious. The resident said he provided false testimony to stop the torture.

According to IPID's 2014-15 annual report--which, like other government reports, covers events during the April 1, 2015 to March 31, 2016 fiscal year--assaults by police decreased from 3,711 cases in 2014-15 to 3,509 in 2015-16. Victims in several cases were interrogated and assaulted while being detained by police, without any record of their arrest. In its 2015-16 annual report, IPID reported 145 torture cases, the same number as in the previous year. Qualitative studies by monitoring organizations found victims in many communities did not report police abuse due to a "normalization" or public acceptance of police torture and brutality.

In 2015-16 IPID received 112 complaints of rape by police officers. Of the 112 cases, 51 were against on-duty SAPS members, and the remaining 61 were against off-duty SAPS members. IPID received 23 complaints of rape from persons in police custody, of which six were against SAPS members and 17 were against other civilians in police custody.

On August 30, a police officer reportedly raped a 15-year-old girl after she was taken to the Montagu police station, in Western Cape, following an altercation with her parents at home. IPID was investigating the case at year's end.

Incidents of police harassment of foreigners continued, particularly during coordinated police raids in areas where foreign nationals resided. The raids resulted in the arrest of thousands of individuals, both foreign and South African, on charges ranging from residing illegally in the country to running an illegal business and murder. The government claimed the raids targeted all lawbreakers, but immigrant rights groups disagreed.

Refugee and migration advocacy organizations received reports police confiscated immigration and identity documents of foreign nationals, threatened foreign nationals with arrest on spurious charges, and forced them to pay bribes to secure release. This was most prevalent among individuals whose legal documentation was not renewed in a timely fashion, according to refugee advocacy organizations, including the Office of the UN High Commissioner for Refugees (UNHCR). There were also reports police required bribes to protect the businesses of foreigners threatened by xenophobic violence.

## **Prison and Detention Center Conditions**

According to the Department of Correctional Services (DCS), many of the 243 operational prisons did not meet international standards, and prison conditions did not always meet the country's minimum legal requirements. Vincent Smith, former chairperson of parliament's Portfolio Committee on Justice and Correctional Services, routinely criticized the DCS for "inhumane conditions not compatible with the country's constitution." Smith specifically cited the high number of juvenile detainees in the system, the setting of bail for persons with no assets, remand detention, poor medical treatment, prison overcrowding, and abuse of inmates.

Physical Conditions: A 2015 visit by a Constitutional Court judge to Pollsmoor Prison found overcrowding by more than 300 percent in the pretrial section of the prison, resulting in "filthy and cramped conditions"; systemic plumbing problems that forced some prisoners to bathe in sinks; skin disease--including rashes, boils, and lice--resulting from poor medical care; and insufficient beds, forcing some prisoners to sleep three to a bed or on the floor. A leptospirosis outbreak at Pollsmoor in 2015 killed two inmates and forced wardens to relocate temporarily 4,100 prisoners. Officials believed a rat infestation spread the bacteria to the prisoners' food.

In December an inmate won a case challenging poor conditions and overcrowding at the Pollsmoor Remand Detention Facility in Cape Town, where prison cells designed to hold 25 prisoners sometimes held 55 to 75.

The Judicial Inspectorate of Correctional Services (JICS) received 811 complaints of assaults on prisoners by correctional officers for the 2015-16 reporting period, which tracks the April 1 to March 31 fiscal year. In addition to monitoring by its own employees, JICS appointed an Independent Correctional Center Visitor (ICCV) for each correctional center to monitor prison conditions. Authorities recorded and verified monthly ICCV visits in official registers kept at all correctional centers. The visitors submitted monthly reports to the inspecting judge, listing the number and duration of visits, the number of inmates interviewed, and the number and nature of inmate complaints. There were reports of shortages of prison doctors, inadequate investigation and documentation of prisoner deaths, inadequate monitoring of the prison population, high suicide rates among prisoners, and a lack of financial independence for JICS. Some detainees awaiting

trial contracted HIV/AIDS through rape. Media and NGOs also reported prisoners were tortured.

Following the 2015 killing of a warden at St. Albans Prison in Port Elizabeth, prisoners claimed guards tortured them. Former prisoner Bradley McCallum alleged guards sexually assaulted him and other prisoners with batons, kicked and punched them, and set dogs on them. A total of 231 inmates filed suit against the DCS.

According to the 2015-16 DCS annual report, the country's correctional facilities held 159,331 prisoners in facilities designed to hold 119,134; the correctional system was 32 percent above capacity, up 3 percent from the previous year. Many prisoners had less than 13 square feet in which to eat, sleep, and spend 23 hours a day. To reduce overcrowding, the government transferred prisoners to facilities that were not at capacity. JICS reported the prisoner transfer program resulted in a reduction in the number of prisons considered "critically overcrowded" (prisoner population at more than 200 percent of capacity).

Prison overcrowding and poor living conditions, including lack of ventilation, contributed to the spread of disease, particularly tuberculosis (TB). An NGO active in lobbying for prisoner rights called prisons a breeding ground for TB and a risk to public health because discharged prisoners infected their families. NGOs also considered prisons a major source of multidrug-resistant TB since prisoners did not, or could not, always comply with treatment procedures. The NGO also noted that doctors were sometimes only on site for consultations one day a week and dentists only one day every six weeks.

According to its 2015-16 annual report, the DCS tested 98 percent of prisoners for HIV, dramatically improving testing over the previous year in which only 67 percent were tested. Prisons dispensed antiretroviral therapy, and 97 percent of HIV-positive prisoners received such therapy. In areas where prisons did not have medication, authorities took prisoners to local clinics to receive their medication. There were no HIV screening programs on intake or discharge of prisoners, but the DCS conducted HIV prevention programs in prisons, including condom distribution and awareness sessions. The DCS annual report noted HIV awareness sessions took place in prisons throughout the country. NGOs such as the Aurum Institute, Society for Family Health, and South Africa Partners provided correctional centers with HIV testing and antiretroviral therapy. According to its 2015-16 annual report, 21,722 inmates were placed on anti-retroviral treatment; 199,750 inmates were voluntarily tested for HIV and informed of their status.

General health care in prisons was inadequate, and 7,574 inmates filed health-care complaints during the reporting year. Prisons provided inmates with potable water, but supplies were occasionally inadequate, and plumbing problems occurred, according to JICS. There were reports of food shortages.

The 2015-16 DCS annual report noted prisons held 4,126 youth (defined as persons under age 25). Prisons sometimes held youth with adults, particularly in pretrial detention. Prisons generally held pretrial detainees with convicted prisoners, although in some large urban areas specific pretrial facilities were available.

According to the JICS report, there were 1,273 prison deaths during the 2015-16 reporting period--511 from natural causes, including HIV/AIDS, and the remainder due to suicides, assaults, or accidents; 634 deaths were reported the previous year. The JICS report drew a correlation between deaths from natural causes and overcrowding, noting that less crowded conditions would likely result in a decrease of natural deaths. Inmate violence sometimes resulted in deaths.

The DCS requires medical doctors to complete and sign reports of inmate deaths to lessen the likelihood that a death caused by neglect is reported as “natural.” Nevertheless, the DCS failed to investigate many deaths due to an insufficient number of doctors.

Prisons provided all detainees in cells with felt mattresses and blankets. Most cells had toilets and basins but often lacked chairs, adequate light, and ventilation. Food, sanitation, and medical care in detention centers were similar to those in prisons.

Prisoners with mental illness sometimes failed to receive psychiatric care.

Administration: NGOs accused the DCS of moving prisoners between facilities to prevent them from reporting abuse; the DCS countered the inmates were members of rival gangs and needed to be separated.

The DCS did not have an ombudsman to consider status and circumstances of confinement of juvenile offenders; or improvement in pretrial detention, bail, and recordkeeping procedures to prevent prisoners from serving beyond maximum sentences for charged offenses. JICS, however, made recommendations on such topics in its reports.

Corruption among prison staff remained a problem (see section 4).

Independent Monitoring: The government permitted independent monitoring of prison conditions, including visits by human rights organizations, but organizations were required to apply for permission to gain access. Organizations could also request permission to visit prisons to conduct specific research. The government permitted International Committee of the Red Cross representatives to visit prisons on a case-by-case basis, but they visited only the Lindela Detention Facility during the year.

JICS was the primary monitoring group for prisons but was not autonomous since the DCS controlled its budget. JICS drafted an annual report to parliament summarizing prison conditions and abuses. During the year 309 ICCVs collectively handled 456,994 cases. NGOs claimed the failure of the DCS to follow up on ICCV recommendations hindered the program's effectiveness. They also claimed many ICCVs appeared to be "fully captured" by the DCS and lacked independence in their oversight or reporting of abuses.

The local independent NGO Lawyers for Human Rights (LHR), criticized conditions at the Lindela Repatriation Center, the country's largest detention facility for irregular immigrants. According to the LHR, detainees were subject to: physical and verbal abuse, corruption and demands for bribes, insufficient food, lack of reading and writing materials, lack of access to recreational facilities or telephones, lack of access to and poor quality of medical care, indefinite detention without judicial review, detention of legally registered asylum seekers, and lack of procedural safeguards such as legal guidelines governing long-term detention.

The South African Human Rights Commission (SAHRC) released a report in 2014 on health care at Lindela. The investigation revealed a lack of tuberculosis-testing capacity and failure to isolate infected persons, limited availability of condoms, unavailability of tetanus vaccines, overcrowding in rooms, and inadequate intervals between the evening meal and breakfast despite regulations governing mealtimes in the Immigration Act. Several refugee and migration advocacy groups noted, however, that conditions in Lindela were generally acceptable and that the government was generally responsive when NGOs identified problems. Minister of Home Affairs Malusi Gigaba, under pressure from parliament to account for reported human rights abuses at Lindela Repatriation Center, invited the SAHRC to establish an office at the center. By year's end, however, the SAHRC lacked adequate funds to open an office.



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

The constitution and law prohibit arbitrary arrest and detention, but security forces arbitrarily arrested numerous persons during the year.

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

SAPS has primary responsibility for internal security. The police commissioner has operational authority over police. The president appoints the police commissioner, but the minister of police supervises the commissioner. The South African National Defense Force, under the civilian-led Department of Defense, is responsible for external security but also has domestic security responsibilities, such as patrolling the borders. Border Control Operational Coordinating Committees--composed of representatives of SAPS, DHA, the defense force, the South African Revenue Service, the Department of Health, the Department of Agriculture and Fisheries, the Department of Transportation, the Department of Trade and Industry, the State Security Agency, and the Department of Environmental Affairs--are charged with overall migration and border enforcement. A committee representative is present at all land, air, and sea ports of entry to facilitate an interagency approach to border enforcement and migration management. All departments have a representative at major border crossings, while regional representatives covered lesser border crossings. The SAPS Directorate for Priority Crime Investigation, also known as "the Hawks," coordinates efforts against organized crime, priority crimes, and official corruption. Despite continued efforts to professionalize, SAPS remained understaffed, ill equipped, and poorly trained. Corruption was a problem (see section 4).

