

# **SOUTH AFRICA 2018 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. In December 2017 the ruling African National Congress (ANC) elected then deputy president Cyril Ramaphosa as party president. On February 14, then president of the country Jacob Zuma announced he would step down. On February 15, the National Assembly elected Ramaphosa to replace Zuma. In 2014 the country held a largely free and fair national election in which the ruling ANC won 62 percent of the vote and 249 of 400 seats in the National Assembly.

Civilian authorities maintained effective control over the security forces.

Human rights issues included: unlawful or arbitrary killings by government agents; corruption; trafficking in persons; and crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

Although the government investigated and prosecuted officials who committed abuses, 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).

In August, three police officers in KwaZulu-Natal Province were arrested for torturing three men who had been detained for questioning regarding a homicide. One of the three detained men died from injuries inflicted by the officers. At year's end a task force was investigating the case.

According to the 2017-18 IPID annual report, 436 persons died in police custody or due to police action during the 12 months from April 2017 to April 2018, an 11-percent increase from the prior 12 months. IPID recommended prosecution in 112 of the instances.

A death resulting from police action was defined as a death that occurred while a police officer attempted to make an arrest, prevent an escape, or engage in self-defense; it also covered collisions involving one or more South African Police Service (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 homicide. Watchdog groups noted deaths in custody often resulted from physical abuse combined with a lack of medical treatment or neglect (see section 1.c.).

Officials at the highest levels of government recognized the prevalence of political killings needed to be addressed. In May the president categorized KwaZulu-Natal's political killings as a "matter of national concern," called for the violence to cease, and ordered a high-level inquiry into the problem. Although interparty killings took place, media and NGOs claimed the vast majority were a result of intra-ANC disputes at the local level. Killings often occurred in the context of a competition for resources or positions, or whistleblowers targeted for uncovering corruption.

In September the Moerane Commission, which KwaZulu-Natal Province Premier Willies Mchunu established in 2016 to investigate political killings, published its report, which identified ANC infighting, readily available hitmen, weak leadership, and ineffective and complicit law enforcement agencies as key contributing factors to the high rate of killings. Despite government attention to the problem, political killings in the country, and specifically in KwaZulu-Natal Province, continued.

There were numerous reported killings similar to the following example. In May a prominent ANC activist and an Inkatha Freedom Party municipal councilor were shot and killed on the same day.

## **b. Disappearance**

There were no reports of disappearances by or on behalf of government authorities.

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

Although the law prohibits such practices, there were reports that police and correctional officers moved nonviolent suspects under interrogation into cells with violent criminals. Police allegedly ignored activities in the cells as the violent criminals intimidated, beat, or raped suspects, 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.).

The United Nations reported that it received 16 allegations of sexual exploitation and abuse against peacekeepers from South African units deployed in the UN Stabilization Mission in the Democratic Republic of the Congo during the year. The majority of cases alleged sexual exploitation (exploitative relationships, involving 11 peacekeepers and 11 victims; transactional sex, involving three peacekeepers and three victims). Sexual abuse (sexual assault, rape) was alleged in two cases, one of which involved a minor. Most UN investigations were pending. One allegation was substantiated according to a UN investigation. The peacekeeper in question was repatriated. Interim action was taken in three other cases. Seven allegations were reported in 2017, of which six remained under investigation (and one was closed because the subject died) at year's end.

### **Prison and Detention Center Conditions**

Prison conditions were harsh due to overcrowding, poor sanitation and medical care, disease, particularly tuberculosis, inmate-on-inmate rape, and physical abuse, including torture.

Physical Conditions: In 2016 the national commissioner for correctional services appealed to government security agencies to reduce overcrowding in the country's correctional facilities. In 2017 the High Court ordered that the Pollsmoor detention facility's inmate population be reduced to 150 percent of capacity within six months. Some prisoners believed they would be taken further away from their families where relatives would not be able to visit them due to unaffordable travel costs.

From April 1, 2017, through March 31, the Judicial Inspectorate of Correctional Services (JICS) received 231 complaints of assaults on prisoners by correctional officers. The Judicial Inspectorate of Correctional Services (JICS) and a JICS-appointed Independent Correctional Center Visitor (ICCV) monitored prison conditions in each correctional center. 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 instances in which prisoners were tortured.

Corruption among prison staff remained a problem. For example, in April, two wardens were arrested allegedly for accepting bribes to help 16 inmates escape from a Johannesburg prison.

According to the 2017-18 Department of Correctional Services (DCS) annual report, the country's correctional facilities held 160,583 prisoners in facilities designed to hold 118,723; the correctional system was 35 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 below capacity.

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 the DCS 2017-18 annual report, 26,442 inmates were placed on antiretroviral treatment.

General health care in prisons was inadequate; 7,574 inmates filed health-care complaints. Prisons provided inmates with potable water, but supplies and food were occasionally inadequate, and sanitation was inadequate, according to JICS.

