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## U.S. Department of State

### South Africa Country Report on Human Rights Practices for 1998

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#### SOUTH AFRICA

South Africa's governing institutions and society continued to consolidate the democratic transformation initiated by the historic 1994 elections. The Government comprises ministers from the African National Congress (ANC) and the Inkatha Freedom Party (IFP), but is dominated by the ANC. With the 1996 withdrawal of the National Party (NP) from the Government of National Unity, the Parliament took on a more central role in national debate. In addition to the 3 major parties, the 400-member National Assembly includes the Democratic Party, the Freedom Front, the Pan Africanist Congress (PAC), and the African Christian Democratic Party. The new Constitution came into effect in 1997. The judiciary, including the Constitutional Court, is independent.

The South African Police Service (SAPS) has primary responsibility for internal security, although the Government continues to call on the South African National Defense Force (SANDF) to provide support for the SAPS in internal security situations. The SAPS continued its major restructuring and transformation from a primarily public order security force largely dedicated to enforcing apartheid laws, to a more accountable, community service oriented police force. The SANDF and the newly created SAPS border control and policing unit share responsibility for external security. The civilian authorities maintain effective control of the security forces. However, some members of these forces committed human rights abuses.

South Africa has a diversified and productive economy whose mainstays are manufacturing, mining, and agriculture (augmented by service support industries), which make up 24 percent, 8 percent, and 5 percent, respectively, of the gross domestic product of \$115.86 billion (654.6 billion rand). Ownership

of wealth remains highly skewed. The disparity between skilled and unskilled workers is considerable, as is the income distribution gap between urban and rural citizens. Officially, unemployment is just under 30 percent, although large numbers of persons, particularly blacks, are employed informally in retail or

small-scale manufacturing operations. The economy is driven largely by market forces, although a few key industries remain tightly controlled, including power generation, petroleum, and mining. The Government's "Growth, Employment and Redistribution" macroeconomic program provides a framework for economic restructuring to achieve enhanced growth. The numerous social and economic problems that developed largely during the apartheid era are expected to persist for many years.

The Government generally respected the human rights of its citizens; however, problems remain in several areas. Some members of the security forces committed human rights abuses, including killings due to use of excessive force and deaths in police custody. There were hundreds of political and extrajudicial killings, and political violence remained at about the same level as in 1997, both in KwaZulu-Natal and countrywide. Security forces were responsible for torture, excessive use of force during arrest, and other physical abuse. The Government has taken action to investigate and punish some of those involved. In 1997 the Government established an Independent Complaints Directorate to investigate deaths as a result of police action, deaths in police custody, and police brutality. Prisons are seriously overcrowded. The judiciary is overburdened, and lengthy delays in trials and prolonged pretrial detention are problems. Discrimination against women and the disabled, and violence against women and children remained serious problems. Vigilante action and mob justice remained a problem. Parliament passed a number of laws aimed at addressing racial and gender discrimination, including employment equity legislation and a bill to recognize customary marriages.

The Truth and Reconciliation Commission (TRC), created to investigate apartheid-era human rights abuses, make recommendations for reparations for victims, and grant amnesty for full disclosure of politically motivated crimes, completed all but its amnesty- and reparations-related work by midyear and presented its final report to President Mandela on October 29. The report criticized the former apartheid government, as well as almost every group involved in the liberation struggle, including the ANC. Legislation was passed to allow the TRC to complete adjudication in 1999 of the 7,060 amnesty applications received.

## **RESPECT FOR HUMAN RIGHTS**

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

#### **a. Political and Other Extrajudicial Killing**

Police use of lethal force during apprehensions resulted in numerous deaths, and deaths in police custody also remain a problem. In April 1997, the Government established an Independent Complaints Directorate (ICD) to investigate deaths in police custody and deaths as a result of police action. The ICD reported 789 deaths as a result of police action during the year. Of these deaths, 758 occurred while in police custody, and 31 occurred as a result of police action. These figures represented a significant increase over the estimated 441 deaths as a result of police action that occurred in 1997. The ICD's report lists the subcategories under deaths in police custody to include natural causes, suicide, injuries in custody, injuries prior to custody, and possible negligence. The ICD experienced considerable resistance to its activities from the SAPS.

In September South African soldiers, as part of a Southern African Development Community (SADC)

military task force, intervened in Lesotho to quell an army mutiny and opposition protests. Over 40 opposition-allied civilians died as a result of fighting with the SADC troops.