The government investigated and prosecuted security force members who committed abuses, although there were numerous reports of police impunity, including of high-ranking members (see section 4). IPID, an independent and external body, investigates all complaints and makes recommendations to the SAPS inspectorate division that handles disciplinary matters and to the NPA on which cases to prosecute. IPID examines all SAPS killings and evaluates whether they occurred in the line of duty or were otherwise justifiable. IPID also investigates cases of police abuse, although it was unable to fulfill its mandate due to funding shortages, inadequate cooperation by police, and lack of investigative capacity. When it did complete investigations, the NPA often declined to prosecute cases involving criminal actions by police and rarely obtained

convictions. In cases in which IPID recommended disciplinary action, SAPS often failed to follow IPID disciplinary recommendations.

The law provides IPID with additional enforcement powers and requires SAPS and metropolitan police departments to report any suspected legal violations by their own officers to IPID. The law criminalizes the failure to report wrongdoing, and in 2015-16, IPID recorded 41 cases in which SAPS or metropolitan police departments failed to report wrongdoing to IPID. During the year IPID took the additional step of investigating cases that resulted in civil lawsuits, even if police or the public had not reported those cases to IPID. Civil society groups reported they used IPID investigations as evidence in civil lawsuits. As a result SAPS often settled out-of-court civil lawsuits it previously would have challenged.

Security forces failed to prevent or adequately respond to societal violence, particularly in response to attacks on foreigners (see sections 2.d. and 6). Unlike in the previous year, however, there were no reports that foreigners were displaced due to xenophobic attacks.

Officers from SAPS and metropolitan police departments received training in ethics, human rights, corruption, sexual offenses, domestic violence, gender violence, and violence against LGBTI persons. Training, however, was inconsistent. Many officers went years between refresher courses. SAPS also provided officers with access to social workers, psychologists, and chaplains.

### **Arrest Procedures and Treatment of Detainees**

The law requires that a judge or magistrate issue arrest warrants based on sufficient evidence. Police must promptly inform detainees of the reasons for their detention, their right to remain silent, and the consequences of waiving that right. Police must charge detainees within 48 hours of arrest, hold them in conditions respecting human dignity, allow them to consult with legal counsel of their choice at every stage of their detention or provide them with state-funded legal counsel when “substantial injustice would otherwise result,” and permit them to communicate with relatives, medical practitioners, and religious counselors. The government often did not respect these rights. Police must release detainees (with or without bail) unless the interests of justice require otherwise, although bail for pretrial detainees often exceeded what suspects could pay.

Human rights groups, judges, and judicial scholars expressed concern about the Criminal Procedure Second Amendment Act that allows the pretrial detention of

children and prohibits bail in certain cases. Some judges also expressed concern that police and the courts often construed the exercise of the right to remain silent as an admission of guilt.

Arbitrary Arrest: During the year there were numerous cases of arbitrary arrest, particularly of foreign workers, asylum seekers, and refugees.

Legal aid organizations reported police frequently arrested persons for minor crimes for which the law stipulates the use of a legal summons. Arrests for offenses such as common assault, failure to provide proof of identity, or petty theft sometimes resulted in the unlawful imprisonment of ordinary citizens with hardened criminals that created the opportunity for physical abuse (see section 1.c.).

Pretrial Detention: Lengthy pretrial detention was a problem. According to the DCS 2015-16 annual report, there were 45,043 remand (pretrial) detainees in the prison system. Police held approximately 1,678 detainees for more than two years, fewer than the 1,889 from the previous year. According to the DCS 2015-16 report, detainees waited an average of 176 days before trial. Observers attributed the high rate of pretrial detention to arrests without substantial evidence, overburdened courts, poor case preparation, irregular access to public defenders, and prohibitive bail amounts. Police often held detainees while prosecutors developed cases and waited for court dates. Legal scholars estimated prosecutors failed to convict 60 percent of those arrested. The law requires a review of remand detention once it exceeds two years.

Detainee's Ability to Challenge Lawfulness of Detention before a Court: Persons arrested, regardless of whether on criminal or other grounds, are entitled to challenge in court the legal basis or arbitrary nature of their detention and obtain prompt release and compensation if found to have been unlawfully detained. These rights, however, do not apply to undocumented residents in the country.

Protracted Detention of Rejected Asylum Seekers or Stateless Persons: NGOs and media reported security forces arrested migrants and asylum seekers arbitrarily, even those with documentation, often because police were unfamiliar with asylum documentation. In some cases police threatened documented migrants and asylum seekers with indefinite detention and bureaucratic hurdles unless they paid bribes to obtain quick adjudication of their cases. Although the law prohibits the detention of unaccompanied migrant children for immigration violations, immigrant rights NGOs reported that the DHA and SAPS detained unaccompanied

minors for immigration violations. In 2015 the LHR handled six detention-of-minor cases and expressed concern that some arresting officers appeared to list minors as adults intentionally in order to detain them. In some cases minors claimed to be adults, preferring deportation to their home country to institutionalization. According to the LHR, children often were identified only if an ICCV visited the detention center and pressured the facility to release them.

In 2014 the South Gauteng High Court in Johannesburg ruled the long-term detention of migrants at the Lindela Repatriation Center was unlawful and unconstitutional. In a complaint filed by the SAHRC and other applicant organizations, the court found the DHA contravened Immigration Act 13 of 2002 by detaining persons for more than 30 days without charges or deportation-- sometimes detaining individuals for more than 120 days, the maximum statutory limit at Lindela. The court ordered the DHA not to detain anyone for more than 30 days without a court-issued warrant and no more than 120 days with a court-issued warrant. Immigrant rights NGOs reported the DHA generally complied with the 120-day maximum detention requirement, but that compliance was poor with the requirement to obtain a warrant when detaining individuals for more than 30 days. NGOs also reported a concurrent increase in the length of time the government detained migrants at regular police stations before transferring them to Lindela and expressed concern that the DHA simply shifted the location of detention to avoid detection.

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

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence. Nevertheless, the judiciary was understaffed and underfunded. There were numerous reports that legal documents used in trials were lost, particularly when the accused was a government official. Civil society alleged judicial corruption was a problem, although there were no proven cases of corruption during the year. According to the presidentially mandated Criminal Justice System Working Group composed of ministers and deputy ministers, two-thirds of the estimated two million criminal cases reported annually never resulted in a verdict.

The government sometimes ignored orders from provincial high courts (see section 1.e., Civil Judicial Procedures and Remedies).

#### **Trial Procedures**

Criminal defendants enjoy a legal presumption of innocence. The constitutional bill of rights provides for due process and equal protection. The law requires police to inform detainees promptly and in detail of the charges against them, but this did not always occur, nor did police always accurately complete the charge sheets. The law requires the government to provide interpretation in all 11 official languages, but provision was dependent on the availability and cost of interpreters. Interpretation standards, even for national languages, were low and sometimes compromised the veracity of exchange between the defendant and the court. Judges sometimes transferred cases from rural to urban areas to access interpreters more easily. Limited access to qualified interpreters sometimes delayed trials. Judges and magistrates hear criminal cases and determine guilt or innocence. 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 may use assessors in an advisory capacity in adjudicating bail applications and sentences.

Detainees and defendants have the right to legal counsel provided and funded by the state when “substantial injustice would otherwise result,” but this right was limited due to a general lack of information regarding rights to legal representation and the government’s inability to adequately budget for such services. Defendants have the right to be present in court and may question witnesses in court and present their own witnesses and evidence. Every accused person has a right to a fair public trial, including the right to have adequate time and facilities to prepare a defense within a reasonable time after being charged. Defendants have access to government evidence before going to court and may not be compelled to make any confession or admission that prosecutors could use as evidence against them. There is no automatic right to appeal unless the accused is younger than age 16, but courts may give defendants permission to do so. Additionally, the law requires a judge to review automatically all prison sentences longer than three months.

### **Political Prisoners and Detainees**

The IFP maintained the government has imprisoned 384 of its members since 1994 for political reasons, although international human rights organizations did not list these persons as political prisoners or detainees. In 2010 President Zuma announced he approved 154 and rejected 230 IFP applications for pardon. Following the president’s announcement, the government considered and rejected an additional six cases. The presidency continued to consider the remaining pardon requests on a case-by-case basis. In 2015 the Department of Justice

announced it forwarded to the president additional recommendations for pardons for IFP members, but no additional pardons had been granted by year's end.

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

Individuals and organizations may seek civil remedies for human rights violations, although they may not appeal decisions to the African Court on Human and Peoples' Rights because the government has not made the obligatory declaration to accept the competence of the court. The government did not always comply with court decisions.

On March 15, the Supreme Court of Appeal ruled the government's failure to arrest Sudanese President Omar al-Bashir--who freely attended the 25th Summit of the African Union in Johannesburg despite two pending International Criminal Court warrants for his arrest--was unlawful under domestic and international law. A local NGO, the Southern Africa Legal Center, filed a lawsuit to force the government to arrest Bashir in 2015, and the North Gauteng High Court in Pretoria ruled in the legal center's favor and issued an injunction to prevent Bashir from leaving the country. Despite the injunction, the government allowed Bashir to depart. The court subsequently recommended criminal charges be instituted against senior officials complicit in Bashir's departure from the country, and the government filed an appeal at the Supreme Court of Appeal.

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

The constitution and law prohibit such actions, but magistrates issued search warrants despite inadequate evidence. The constitution contains an explicit right to privacy, but the 2013 General Intelligence Laws Amendment Bill authorizes the interception of electronic communications known as "foreign signals intelligence" without a warrant. Unlike in previous years, police conducted no sweeps or searches for irregular migrants.

The Promotion of Access to Information Act allows any person to access information from the government or any other individual for the exercise or protection of any right. Authorities could also use the act to obtain personal information in connection with criminal investigations. Opposition parties and human rights NGOs objected that its broadly defined provision enables the government to access an individual's personal information.

The 2013 General Intelligence Laws Amendment Bill authorizes the interception of “foreign signals intelligence” without a warrant.

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

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

The constitution and law provide for freedom of speech and press, and the government generally respected these rights. Nevertheless, several apartheid-era laws and the Law on Antiterrorism permit authorities to restrict reporting on the security forces, prisons, and mental institutions.

Press and Media Freedoms: Independent media were active and expressed a wide variety of views without restriction, although state-sponsored media were the most prevalent. Journalists were generally able to criticize the government openly and without fear of reprisal, but the government sometimes tried to control or monitor the media by forcing the deletion of photos or audio recordings, despite the illegality of such requests. Police or other security officials sometimes assaulted media members who refused to delete photos of police misconduct.

For example, on January 3, police arrested Eduard Grebe for refusing to delete footage on his mobile phone showing officers assaulting a man they claimed to be arresting for drug possession. Police held Grebe overnight at Woodstock Police Station, Western Cape Province, and released him the following day without charge. Following a suggestion by the Western Cape police ombudsman, Grebe filed a complaint on January 13 with IPID, which had not responded by year’s end.