The 2017-18 DCS annual report noted prisons held 3,432 youths (individuals under age 25). Prisons sometimes held youths alongside adults, particularly in pretrial detention. Prisons generally held pretrial detainees with convicted prisoners, although in some large urban areas dedicated pretrial facilities were available.

According to JICS, there were 569 prison deaths from April 1, 2017, through March 31, a 55-percent decrease from the prior 12 months. Natural causes accounted for 487 deaths, a 5-percent decline from the prior 12 months. 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.

JICS was the primary monitoring group for prisons but was not autonomous since the DCS controlled its budget. According to JICS, from April 1, 2017, through March 31, ICCVs collectively handled 119,836 cases, a 74-percent decrease from the prior 12 months. NGOs claimed the failure of the DCS to follow up on ICCV recommendations hindered the program's effectiveness. They also claimed many ICCVs lacked independence in their oversight or reporting of abuses.

Local NGO Lawyers for Human Rights (LHR) criticized conditions at the Lindela Repatriation Center, the country's largest immigrant detention facility. According to 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, and lack of procedural safeguards such as legal guidelines governing long-term detention.

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

Prisons provided 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: Authorities did not always conduct proper investigations of credible allegations of mistreatment. JICS recommended the DCS have an ombudsman to address juvenile confinement and improve procedures to make confinement unnecessary, but the DCS had not implemented the change by year's end.

Independent Monitoring: The government permitted independent monitoring of prison conditions, including visits by human rights organizations, which were required to apply for permission to gain access. Organizations' requests for permission to visit prisons to conduct specific research were sometimes granted.

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

The constitution and law prohibit arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of arrest or detention in court. Unlike in prior years, the government generally observed these requirements.

#### **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 SAPS, Department of Home Affairs (DHA), defense force, South African Revenue Service, Department of Health, Department of Agriculture and Fisheries, Department of Transportation, Department of Trade and Industry, State Security Agency, and Department of Environmental Affairs representatives--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. The departments each have a representative at major border crossings; regional representatives covered lesser border crossings. The SAPS Directorate for Priority Crime Investigation (the "Hawks") coordinates efforts against organized crime, priority crimes, and official corruption. Despite efforts to professionalize, SAPS remained understaffed, ill equipped, and poorly trained. Corruption continued to be a problem (see section 4).

Civilian authorities maintained effective control over the security forces, and the government had effective mechanisms to investigate and punish abuse. The government investigated and prosecuted security force members who committed abuses, although there were numerous reports of police impunity, including of high-ranking members. IPID investigates complaints and makes recommendations to SAPS and to the National Prosecution Authority (NPA) on which cases to prosecute. IPID examines all SAPS killings and evaluates whether they occurred in the line of duty and if they were justifiable. IPID also investigates cases of police abuse, although it was unable to fulfill its mandate due to inadequate cooperation by police, lack of investigative capacity, and other factors. 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; from April 2017 to April 2018 IPID recorded 69 cases in which SAPS or metropolitan police departments failed to report wrongdoing to IPID.

Security forces failed to prevent or adequately respond to societal violence, particularly in response to attacks on foreign nationals (see sections 2.d. and 6).

Some SAPS and metropolitan police department officers received training in ethics, human rights, corruption, sexual offenses, domestic violence, gender violence, and violence against LGBTI persons. SAPS also provided officers with access to social workers, psychologists, and chaplains. SAPS investigations of gender-based violence (GBV) crimes and crimes against LGBTI individuals were often insufficient.

### **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), 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 regarding the Criminal Procedure Second Amendment Act, which allows 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. For example, in May, Department of Home Affairs officers detained 25 irregular migrants during raids at China City and Canal Walk in Cape Town. Human rights activists condemned the arrests and complained that some of the individuals were undocumented because the Department of Home Affairs failed to reopen a refugee center in Cape Town, despite a court order.

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 alongside hardened criminals, which created opportunities for physical abuse.

NGOs and media outlets reported security forces arbitrarily arrested migrants and asylum seekers--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. The law prohibits the detention of unaccompanied migrant children for immigration law violations, but NGOs reported that the DHA and SAPS nevertheless detained them.

Pretrial Detention: Lengthy pretrial detention was common. According to the DCS 2017-18 annual report, there were 46,142 pretrial detainees in the prison system--equal to 29 percent of the inmate population. According to the DCS, detainees waited an average of 176 days before trial. Observers attributed the high rate of pretrial detention to arrests based on insufficient 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 less than 60 percent of those arrested were convicted. The law requires a review of pretrial 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.



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

The law provides for an independent judiciary, and the government generally respected judicial independence. The judiciary, however, was understaffed and underfunded. There were numerous reports that legal documents used in trials were lost, particularly when the accused was a government official. NGOs stated 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 verdicts.

Government agencies sometimes ignored orders from provincial high courts and the Constitutional Court.

