

# South Africa | Freedom House

## POLITICAL RIGHTS: 33 / 40 (+1)

### A. ELECTORAL PROCESS: 12 / 12

#### **A1. Was the current head of government or other chief national authority elected through free and fair elections? 4 / 4**

The National Assembly, the lower house of South Africa's bicameral Parliament, elects the president to serve concurrently with its five-year term, and can vote to replace him or her at any time. Presidents can serve a maximum of two terms. The most recent national elections, held in 2014, were declared free and fair by domestic and international observers. The ANC won with 62.2 percent of the national vote, and the party's president, Jacob Zuma, was elected to a second term as the nation's president.

Zuma survived four parliamentary no-confidence votes—the last one, in August 2017, being quite close—before ANC delegates elected Deputy President Cyril Ramaphosa to be the party's new leader at the 54th ANC party conference that December. Ramaphosa narrowly defeated former African Union Commission Chairperson Nkosazana Dlamini-Zuma, President Zuma's ex-wife. The defeat of Dlamini-Zuma, Zuma's preferred successor, made it difficult for Zuma to hold on to his position as president of the country, and in February 2018, the ANC's executive committee forced him to resign. Ramaphosa was then elected acting president by the National Assembly. The next presidential election will take place following general elections set for May 2019.

#### **A2. Were the current national legislative representatives elected through free and fair elections? 4 / 4**

The 400-seat National Assembly is elected by party-list proportional representation. The 90 members of the upper chamber, the National Council of Provinces, are selected by provincial legislatures. In the 2014 national elections, the ANC's 62.2 percent of the vote translated into 249 of 400 seats in the National Assembly, and clear majorities in eight of nine provinces. The Democratic Alliance (DA) remained the largest opposition party, winning 89 seats with 22.2 percent of the vote, up from 16.7 percent in the previous election, and maintained control over the Western Cape. The Economic Freedom Fighters (EFF), then a new party, won 25 seats; the Inkhatha Freedom Party (IFP) took 10 seats; and nine smaller parties shared the remainder. The elections were deemed free and fair by international observers.

#### **A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 4 / 4**

The IEC is largely considered independent, and the electoral framework fair, though

recent years have seen some questions raised concerning the integrity of the commission's leadership. The 2017 appointment of Sy Mamabolo to the position of chief electoral officer has given new hope that the IEC will be able to reinvigorate its perception of integrity. Mamabolo is well respected and has an excellent track record in his more than two decades of work with the IEC.

In 2018, deputy IEC chairman Terry Tselane, a former ANC anti-apartheid activist, revealed that after the ANC lost control of major metropolitan municipalities such as Johannesburg and Pretoria in 2016 municipal elections, party leaders had accused him of contributing to the ANC's electoral misfortunes. Tselane stepped down from the IEC in November, saying he had been asked to do so a few weeks ahead of schedule; sitting commissioner Janet Love replaced him as deputy chair, and the commission's three vacancies were filled shortly afterward. One of the seats went to former chief electoral officer Mosotho Moepya. His appointment prompted some controversy, as years earlier a public prosecutor had recommended disciplinary action against him in connection with a probe into the improper procurement of a lease for IEC headquarters.

The IEC has been working to comply with a 2016 Constitutional Court directive that it accurately record the addresses of all voters on the roll. In 2017, the IEC launched an online campaign to encourage South Africa's 26 million registered voters to check their details and update them accordingly. In 2018 it asked for, and was granted, the postponement of its implementation; it cited logistical difficulties and a need for more time to accurately capture the addresses of voters. The body expects to complete the process by November 2019.

## **B. POLITICAL PLURALISM AND PARTICIPATION: 13 / 16**

### **B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 3 / 4**

The ANC, which is part of a tripartite governing alliance with the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP), has won every election since 1994. Nevertheless, the political environment is generally free from formal constraints, and opposition parties have gained significant ground in recent elections. Several new groupings have also recently emerged. The country's biggest union—the National Union of Metalworkers of South Africa, which represents mostly private-sector workers—is sponsoring the establishment of a socialist party. The former Democratic Alliance mayor of Cape Town, Patricia de Lille, has also formed her own party after her bitter resignation from the official opposition that governs the Western Cape Province and the city.

Independent candidates may not run for national office, though Mosiuoa Lekota, the leader of the small opposition Congress of the People (COPE), is sponsoring a law that would change this.

Nontransparent mechanisms for the funding of political parties have benefited the ANC, though reforms to party financing laws were being discussed in 2018.

Over two dozen political murders have taken place in KwaZulu-Natal Province since early 2016. In 2017, ANC deputy chairperson of Harry Gwala region, Khaya Thobela, died after being shot in his home. The same year, former ANC Youth League leader Sindiso Magaqa was shot and later died in the hospital.