In its *2016 Freedom of the Press Report*, Freedom House noted conditions for media freedom improved marginally, with the courts reaffirming journalists’ right to access information and further limiting arbitrary restrictions on publishing information in the public interest.

In May a former police captain was charged at the Specialized Commercial Crimes Court in Pretoria for contravening the Regulation of Communication and Provision of Communication Related Information Act. While at the Crime Intelligence Unit in Durban, the former captain allegedly lied to a judge to seek an interception warrant by matching two investigative journalists’ phone numbers with fictional names in an affidavit and suggesting that the warrant was required to probe a criminal syndicate. The captain pleaded not guilty, and the case was awaiting trial at year’s end.

According to the South African Advertising Research Foundation, print media reached 49 percent of the adult population. Despite the number and diversity of publications, the concentration of media ownership in a few large media groups drew criticism from the government and some political parties, who complained print media did not always adequately cover their points of view.

Most citizens received news through radio broadcasts from the South African Broadcasting Corporation (SABC) and community radio stations. The SABC, a state-owned enterprise, was the largest and most influential source of news for the majority of the population. It broadcast television and radio programs in the country's 11 official languages and reached an estimated 70 percent of television viewers and 78 percent of radio listeners. Media watchdogs increasingly criticized the SABC, however, for violating its stated "editorial independence" in favor of progovernment reporting (see section 3).

Nonprofit community radio stations played an important role in informing the mostly rural public, although they often had difficulty producing adequate content and maintaining quality staff. Community activists complained some community radio stations self-censored their programming because they were dependent on government advertising for revenue. Government broadcast regulators regularly withdrew community radio licenses for noncompliance with the terms of issuance.

Violence and Harassment: Journalists were attacked by demonstrators and others during the year. For example, on June 22, demonstrators attacked journalists covering violent protests in Pretoria. One journalist reported that protesters bit him and stole his money and car keys as he tried to film them. Protesters chased a reporter from Power FM out of one area, threatening her with violence. A group of men robbed journalists with Eye Witness News of their phones and cameras and threatened to attack them with a brick. A journalist and photographer with E-News Channel Africa were robbed after a live report on the protests.

Censorship or Content Restrictions: Government and political officials often criticized media for lack of professionalism and reacted sharply to media criticism, frequently accusing black journalists of disloyalty and white journalists of racism. Some journalists believed the government's sensitivity to criticism resulted in increased media self-censorship.

In May, SABC announced it would stop showing public protests in which violence and the destruction of public property occurred. Following several months of



heightened and sometimes violent protest activity, SABC's chief operating officer (COO) stated that showing such footage incited further violence if protesters believed their activities might appear on the news. The Independent Communications Authority of South Africa directed SABC to withdraw the decision, ruling that the restrictions amounted to censorship. In a press conference, SABC's COO reacted defiantly to the decision, claiming outside forces were trying to destroy the public broadcaster; SABC ultimately abided by the ruling.

### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. The law authorizes state monitoring of telecommunication systems, however, including the internet and e-mail, for national security reasons. The law requires all service providers to register on secure databases the identities, physical addresses, and telephone numbers of customers. Approximately 52 percent of the population used the internet during the year.

A 2015 investigative report by the *Mail & Guardian* newspaper in coordination with the Media and Democracy Project reported state intelligence agencies had the ability to access citizens' private communications, including chats, e-mails, text messages, and voice conversations. The report interviewed 10 former intelligence officials and found evidence of unauthorized access to private communications. Some officials insisted legal and technical safeguards prevented unauthorized collection, but other officials gave examples of having personally accessed information, particularly bulk telephone records, without a court warrant. The report cited telecom companies who say they must proactively provide audio or e-mail records to the government after reviewing a court order; the government does not have the ability to tap into their system at will. The report concluded, however, the potential for illegal access of private communications existed due to insufficient safeguards. Government spokespersons noted no successful case against the government for illegal data collection and challenged anyone who believed the government monitored their communications to file a complaint in court (although citizens would have no way of knowing their communications were monitored unless the government informed them).

In April the UN Human Rights Committee released a report on the country's compliance with the International Covenant on Civil and Political Rights. The report repudiated the government's claims that its surveillance law, the Regulation

of Interception of Communications and Provision of Communications-related Information Act (RICA), was a justifiable response to the country's high crime rate or the global terrorist threat. According to media reports, the UN committee also expressed concern about the lack of independent oversight of the judge who monitored RICA, thus increasing the potential for abuse.

### **Academic Freedom and Cultural Events**

The Film and Publications Board reviews written and graphic materials published in, or imported into, the country. The board has 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 criticized government efforts to extend the board's authority to newspapers and broadcast media.

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

#### **Freedom of Assembly**

The constitution and law provide for freedom of assembly, but police violently dispersed hundreds of demonstrations during the year, which resulted in numerous deaths and injuries. According to a 2014-15 SAPS report, there were 11,151 peaceful protests and an additional 3,542 demonstrations that turned violent. Protest action was most common in Gauteng, North West, Western Cape, and KwaZulu-Natal Provinces. Police used batons, rubber bullets, and water cannons to control demonstrators and quell violence, resulting in hundreds of injuries.

On August 14, students revived nationwide student protests, coined #FeesMustFall Reloaded, to demand free tertiary education. The #FeesMustFall campaign began in October 2015 after an increase in university fees. Major universities around the country suspended operations, including the universities of Pretoria, Cape Town, and the Witwatersrand. On September 19, in Johannesburg, police fired stun grenades and arrested 31 students at the University of the Witwatersrand. Protests were triggered by a government decision to allow universities to determine 2017 tuition fee increases, but capping them at 8 percent above the country's inflation rate of 6 percent. One university employee died several days after inhaling fumes from a fire extinguisher sprayed by a protesting student.

#### **Freedom of Association**

The constitution provides for the right of association, and the government respected this right.

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

See the Department of State's *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

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

The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, but the government did not always respect these rights. The government cooperated with UNHCR and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, stateless persons, and other persons of concern. Nevertheless, refugee advocacy groups criticized the government's processes for determining asylum and refugee status, citing large case backlogs, low approval rates, inadequate use of country-of-origin information, and susceptibility to corruption and abuse.

Abuse of Migrants, Refugees, and Stateless Persons: Refugee advocacy organizations charged police and immigration officials abused refugees and asylum seekers. In 2014 the Khayelitsha Commission of Inquiry reported SAPS discriminated against foreign nationals, including refugees, in Khayelitsha, Western Cape Province, and that SAPS officers targeted such individuals and their businesses for extortion.

Xenophobic violence occurred against foreign nationals running small, informal grocery stores known as "spaza" shops in townships and informal settlements; refugees registered and owned many spaza shops.

In a December speech marking the his first hundred days in office, Johannesburg mayor Herman Mashaba characterized illegal immigrants in Johannesburg's inner city as "criminals." The NGO Corruption Watch called the use of the term "reprehensible." Other NGOs criticized Mashaba's comments as dangerous and hostile, particularly given previous xenophobic incidents in Johannesburg and other parts of the country.

Although the DHA had anticorruption programs in place and punished officials or contracted security officers found to be accepting bribes, NGOs and asylum

applicants reported that immigration authorities sought bribes from those seeking permits to remain in the country, particularly in cases where applicants' documentation had expired.

In 2015 the African Center for Migration Studies and the LHR conducted a joint survey of nearly 1,000 asylum seekers as they left refugee reception offices in Pretoria, Durban, Cape Town, and Musina (near the border with Zimbabwe). The survey found 13 percent of asylum seekers had bribed an official when crossing a border, been refused access to an asylum officer due to refusal to pay a bribe, or paid a bribe to an asylum officer. Twenty percent of respondents experienced corruption when queuing for access to an asylum office, such as being asked for money by an asylum officer to resolve an issue. For all of the above categories, corruption experienced at the reception office in Pretoria was double that of other offices. The report also found 56 percent of those surveyed had been in the system for more than 180 days. The report concluded that insufficient resources, poor management, and policy gaps were responsible for the high levels of corruption in the system. The government, which agreed to study the report's findings and take action to curb corruption, arrested five officials.

### **Internally Displaced Persons**

Rioters regularly targeted foreign-owned shops for looting. Although precise statistics were unavailable, monitoring groups reported these attacks displaced thousands of foreigners during the year (see sections 1.d. and 6).

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum and refugee status, and the government has an established system for providing protection to refugees. According to UNHCR, the country hosted approximately 121,645 recognized refugees and an estimated 1.1 million asylum seekers. Government services strained to keep up with the caseload, and NGOs criticized the government's implementation of the system as inadequate.

In 2009 the Department of Home Affairs (DHA) moved refugee processing from various provincial headquarters to the borders but created no new facilities. Refugee rights NGOs argued that many refugees did not cross a land border and that returning them to a land border posed undue hardship. Renewing refugee and asylum documents--some of which are valid only for six months--requires travel to

the office where a refugee was originally registered, despite repeated government commitments to allow renewal processing at any DHA office.

In 2015 refugee rights organizations won a lawsuit in the Supreme Court of Appeal, forcing the government to reopen the refugee reception center in Port Elizabeth. The groups argued that the DHA did not properly consult stakeholders when closing down the office or provide alternate capacity to make up for the loss in processing capacity. The Constitutional Court gave the DHA until November 2015 to reopen the Port Elizabeth office to new applicants, a deadline it did not meet. The Supreme Court of Appeal subsequently ordered the DHA to open the center to new applications by February 9, a deadline the DHA also did not meet. On July 15, the DHA complied with the court order and reopened the office.

Only the centers in Pretoria, Durban, and Musina (Limpopo Province) accepted new applicants. The government did not expand remaining reception centers, resulting in large backlogs and long queues. Remaining reception offices-- particularly the one at Marabastad, in Pretoria--did not have sufficient facilities to cope with the increase in applicants resulting from the closure of other offices. NGOs reported asylum seekers sometimes waited in line for days to access the offices.

In November, Corruption Watch opened criminal cases at Johannesburg's Central Police Station against three DHA employees implicated in corrupt activities at Marabastad's refugee reception office; foreign nationals allegedly were forced to pay bribes to SAPS officials, security guards, and DHA staff. The three DHA employees awaited trial at year's end.

Refoulement: Unlike in previous years, there were no reports the government forcibly returned refugees to countries in which their lives would be in danger.

Access to Basic Services: Although the law provides for access to basic services-- including education for refugee children, police, and courts--NGOs including Human Rights Watch found health-care facilities and law enforcement personnel discriminated against asylum seekers, migrants, and refugees. The government cooperated with UNHCR and the International Organization for Migration to address discrimination against and exclusion of migrants and refugees from the health-care and education systems. The issue was most acute at facilities with scarce financial and human resources. Access to critical health care was generally available, but access for chronic illnesses and preventive care operated on a queue system. Refugees and migrants received services after citizens, which often

resulted in delayed services. Unlike in previous years, refugees and migrants reported they could not generally access schooling for their children since birth registrations were not consistently provided at birth. They reported that schools often refused to accept asylum documents as proof of residency.