In its report, the TRC found that the former apartheid regime, including the National Party leadership and various state security agencies; the ANC and the armed wing of the ANC, the Umkhonto We Sizwe (MK); and the IFP were responsible for extrajudicial killings (see Section 4). The TRC granted amnesty to those responsible for the murder of U.S. student Amy Biehl and the 1993 St. James Massacre. In July former police minister Adrian Vlok testified that he had ordered the 1988 bombing of a church building in Johannesburg on direct instructions of then-President P.W. Botha.

The South Africa Institute for Race Relations, a nongovernmental organization (NGO) that follows political and extrajudicial killings, reported 322 politically motivated killings during the first 11 months of the year, most of which occurred in the province of KwaZulu-Natal, compared with 425 for the same period in 1997.

The peace process continued in KwaZulu-Natal. A special provincial bilateral IFP-ANC Peace Committee met regularly, seeking a settlement that would end political violence. The IFP and the ANC, as the parties with the largest numbers in the provincial parliament, had the majority of the members on the Portfolio Committee on Safety and Security that intervened regularly at scenes of potential conflict to facilitate peaceful solutions.

After a period of relative peace at the beginning of the year in the province of KwaZulu-Natal, there was renewed violence beginning in May in areas identified by police as flash points, where sporadic attacks have occurred previously. The violence in KwaZulu-Natal resulted in hundreds of deaths during the year, and accounted for most of the country's political killings. Observers predict that killings could increase as political activity increases, party branches are launched, and political rallies held in the period prior to elections in 1999. There are several theories to explain the resurgent violence, including the legacy of "warlordism" that fuels interparty conflict; criminal elements involved in a mafia-like illegal trade in drugs, arms, and wildlife; and a shady "third force" which combines criminal and conservative elements determined to undermine the new political order. Observers warn that a factor underlying and aiding such forces is the fact that the province is yet to be demilitarized and disarmed.

Violence among warring taxi companies continued to be a major problem. Among those killed was James Zulu, a controversial Inkatha leader on the south coast, who also had substantial interests in the taxi industry.

Violence in Richmond peaked in June and July after the acquittal of the UDM's Sifiso Nkabinde on 16 counts of murder and 2 counts of conspiracy to murder. More than 90 persons were killed in the space of those 2 months. A combined security force of between 400 and 500 police and army soldiers was deployed to stabilize the area. The regular police force in the area was replaced with a special "public order police" force to stabilize the region. The large build-up of the military and police resulted in reduced violence in the Richmond area. However, no arrests or convictions were made in connection with the violence.

Vigilante action and mob justice remained problems. The Cape Town-based People Against Gangsterism and Drugs (PAGAD), an Islamic-oriented community-based organization that called for stronger action against crime and drugs, continued to engage in acts of intimidation and violence against suspected drug dealers, gang leaders, and critics of PAGAD's violent vigilantism. PAGAD's earlier tactic of mass marches and drive-by shootings largely was replaced by pipe-bomb attacks. Homes of suspected drug dealers and gangsters were targeted, as were homes of anti-PAGAD Muslim clerics,

academics, and business leaders. In one instance, a key witness in the murder of a PAGAD leader was shot and killed by unknown gunmen. Two police stations were pipe-bombed, as was a foreign-based franchise restaurant (although PAGAD involvement in the latter incident is suspected, it has not been proven). Some 20 persons were killed and over 60 injured in over 150 pipe-bomb explosions. Taxi drivers in crime-ridden neighborhoods spearheaded a dozen instances of mob justice, publicly stripping and whipping suspected criminals before turning them over to police. Police arrested a few persons in connection with the vigilante violence, but there were no trials or convictions at year's end.

In December an appeals judge acquitted and released 5 IFP members who had been convicted of participation in the 1995 Shobashobone massacre in which 18 ANC members were killed.

The murder of farm families in rural parts of the country also is a problem, and these killings have received considerable media attention. In the last several years, more than 560 farm owners, most of them white, have been killed mostly by black assailants. Between January and June, there were approximately 364 attacks on farms and small holdings, which resulted in about 65 killings. There is widespread concern that the white framers are being targeted for racial and political reasons, although no evidence exists that the murders are part of an organized political conspiracy.

There were occasional reports of killings linked to the continued practice of witchcraft in some rural areas. In the northern province, where traditional beliefs regarding witchcraft remain strong, officials reported dozens of killings of persons suspected of witchcraft. The Government has instituted educational programs to prevent such actions.

#### b. Disappearance

There were no new reports of politically motivated disappearances caused by government authorities or agents.