### **Trial Procedures**

The law provides for the right to a fair and public trial, and an independent judiciary generally enforced this right. Criminal defendants enjoy the right to a presumption of innocence; to be informed promptly of the charges; a fair, timely, and public trial; to be present at their trial; to communicate with an attorney of their choice; to have adequate time and facilities to prepare a defense; free assistance of an interpreter; to confront prosecution or plaintiff witnesses and present their own witnesses and evidence; and not to be compelled to testify or confess guilt. Police did not always inform detainees promptly and in detail of the charges against them, nor did they always accurately complete corresponding paperwork. Provision of free assistance of an interpreter depended on the availability and cost of interpreters. Interpretation standards 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.

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. 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 opposition Inkatha Freedom Party (IFP) maintained the government had 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 then president Zuma announced he approved 154 and rejected 230 IFP applications for pardon. Following his announcement, the government considered and rejected an additional six cases. The presidency considered the remaining pardon requests on a case-by-case basis.

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

Individuals and organizations may seek civil remedies for human rights violations through domestic courts or through the South African Human Rights Commission, but the government did not always comply with court decisions. Individuals and organizations may not appeal domestic court decisions to the African Court on Human and Peoples' Rights, because the government has not recognized the competence of the court.

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

The constitution and law prohibit such actions, but there were reports that the government failed to respect this prohibition. The "Right 2 Know" (R2K) campaign reported that government surveillance targeted whistleblowers, activists, and journalists who uncovered corruption, including "state capture," a World Bank term often used to describe systemic political corruption, in which private interests influence the state's decision-making process.

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

#### **a. Freedom of Expression, Including for the Press**

The law provides for freedom of expression, including for members of the press, and the government generally respected this right. An independent press, a generally effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for the press. Nevertheless,

several apartheid-era laws and the Law on Antiterrorism permit authorities to restrict reporting on the security forces, prisons, and mental institutions.

In a March court judgment, Vicki Momberg was convicted of “*crimen injuria*” (unlawfully, intentionally, and seriously injuring the dignity of another person) for repeatedly addressing black police officers with a racial slur. She was sentenced to two years’ imprisonment without parole. Many human rights groups applauded the ruling--the first of its kind--but the Afrikaner rights group AfriForum called it a case of “double standards... a white person who insults a black person goes to prison, while a senior officer in the defense force who says that white people’s eyes and tongues must be stabbed out is simply asked nicely not to repeat it.”

Press and Media Freedom: Independent media were active and expressed a wide variety of views without restriction.

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, which complained print media did not always adequately cover their points of view.

The state-owned South African Broadcasting Corporation (SABC) was criticized for violating its stated editorial independence in favor of progovernment reporting (see section 4, elections, and political participation). In January former independent television station (eNCA) presenter and journalist Chris Maroleng was hired as the SABC’s chief operating officer, and stated he was committed to promoting fair, balanced, and impartial coverage, to limit political interference, and to regain public trust in the SABC.

Nonprofit community radio stations played an important role in informing the mostly rural public, although these stations 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 withdrew community radio licenses on a regular basis for noncompliance with the terms of issuance.

Talk radio broadcast in the country’s 11 official languages played a significant role in public debate, providing a forum for discussion by government officials, politicians, commentators, and average citizens.

Many in the public credited media with exposing corruption in former president Zuma's administration and with his eventual resignation. For example, the online *Daily Maverick's* investigative unit "amaBhungane and Scorpio" ran a series of stories exposing details regarding state capture by the politically connected Gupta family and the family's level of influence on government officials and institutions.

Violence and Harassment: Journalists covering the ANC's national elective conference reported security officers manhandled them to prevent their access to delegates. SABC journalists covering protests in North West Province reported being attacked and robbed by protesters. SABC journalists reported that soccer fans in Durban destroyed some of their media equipment. These incidents did not appear to be orchestrated attacks on media.

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.

Jacques Pauw, an investigative journalist and author of an expose of corruption in former president Zuma's administration, was investigated by the Directorate of Priority Crime Investigation for allegedly using secret government documents as material for his book. The South African Revenue Service also filed charges against Pauw for violating confidentiality laws. Human rights activists charged that Pauw was targeted for exposing the corruption.

### **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 email, for national security reasons. The law requires all service providers to register on secure databases the identities, physical addresses, and telephone numbers of customers.

According to the International Telecommunication Union, 56.2 percent of individuals used the internet in 2017.

## Academic Freedom and Cultural Events

Unlike in prior years, there were no reports of government restrictions on academic freedom or cultural events.

### b. Freedoms of Peaceful Assembly and Association

#### Freedom of Peaceful Assembly

The constitution and law provide for freedom of assembly, and the government generally respected this right. According to SAPS, from April 2017 through March there were 11,058 peaceful protests and an additional 3,583 demonstrations that turned violent. Protest action was most common in Gauteng, North West, Western Cape, and KwaZulu-Natal Provinces.