Temporary Protection: The government offered temporary protection to some individuals who may not qualify as refugees. The government allowed persons who applied for asylum to stay in the country while their claims were adjudicated and their appeals (if filed) finalized.

### **Section 3. Freedom to Participate in the Political Process**

The constitution and law provide citizens with the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

#### **Elections and Political Participation**

Recent Elections: On August 3, the country held municipal elections to elect councils for all district, metropolitan, and local municipalities in each of the nine provinces. The ANC won 53.9 percent of the vote, the leading opposition DA party won 27 percent, and the EFF won 8.2 percent. According to the Electoral Institute for Sustainable Democracy in Africa, voter turnout was 58 percent--the highest local election turnout since the fall of apartheid. The institute said the elections were transparent, fair, credible, and in line with the constitutional and legal framework for elections.

Nevertheless, violent protests occurred prior to the election in Pretoria after some ANC members rejected the party's choice of mayoral candidate. Protests marked by intermittent violence and looting lasted for three days. Five persons died and approximately 200 persons were arrested and charged with public violence, possession of unlicensed firearms and ammunition, possession of stolen property, and malicious damage to property.

In the May 2014 national election, the ruling ANC won 62.2 percent of the vote and 249 of 400 seats in the National Assembly, the dominant lower chamber of parliament. Election observers, including the African Union and the Southern African Development Community, characterized the election as generally free and fair. The government, however, for the first time restricted diplomatic election observers to chiefs of mission only, effectively prohibiting diplomatic missions

from observing elections. Following the general election, parliament re-elected Jacob Zuma as the country's president. The DA won 89 parliamentary seats, the EFF won 25, and the IFP won 10. The remaining 27 seats in parliament were allocated to nine other political parties based on a proportional vote-count formula. In the National Council of Provinces, the upper house of parliament, the ANC held 33 seats, the DA 13, and the EFF six. The remaining two seats were allocated to two other parties.

Although violence occurred in the May 2014 election, the Independent Electoral Commission called the election the most peaceful on record. The election coincided, however, with a record number of protests over poor government services and other local grievances. The government preemptively deployed a record 20,000 police and army personnel to potential trouble spots to maintain order. There were reports of electoral irregularities, including attempted vote rigging, but the commission responded quickly to incidents, and political parties had an opportunity to challenge results in wards where incidents occurred.

Political Parties and Political Participation: Opposition parties accused the SABC, the state-owned public broadcaster, of favoring the ruling party in its news coverage and advertising policies. Prior to the municipal elections, smaller political parties criticized the SABC for not covering their events. SABC regulations, however, dictate coverage should be proportional to the percentage of votes won in the previous election, and independent observers did not find the SABC violated this regulation.

Opposition parties claimed the ANC and DA used state resources for political purposes in the provinces under their control. Prior to the 2014 election, the ANC reportedly handed out government food parcels to potential voters at political rallies, tied social grants to voting for the ANC, and created temporary government jobs for the election period for ANC voters. Through a cadre deployment system, the ruling party controls and appoints party members to thousands of civil service positions in government ministries, and provincial and municipal governments. During the year the ANC requested political contributions from all civil servants.

Opposition parties accused ANC members of interference in or interruption of opposition party meetings, assaults and threats of assault, and punishing opposition party members by denying them jobs, contracts, services, and development opportunities. Intimidation allegedly included aggressive taunting chants and dances (toyi-toying) outside opposition party meetings to disrupt proceedings. This sometimes devolved into threats against persons entering and exiting

meetings, mock charges, and, in rare cases, assault or murder. In some cases local ruling party leaders denied opposition parties permission to rent public facilities for political meetings.

During the 2015 State of the Nation Address in parliament, the ANC initiated measures to limit disruptions by opposition parties--including jamming cell phone signals and using executive branch police to remove unruly members of parliament (MPs). (The EFF routinely disrupted parliament's proceedings in an effort to force the president to answer questions about lavish upgrades to his personal residence.) Many observers considered the measures unconstitutional. After an ensuing public backlash, the ANC and the DA, the largest opposition party, joined forces to pass compromise parliamentary rule changes. The EFF and other small opposition parties planned to challenge the constitutionality of the compromise rules in court.

Public condemnation and opposition threats to sue the ANC over the use of signal jammers and executive branch police in the chamber during the president's speech resulted in the amendment of parliamentary rules. The amended rules automatically suspend MPs who are removed from the chamber and prohibit executive branch police from entering the parliamentary chamber, barring an external threat--such as a bomb or active shooter. Security services controlled directly by parliament may still remove MPs whom the presiding officer has ordered to leave the chamber, if the MPs fail to leave. Parliament also established a multiparty disciplinary committee (controlled by the ANC) to oversee the rules. The ANC speaker repeatedly ordered the forceful removal of EFF members, and the disciplinary committee suspended EFF members involved. The EFF claimed the rules violated constitutional protections of free speech and launched two court challenges. In May the Constitutional Court ruled in favor of the EFF, saying the party's "commander in chief," Julius Malema, had exercised his free speech rights when he said the ANC "massacred" workers in Marikana. In March the Constitutional Court ruled that parliamentarians' interventions in Parliament are protected as free speech and that police should not be called to remove MPs.

There were reports government officials publicly threatened to boycott private businesses that criticized government policy.

Participation of Women and Minorities: No laws limit the participation of women and members of minorities in the political process, and women and minorities participated. Cultural factors, however, limited women's political participation. There were an estimated 89 minority (nonblack) members in the 400-seat National Assembly. There were 16 minority members among the 54 permanent members of



the National Council of Provinces and 12 minority members in the 72-member cabinet.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for conviction of official corruption, and the government continued efforts to curb corruption, but officials sometimes engaged in corrupt practices with impunity. The World Bank's most recent Worldwide Governance Indicators reflected that corruption remained a problem.

Corruption: During the year the Office of the Public Protector, a constitutionally mandated body designed to investigate government abuse and mismanagement, investigated thousands of cases, some of which involved high-level officials. The public and NGOs considered the Office of the Public Protector independent and effective, despite limited funding. According to the NPA's 2014-15 *Annual Report*, 23 persons were convicted of corruption in cases where the total value of assets seized exceeded five million rand (\$357,000), and 130 government officials were convicted of corruption.

The government secured one high-profile public-sector corruption conviction during the year. On October 14, a court convicted Northern Cape ANC chairperson (and former provincial premier) John Block of corruption, racketeering, and money laundering. The state accused Block--along with Trifecta Holdings chief executive Christo Scholtz and Northern Cape Minister of Social Development Alvin Botes--in a multimillion-rand fraud, corruption, and money-laundering scheme. Scholtz paid kickbacks to Block and Botes between 2006 and 2010 in return for their influencing provincial departments to rent office space at inflated rates in Trifecta's favor. The ANC forced Block, whose sentencing was scheduled for January 2016, to resign his post as provincial chairperson.

In 2015 the police minister presented parliament's ad hoc committee with his report on the upgrades to the president's Nkandla residence; in 2014 the public protector concluded the Zuma family should repay a portion of the 249 million rand (\$17.8 million) in nonsecurity upgrades to the president's private home. In March the Constitutional Court ordered the president to pay back some of the money and mandated the Treasury, under the Ministry of Finance, to determine an appropriate amount. In June the Treasury ordered the president to repay 7.8 million rand (\$557,000) by September, and he complied.

Corruption remained a problem in prisons. According to the 2015-16 JICS report, there were 941 complaints of corruption in prisons during the annual reporting period. At least 10 agencies, including the SAPS Special Investigation Unit, Public Service Commission, Office of the Public Prosecutor, and Office of the Auditor General, were involved in anticorruption activities.

Financial Disclosure: Public officials, including members of national and provincial legislatures, all cabinet members, deputy ministers, provincial premiers, and members of provincial executive councils, are subject to financial disclosure laws, but some failed to comply, and departments filed the majority of their reports late. The declaration regime clearly identifies which assets, liabilities, and interests public officials must declare. Government officials are required to declare publicly their interests when they enter office, and there are administrative and criminal sanctions for noncompliance, but no defined unit is mandated to monitor and verify disclosures of government officials. The government made declarations by government officials public, but not those of their spouses or children.

The awarding of tenders was a problem at all levels of government. In 2014 the auditor general's annual report revealed government departments awarded contracts worth 438 million rand (\$31.3 million) to companies in which senior employees of the department had personal financial interests. Moreover, government departments awarded contracts worth 141 million rand (\$10 million) to companies in which family members of senior department officials had interests. In 75 percent of these cases, the conflict of interest was not disclosed. The 2014-15 auditor general's report released on November 25 found approximately 25.7 billion rand (\$1.8 billion) in irregular expenditure, although not all was necessarily fraudulent. The report also found an absence of follow-up or punishment for officials who failed to comply with public financial management act regulations, resulting in a culture of impunity in government.

Public Access to Information: The law provides for access to government information, although the government did not always comply with the law. The government operated a publicly accessible website for interested persons to obtain all laws, speeches, parliamentary proceedings, and other official information. If a government department refuses to respond to a specific information request, the requester is entitled to launch a formal appeal. If this also fails, the requester may appeal to the High Court, a lengthy and expensive process. The Open Democracy Advice Center reported the government was late in responding to many requests for information or failed to answer entirely. In September 2015 Minister in the

Presidency Buti Manamela told the SAHRC only 52 percent of government ministries had a structure in place to comply with the Promotion of Access to Information Act.

### **Section 5. 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 somewhat cooperative and responsive to their views.

Government Human Rights Bodies: Although created by the government, the SAHRC operated independently and 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 authority to conduct investigations, issue subpoenas, and take testimony under oath. The government reacted positively to SAHRC reports and was responsive to its views. Despite a large backlog of cases and lack of funding, the SAHRC was considered moderately effective.

No parliamentary committees dealt exclusively with human rights, although some parliamentary committees looked into human rights problems for their constituencies.

### **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

#### **Women**

Rape and Domestic Violence: Rape, including spousal rape, is illegal but remained a serious and pervasive problem. The minimum sentence for rape is 10 years in prison for the first offense. Under certain circumstances, such as second or third offenses, multiple rapes, gang rapes, or the rape of a minor or a person with disabilities, conviction results in a minimum sentence of life imprisonment (25 years), unless substantial and compelling circumstances exist to justify a lesser sentence. Perpetrators with previous rape convictions and perpetrators aware of being HIV positive at the time of the rape also face a minimum sentence of life imprisonment, unless substantial and compelling circumstances exist to justify a lesser sentence.

According to police statistics, approximately 150 women and girls per day reported rape to police. Doctors Without Borders reported that in Rustenburg, in the platinum mining belt, one in four women (55,000) were raped at least once in their lifetime. The study also found that 95 percent of raped women did not report or seek medical attention, raising their risk of HIV/AIDS infection.

In a 2011 study conducted in Gauteng Province by the Medical Research Council of South Africa and Gender Links, 37 percent of men admitted to having committed one or more rapes, and 25 percent of women admitted being a victim of sexual violence in their lifetime.