In its report, the TRC found that the former apartheid regime was responsible for numerous abductions of political enemies in the country and neighboring countries (see Section 4).

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

The Constitution's Bill of Rights provides for the right not to be tortured, to be free from all forms of violence from either public or private sources, and the right not to be treated or punished in a cruel, inhuman, or degrading way. However, police tortured and otherwise abused suspects and detainees through beatings, suffocation with rubber tubing, electric shock, and rape. Broad efforts to reform police practices have reduced such activities substantially, and the ICD investigates reports of police misconduct and corruption(see Section 1.a.). NGO's continued to conduct several human rights education programs for the SAPS.

In July police at a Guguletu police station severely beat a Cape Town journalist, Thabo Mabaso, after he went to the station to report a traffic accident (see Section 2.a.). The officers responsible were suspended pending further investigation. There had been no convictions by year's end.

As a result of their actions during the Lesotho intervention (see Section 1.a.), 18 SANDF soldiers were convicted of crimes including rape and destruction of property and sentenced to military detention.

The SAPS continued to undergo sweeping, mostly positive change, including the institution of reforms designed to create partnerships between local police forces and the communities that they serve.

Resignations and retirements of senior police officials have permitted the infusion of new personnel at senior levels, from both inside and outside the SAPS; these appointments also have served to further affirmative action within the SAPS. However, the SAPS have been left with deficiencies in midlevel leadership and institutional memory that has been harmful to its overall performance. The first intake of new recruits since 1994 occurred in 1998.

In its report, the TRC found that the former apartheid regime had engaged in the widespread use of torture and severe mistreatment of political opponents including sexual assault; abuse and harassment; the deliberate withholding of medical services, food, and water; and the mutilation of body parts (see Section 4). The ANC also was found responsible for the widespread use of torture against suspected enemy agents, prisoners, and mutineers.

Two suspects arrested for a series of bombings in January 1997 that hit a mosque in Rustenberg and injured two persons were still awaiting trial at year's end (see Section 5).

Prison conditions generally meet minimum international standards; however, overcrowding remains a serious problem.

In 1997 the Government commissioned the first of several planned "C-MAX" prisons in Pretoria. C-MAX prisons are designed to hold the country's most dangerous criminals. Human rights groups have raised serious concerns regarding C-MAX facilities, including the Government's criteria for transferring prisoners from other prisons to a C-MAX facility and the restrictive, solitary conditions of the prisons themselves. No additional C-MAX prisons had begun operations by year's end.

Juveniles between the ages of 14 and 18 accused of serious crimes including murder or rape are sometimes placed in pretrial detention in prisons with adult offenders (see Section 5).

The Government permits independent monitoring of prison conditions including visits by human rights organizations.

#### d. Arbitrary Arrest, Detention, or Exile

The Bill of Rights prohibits detention without trial. It also provides that every detained person has the right to be promptly informed of the reasons for the detention; to be promptly advised of the right to remain silent and the consequences of waiving that right; to be charged within 48 hours of arrest; to be detained in conditions of human dignity; to consult with legal counsel at every stage of the legal process; to communicate with relatives, medical practitioners, and religious counselors; and to be released (with or without bail) unless the interests of justice require otherwise.

Courts and police generally acted in good faith to respect these rights, although there was a growing problem with bringing detainees to trial. According to the Human Rights Commission, prisoners wait on average for 6 months to be tried in the regional courts and 6 months to 1 year in the high courts; however, in extreme cases detention can extend to up to 2 years. This problem primarily is the result of an understaffed, underfunded, and overburdened judiciary (both magistrates and prosecutors), with more cases than can be handled efficiently. Parliament passed new laws in 1997 that mandated minimum sentences and the refusal of bail in most cases for certain serious offenses. Some human rights groups expressed concern with parts of the new laws, stating that they would harm judicial independence and limit civil liberties.

In its report, the TRC found the former apartheid regime responsible for detaining political opponents

without trial (see Section 4).

There were no reports of forced exile.

In its report, the TRC found the former apartheid regime responsible for forcibly and illegally removing or banishing political opponents from the country (see Section 4).

#### e. Denial of Fair Public Trial

The Constitution provides for an independent and impartial judiciary subject only to the Constitution and the law, and the Government respects this provision in practice.

Under the Constitution, the Constitutional Court is the highest court for interpreting and deciding constitutional issues, while the Supreme Court of Appeal is the highest court for interpreting and deciding other legal matters. Generally, magistrates' courts and high courts are the courts of original jurisdiction in criminal cases.

