

SOUTH AFRICA 2021 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

South Africa is a multiparty parliamentary democracy in which constitutional power is shared among the executive, judiciary, and parliamentary branches. In 2019 the country held a credible national election in which the ruling African National Congress won 58 percent of the vote and 230 of 400 seats in the National Assembly. In 2019 African National Congress president Cyril Ramaphosa was sworn in for his first full term as president of the republic.

The South African Police Service 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, also has domestic security responsibilities.

In July the country witnessed violent riots and unprecedented looting, primarily in KwaZulu-Natal and Gauteng, following the arrest of former president Jacob Zuma for contempt of the Constitutional Court. In the aftermath, then acting minister in the presidency, Khumbudzo Ntshavheni, announced the death toll related to the unrest was 337, but no deaths were attributed to authorities. The South African Human Rights Commission conducted public hearings in November and December to determine the causes of the unrest and identify failures by the government to anticipate violence and mitigate death and destruction.

Significant human rights issues included credible reports of: unlawful or arbitrary killings by the government; torture or cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest or detention; serious government corruption; trafficking in persons; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, or intersex persons; and the existence of the worst forms of child labor.

Although the government investigated, prosecuted, and punished some officials

children more vulnerable to exploitation, in particular to sex trafficking.

See also the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings/>.

d. Discrimination with Respect to Employment and Occupation

The Employment Equity Act protects all workers against unfair discrimination based on 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 among 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. Penalties were commensurate with those for comparable crimes. The government has a regulated code of conduct to assist employers, workers, and unions to develop and implement comprehensive, gender-sensitive, and HIV- and AIDS-compliant workplace policies and programs.

The government did not consistently enforce the law. 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 2020-21 annual report, the Commission for Employment Equity cited data on discrimination by ethnicity, gender, age, and disability in all sectors of the economy. The report argued that White and Indian females continued to bear the brunt of discrimination, while the White and Indian population groups dominated top and senior management positions. The implementation of the Black Economic Empowerment Act, 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. Bias against foreign nationals was common in society and the workplace.

e. Acceptable Conditions of Work

Wage and Hour Laws: In 2019 the country's first national minimum wage came into effect, replacing a patchwork of sectoral minimum wages set by the Department of Labour. The minimum wage was above the official poverty line. The employment and labour minister announced an increase to 21,69 rand (\$1.47) per hour for the year that went into effect on March 1. The law protects migrant workers, and they are entitled to all benefits and equal pay. The minimum wage law also established a commission to make annual recommendations to parliament for increases in the minimum wage.

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 employees may not work be more than 10 overtime 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.

Occupational Safety and Health: The government set appropriate occupational health and safety (OSH) standards through the Department of Mineral Resources and Energy for the mining industry and through the Department of Labour for all other industries.

There are harsh penalties for violations of OSH laws in the mining sector. Employers are subject to heavy fines or imprisonment if convicted of responsibility 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 OSH statistics for each mine, including safety incidents. Conviction of violating the mining health and safety law is punishable by two years' imprisonment, and the law empowers the courts to determine a fine or other penalty for perjury. The Department of Mineral Resources and Energy is responsible for enforcing OSH law.

Outside the mining industry, no law or regulation permits 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 Department of Labour that used employee complaints as a basis for prioritizing labor inspections. Penalties were commensurate with those for comparable offenses. The Department of Labour is responsible for enforcing safety laws outside the mining sector.

The Department of Labour 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 workhour laws outside the mining sector were commensurate with those for comparable offenses.

The Department of Labour employed an insufficient number of labor inspectors to enforce compliance. 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.

The government did not effectively enforce the law in all sectors. OSH regulations were frequently violated in the mining sector, and compensation for injuries was erratic and slow. Penalties were commensurate with those for comparable offenses, however, not sufficient to deter violations. Unions in the agriculture sector noted their repeated attempts to have the Department of Labour fine farm owners who failed to shield workers from hazardous chemicals sprayed on crops. Although labor conditions improved on large commercial farms, COSATU and leading agricultural NGOs reported labor conditions on small farms remained

harsh. Underpayment of wages and poor living conditions for workers, most of whom were Black noncitizens, 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 goods from farm-operated stores to farm employees on credit at inflated prices. During the COVID-19 pandemic, many employers cut salaries, without following the law restricting an employer's ability to change an employee's pay; this was especially evident with domestic workers. Most domestic workers were either subject to staying with their employers or risk losing both their income and employment.

Farm workers also reported health and sanitation concerns.

Mining accidents were common. Mine safety has steadily improved from prior decades, however. For example, 553 miners lost their lives in 1995 compared with only 60 deaths in 2020 and 51 deaths in 2019. Mining operations were scaled down significantly for much of 2020 and during the year due to the COVID-19 pandemic, particularly deep-level mining. According to the Department of Mineral Resources and Energy, as of December 13, there were 72 reported fatalities among workers in the mining industry.

In July 2019 the Constitutional Court ruled employees assigned to workplaces via a labor broker ("temporary employment service") are employees of the client and entitled to wages and benefits equal to those of regular employees of the client.

Informal Sector: Economic researchers reported that approximately 30 percent of total employment was informal, with higher rates in rural areas. The informal sector included traders such as street vendors and market sellers, domestic workers, waste pickers, and agricultural workers. The *Government Gazette* confirmed that domestic workers are covered for injury or death under workers compensation laws and minimum wage laws. This action followed a landmark ruling by the Constitutional Court upholding the 2019 High Court of Gauteng decision expanding statutory workers' compensation coverage to domestic workers.