**B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 3 / 4**

The ANC has won every election since 1994. It won the 2014 polls by a comfortable margin but with a smaller majority than in previous elections—a trend that has persisted for three consecutive elections. In the 2016 municipal elections, the ANC's support declined to its lowest level—53.9 percent—since it took power. The party also lost control of major municipalities, including Tshwane, the metropolitan area that includes Pretoria, the national capital. Opposition gains in local elections in South Africa are especially significant because of the taxation powers and autonomy afforded to municipalities, presenting opposition parties with an opportunity to demonstrate governance capacity.

**B3. Are the people's political choices free from domination by the military, foreign powers, religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 3 / 4**

People's political choices in South Africa are largely free from domination from external actors, and the military is professional and generally stays out of politics. However, there is widespread corruption within the ANC, including vote buying from delegates to the party conference and bribes to influence political appointments. There have also been reports of individuals buying party membership cards in bulk in order to hold full control of specific branches of the party. A 2016 report on state capture, issued by a former public prosecutor, and other investigations revealed that the Gupta family's close relationship with Zuma enabled it to exercise influence over a wide range of political and economic activities.

Despite fears that Zuma, and the Guptas, would use vote-buying tactics to engineer the election of their favored candidate as party president at the December 2017 ANC congress, Ramaphosa—a figure perceived to be opposed to the Zuma faction—emerged victorious.

**B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 4 / 4**

The constitution prohibits discrimination and provides full political rights for all adult citizens. Women are well represented in government, holding 42 percent of the seats in the National Assembly and two of nine provincial premierships. South Africa has one of the world's most liberal legal environments for LGBT (lesbian, gay, bisexual, and transgender) people. However, in practice discrimination and the threat of violence can discourage LGBT people from political participation.

**C. FUNCTIONING OF GOVERNMENT: 8 / 12 (+1)**

**C1. Do the freely elected head of government and national legislative**

### **representatives determine the policies of the government? 3 / 4 (+1)**

Pervasive corruption and apparent interference by nonelected actors has hampered the proper functioning of government, particularly during the Zuma administration, in which the Gupta family had great influence. However, Ramaphosa has promised to clean up corruption. In January 2018, he appointed a Judicial Commission of Inquiry into state capture, or external influence held over an administration—in this case that of the Gupta family over Zuma's. Ramaphosa also amended the terms of the state capture inquiry to pave the way for evidence gathered to be used in prosecutions. Significantly, the ANC supports the inquiry's work, even as its leaders stand to be exposed for culpability. The public nature of the inquiry and the participation of senior ministers and commercial banks in it have allowed the commission to establish credibility, and there are increasing signs that the South African public resents the dominance of unaccountable groups and supports the use of available mechanisms to eject state capturers.

Testimony offered at the state capture commission, as well as media reports, strongly suggest that the Gupta family held vast influence in government. For example, the group of brothers was reportedly able to convince top ANC leaders, including Zuma and some in his cabinet, to pressure South African banks to reopen bank accounts that had been shut due to suspicions of money laundering activities. The brothers also reportedly held influence over Zuma's cabinet selections, and board posts at state-owned companies. The Ramaphosa administration has removed figures linked to the Guptas from the boards of such companies, including the logistics firm Transnet, energy utility Eskom, and arms manufacturer Denel. At the end of 2018, the Gupta brothers were living in Dubai, having left South Africa to avoid prosecution.

*Score Change: The score improved from 2 to 3 because the powerful Gupta family's influence on governance has been curtailed since government and media investigations revealed the extent of influence they had within the Jacob Zuma administration.*

### **C2. Are safeguards against official corruption strong and effective? 2 / 4**

Comprehensive anticorruption laws and several agencies tasked with combating corruption exist, but enforcement has been inadequate. However, in 2017, the Supreme Court of Appeal (SCA) upheld a 2016 High Court ruling to reinstate 783 corruption charges that had been brought against Zuma before he became president. Since he was removed from office, he has appeared in court on corruption charges.

The government's anticorruption stance in the past was predominantly rhetorical because the National Prosecuting Authority was hobbled by political interference by Zuma and his allies. However, Ramaphosa appointed highly regarded prosecutor Shamila Batohi as head of the National Prosecuting Authority (NPA) in December 2018; the appointment was preceded by a transparent interview process that was open to the media—the first of its kind. Given Ramaphosa's public undertaking to clean up the NPA, and Batohi's promise to professionalize it, there is hope for improvements in the institution's performance in prosecuting both petty corruption cases, as well as large-scale corruption cases likely to arise from the state capture

commission of inquiry.