#### Freedom of Association

The constitution provides for the right of association, and the government generally 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

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, but the government did not always respect these rights. The government cooperated with the UN High Commissioner for Refugees (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, limited locations at which to request status, and susceptibility to corruption and abuse.

Abuse of Migrants, Refugees, and Stateless Persons: Refugee advocacy organizations stated that police and immigration officials abused refugees and asylum seekers. Xenophobic violence was a continuing problem across the

country. Although no official data existed on this subject, Xenowatch, an open-source system for information collection and interactive mapping that allows crowd sourcing of xenophobia-related incidents, reported that 27 persons were killed, 77 persons were assaulted, 588 shops were looted, and 1,143 persons were displaced due to xenophobic incidents during the 18 months between February 2017 and August 31. According to Xenowatch, during that period xenophobic-related killings, assaults, and displacements declined, but the looting of foreign-owned or -managed shops increased.

Xenophobic violence occurred against foreign nationals, often refugees from Somalia, Ethiopia, or the Democratic Republic of the Congo. They often owned or managed small, informal township grocery stores. In May, Durban police were on high alert after the North Region Business Association sent letters to foreign national shop owners advising them to shut down their businesses in Inanda, Ntuzuma, and KwaMashu townships.

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.

### **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 local organizations, the DHA rejected the vast majority of refugee applications. There were more than one million refugees and asylum seekers at year's end. An estimated 120,000 were granted refugee status. Government services strained to keep up with the caseload, and NGOs criticized the government's implementation of the system as inadequate. According to UNHCR, the government registered 24,174 asylum seekers in 2017, a 46-percent decline from 2016.

The DHA operated only three processing centers for refugees but refused to transfer cases among facilities. The DHA thus required asylum seekers to return to the office at which they were originally registered to renew asylum documents, usually valid for only three months, which NGOs argued posed an undue hardship. During the year the government did not expand the number of reception centers,

resulting in large backlogs. NGOs reported asylum seekers sometimes waited in line for days to access the reception centers.

Employment: According to NGOs, refugees and asylum seekers were regularly denied employment due to their immigration status.

Access to Basic Services: Although the law provides for access to basic services, including educational, police, and judicial services, NGOs stated that health-care facilities and law enforcement personnel discriminated against asylum seekers, migrants, and refugees. Some refugees reported they could not access schooling for their children. They reported that schools often refused to accept asylum documents as proof of residency.

One immigrant group stated the government would not recognize it as an official NGO because it did not have a bank account; however, no bank would issue an account to the group because its representatives lacked government-issued identification documents.

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 if denied, to appeal.

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

The law provides citizens 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: The ruling ANC's elective conference in December 2017 elected then deputy president Cyril Ramaphosa as president of the ANC. On February 14, Jacob Zuma stepped down as the country's president, and on February 15, the National Assembly elected Ramaphosa to replace him. In 2016 the country held municipal elections to elect councils for all district, metropolitan, and local municipalities in each of the nine provinces. The ANC won 54 percent of the vote, the leading opposition Democratic Alliance (DA) party 27 percent, and the Economic Freedom Fighters (EFF) 8 percent. According to the Electoral Institute for Sustainable Democracy in Africa, voter turnout was 58 percent, the highest local election turnout since the end of apartheid. The institute stated 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 were arrested and charged with public violence, possession of unlicensed firearms and ammunition, possession of stolen property, and malicious damage to property.

In the 2014 parliamentary elections, which were the most recent national elections, the ruling ANC won 62 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 seats, and the EFF six seats. The remaining two seats were allocated to two other parties.

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 the DA used state resources for political purposes in the provinces under their control. Prior to the municipal and national elections, the ANC reportedly handed out government food parcels to potential voters at political rallies, tied social grants to voting for the ANC, began (but did not complete) infrastructure projects, and created temporary government jobs for ANC voters during the election period. Through a cadre deployment system, the ruling party controls and appoints party members to thousands of civil service positions in government ministries and in provincial and municipal governments.



During the year the ANC requested political contributions from some civil servants. One NGO reported that ANC members told residents of a community in rural Eastern Cape that if they did not vote for the ANC, the local government would withhold the distribution of free solar panels it was directed to provide to them.

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 or members of minorities in the political process, and they did participate. Cultural factors, however, limited women's political participation. There were an estimated 93 minority (nonblack) members in the 400-seat National Assembly. There were 14 minority members among the 54 permanent members of the National Council of Provinces and nine minority members in the 72-member cabinet.

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

The law provides for criminal penalties for conviction of official corruption, and the government continued efforts to curb corruption, but officials sometimes engaged in corrupt practices with impunity.

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 *2017-2018 Annual Report*, it recovered 410,000 rand (\$31,700) from government officials involved in corruption, a 92-percent decrease from the previous year. Courts convicted 213 government officials of corruption.