In most cases attackers were acquaintances or family members of the victim, which contributed to a reluctance to press charges, as did a poor security climate and societal attitudes. According to the 2015-16 NPA annual report, the conviction rate for sexual offense crimes was 70 percent. Prosecutors chose not to prosecute many cases due to insufficient evidence. Poor police training, insufficient forensic lab capacity, a lack of trauma counseling for victim witnesses, and overburdened courts contributed to the low conviction rate. The NPA did not track the length of time required for cases to reach trial, but, according to media reports, it could take between six months and three years for a rape case to reach trial, depending on the complexity of the case and the plea of the accused.

The Department of Justice operated 50 dedicated sexual-offense courts throughout the country. Sexual-offense courts included facilities such as private waiting rooms, court preparation rooms, and closed-circuit television rooms for victims, all in an attempt to provide additional privacy and prevent secondary victimization. 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.

The NPA operated 53 rape centers, or TCCs (see section 1.e.). All TCCs were located at hospitals, either within the hospital or in a mobile unit on hospital grounds. Of rape cases brought to TCCs, 47 percent went to trial and were terminated--by either conviction or acquittal--within nine months from the date a victim reported the case.

Domestic violence was pervasive and included physical, sexual, emotional, and verbal abuse, as well as harassment and stalking. The government prosecuted domestic violence cases under laws governing rape, indecent assault, damage to property, and violating a protection order. The law facilitates protection orders

against abusive individuals, requires 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. The law requires police to protect victims from domestic violence, but police commanders did not always hold officers accountable. Conviction of violating a protection order is punishable by a prison sentence of up to five years, or up to 20 years if additional criminal charges apply. Penalties for domestic violence include fines and sentences of between two and five years' imprisonment.

On August 1, the Western Cape High Court sentenced Bennie Adams to 25 years in jail for housebreaking with intent to kidnap, kidnapping, rape, common assault, and murder. In 2014 Adams beat to death the toddler son of Uretta Nicholas, who had sought protection from the Kuils River Police Station after Adams had assaulted and beaten her and her son. The police turned her away, and by the time she managed to obtain a protection order, her son had been beaten to death.

In July, Oscar Pistorius was returned to jail to serve a six-year sentence for killing his girlfriend in 2013; he was expected to be paroled in as few as three years. The light sentencing drew criticism as prosecutors had demanded the mandatory minimum murder sentence of 15 years. The NPA filed an application to appeal the sentence, which was subsequently denied. In September the NPA announced its intention to petition the Supreme Court of Appeal to overturn the decision.

NGOs estimated 25 percent of women were in abusive relationships, but few reported it. The Southern African Development Community Gender Protocol 2016 Barometer (a survey compiled by Gender Links) found 43 percent of men and 35 percent of women believed that a husband had the right to punish his wife and that 37 percent of men and 32 percent of women believed a man beating a woman showed his love for her. The report attributed the high levels of gender-based violence in the country to such attitudes.

The government financed shelters and rape-support centers for abused women, but more were needed, particularly in rural areas. The government conducted rape and domestic violence awareness campaigns. In honor of Women's Month, the government hosted numerous events focused on empowering women in business, government, health, sports, and the arts. The discussions generated controversy, however, because the government focused on men's role in protecting women, while civil society advocated a more inclusive focus on gender-based violence. Many civil society organizations were also dissatisfied with the Ministry of Women's general focus on women's economic empowerment while neglecting the issue of gender-based violence.

Female Genital Mutilation/Cutting (FGM/C): The law prohibits FGM/C, but girls in isolated zones in ethnic Venda communities in the Northeast were subjected to the practice. The government continued initiatives to eradicate the practice, including national research and sensitization workshops in areas where FGM/C was prevalent.

Sexual Harassment: Although the law prohibits sexual harassment, it remained a widespread problem. With criminal prosecution a rare secondary step that the complainant must request, the government left enforcement primarily to employers. The Department of Labor issued guidelines to employers on how to handle workplace complaints that allow for remuneration of the victim's lost compensation plus interest, additional damages, legal fees, and dismissal of the perpetrator in some circumstances. Tougher punishments are imposed for assault that carry a range of penalties depending on the severity of the act but require the complainant to press charges.

Reproductive Rights: Couples and individuals have the right to decide freely the number, spacing, and timing of their children; manage their reproductive health; and to have the information and means to do so free from discrimination, coercion, and violence. Contraception was widely available and free at government clinics. Emergency health care was available for the treatment of complications arising from abortion.

According to the Department of Health, the antenatal care coverage rate was 98.5 percent. According to the country's 2010 Millennium Development Goal Report posted by the UN Development Program, the maternal mortality ratio was 269 per 100,000 live births. The government and numerous international organizations continued efforts to reduce the maternal mortality rate through a variety of pilot projects. During the year the government collaborated with a foreign government to form "MomConnect," an SMS (short message service)-based messaging service to provide health information to pregnant women; the service enrolled approximately 500,000 mothers by year's end. Primary challenges were low awareness among mothers of available antenatal care, the high HIV/AIDS rate, poor administrative and financial management, poor quality of care, and lack of accountability in the health-care system.

Discrimination: Discrimination against women remained a serious problem despite legal equality in family, labor, property, inheritance, nationality, divorce,

and child custody matters. Women experienced economic discrimination in wages (see section 7.d.), extension of credit, and ownership of land.

Traditional patrilineal authorities, such as a chief or a council of elders, administered many rural areas. Some traditional authorities refused to grant land tenure to women, a precondition for access to housing subsidies. Women may challenge traditional land tenure decisions in national courts, but access to legal counsel was costly.

The Employment Equity Amendment Act aims to promote equality in the workplace. According to the act, any difference in the terms or conditions of employment among employees of the same employer performing the same, substantially similar, or equal value work constitutes discrimination. The act expressly prohibits unequal pay for work of equal value and discriminatory practices, including unequal pay and separate pension funds for different groups in a company (see section 7.d.). In June 2015 the government adopted a Code of Good Practice to provide employers and employees with practical guidance on the equal pay principle of the act.

Women, particularly black women, typically had lower incomes and less job security than did men. Many women were engaged in poorly paid domestic labor and microenterprises that 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. The department also operated the Isivande Women's Fund to improve women's access to formal finance.

According to the 2015-16 Employment Equity Report produced by the labor department's Commission for Employment Equity, women held 21 percent of top management, 32 percent of senior management positions, and 46 percent of professional positions.

Female farm workers often experienced discrimination, and their access to housing frequently depended on their relationship to male farm workers. Female farm workers on maternity leave who could not obtain timely compensation through the Unemployment Insurance Fund often returned to work shortly after giving birth, according to NGOs working with farm workers.

The minister of women in the Presidency, the Commission for Gender Equality, the Commission for Employment Equity, and a number of other government

bodies monitored and promoted women's rights, as did numerous NGOs and labor unions.

## **Children**

Birth Registration: The law provides for citizenship by birth (if at least one parent is a permanent resident or citizen), descent, and naturalization. Nevertheless, registration of births was inconsistent, especially in remote rural areas or among parents who were unregistered foreign nationals. Some human rights NGOs claimed government inefficiency inhibited birth registration. Authorities blamed late birth registration for irregularities in the population register. In the 2014-15 reporting period, parents registered only 62 percent of births in the prescribed 30-day window, according to the DHA. Children without birth registration had no access to free government services such as education or health care, and their parents had no access to financial grants for their children.

Education: Public education is compulsory until age 15 or grade nine. Public education was fee based and not fully subsidized by the government. The law provides that schools may not refuse admission to children due to a lack of funds, and disadvantaged children, who were mainly black, were eligible for assistance. Nevertheless, even when children qualified for fee exemptions, low-income parents had difficulty paying for uniforms and supplies. According to the 2012 national census, girls faced more difficulties accessing services than boys; children with disabilities were at an even greater disadvantage.

Child Abuse: Violence against children, including domestic violence and sexual abuse, remained widespread. According to the 2016 Optimus Study, 10 percent of children ages 15 to 17 had experienced sexual abuse. According to the 2015-16 SAPS report, 40,689 children were victims of crime, and 1,344 persons were arrested for child abuse.

Some teachers and other school staff harassed, abused, and assaulted students in schools, according to reports. The law requires schools to disclose sexual abuse to authorities, but administrators sometimes concealed sexual violence or delayed disciplinary action. The level of sexual violence in schools also increased the risk of contracting HIV/AIDS or other sexually transmitted diseases, as well as unwanted pregnancies.

In August authorities suspended a male teacher at a high school in Nquthu for allegedly sexually abusing six female students ages 14 and 15. The teacher



reportedly filmed the abuse that occurred on school property on his mobile phone. Although the law prohibits corporal punishment in schools, there were reports that teachers used physical violence to discipline students. There were also multiple reports of students physically assaulting teachers.

Student-on-student violence, including racially motivated violence, was a problem.

Early and Forced Marriage: Parental or judicial consent to marry is required for individuals younger than 18. Nevertheless, the traditional practice of “ukuthwala,” the arranged marriage of girls as young as age 12 to men, occurred in remote villages in Western Cape, Eastern Cape, and KwaZulu-Natal Provinces. In 2015 the president promulgated the Prevention and Combating of Trafficking in Persons Bill that prohibits nonconsensual ukuthwala and classifies it as a trafficking offense. According to the 2016 *State of the World’s Children Report* of the UN Children’s Fund, 6 percent of girls in the country were married before age 18.

Female Genital Mutilation/Cutting: See information for girls under age 18 in women’s section above.

Ritual circumcision of young males, often by medically unqualified practitioners, was still a prevalent initiation tradition in several provinces, particularly in Eastern Cape Province. Circumcisions took place at initiation schools, remote camps where traditional leaders led a multiweek rite-of-passage ceremony. Circumcision, which sometimes resulted in death, was considered a precondition for adult status and permits marriage, inheritance, and other societal privileges.

The government regulates initiation schools, but unlicensed schools operated throughout the country for financial gain. In the worst cases, initiation schools enticed or kidnapped boys and girls to undertake rites of passage and held them for ransom until their parents paid for their release. The Council of Traditional Leaders conducted a dialogue with medical providers to identify options for the integration of medical circumcision into traditional practices. In some communities the dialogue led to the successful use of medical providers to perform circumcisions, but in other communities the dialogue failed to resolve differences. Regardless of agreement on medical provider participation, illegal and unlicensed initiation schools remained a major problem.

As an outcome of the dialogues, the government also supported a program to conduct medical circumcisions and deployed field hospitals to the remote areas where most circumcision rituals occurred. Discussing circumcision was taboo in

many communities, where it was considered a matter for chiefs to decide. Some traditional leaders criticized government interference in initiation and circumcision practices, while others declared moratoriums on circumcision. Many traditional leaders vocally criticized initiation schools and encouraged the government to punish offenders strictly. The government conducted outreach, education, and training programs to engage youth and traditional leaders on circumcision best practices.

During the year 23 initiates died as a result of botched circumcisions, mostly due to infections and dehydration as boys were frequently told not to drink water over the initiation period, which could last a month. Botched circumcisions leading to hospitalizations and penile amputations also were reported. In June, following the botched circumcisions of 17 boys in Zeerust, political parties sought greater oversight by the North West Traditional Affairs Department of illegal initiation schools.