Judges try criminal cases. The jury system was abolished in 1969. The presiding judge or magistrate determines guilt or innocence. In November Parliament passed the Magistrates Court Amendment Act, which made it compulsory to have a panel of lay assessors hear cases along with a magistrate in cases involving murder, rape, robbery, indecent assault, and assault leading to serious bodily harm. Magistrates also are required to use their discretion in using assessors in an advisory capacity in bail applications and sentencing. In August Parliament established the Office of the National Director of Public Prosecutions (the so-called super Attorney General), who exercises national control over prosecution policy. Parliament also established nine provincial directors and offices to coordinate and streamline prosecutions.

The Constitution's Bill of Rights provides for due process, including the right to a fair, public trial within a reasonable time of being charged and the right to appeal to a higher court. It also gives detainees the right to state-funded legal counsel when "substantial injustice would otherwise result." In practice the law functions as intended. A general lack of information on the part of accused persons regarding their rights to legal representation, and the Government's inability to pay the cost of those rights are continuing problems. In a March report, Justice Minister Dullah Omar expressed concern over 356,000 unpaid lawyer's accounts. There was public concern about the capacity of the criminal justice system to deal with the high-level of nonpolitical crime, as well as the continuing political violence in KwaZulu-Natal and elsewhere. The resurgence of vigilante justice (see Section 1.a.) apparently was a result of doubts about the capacity of the police and the courts to address the serious problem of common crime.

The Government and legal bodies have acted to redress historic racial and gender imbalances in the judiciary and the bar. The ranks of judges, magistrates, senior counsels, and attorneys are more reflective of society, although they still fall far short of a representative composition.

In its report, the TRC found that the former apartheid regime was responsible for deliberately falsifying or destroying evidence to be used in trials against security force personnel accused of killing political enemies.

There were no reports of political prisoners.

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

The Constitution prohibits such practices, government authorities generally respect these prohibitions, and violations are subject to effective legal sanction.

In 1994 the Redistribution of Land Rights Act established the Constitutional Land Court and the Commission on Restitution of Land Rights. The Court's mission is to settle cases previously vetted and evaluated by the Commission. Claims only can be filed for land dispossessions following the promulgation of the Natives Land Act of 1913, although this does not include dispossessions that occurred in 1913, which marked the year of the Government's most significant land redistribution in favor of whites. The various forms of compensation offered to claimants are the return of the original land, deed to another piece of land, financial remuneration, or preferential access to government housing. A deadline of December 31 was set for receiving claims. There is no deadline for completion of the claim settlements, and the pace at which cases are moving is particularly slow. As of December, 63,455 cases had been received, of which 4,000 were accepted and are under investigation. Only 31 claims have been resolved. A provision passed by Parliament in late 1997 was aimed at speeding up the process of allowing out-of-court settlements negotiated with the Ministry of Land Affairs.

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

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

The Constitution provides for freedom of speech and of the press, and the Government respects these rights in practice. However, these rights can be limited by general law under some circumstances. Several apartheid-era laws that remain in force pose a potential threat to the media. Nevertheless, the press criticizes both the Government and the opposition.

The media offer a broad range of news, opinion, and analysis. Coverage of news and expression of opinion is vigorous. However, high-ranking government officials on occasion have reacted sharply to media criticism of government programs and problems, going so far as to accuse journalists of disloyalty. A few journalists fear that the Government would like to control the media. A larger number of journalists believe that the Government's sensitivity to criticism causes self-censorship in the media. The Government's deportation in May of an

award-winning investigative journalist, Newton Kanhema, sent a chilling message to the rest of the media. In July police at a Guguletu police station severely beat a Cape Town journalist, Thabo Mabaso (see Section 1.c.).

The state-owned South African Broadcasting Corporation (SABC) continues to own and control the majority of the television and radio outlets. However, the SABC maintains its editorial independence from the Government. The SABC is managed by black South Africans, provides broadcasting in the country's main African languages, and its news programming offered balanced coverage of the Government and the leading opposition parties. In March the first private television license was granted by the Independent Broadcasting Authority (IBA) to Midi Television, a black-owned consortium made up of a number of associations and syndicates representing workers, women, and disabled persons. Midi Television holds majority ownership of the first commercial television station in the country, E-TV. Despite start-up difficulties, E-TV began broadcasting October 1; its schedule consists mainly of foreign programs.