The Constitutional Court ruled in August that former president Jacob Zuma's appointment of Shaun Abrahams as head of the NPA was invalid and ordered President Ramaphosa to replace Abrahams within 90 days. The court also ordered former NPA head Mxolisi Nxasana to repay a "golden handshake" (an illegal departure bonus) of 10.2 million rand (\$788,000) he received when Zuma replaced him with Abrahams in 2015. Most political parties and civil society organizations celebrated the court's ruling and acknowledged the challenges facing the NPA. In September 2017 Zuma's lawyers conceded in an appeals court that the NPA's dropping of 783 corruption charges against the president in 2009 was irrational. In

October 2017 the Supreme Court of Appeal reinstated the charges, opening the door for future prosecution of Zuma.

In August the Commission of Inquiry into State Capture began an investigation of public-sector corruption and fraud. Popularly known as the “Zondo Commission” because it was led by Constitutional Court Deputy Chief Justice Raymond Zondo, the commission was formed to investigate concerns raised by the former public protector Thuli Madonsela in her 2016 “state of capture” report. Numerous former senior officials had already testified before the commission; a number of them directly implicated former president Jacob Zuma in corruption cases.

Corruption remained a problem in prisons. 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.

In August, Public Protector Busisiwe Mkhwebane called on SAPS to improve its protection of whistleblowers after Thabiso Zulu and Les Stuta claimed former ANC youth league secretary general Sindiso Magaqa was killed because he wanted to expose corruption in the multimillion-rand renovation of the uMzimkhulu memorial hall on KwaZulu-Natal Province’s south coast. Mkhwebane accused the police minister of gross negligence and of exposing whistleblowers to possible retaliatory killings.

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 and regulations, 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 financial 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 public declarations by government officials but not those of their spouses or children. Public service regulations prohibit employees of departments from doing business with the state, a prohibition not always respected. Annual disclosure of financial interests may be done electronically through the *eDisclosure* system to simplify the process of disclosure of financial interests.

The auditor general's 2016-17 report noted cases of public servants who had private or business interest in contracts awarded by the National Department of Health and the National Department of Education who failed to disclose such interests. Audits revealed that officials of 31 departments and state-owned enterprises failed to declare their interests in awards totaling 54 million rand (\$4.2 million) either as part of the procurement processes or through annual declarations. Another 44 officials failed to declare family members' interests in awards totaling 274 million rand (\$21.2 million). These findings were most common in national government (27 instances) and the North West Province (nine instances) entities.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

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 South African Human Rights Commission operated independently and was responsible for promoting the observance of fundamental human rights at all levels of government and throughout the general population. The commission also has the authority to conduct investigations, issue subpoenas, and take sworn testimony. Due to a large backlog of cases, the failure of government agencies to adhere to its recommendations and fund it adequately, the commission was considered only moderately effective.

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

#### **Women**

Rape and Domestic Violence: Rape of men or women, including spousal rape, is illegal and remained a serious and pervasive problem. The minimum sentence for conviction of 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 requires a minimum sentence of life imprisonment, 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.

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. In June, Khensani Maseko, a Rhodes University student, committed suicide after being raped by her boyfriend. In response the Department of Higher Education drafted a policy that requires institutions to expand support for victims of sexual violence and that perpetrators be prosecuted. From April 2017 through March, 40,525 cases of rape were reported. According to the *2017-2018 NPA Annual Report*, the conviction rate for sexual offense crimes was 73 percent based on a sample of 6,879 cases that were “finalized” or investigated first as rape cases before being passed to the NPA and tried. A Medical Research Council study on the investigation, prosecution, and adjudication of reported rape cases concluded that only 18.5 percent of cases reported went to trial and only 8.6 percent of cases resulted in a verdict of guilty. 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 Department of Justice operated 58 dedicated sexual-offenses courts throughout the country. 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 55 rape management centers, or TCCs (Thuthuzela Care Centers). All TCCs were located at hospitals. 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 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 conviction of domestic violence include fines and sentences of between two and five years’ imprisonment.

The government financed shelters for abused women, but NGOs reported a shortage of such facilities, particularly in rural areas, and that women were sometimes turned away from shelters. The government conducted rape and domestic violence awareness campaigns, including a first-of-its-kind GBV summit. In August the government hosted numerous events focused on empowering women in business, government, health, sports, and the arts; however, many civil society organizations were critical of the Ministry of Women's general focus on women's economic empowerment while neglecting the issue of GBV.

On August 1, women across the country participated in #TotalShutdown, a one-day protest against violence against women. According to SAPS, the number of incidents of violence against women and children drastically increased nationwide during the year. In November, SAPS arrested two suspects in connection with the killing of three women and four children from one family in Vlakfontein (south of Johannesburg).

Female Genital Mutilation/Cutting (FGM/C): The law prohibits FGM/C of girls and women, but girls in isolated zones in ethnic Venda communities in Limpopo Province 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. For additional information, see Appendix C.

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 a victim's lost compensation plus interest, additional damages, legal fees, and dismissal of the perpetrator in some circumstances.

Coercion in Population Control: There were no reports of forced abortion or involuntary sterilization. For additional information, see Appendix C.