On June 2, Cooperative Governance and Traditional Affairs Minister David Van Rooyen announced the cabinet had approved a policy to govern the administration and operation of traditional and cultural circumcision. The policy would allow the government to close illegal initiation schools and arrest the proprietors.

Sexual Exploitation of Children: Penalties for the sexual exploitation of a child include fines and imprisonment of up to 20 years. The law defines statutory rape as sexual intercourse between anyone under age 18 and an adult more than two years older. The statutory sentence for rape of a child is life in prison, although the law grants judicial discretion to issue sentences that are more lenient.

In 2015 the president signed into law changes to decriminalize consensual sexual conduct between children ages 12 to 16. This fulfilled a 2013 Constitutional Court order that gave the government 18 months to remove the portion of the Sexual Offenses and Related Matters Act that criminalized such conduct.

The law prohibits child pornography and provides for penalties including fines and imprisonment of up to 10 years. The Film and Publications Board maintained a website and a toll-free hotline for the public to report incidents of child pornography.

The SAPS Family Violence, Child Protection and Sexual Offense team continued to work with Belgian authorities on Operation Cloud 9, an investigation into online

sexual exploitation of children. In March the operation's work led to the arrest of a 27-year-old child pornography suspect in Johannesburg.

A study conducted by the government entity Statistics South Africa from 2009 to 2015 found approximately 90,000 children lived in approximately 50,000 child-headed households, mostly due to the impact of the HIV/AIDS epidemic. These children sometimes turned to prostitution to support themselves and their siblings. Traffickers in the sex trade exploited other children. Traffickers often recruited children from poor rural areas and moved them to urban centers such as Johannesburg, Cape Town, Durban, and Bloemfontein. NGOs provided shelter, medical, and legal assistance for children in prostitution and a hotline for victims of child abuse.

International Child Abductions: The country is a party to the 1980 Hague Convention on Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at [travel.state.gov/content/childabduction/en/legal/compliance.html](http://travel.state.gov/content/childabduction/en/legal/compliance.html).

### **Anti-Semitism**

The South African Jewish Board of Deputies estimated the Jewish community at 75,000 to 80,000 persons. There were reports of verbal abuse, hate speech, harassment, and attacks on Jewish persons or property.

On July 11, four individuals were arrested and charged with "conspiracy and incitement to commit the crime of terrorism" after reportedly plotting to attack a foreign embassy in Pretoria and unidentified Jewish buildings. Charges against two of the four were subsequently withdrawn. Brandon Lee Thulsie and Tony Lee Thulsie, 24-year-old twin brothers, were charged with three counts of contravening the Protection of Constitutional Democracy Against Terrorist and Related Activities Act. According to the charge sheet, the brothers allegedly were linked to Da'esh and planned to set off explosives at a foreign embassy and Jewish institutions in the country. The case continued at year's end.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

### **Persons with Disabilities**

The law prohibits discrimination in employment or access to health care, the judicial system, and education based on physical, sensory, intellectual, and mental disability. Department of Transportation policies on providing services to persons with disabilities were consistent with the constitution's prohibition on discrimination. Nevertheless, government and private-sector discrimination existed. The law mandates access to buildings for persons with disabilities, but such regulations were rarely enforced, and public awareness of them remained minimal.

In September the Gauteng provincial government announced the deaths of 36 persons with mental disabilities. The individuals were among those whose care was transferred to 122 NGOs after the Department of Health cancelled its contract with Life Healthcare, which cared for approximately 2,000 persons with mental disabilities. The individuals were transferred without clinical files that detailed their medical history. Opposition parties called for an investigation into the deaths.

Educational opportunities for children with disabilities were limited. According to Section 27, a public-interest law center, a mother in Manguzi reported that her son had never attended school because he was deaf and did not know sign language. When the child was eight years old, he was put onto a waiting list for a special school but not offered admission until four years later. His offer was subsequently rescinded because he was too old. Section 27 stated teachers were often hired without skills to teach students with different disabilities and were challenged by large student-to-teacher ratios.

In 2012, the most recent year for which data were available, there were more than 111,000 students with disabilities in mainstream schools, and the country had 444 specialized schools for students with disabilities. A report published during the year by the SAHRC and Human Rights Watch estimated, however, that more than 500,000 children with disabilities were not in school. The report found numerous barriers to education for students with disabilities, primarily a policy of channeling students into specialized schools at the expense of inclusive education. Specialized schools frequently charged additional fees, making them financially inaccessible, were located long distances from students' homes, and lacked the capacity to accommodate demand. Children often were housed in dormitories with few adults, many of whom had little or no training in caring for children with disabilities. When parents attempted to force mainstream schools to accept their children with disabilities, an option under the law, schools sometimes rejected the students outright because of their disabilities or claimed there was no room.

The Department of Basic Education allocated part of its budget for assistive devices, material resources, and assistive technology, but it noted resources were inadequate, and teachers reported insufficient skills in inclusive education. Many blind and deaf children in mainstream schools received only basic care rather than education.

The law prohibits harassment of persons with disabilities and, in conjunction with the Employment Equity Act, provides guidelines on the recruitment and selection of persons with disabilities, reasonable accommodation for persons with disabilities, and guidelines on proper handling of employees' 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 to achieve employment equity for persons with disabilities (see section 7.d.). Nevertheless, persons with disabilities constituted only an estimated 1.2 percent of the workforce. The government did not meet its goal of filling 2 percent of government positions with persons with disabilities by year's end.

Persons with disabilities were sometimes subject to abuse and attacks, and prisoners with mental disabilities often received no psychiatric care. According to the 2016 Optimus Study, children with disabilities were 78 percent more likely to have experienced sexual abuse in the home than children without disabilities.

In 2015 four men--including a traditional healer--abducted and killed Thandazile Mpunza, a 20-year-old woman with albinism and a learning disability. They dismembered Mpunza, allegedly used her body parts in a traditional ceremony, and buried her remains in a shallow grave. Police arrested the men and charged them with murder. In 2015 the two primary suspects were convicted and each sentenced to 20 years' imprisonment. During the year one suspect was sentenced to 18 years' imprisonment, and one was convicted and awaiting sentencing at year's end.

There were 15 persons with disabilities in the upper and lower houses of parliament and 218 elected officials with disabilities at the provincial and municipal levels, according to the umbrella advocacy group Disabled People South Africa. The law does not allow persons identified by the courts as mentally disabled to vote.

The Department of Social Development has primary responsibility for disability policy. All provincial and local governments also have offices charged with protecting the rights of persons with disabilities, and there are representatives

advocating for persons with disabilities at the Commission for Gender Equality and the SAHRC. NGOs also advocated for the rights of persons with disabilities.

A 2014 study by the South African Federation for Mental Health found that of the 20 percent of citizens with mental disabilities, 75 percent did not receive needed care. There were approximately 80 mental health treatment facilities in the country, and more than half were run by NGOs, well short of the facilities needed.

According to November media reports, some government employees with disabilities who worked in a Mpumalanga provincial government complex were unable to get to their offices due to broken elevators. An investigation revealed that only two of six government buildings had working elevators, and that the elevator in one of the buildings had been broken since August.

### **National/Racial/Ethnic Minorities**

The law requires employers with 50 or more employees to provide for previously disadvantaged groups, legally defined as “Africans or blacks,” “Coloureds,” and “Asians” and collectively constituting more than 90 percent of the population, to be represented adequately at all levels of the workforce. Nevertheless, blacks remained underrepresented, particularly at the professional and managerial levels (see section 7.d.). According to the 2015-16 *Employment Equity Report*, whites occupied 68.9 percent of top management positions, 58.1 percent of senior management positions, and 38 percent of professionally qualified positions while comprising only 9.9 percent of the economically active population. Blacks held 14.3 percent of top management positions (up from 13.6 percent in 2014-15), 21.2 percent of senior management positions (up from 20.5 percent in 2014-15), and 41.2 percent of all professional positions (up from 36.7 percent in 2014-15). Black women remained by far the most disadvantaged group in number and quality of management jobs.

Xenophobic attacks on foreign African migrants and ethnic minorities occurred and sometimes resulted in death, injury, and displacement. Incidents of xenophobic violence generally were concentrated in areas characterized by poverty and lack of services. Citizens blamed immigrants for increased crime and the loss of jobs and housing. According to researchers from the African Center for Migration and Society, perpetrators of crimes against foreigners enjoyed relative impunity.

Local community or political leaders who sought to gain notoriety in their communities allegedly instigated some attacks. The government sometimes responded quickly and decisively to xenophobic incidents, sending police and soldiers into affected communities to quell violence and restore order, but more often, the response was slow and insufficient. Since 2013, the government reduced significantly the number of assaults and deaths by evacuating individuals from communities affected by xenophobic violence, although little was done to protect property owned by foreign nationals. Civil society organizations criticized the government for failing to address the causes of violence, for not facilitating opportunities for conflict resolution in affected communities, for failing to protect the property or livelihoods of foreigners, and for failing to deter such attacks by vigorous investigation and prosecution of perpetrators.

On January 3, KwaZulu-Natal real estate agent Penny Sparrow posted racist statements on social media labeling black beachgoers as “monkeys.” After being reported to the SAHRC, the Equality Court ruled that the words constituted hate speech and fined her 150,000 rand (\$10,700). Sparrow successfully appealed the sentence at the Magistrate’s Court, where it was reduced to 5,000 rand (\$357). Additionally, she received a suspended sentence of two years in prison conditioned on issuing a public/social media apology and not committing a similar offense for five years. Sparrow was instructed to pay the fine to the Oliver and Adelaide Tambo Foundation; however, the foundation refused to accept it.

On August 27, in Middelburg, Victor Mlotshwa was held at gunpoint, beaten, and placed in a coffin by Theo Jackson and Willem Oosthuizen. The perpetrators filmed the incident for social media. On November 16, the case was brought in front of the Middleburg magistrate court, where the defendants abandoned their bail bid. The case was postponed to January 25, and Jackson and Oosthuizen remained in custody.

On September 30, the SAHRC released its findings on 31 complaints filed against the Zulu king in 2015 for xenophobic comments, including that foreigners “dirtied the streets” and should “pack their bags and go home.” The SAHRC found that the comments attacked a vulnerable minority but did not amount to hate speech.

Killings of farm owners and farm laborers continued. For example, in January authorities arrested four farmers for allegedly beating to death two farm workers they claimed had attacked a 72-year-old farmer over a wage dispute. According to police, the four detainees were avenging the beating of a fellow farmer. The case continued at year’s end.

In July unknown assailants repeatedly stabbed a farmer and assaulted his wife during a robbery on his farm in the south of Johannesburg. The police had made no arrests by year's end.