In addition to E-TV, the SABC competed with two pay-per-view broadcasters, M-NET and Multichoice, several commercial radio broadcasters, and a large number of low-power, not-for-profit community radio stations. Community radio has more than 80 licensees (all granted since 1994), many of which are

experiencing start-up and longevity problems. Nevertheless, community radio is providing first-time radio access to thousands of citizens, including election information and news tailored for specific interest groups.

In 1997 a black-owned consortium acquired control of the country's leading black-oriented newspaper, The Sowetan and of a major, traditionally white-oriented publishing business, Times Media Limited, thereby making major inroads into the historic monopoly of white South Africans over both print and electronic media. The investment group MIDI TV, which holds majority ownership of E-TV, is black owned. Black South Africans also are gaining access to the media through community radio and in upper-level management positions at the SABC.

Several laws remain in effect that permit the Government to restrict the publication of information about the police, the national defense forces, prisons, and mental institutions. Another law remains in force that could be used to compel reporters to reveal their sources. While these laws were not employed often, they still were perceived by journalists as a threat to freedom of the press. However, in a landmark judgement in September, the Supreme Court ruled that if journalists could prove that they had taken all the steps necessary to verify that the information they obtained was genuine and the articles published as a consequence were reasonable and not negligent in their reporting of the facts, journalists would not be liable if the information obtained was defamatory.

There are several government agencies with media-related responsibilities. The South African Board of Censors reviews and passes judgment on written and graphic materials published in or imported into the country. The Board of Censors has the power to edit or ban books, magazines, movies, and videos, and regularly exercises that power, although with restraint. The Government recently created a new information service, the Government Communications and Information Services (GCIS), to coordinate and facilitate its communications with the citizenry.

There are no official restrictions on academic freedom.

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

The Constitution provides for these rights, and the Government respects them in practice.

#### c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government respects this right in practice.

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government respects them in practice.

The law contains provisions for the granting of refugee or asylee status in accordance with the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol. In November the National Assembly and the National Council of Provinces passed the Refugees Bill--framework legislation that codified the country's obligations under the U.N. Convention and its Protocol. The Refugees Bill stipulates that no person shall be expelled, extradited, or returned to any other country if they face persecution due to race, religion, or political affiliation, or when "his or her life, physical safety, or freedom would be threatened." The bill also stipulates that designated refugees lose their status if they voluntarily return to their country of origin, take citizenship of another country, or if the circumstances that caused their flight from the country of origin change. However, the bill stipulates that

in order to renew their temporary residency permits, asylum seekers must return to the town in which they originally lodged their application to be recognized as refugees. Permits that are lost, stolen, or destroyed are not renewed. If found without a valid permit, asylum seekers are subject to arrest, detention and deportation. The bill is scheduled to go into effect in early 1999.

In 1996 the Government signed a Memorandum of Understanding with the United Nations High Commissioner for Refugees (UNHCR) on the standardization of regional refugee policies, which is designed to shift more responsibility for handling refugee flows onto first-asylum countries in the region. The Government cooperates with the UNHCR and other humanitarian organizations in assisting refugees. The Government provides first asylum, granting applicants the right to work and study. There were approximately 50,000 applications for refugee status by year's end. Of those claims, approximately 8,400 were accepted and 20,000 were rejected. The rest are still outstanding. About 70 percent of the thousands of illegal immigrants deported during the year came from Mozambique. Despite numerous procedural safeguards, energetic efforts to combat a mounting illegal immigration problem occasionally resulted in the wrongful deportation of aliens legally in the country. However, no persons were forcibly returned to countries where they feared persecution. There also have been credible reports of overcrowded, unhygienic detention facilities, beatings by security personnel in detention centers, and the theft of money and personal possessions from refugees by security personnel.

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

Citizens exercised the right to change their government in 1994 elections that observers deemed to be substantially free and fair. The new Constitution went into effect in February 1997. Under its terms, the country retains a bicameral parliament, an executive state presidency, and an independent judiciary, including a constitutional court.

The current 400-member National Assembly was retained under the new Constitution. A new National Council of Provinces (NCOP), consisting of six permanent and four rotating delegates from each of the nine provinces, replaced the former Senate as the second chamber of Parliament. The NCOP, created to give a greater voice to provincial interests, must approve legislation that involves shared national and provincial competencies according to a schedule in the Constitution. An 18-member Council of Traditional Leaders, which the Constitution accords an advisory role in matters of traditional law and authority, was inaugurated in April 1997.

Two parties, the ANC and the IFP, continued to share executive power following the National Party's withdrawal from the Government of National Unity and provincial executives in 1996. This arrangement is expected to continue until elections in 1999. President Nelson Mandela continued in office as Executive Head of State, with Thabo Mbeki as the sole Executive Deputy President. The ANC fills 22 of the 25 cabinet positions.