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, 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 could challenge traditional land tenure decisions in courts, but access to legal counsel was costly.

According to the Employment Equity Amendment 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.

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. 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. For additional information, see Appendix C.

Education: Public education is compulsory and universal until age 15 or grade nine. Public education is fee-based and not fully subsidized by the government. Nevertheless, the law provides that schools may not refuse admission to children due to a lack of funds; disadvantaged children, who were mainly black, were eligible for assistance. Even when children qualified for fee exemptions, low-income parents had difficulty paying for uniforms and supplies. In violation of law, noncitizen children were sometimes denied access to education.

Child Abuse: Child abuse is illegal. The penalties for conviction of child abuse include fines and up to 20 years' imprisonment. Violence against children, including domestic violence and sexual abuse, remained widespread.

Some teachers and other school staff harassed, abused, raped, 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.

In April a Hermanus (Western Cape) schoolteacher was tried for the rape and kidnapping at gunpoint of a female pupil. The trial continued at year's end.

Early and Forced Marriage: By law parental or judicial consent to marry is required for individuals younger than 18. Nevertheless, *ukuthwala*, the practice of abducting girls as young as age 12 and forcing them into marriage, occurred in remote villages in Western Cape, Eastern Cape, and KwaZulu-Natal Provinces. The law 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. For additional information, see Appendix C.

Sexual Exploitation of Children: Penalties for conviction of sexual exploitation of a child include fines and imprisonment of up to 20 years. By law the age of consent is 16. The statutory sentence for conviction of rape of a child is life in prison, although the law grants judicial discretion to issue sentences that are more lenient.

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.

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 <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.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. Government and political representatives made anti-Semitic statements.

Twin brothers Brandon Lee Thulsie and Tony Lee Thulsie, arrested in 2016 for allegedly planning to set off explosives at Jewish establishments, continued to await trial at year's end. They were charged with contravening the Protection of Constitutional Democracy Against Terror and Related Activities law and with having ties to a foreign terrorist organization.

### **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 based on physical, sensory, intellectual, and mental disability in employment or access to health care, the judicial system, and education. Persons identified by the courts as having a mental disability, however, are prohibited by law from voting. Department of Transportation policies on providing services to persons with disabilities were consistent with the constitution's prohibition on discrimination. The Department of Labor ran vocational centers at which persons with disabilities learned skills to earn a living. 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.

According to the *2017-2018 Annual Report of the Department of Basic Education*, there were numerous barriers to education for students with disabilities, primarily a policy of channeling students into specialized schools at the expense of inclusive education. Separate 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 provided for by law--schools sometimes rejected the students outright because of their disabilities or claimed there was no room. 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.

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 than children without disabilities to have experienced sexual abuse in the home. According to media reports, in June a mute 11-year-old boy was raped at the Golden Hours Special Needs School in Durban North.

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

Incidents of racism continued. In March, Vicki Momberg was convicted of crimen injuria (see section 2.a.) for repeatedly addressing black police officers with a racial slur and sentenced to two years' imprisonment without parole. She was recorded on video using the "K-word" 48 times at the officers who were trying to assist her after she was a victim of a theft in Johannesburg. Momberg's conviction was the first under the 2000 Promotion of Prevention of Unfair Discrimination Act.

Some advocacy groups asserted that white farmers were targeted for burglaries, home invasions, and killing because of their race. Some analysts attributed the incidents to the country's high and growing crime rate. According to the Institute for Security Studies, "farm attacks and farm murders have increased in recent years in line with the general upward trend in South Africa's serious and violent crimes." A report by the NGO AgriSA stated that killings on farms during the year were at their lowest level in the past 19 years. According to SAPS 2017/2018 crime statistics, farm killings represented only 0.3 percent of all killings in the country (62 of 20,336).

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 foreign nationals enjoyed relative impunity. In August, Soweto and other Johannesburg-area townships saw a spate of looting and violence targeted against small foreign-owned convenience shops. SAPS confirmed that four residents died and at least 27 were arrested on

charges of murder, possession of firearms, and public disorder in connection with the violence. At year's end their trial date had yet to be set.

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 responses were often slow and inadequate. Since 2013 the government significantly reduced the number of assaults and deaths by evacuating foreign nationals from communities affected by xenophobic violence, although little was done to protect their property. 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 foreign nationals, and for failing to deter such attacks by vigorous investigation and prosecution of perpetrators.

### **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 them from inclusion in 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.

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

The constitution prohibits discrimination based on sexual orientation. The law prohibits discrimination against LGBTI persons in housing, employment, nationality laws, and access to government services such as health care.

Despite government policies prohibiting discrimination, there were reports of official mistreatment or discrimination based on sexual orientation or gender

identity. Security force members, for example, reportedly raped LGBTI individuals during arrest. A 2018 University of Cape Town report underscored violence and discrimination, particularly against lesbians and transgender individuals. The report documented cases of “secondary victimization” of lesbians, including cases in which police harassed, ridiculed, and assaulted victims of sexual violence and GBV who reported abuse. 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 they handled complaints by LGBTI individuals.