### **Indigenous People**

The NGO Working Group of Indigenous Minorities in Southern Africa estimated there were 7,500 indigenous San and Khoi in the country, some of whom worked as farmers or farm laborers. By law the San and Khoi have the same political and economic rights as other citizens, although the government did not always effectively protect those rights or deliver basic services to indigenous communities. Indigenous groups complained of exclusion from land restitution, housing, and affirmative action programs. They also demanded formal recognition as “first peoples” in the constitution. Their lack of recognition as “first peoples” excluded their leadership from government-recognized structures for traditional leaders. Their participation in government and the economy was limited due to fewer opportunities, lack of land or other resources, minimal access to education, and relative isolation (see section 7.d.).

### **Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

The post-apartheid constitution outlaws discrimination based on sexual orientation. According to the Other Foundation, a local NGO, more than 50 percent of citizens believed that LGBTI individuals should have the same human rights as other citizens, although more than 70 percent of respondents believed same-sex sexual activity was morally wrong. This cultural attitude influenced service delivery by individual government employees at the local level. NGOs reported the prevailing culture also negatively influenced hiring practices by local firms, particularly for transgender and intersex individuals.

There were reports of official mistreatment or discrimination based on sexual orientation or gender identity despite clear government policies prohibiting discrimination. Security force members, for example, reportedly raped LGBTI persons during arrest. A 2015 Human Rights Watch report highlighted violence and discrimination, particularly against lesbians and transgender persons in the country. The report documented cases of “secondary victimization” of lesbians, including cases in which police harassed, ridiculed, and assaulted victims of sexual- and gender-based violence who reported abuse. According to the



Khayelitsha Commission of Inquiry Report released in 2014, LGBTI individuals were particularly vulnerable to violent crime due to anti-LGBTI attitudes within the community and among police. Anti-LGBTI attitudes among junior members of SAPS affected how SAPS handled complaints by LGBTI individuals, and management did not always address the problem.

In 2014 the government launched a National Intervention Strategy that included rapid-response teams from civil society and various government departments to ensure that law enforcement officers dealt with crimes against the LGBTI community promptly and professionally. In August 2015 the government reported these rapid-response teams, which continued to meet during the year, analyzed more than 200 hate crimes cases labeled as “stalled” by civil society. The NPA closed approximately 80 of the cases due to lack of evidence or unavailability of witnesses, but it advanced and concluded 23 cases with convictions, some resulting in life sentences. The NPA and SAPS continued to investigate the remaining cases. The task team has also made progress in educating local government officials and the public about equal rights for the LGBTI community.

On August 17, a gang member raped a lesbian in Bentersdorp. The gang member allegedly told the victim that other lesbians were next, as he knew where they stayed and their working hours. The perpetrator was arrested the following day and was awaiting trial at year’s end.

According to the Western Cape Ministry of Community Safety, on December 3, more than 10 men broke into the home of 22-year-old LGBTI activist Noluvo Swelindawo, who they subsequently abducted, assaulted, shot, and killed. Authorities arrested one suspect, who was awaiting trial at year’s end.

### **HIV and AIDS Social Stigma**

The social stigma associated with HIV/AIDS remained a problem, especially in rural communities. Civil society organizations such as the Treatment Action Campaign and government campaigns continued to address the problem.

In 2015 the South African National AIDS Council--a joint body composed of government, academic, and civil society representatives--released a landmark People Living with HIV Stigma Index. The council surveyed more than 10,000 HIV-positive individuals, age 15 and over, from two districts in each province on their experiences with social stigma. Overall, 36 percent of respondents reported experiencing external stigma; most were girls and women, ages 15 to 24, poor,

infected with HIV for two to five years, living in a small town, and married or with a partner but temporarily not living in the same house. A large majority of respondents said they had never been excluded from social gatherings, but those who were excluded listed their HIV status as a key factor. Most participants said they had not been physically assaulted or harassed, discriminated against, or abused physically or emotionally by a partner in the prior 12 months. Of those who experienced abuse, approximately one-third attributed it to their HIV-positive status.

Forty-three percent of respondents of all socioeconomic groups reported internal stigma, or negative feelings toward themselves. Internal stigma had a profound impact on social participation, with 32 percent of respondents deciding not to have children because of their status, 15 percent deciding not to marry, 12 percent choosing not to attend social gatherings, and 10 percent isolating themselves from family and friends. Those most likely to experience internal stigma were between ages 15 to 24, in their first year of HIV-positive status, and lacking formal education.

Of those surveyed who disclosed their status to family or friends, most found family or friends to be supportive. Most respondents disclosed their status--89 percent to their partners and 68 percent to their children. Approximately 28 percent suggested their status might have been disclosed without their consent, 24 percent were unsure whether their status might have been disclosed, and 30 percent were unsure if their medical records were kept confidential.

### **Other Societal Violence or Discrimination**

There were reports that persons accused of witchcraft were attacked, driven from their villages, and in some cases killed, particularly in Limpopo, Mpumalanga, KwaZulu-Natal, and Eastern Cape Provinces. Victims were often elderly women. Traditional leaders generally cooperated with authorities and reported threats against persons suspected of witchcraft.

Persons with albinism faced discrimination and were sometimes attacked for ritual practices. In June a four-year-old boy with albinism was kidnapped in KwaZulu-Natal and remained missing at year's end. In July a woman was charged with conspiracy to murder and child trafficking after she allegedly tried to sell a 12-year-old boy with albinism to a traditional healer for 100,000 rand (\$7,140). Police were investigating reports that a trafficking syndicate was operating in the area.

Ritual (“muthi”) killings to obtain body parts believed by some to enhance traditional medicine persisted. Police estimated organ harvesting for traditional medicine resulted in 50 deaths per year.

Incidents of vigilante violence and mob killings occurred, particularly in Gauteng, Mpumalanga, Eastern Cape, and KwaZulu-Natal Provinces.

On August 13, in Pietermaritzburg, residents assaulted a man accused of stabbing a young child.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

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. According to the 2015 *First Quarter Labor Force Survey* conducted by government entity Statistics South Africa, 3.6 million workers belonged to unions. According to the Department of Labor, as of June there were 189 registered unions. The law allows unions to conduct their activities without interference and provides for the right to strike, but it prohibits workers in essential services from striking, and employers are prohibited from locking out essential service providers. The government characterizes essential services as: (a) a service, the interruption of which endangers the life, personal safety, or health of the whole or part of the population; (b) the parliamentary service; or (c) members of SAPS.

The law allows workers to strike over matters of mutual interest, such as wages, benefits, organizational rights disputes, socioeconomic interests of workers, and similar measures. Workers may not strike over disputes where other legal recourse exists, such as through arbitration. Labor rights NGOs operated freely.

The law protects collective bargaining and prohibits employers from discriminating against employees or applicants for past, present, or potential union membership or participation in lawful union activities. According to Statistics South Africa’s *First Quarter Labor Force Survey*, unions negotiated salary increments for 75 percent of workers in sectors where unions organized. Fifty-six percent of workers had their salary increments determined solely by their employers, and approximately 5.5 percent of workers had no regular salary

increment. The law provides for automatic reinstatement of workers dismissed unfairly for conducting union activities. The law provides a code of good practices for dismissals that includes procedures for determining the “substantive fairness” and “procedural fairness” of dismissal. The law includes all groups of workers, including illegal and legally resident foreign workers.

Labor courts and labor appeals courts effectively enforced the right of association and the right to collective bargaining.

The government respected freedom of association and the right to collective bargaining. Worker organizations were independent of the government and political parties, although the Congress of South African Trade Unions (COSATU), the country’s largest labor federation, is a member of a tripartite alliance with the governing ANC party and the South African Communist Party. Some COSATU union affiliates lobbied COSATU to break its alliance with the ANC, arguing the alliance had done little to advance workers’ rights and wages. The country’s largest and most influential agriculture-sector union in August voted to disaffiliate from COSATU.

In July 2015 two other labor federations accused the minister of labor of political interference favoring COSATU-affiliated unions. Labor Registrar Johan Crouse--who the labor minister dismissed in 2015 in a decision the labor court found to be unreasonable, irrational, and procedurally unfair--was not reinstated as ordered by the court.

The minister of labor has the authority to extend agreements by majority employers (one or more registered employers’ organizations that represent 50 percent plus one of workers in a sector) and labor representatives in sector-specific bargaining councils to the entire sector, even if companies or employees in the sector were not represented at negotiations. Companies not party to bargaining disputed this provision in court. Employers often filed for and received labor department exemptions from collective bargaining agreements.

Workers frequently exercised their right to strike, and strikes were sometimes violent and disruptive. Although the law prohibits essential service providers from striking, they participated in strikes throughout the year. Despite a court order to return to duty, for example, workers of state-owned power utility Eskom participated in a two-day illegal national strike in August over their unmet wage increase demands.

If not resolved through collective bargaining, independent mediation, or conciliation, disputes between workers in essential services and their employers were referred to arbitration or the labor courts.

Trade unions generally followed the legal process of declaring a dispute (notifying employers) before initiating a strike. Some unions, however, during the year, as in previous years, defied court orders interdicting them from initiating a strike. For example, workers from the ANC-aligned Municipal Workers Union embarked on an illegal strike against Pikitup refuse collection company in April. The strike lasted five weeks and resulted in 4,000 tons of garbage being left on the streets of Johannesburg, causing environmental and health concerns. Other sectors affected by strikes during the year included energy, petroleum, communications, transportation, pharmaceutical, and mining.

Despite the presidency's 2015 announcement that surviving family members of the 34 killed during the 2012 Marikana Massacre by police and the several others injured would be compensated, compensation from the government was not provided. Neither SAPS personnel nor the government had been charged with the murders. Police Commissioner Riah Phiyega's competency hearing recommended by the Farlam Commission of Inquiry concluded in June, but any conclusions had not been made public.

During the year there were no credible cases of antiunion discrimination or employer interference in union functions, although anecdotal evidence suggested farmers routinely hampered the activities of unions on farms.

Rivalry and intolerance between unions were common. In June a senior member of the ANC-aligned National Union of Mineworkers and a member of the nonaligned Association of Mineworkers and Construction Association were killed due to union rivalry at the Northam Platinum mine in Limpopo Province, halting mine operations for eight days.

Violence and intimidation during strikes also were common. Members of the ANC-aligned Communication Workers Unions intimidated nonstriking workers and blocked entrance to the facilities of telecommunication company Telkom during a legal strike in August. In March, two drivers survived when striking workers of Pikitup shot at their trucks while the drivers collected trash during an illegal strike.

Minority unions often encouraged their members to join strikes led by majority unions for their own safety since strikebreakers sometimes encountered violence.

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

Although the law prohibits all forms of forced or compulsory labor, the government did not consistently or effectively enforce the law. There were reports of isolated cases of forced labor involving children and women, primarily in domestic and agricultural labor. Boys, particularly migrant boys, were reportedly forced to work in street vending, food services, begging, criminal activities, and agriculture.