Ramaphosa in November also sacked Tom Moyane, the head of the South African Revenue Services (SARS), who presided over a corruption-riddled and mismanaged agency; his sacking followed a recommendation by retired judge Robert Nugent, who had been appointed by Ramaphosa to investigate the governance failures of what was once a world-class revenue collector. In addition to the axing of Moyane, Nugent recommended wide-ranging changes at SARS, including changing the governance structure and appointing more competent officials to run it.

### **C3. Does the government operate with openness and transparency? 3 / 4**

Section 32(1) of the South African constitution states that everyone has the right to access “any information held by the state” and requires that private bodies release information necessary for the exercise and protection of rights. The 2000 Promotion of Access to Information Act created a framework for access to information procedures in both public and private entities. However, in practice the procedure of accessing information is laborious and bureaucratic.

State contracts worth hundreds of millions of rand were awarded to companies linked to the Gupta family without following proper procedures. A similar lack of transparency and competitive bidding has affected the awarding of other government contracts.

## **CIVIL LIBERTIES: 46 / 60**

### **D. FREEDOM OF EXPRESSION AND BELIEF: 15 / 16**

#### **D1. Are there free and independent media? 3 / 4**

Freedom of expression and the press are protected in the constitution and generally respected in practice. South Africa features a vibrant and often adversarial media landscape, including independent civic groups that help counter government efforts to encroach on freedom of expression. In 2017, the media played a crucial role in exposing the corruption linked to the Gupta family and the involvement of British public relations firm Bell Pottinger in stirring up racial tensions in the country.

However, journalists face harassment for critical reporting and occasional attack, and the government has exerted pressure on both state-run and independent outlets. In a high-profile incident in October 2018, the *Sunday Times* printed an apology for several stories printed in past years it said had been inaccurate, adding, “we committed mistakes and allowed ourselves to be manipulated by those with ulterior motives.” The controversy involving one of the country’s most prominent newspapers prompted talk by the ANC about dusting off its plan to establish a media appeals tribunal, which media practitioners have consistently criticized.

Journalists and rights groups have expressed concern that the misuse of surveillance laws, notably the 2002 Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA), can enable spying on reporters.

In 2017, the amaBhungane Centre for Investigative Journalism launched a constitutional challenge to the act, which was ongoing at the end of 2018.

**D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 4 / 4**

Freedom of religion is constitutionally guaranteed and actively protected by the government. Religious leaders are largely free to engage in discussions of a political nature without fear of adverse consequences.

**D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 4 / 4**

Academic freedom in South Africa is constitutionally guaranteed and actively protected by the government.

**D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 4 / 4**

South Africans are generally free to engage in private conversations of a political nature without harassment. However, a 2016 report from the UN Human Rights Committee expressed concern about the government's use of surveillance and about RICA, the law governing surveillance. A legal challenge to RICA was ongoing at the end of 2018.

**E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 12 / 12**

**E1. Is there freedom of assembly? 4 / 4**

Freedom of assembly is constitutionally guaranteed and generally respected, and South Africa has a vibrant protest culture. Demonstrators must notify police of events ahead of time, but are rarely prohibited from gathering; in November 2018, the Constitutional Court ruled that a failure to notify authorities of intent to protest could not be classified as a crime. Protests over the government's shortcomings in the provision of public services are common in South Africa, and sometimes turn violent. Police have faced accusations of provoking some protest violence.

**E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work? 4 / 4**

South Africa hosts a vibrant civil society. Nongovernmental organizations (NGOs) can register and operate freely, and lawmakers regularly accept input from NGOs on pending legislation.

**E3. Is there freedom for trade unions and similar professional or labor organizations? 4 / 4**

South African workers are generally free to form, join, and participate in independent trade unions, and the country's labor laws offer unionized workers a litany of protections. Contract workers and those in the informal sector enjoy fewer

safeguards. Strike activity is very common, and unionized workers often secure above-inflation wage increases. Union rivalries, especially in mining, sometimes result in the use of violent tactics to recruit and retain members and to attack opponents.

## **F. RULE OF LAW: 9 / 16**

### **F1. Is there an independent judiciary? 3 / 4**

The constitution guarantees judicial independence, and courts operate with substantial autonomy. The Judicial Services Commission recommends to the president the appointment of Constitutional Court judges based on both merit and efforts to racially diversify the judiciary.

A number of recent court judgments held the executive and legislative branches to account in such a manner as to suggest that the judiciary commands significant independence. In 2017, the Constitutional Court ruled that the vote of no confidence for Zuma could be held by secret ballot, and left the decision on whether to use this method to the speaker of the national assembly, which they did. The SCA's ruling that same year allowing corruption charges against Zuma to be reinstated also demonstrated the independence of the judiciary.

### **F2. Does due process prevail in civil and criminal matters? 2 / 4**

Prosecutorial independence in South Africa has been undermined in recent years; notably, the NPA experienced a string of politically motivated appointments and ousters. However, Ramaphosa appointed a new NPA head in 2018, who is seeking to reform the institution.