The multisector network of civil society organizations Hate Crimes Working Group analyzed 945 cases of hate crimes from across five provinces and found that 17 percent of victims were targeted due to their sexual orientation. According to the NGO, approximately 66 percent of hate crimes were not reported to police. Of those reported there were numerous abuses similar to the following example. In February media reported that during the annual gathering in Tongaat of pastors of the Shembe Nazareth Church, 50 male parishioners were beaten for being gay.

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

HIV and HIV-related social stigma and discrimination in employment, housing, and access to education and health care remained a problem, especially in rural communities. 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 a representative sampling of more than 10,000 HIV-positive individuals regarding their experiences with social stigma. The survey revealed a large majority of respondents had never been excluded from social gatherings. Nevertheless, those who reported exclusion cited their HIV status as the main reason. For additional information, see Appendix C.

### **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 in connection with ritual practices.

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. For example, in August, two men were killed in separate incidents of mob justice in Brits (North West Province). In one case the victim of an armed robbery caught the perpetrator and took him to the night vigil of the victim's congregation, where he was assaulted and later died of his injuries. In the second case, police arrested a man for assault. Hundreds of community members surrounded the police vehicle in which the suspect was being held, poured hot wax on the vehicle, pelted police with stones, and removed the suspect, whom they set on fire and killed.

## **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 independent unions of their choice without previous authorization or excessive requirements. According to Statistics South Africa's *2018 Second Quarter Labor Force Survey*, 4.15 million workers reported themselves as belonging to unions. According to the Department of Labor, as of July there were 196 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 due to matters of mutual interest, such as wages, benefits, organizational rights disputes, socioeconomic interests of workers, and similar measures. Workers may not strike because of 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 on the basis of past, present, or

potential union membership or participation in lawful union activities. 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.

The government respected freedom of association and the right to collective bargaining. Labor courts and labor appeals courts effectively enforced the right to freedom of association and the right to collective bargaining, and penalties were sufficient to deter violations. According to Statistics South Africa’s *2018 Second Quarter Labor Force Survey*, unions negotiated salary increments for 75 percent of workers in sectors where unions organized. Employers solely determined the salary increments for 55 percent of workers surveyed, and 6.2 percent of workers had no regular salary increment.

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. In April 2017 COSATU’s breakaway unions, unhappy with the ANC alliance, launched an independent labor federation, the South African Federation of Trade Unions.

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.

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.

Workers frequently exercised their right to strike. Trade unions generally followed the legal process of declaring a dispute (notifying employers) before initiating a strike. Sectors affected by strikes during the year included transportation, health

care, academia, municipal services, and mining. Strikes were sometimes violent and disruptive. For example, in June union members at Eskom, the country's national electricity company, engaged in unlawful industrial actions, including sabotage to power plants and intimidation of nonparticipants, which resulted in a significant disruption to the country's power grid and rolling nationwide blackouts. In August, Eskom signed a three-year wage agreement with the unions.

In March 2017 the government announced it had set aside 1.1 billion rand (\$83 million at the time) to compensate surviving family members and victims of the 2012 Marikana Massacre in labor protests at a platinum mine. As of August only 67 million rand (\$5.2 million) had been paid, according to the Government Communication and Information System.

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. From mid-2017 to year's end, a succession of killings and attacks of union leaders of both the Association of Mineworkers and Construction Union (AMCU) and NUM occurred (most likely born of rivalries between the two main unions in the platinum sector). The killings were considered violent aftershocks of the 2012 police killings of 34 striking platinum miners in Marikana. On January 18, the NUM leader at a Lonmin mine was shot and subsequently died in the hospital. In 2017 at least five AMCU members were killed in the platinum belt.

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

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 (\$7,720) and the maximum criminal sentence to life in prison.

The government did not always effectively enforce the law. Boys, particularly migrant boys, were reportedly forced to work in street vending, food services, begging, criminal activities, and agriculture (see section 7.c.). Women from Asia and neighboring African countries were recruited for legitimate work, but some

were subjected to domestic servitude or forced labor in the service sector. There was also evidence of forced labor in the agricultural sector.

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, but only 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. Conviction of violation of child labor law is punishable by a maximum prison sentence of six years and a fine of 15,000 rand (\$1,160).

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. The Department of Labor deployed specialized child labor experts in integrated teams of child labor intersectoral support groups to each province and labor center.

In September 2017 Department of Labor inspectors opened 22 cases of child labor against a broker who recruited seasonal workers from poverty-stricken villages in North West Province on behalf of farmers in Wesselsbron, Free State Province. Prosecution of the broker was pending at year's end. 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.