The law prohibits forced labor and provides for penalties ranging from fines to three years in prison for perpetrators convicted of forced labor. The penalties were insufficient to deter violations, in part because inspectors typically levied fines and required payment of back wages in lieu of meeting evidentiary standards of criminal prosecution. The Prevention and Combatting of Trafficking in Persons Act of 2013 increased maximum fines for forced labor to 100,000 rand (\$7,140) and the maximum criminal sentence to life in prison.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

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

The law prohibits employment of children under age 15, and prohibits anyone from requiring or permitting a child under age 15 to work. The law allows children under age 15 to work in the performing arts, however, if their employers receive permission from the Department of Labor and agree to follow specific guidelines. The law also prohibits children between ages 15 and 18 from work that threatens a child's wellbeing, education, physical or mental health, or spiritual, moral, or social development. Children may not work more than eight hours a day or before 6 a.m. or after 6 p.m. A child not enrolled in school may not work more than 40 hours in any week, and a child attending school may not work more than 20 hours in any week.

The law prohibits children from performing hazardous duties, including lifting heavy weights, meat or seafood processing, underground mining, deep-sea fishing, commercial diving, electrical work, working with hazardous chemicals or explosives, in manufacturing, rock and stone crushing, and work in casinos or

other gambling and alcohol-serving establishments. Employers may not require a child to work in a confined space or to perform piecework and task work. Violation of child labor law is punishable by a maximum prison sentence of six years and a fine of 15,000 rand (\$1,070).

The government enforced child labor laws in the formal sector of the economy that strong and well-organized unions monitored, but enforcement in the informal and agricultural sectors was inconsistent. Although child labor continued, enforcement improved: The Department of Labor deployed specialized child labor experts in integrated teams of child labor intersectoral support groups to each province and labor center.

Cases of the worst forms of child labor were rare and difficult to detect, and neither the Department of Labor nor NGOs confirmed any cases during the year. The Department of Labor investigated a number of complaints but was unable to develop enough evidence to file charges. According to the department, the government made significant progress in eradicating the worst forms of child labor by raising awareness, putting strict legal measures in place, and increasing penalties for suspected labor violators.

An important factor in reducing child labor was the government's Child Support Grant, a direct cash transfer of 350 rand (\$25) per month. The government pays the grant to primary caregivers of vulnerable children age 18 and under. To be eligible for the grant, a single caregiver must earn less than 34,800 rand (\$2,490) per year, and the combined income for married caregivers may not exceed 69,600 rand (\$4,970) per year. A foster-child grant of 890 rand (\$63) per month was also available to a primary caregiver of a foster child whom a court order has placed in their custody.

Comprehensive data on child labor did not exist, but NGOs and inspectors considered it rare in the formal sectors of the economy.

See also the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

#### **d. Discrimination with Respect to Employment and Occupation**

The Employment Equity Act protects all workers against unfair discrimination on the grounds of race, age, gender, religion, marital status, pregnancy, family responsibility, ethnic or social origin, color, sexual orientation, disability,

conscience, belief, political, opinion, culture, language, HIV status, birth, or any other arbitrary ground. According to a 2014 amendment to the act, a contractor or part-time employee must be treated as a full-time employee after three months of service, unless he/she meets a defined list of exceptions. The legal standard used to judge discrimination in all cases is whether the terms and conditions of employment between employees of the same employer performing the same or substantially similar work, or work of equal value, differ directly or indirectly based on any of the grounds listed above. Employees have the burden of proving such discrimination. The amendment increases fines incrementally for noncompliance to 2 percent of company revenue, or 1.5 million rand (\$107,000), for a first offense. Authorities may fine up to 10 percent of company revenue, or 2.7 million rand (\$193,000), for a fourth offense on the same provision within three years. The government has a regulated code of conduct to assist employers, workers, and unions to develop and implement comprehensive, gender-sensitive, and HIV/AIDS-compliant workplace policies and programs.

Discrimination in employment and occupation occurred with respect to race, gender, disability, sexual orientation, HIV status, and country of origin (see section 6).

Discrimination cases were common and frequently taken to court or the Commission for Conciliation, Arbitration, and Mediation.

In its 2015-16 annual report released in May that surveyed 25,030 companies, the Commission for Employment Equity cited figures indicating discrimination by ethnicity, gender, age, and disability in all sectors of the economy. According to the report, whites--who constituted only 9.9 percent of the economically viable population--held 68.9 percent of top management positions in the private sector. Blacks--who constituted 77.4 percent--held only 14.3 percent. The implementation of the Black Economic Empowerment law, which aims to promote economic transformation and enhance participation of blacks in the economy continued. The public sector better reflected the country's ethnic and gender demographics. Traditional gender stereotypes, such as "mining is a man's job" and "women should be nurses" persisted. Bias against foreigners was common in society and the workplace. During the year labor department officials reviewed 551 companies for compliance with the employment equity law, exceeding its target of 523 reviews. The Department of Labor inspected 1,364 designated employers, missing the department's target of 1,837.

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



There is no legally mandated national minimum wage, although the law gives the Department of Labor authority to set wages by sector. The department increased the minimum wage for farm workers to 14.25 rand (\$1.01) per hour. The minimum hourly wage for domestic workers employed more than 27 hours per week was raised from 11.27 rand to 11.44 rand (\$0.80 to \$0.82) per hour for employers in the urban areas and from 9.80 rand to 10.23 rand (\$0.70 to 0.73) for employers in semi-urban and rural areas. The law protects migrant workers, and they are entitled to all benefits and equal pay.

The abuse of farm workers remained common. In 2015 migrant workers from Zimbabwe were violently evicted from a farm in Lephalale, Limpopo Province, after complaining of being paid below the sectoral minimum wage by the farmer. The Commission for Conciliation, Mediation and Arbitration in August ordered the reinstatement of the dismissed workers. The criminal case against the farmer continued. In January, in Parys, Free State Province, two farmworkers died after an alleged attack by four white farmers following an alleged dispute over wages. The murder cases against the farmers continued at year's end.

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 and must include Sunday. The law allows adjustments to rest periods by mutual agreement. 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 variances from the law by showing good cause. The law applies to all workers, including workers in informal sectors, foreigners, and migrant workers. The government did not provide social protections for workers in the informal economy.

The government set occupational health and safety standards through the Department of Mineral Resources for the mining industry and through the Department of Labor for all other industries. 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 law and requires mine owners to file annual reports providing statistics on health and safety incidents for each mine.

There are harsh penalties for violations of occupational health in the mining sector that has separate legislation with strict deterrents to protect mineworkers. Employers are subject to heavy fines or imprisonment for serious injury, illness, or the death of employees due to unsafe mine conditions. The law allows mine inspectors to enter any mine at any time to interview employees and audit records. Violation of the mining health and safety law is punishable by two years' imprisonment, and the law empowers the courts to determine a fine or penalty applicable for perjury. The Department of Mineral Resources was responsible for enforcing the mining health and safety law. The government, however, did not effectively enforce the law.

The government set separate standards for compensation of occupational diseases for the mining industry and for other industries. The government did not effectively enforce these laws. On May 12, the Johannesburg High Court certified class action against 32 gold-mining companies operating in South Africa from 1965 to the present by mineworkers suffering from silicosis and tuberculosis contracted at South African mines. The companies were accused of insufficiently protecting black workers in particular from contracting lung-related diseases. The landmark judgement paved the way for nearly 500,000 current and former mineworkers to sue mining companies. In March, AngloGold Ashanti and its parent company Anglo American, through an out-of-court settlement, agreed to pay at least 464 million rand (\$33.1 million) to mineworkers who contracted silicosis on the job. The government and unions representing South African and migrant mine workers confirmed a backlog of unpaid claims amount to millions of rand owed to former and current workers under the Department of Health-administered Occupational Diseases in Mines Fund.

Outside the mining industry, no laws or regulations permit workers to remove themselves from work situations deemed dangerous to their health or safety without risking loss of employment, although the law provides that employers may not retaliate against employees who disclose dangerous workplace conditions. Employees were also able to report unsafe conditions to the labor department, which used employee complaints as a basis for prioritizing labor inspections. Violation of health and safety law outside the mining sector is punishable by a fine of 100,000 rand (\$7,140) and/or imprisonment for a period not exceeding two years. The Department of Labor was responsible for enforcing safety laws outside the mining sector. The government, however, did not effectively enforce the law. Unions in the agriculture sector have noted their repeated attempts to have the Labor Department enforce fines on farms where protection to shield workers from hazardous chemicals sprayed on crops is not provided.

The Department of Labor is responsible for enforcing wage standards outside the mining sector, and a tripartite Mine Health and Safety Council and an Inspectorate of Mine Health and Safety enforced such standards in the mining sector. Penalties for violations of wages and work-hour standards outside the mining sector were not sufficient to deter violations.

The government employed 1,599 labor inspectors countrywide, a number considered insufficient to investigate reports of labor abuses in a total workforce of 18.6 million. For example, 107 government labor inspectors in Western Cape Province had responsibility for more than 6,600 farms as well as other businesses and sectors. Labor inspectors conducted routine and unplanned inspections at various workplaces that employed vulnerable workers. The government provided free housing for some employees earning less than 3,500 rand (\$250) per month, free health care, and, in some areas, no-fee schooling to assist the children of low-income earners. Labor inspectors and unions had difficulty visiting workers on private farms.

The Department of Labor reported it conducted 149,847 labor inspections in 2014-15, resulting in findings of noncompliance in 27,531 cases. The department did not meet its target of 150,684 inspections. The department issued 27,291 violation notices and referred 394 cases for prosecution. The labor department conducted 730 of 968 requested investigations on work permit cases within five days.

While labor conditions improved on large commercial farms, COSATU and leading agricultural NGOs reported that labor conditions on small farms remained harsh. Underpayment of wages and poor living conditions for workers, most of whom were black, were common. Many owners of small farms did not measure working hours accurately, 12-hour workdays were common during harvest time, and few farmers provided overtime benefits. Amendments to the Basic Conditions of Employment Act attempted to address some labor abuses at farms. For example, changes prohibited farms from selling farm employees goods from farm-operated stores on credit at inflated prices.

Mining accidents were common. In January, four workers died underground during a fire, and another two died in May during a rock fall underground, both at the Impala Platinum mine in Rustenburg, North West Province. In June, two workers were killed at Anglo Ashanti's Kopanong and the TauTona Carletonville mines, Gauteng Province, when a rock fell. In February a mineshaft at the Vantage Goldfields' Lily Mine in Mpumalanga Province collapsed, trapping 79 workers

underground. Recovery operations terminated the following month without the recovery of three of the workers. The Department of Mineral Resources promised that each of the trapped workers, including those whose bodies were not recovered, would receive 200,000 rand (\$14,300). Nevertheless, the government had not provided compensation by year's end; 879 persons lost their jobs when the mine closed in May.

Industrial accidents also were common. For example, on July 5, a man died when he fell while working in a construction area at Eskom Medupe power station in Lephalale, Limpopo Province. On January 17, two workers were killed when the hydraulic lift, which they were working from, fell to the ground in Pietermaritzburg, KwaZulu-Natal Province. A farm worker died when a harvesting machine on a farm in North West Province chopped his body.

During the year officials audited 23,678 workplaces to determine their compliance with occupational and safety laws; 7,888 were not in compliance.