Shortages of judicial staff and financial resources undermine defendants' procedural rights, including the right to a timely trial and state-funded legal counsel. Many detainees wait months for their trials to begin, and some are held beyond the legal maximum of two years.

### **F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 2 / 4**

According to a Judicial Inspectorate for Correctional Services (JICS) 2017–18 annual report, there is severe overcrowding in some prisons—in part due to delays in holding trials. During this period, 82 unnatural deaths were reported in prisons, and there were 988 complaints of assault by prison officials on inmates.

Despite constitutional prohibitions, there are many reports of police torture and excessive force during arrest, interrogation, and detention. The Independent Police Investigative Directorate (IPID) is required by law to investigate allegations of police offenses or misconduct. In its annual report for the 2017–18 fiscal year, the IPID recorded 637 reported deaths either in police custody or as a result of police action, 105 reported rapes by police officers, 217 reports of torture, and 3,661 reports of assault. Overall, there was a 19 percent decrease in total reported incidents from the previous period.

Official statistics released in 2018 continue to show high levels of violent crimes in some parts of the country.

#### **F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 2 / 4**

The constitution prohibits discrimination based on a range of categories, including race, sexual orientation, and culture. State bodies such as the South African Human Rights Commission (SAHRC) and the Office of the Public Protector are empowered to investigate and prosecute discrimination cases. Affirmative-action legislation has benefited previously disadvantaged racial groups in public and private employment as well as in education but racial imbalances in the workforce persist. White people, constituting a small minority, still own a majority of the country's business assets. The indigenous, nomadic Khoikhoi and Khomani San peoples suffer from social and legal discrimination.

The constitution guarantees equal rights for women, which are actively promoted by the Commission on Gender Equality. Nevertheless, women are subject to wage discrimination in the workplace and are not well represented in top management positions.

Xenophobic violence against immigrants from other African countries has broken out sporadically in recent years. In August 2018, at least four people were killed, many more were injured, and shops were looted during xenophobic mob attacks in Soweto that targeted Somali shop owners; the attacks were reportedly sparked by rumors circulating on social media that the storeowners were selling fake or expired goods, which were then picked up by the media. Political leadership on countering xenophobic violence has been lacking, and in some cases political leaders have blamed foreign nationals for their own failure to deliver on political promises. However, in May 2018, regional authorities provided protection to foreign merchants in KwaZulu-Natal after they were threatened by a business association.

There are frequent reports of physical attacks against LGBT people, including instances of so-called corrective rape, in which men rape lesbians, claiming that the action can change the victim's sexual orientation.

Services and accommodations for disabled people remain generally inadequate. In 2018, some 600,000 disabled children were not able to attend school, according to Human Rights Watch (HRW).

### **G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 10 / 16**

#### **G1. Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 3 / 4**

While there are no official restrictions on housing, employment, or freedom of movement for most South Africans, travel and some other personal freedoms are inhibited by the country's high crime rate. For many foreigners, the threat of xenophobic violence impedes freedom of movement as well. The legacy of apartheid

continues to segregate the population and restrict nonwhite opportunity for employment and education.

**G2. Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 3 / 4**

The state generally protects citizens from arbitrary deprivation of property. However, the vast majority of farmland remains in the hands of white South Africans, who make up some 9 percent of the population. Illegal squatting on white-owned farms is common, as are attacks on white farm owners.

At its 54th elective conference in December 2017, the ANC resolved there was a need to expropriate land without compensation for redistribution purposes, on the condition that such expropriation should not negatively affect the economy or compromise food security. Since then, there has been intense public debate about the best way to effect meaningful land reform to address apartheid-era inequalities in property ownership.

Despite constitutional protections, women suffer de facto discrimination with regard to inheritance and property rights, particularly in rural areas.

**G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 2 / 4**

Despite a robust legal framework criminalizing domestic violence and rape, both are grave problems. Only a small percentage of rapes are reported. According to the 2017–18 South Africa Police Service report, an average of 109.7 rapes were recorded each day. Sexual harassment is common, and reports of forced marriages persist.

Same-sex couples have the same adoption rights as heterosexual married couples, and same-sex marriage is legal.

**G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 2 / 4**

Inequality levels in South Africa are among the highest in the world. Only a small percentage of the population benefits from large state industries, and the economy is controlled by a relatively small number of people belonging to the political and business elite. The government, businesses, and the biggest labor federation agreed to institute a minimum wage, to go into effect at the start of 2019, that could benefit more than six million poor workers. High levels of unemployment persist.

South Africans predominantly from rural regions, as well as foreign migrants, are vulnerable to sex trafficking and forced labor. Organized criminal syndicates are responsible for the bulk of trafficking.