In November the Independent Electoral Commission (IEC) began a voter registration drive in preparation for the 1999 elections. The first of at least 3 weekends set aside for voter registration was marked by several problems including the failure of electronic registration equipment, inadequate registration personnel due to insufficient funds, a critical deficiency in voter education, including persons being directed to the wrong registration centers and confusion over necessary documentation for registration, and bad weather. President Mandela deployed several thousand uniformed SANDF members at registration centers nationwide to take the place of official registrars. Approximately 8.4 million voters were registered at year's end.

A constitutional amendment extending the term of municipal councils from 4 to 5 years to coincide with

the terms of national and provincial legislatures was passed during the 1998 parliamentary session.

There are no legal impediments to women's participation in government. Over one-fourth of the National Assembly members are women, while in the NCOP, 9 of the 54 permanent delegates are women. Women currently occupy three of four parliamentary presiding officer positions (speaker and deputy speaker of the National Assembly, deputy chair of the NCOP). Women hold 4 of 25 ministerial positions, as well as 8 of 13 deputy ministerial slots.

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

Human rights groups operate without government restriction, investigating and publishing their findings on human rights cases. Government officials generally are cooperative and responsive to their views. Many organizations participate in governmental bodies that seek to gather public input and to fashion policies related to human rights.

The government-created Human Rights Commission is tasked with promoting the observance of fundamental human rights at all levels of government and throughout the general population. The Commission also has the power to conduct investigations, issue subpoenas, and hear testimony under oath. While commissioners were named in late 1995, the Commission's powers were not determined formally until May 1996. Its operations have been hampered by red tape, budgetary concerns, the absence of civil liberties legislation, several high-level staff resignations, and concerns about the Commission's broad interpretation of its mandate.

The Office of the Public Protector functioned throughout the year. Its role is to investigate abuse and mismanagement by the Government. The Public Protector acts as an office of last resort where citizens report unfair treatment by government organizations. Such complaints generally take the form of concerns over lost pension checks or unfair hiring practices. The office handles an increasing number of complaints, but is hampered by a lack of funding and severe resource constraints.

Under its 1995 enabling legislation, the TRC was empowered to look into apartheid-era gross human rights abuses committed between 1960 and 1994, to grant amnesty to perpetrators of a broad range of politically motivated crimes, and to recommend compensation for victims of human rights abuses. The TRC continued to operate freely throughout its third year, although a number of political parties and individuals filed court challenges against the Commission. Due to the volume of work, the TRC's original 2-year mandate was extended to allow full operations through July and the continuation of amnesty hearings into 1999.

The TRC presented its 3,500 page final report to President Mandela on October 29, with a codicil to be added upon completion of the amnesty process. The TRC received more than 21,000 statements from victims of human rights abuses and more than 7,060 applications from those seeking amnesty. In September the TRC notified more than 200 individuals, including current and former high-level government officials, that they would be named as perpetrators of human rights abuses in the report. Following a court challenge, findings on former State President F.W. De Klerk were excised from the report, pending a hearing scheduled for March 1999. A last-minute bid by the ANC to delay publication of the report, pending a meeting with the TRC, was unsuccessful.

As expected, in its report, the TRC found the former apartheid regime to have been the primary abuser of human rights during the era of its rule. The TRC cited numerous immoral, and, even under its own laws, illegal acts that the former government undertook in its effort to maintain white-dominated control

of the country. The TRC report noted that it had followed the internationally held position that apartheid was a crime against humanity and that it endorsed the concept that liberation movements were involved in a just war. However, the TRC held that just war did not legitimate the perpetration of gross violations of human rights, and that individuals are responsible for violations committed. It found further that the State by virtue of its powers, resources, obligation, and privileges, must be held to a higher standard of moral and political conduct than voluntary associations such as the liberation movements. However, the TRC also took seriously its mandate to consider all violations of citizen's rights on an equal basis by pointing out abuses committed by the ANC during its struggle. The TRC also singled out the IFP and its leader Chief Mangosutho Buthelezi for special attention, calling the party the primary nonstate perpetrator of abuses from the late 1980's through 1994.

The reactions of the various political parties were mixed. The ANC attempted to block the release of the report pending a modification of the findings against the ANC, but was ultimately unsuccessful. The IFP, the PAC, the Freedom Front, and the NP attacked the report's findings, while the Democratic Party and the UDM welcomed its release.