Children were found working in domestic work, street work, and garbage scavenging for food items and recyclable items. Boys, particularly migrant boys, were reportedly forced to work in street vending, food services, begging, criminal activities, and agriculture. The government had yet to collect comprehensive data on child labor, 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. 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 (\$116,000), for a first offense. Authorities may fine up to 10 percent of company revenue, or 2.7 million rand (\$208,000), 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.

The government did not consistently enforce the law and penalties were insufficient to deter violations. 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 frequently taken to court or the Commission for Conciliation, Arbitration, and Mediation.

In its 2017-18 annual report containing the results of 27,163 employment equity reports submitted by designated employers (representing almost half of the country's employed), the Commission for Employment Equity cited data 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 67 percent of top management positions in the private sector. Blacks--who constituted 77 percent--held only 14 percent of top management positions in the private sector. 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 foreign nationals was common in society and the workplace. In 2016-17 labor department officials reportedly reviewed 849 companies for compliance with the employment equity law. The Department of Labor inspected 4,747 employers for compliance with the employment equity law. It found and "dealt with" (the official term) violations at 877 locations. No further information was provided as to the nature of the violation or enforcement.

#### **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, which it has done in approximately 13 employment sectors. For example, effective in March the department increased the minimum wage for farm workers to 16.25 rand (\$1.25) per hour. The minimum hourly wage for domestic workers employed more than 27 hours per week was raised to 13.05 rand (\$1.00) per hour for employees in the urban areas and to 11.8 rand (\$0.91) for employees in semiurban and rural areas. Established minimum wages exceeded the poverty level. The government provided free housing for some employees earning less than 3,500 rand (\$270) per month, free health care, and, in some areas, no-fee schooling to assist the children of low-income earners. The law protects migrant workers, and they are entitled to all benefits and equal pay.

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, foreign nationals, and migrant workers, but the government did not prioritize labor protections for workers in the informal economy.

The government set appropriate 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.

There are harsh penalties for violations of occupational health laws in the mining sector. 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. 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 a mining 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. Conviction of 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 set separate standards for compensation of occupational diseases for the mining industry and for other industries. The Department of Health's fund related to the Occupational Diseases in Mines and Works Act reported that only 33,045 former mineworkers were certified as having silicosis as of 2014, but the final figure could be between 50,000 and 100,000. The fund has set aside 3.7 billion rand (\$286 million) to deal with the backlog and compensate former mineworkers. Additionally, in 2016 the Johannesburg High Court certified class action against 32 gold-mining companies operating in the country from 1965 to the present by mineworkers suffering from silicosis and tuberculosis contracted at the companies' mines. The companies were accused of insufficiently protecting black workers in particular from contracting lung-related diseases. The class-action certification paved the way for nearly 500,000 existing and former mineworkers to receive compensation from mining companies. In May, six major mining

companies and their workers agreed on a five billion rand (\$386 million) settlement. Beneficiaries are to receive between 70,000 rand (\$5,400) each for claimants in early stages of silicosis and 500,000 rand (\$38,600) each for those with a “special aggravated medical condition.”

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. Conviction of violation of health and safety regulations outside the mining sector is punishable by a fine of 100,000 rand (\$7,720), imprisonment for a period not exceeding two years, or both. The Department of Labor was responsible for enforcing safety laws outside the mining sector.

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 laws outside the mining sector were not sufficient to deter abuses.

The Department of Labor employed 1,295 labor inspectors, an insufficient number to enforce compliance. 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 unannounced inspections at various workplaces that employed vulnerable workers. Labor inspectors investigated workplaces in both the formal and informal sectors. Labor inspectors and unions reported having difficulty visiting workers on private farms.

In 2016-17 the Department of Labor reported it conducted 144,061 labor inspections and identified 20,515 cases of noncompliance. The department issued violation notices and referred cases for prosecution. In 2016-17 officials audited 22,967 workplaces to determine their compliance with occupational and safety laws; 15,929 were in compliance.

The government did not effectively enforce the law in all sectors. Occupational safety and health regulations were frequently violated in the mining sector, and compensation for injuries was erratic and slow. Penalties were not sufficient to deter violations. Unions in the agriculture sector noted their repeated attempts to

have the Labor Department fine farms that failed to shield workers from hazardous chemicals sprayed on crops. Although 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.

Farm workers also reported health and sanitation concerns. In a 2017 report, the NGO Women on Farms Project reported that 63 percent of the female farm workers surveyed did not have access to bathroom facilities and were forced to seek a bush or a secluded spot. The report also included the responses of female farm workers and their children who reported suffering from health problems such as skin rashes, cholinesterase depression, poisoning, harmful effects on the nervous system, and asthma due to pesticides to which they were exposed.

Mining accidents were common. Mine safety improved over prior decades, however. In 1995, 553 miners lost their lives in the country. As of July only 130 miners had died from accidents during the preceding 18 months.

In June, five miners died of heat and exhaustion after entering an area not being used for mining. Parts of the gold mine, located near Westonaria, were considered unsafe and were supposed to be cordoned off.