Major findings of the TRC report include: the primary perpetrator of gross human rights violations was the former State, including the Government, the civil service, and the security forces; the State was guilty of a range of abuses including extrajudicial killing, abduction, torture, severe mistreatment, cross border raids, and the training and arming of hit squads; the State Security Council, chaired by former President P.W. Botha, created a political climate that greatly facilitated wide-scale human rights abuses; the IFP was the primary nonstate perpetrator of gross human rights abuses from the late 1980's through to 1994; the South African Defense Forces conspired with the IFP to train and deploy a paramilitary hit squad against opponents of the Government and the IFP in the KwaZulu homeland. The ANC, PAC, and other liberation movements, and their armed wings, were responsible for a number of gross violations, including the execution without due process of mutineers in camps abroad; the killing and maiming of civilians, particularly white farmers, in certain MK operations, including land mine campaigns; and the torture of suspected enemy agents. Rightwing opposition groups committed gross violations in the early 1990's against those perceived to oppose Afrikaaner self-determination and were mobilizing to derail the democratic process; the United Democratic Front facilitated or failed to take measures to prevent gross violations by affiliates or supporters, including "necklacing", the placing of a burning tire around the necks of political opponents.

Among those found accountable for gross violations by virtue of their leadership positions were former President P.W. Botha, former Defense Chief Magnus Malan, former Law and Order Minister Adrian Vlok, former SADF head General Constand Viljoen, Afrikaner Weerstandsbeweging (AWB) leader Eugene Terreblanche, and IFP leader Mangosutho Buthelezi. The Commission reserved special criticism for Winnie Madikizela-Mandela's role in sponsoring the Mandela United Football Club, which essentially was a group of bodyguards accused of a number of extrajudicial killings of suspected enemy agents, torture, assaults and arson. Following a court challenge, the TRC temporarily excised its findings on former President F.W. De Klerk pending a hearing on the issue scheduled for March 1999. The TRC also found institutions such as the legal fraternity, faith communities, the media, business, and others guilty of acts of omission that contributed toward a culture of impunity in which gross violations of human rights were tolerated.

Hearings were also held on a number of topics including the apartheid-era chemical and biological warfare program and the 1986 plane crash that killed Mozambican President Samora Machel. A number of high-level government officials testified before the Commission on the operations of the former State Security Council (SSC) chaired by then-President P.W. Botha. In August a regional court sentenced Botha to a 12-month suspended jail sentence and a fine of approximately \$1785 (10,000 rand) for repeatedly refusing to respond to TRC subpoenas to testify regarding his role in the SSC. Botha may

still be called to testify in the Commission's amnesty hearings.

By year's end, approximately 7,120 amnesty applications were filed with the TRC and some 1,500 cases remained to be heard. An estimated 80 to 90 percent of all applications were from those already incarcerated. A year's end, amnesty had been granted to approximately 130 applicants including former members of government security forces, of the IFP, of both the ANC and PAC liberation movements, and of members of conservative rightwing groups such as the Afrikaner Weerstandsbeweging (AWB). Amnesty was granted in a number of high-profile cases, including to those responsible for the murder of U.S. student Amy Biehl in 1993, and the 1993 St. James church massacre. Decisions in approximately 2,600 amnesty cases, including the killing of ANC activist Ruth First, SACP leader Chris Hanu, black consciousness leader Steve Biko, and human rights lawyer Griffiths Mxenge, and the bombings of Khotso and COSATU houses still were pending at year's end. John Coetzee, Head of the Security Branch from 1980 to 1983 and National Police Chief from 1983 to 1987 also is awaiting a decision on his request for amnesty. In midyear, the Cape Town High Court declared the applications of 37 high-profile ANC members to be invalid since they did not provide details of specific acts for which amnesty was being requested. Discussions continue between the ANC and the TRC on submission of further information on these and a number of other ANC applications.

The TRC report also stated that those who had not sought amnesty should be prosecuted for their investigations were launched against Winnie Madikizela-Mandela. The TRC report also counseled against the grant of a general amnesty for human rights abusers. Other key recommendations called for a reconciliation summit to be scheduled in 1999, increased counseling services for victims of trauma and consideration of a mechanism for restitution, such as a wealth tax. The Cabinet and Parliament still must approve the TRC's recommendations for an overall payment formula for reparations, which include monetary compensation as well as community support and legal and symbolic reparations. TRC officials completed their findings on which of the 21,000 victims who filed statements qualified for reparations under the reparation policy. Interim assistance was given to those considered to be in the greatest financial difficulty. The processing of applications from eligible victims continued through year's end. The TRC officially expressed concern regarding delays in implementing reparations measures along with doubt about the level of government support for reparations funding.

## **Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status**

The Constitution prohibits discrimination on grounds of race, religion, disability, ethnic or social origin, color, age, culture, language, sex, pregnancy, or marital status. Legal recourse is available to those who believe they have been discriminated against, but entrenched attitudes and practices, as well as limited resources, limit the practical effect of these protections.

### **Women**

There is a high rate of violence against women, and such violence includes rape, assault and battery, and domestic violence. Approximately 36,400 women reported being raped during the year; of those, 1 percent were raped by their spouse. Police sources believe that a majority of rapes are still unreported.

Parliament passed a new Domestic Violence Bill in November. The bill expands the definition of victims of domestic violence, facilitates the serving of protection orders on abusers, provides places of safety for victims, allows police to seize firearms at the scene and arrest abusers without a warrant, and compels medical, educational, and other practitioners working with children to report abuse immediately.

The Prevention of Family Violence Act of 1993 defines marital rape as a criminal offense, and it allows women to obtain injunctions against their abusive husbands and partners in a simpler, cheaper, and more effective manner than under previous legislation. However, the implementation process is inadequate, as the police generally are unwilling to enforce the Act. As a consequence, a limited number of women pressed complaints under the law, despite government and NGO efforts to increase public awareness of it.

While some progress has been made, the number of shelters for battered women remained insufficient. The SAPS continued to operate new units that deal specifically with domestic violence, child protection, and sexual violence, which are intended, in part, to increase victims' confidence in the police, and thereby lead to increased reporting of such crimes. However, these units were often hampered by a lack of training among officers.

Discrimination against women remains a serious problem despite legal and constitutional protections. Progress was made in bringing customary law in line with constitutional provisions. In November Parliament passed a new bill, the Recognition of Customary Marriages Bill, that recognizes customary marriages, both monogamous and polygynous, but it does not address religious marriages, which are not recognized under law. The bill includes a number of safeguards for women and children, including requiring a minimum age of 18 and the consent of both spouses to enter into such marriages and a court decree to dissolve them. The bill also addresses inequities of property arrangements under some customary laws. Parliament also passed the Maintenance Bill in November, which tightens procedures for child support payments and improves the ability of caregivers, most of whom are women, to collect maintenance payments from partners. Other legislation, such as the Employment Equity Act, which was passed in October, and the Basic Conditions of Employment Act, which was passed in November, introduced measures to counter discrimination against women in the workplace. The 1997 Interim Protection of Informal Land Act protects persons who have insecure and informal rights and interests in land; many women are in this category. There are 12 known women's private investment companies in the country.

A number of governmental and nongovernmental organizations monitor and promote women's rights. The Office on the Status of Women, located in the Deputy President's office, coordinates departmental gender desks, which develop strategies to ensure integration of gender concerns in policy and planning. The Commission on Gender Equality (CGE), a constitutionally mandated body, is authorized to investigate allegations of gender discrimination and make recommendations to Parliament on any legislation affecting women. As with some of the other statutory watchdog bodies, the CGE continued to be hampered by a lack of funding. The Women's National Coalition, an umbrella organization of women's groups from labor, political parties, trade unions, and religious, cultural, and professional bodies, monitors and promotes women's equity and issues of interest to women.

Polygyny continues to be practiced by several ethnic groups. Exacting a bride price ("lobola") is also a traditional practice of some ethnic groups.

## **Children**

The Constitution stipulates that children have the right "to security, education, basic nutrition, and basic health and social services." The Government remains firm in its commitment to provide these services and has made some progress toward developing the mechanisms for delivering them, including improvements in the provision of education and a campaign against child abuse. However, the demand for such services far outstrips the resources available.

The Schools Act and the National Education Policy Act, passed by Parliament in 1996, provide greater educational opportunities for disadvantaged children--traditionally black children--though a uniform system for the organization, governance, and funding of schools. It mandates compulsory education from ages 7 to 15 and ensures that children cannot be refused admission to public schools due to a lack of funds. The new school funding formula, based on norms and standards tied to physical resources and performance, shifts 75 percent of nonpersonnel resources toward the 40 percent most needy schools. Student populations on university campuses are becoming more representative of the country's racial profile, with previously all-white universities reaching out to recruit students from black and colored communities. The enrollment of black students has risen from nearly zero percent of total enrollment during the previous regime to 30 to 40 percent at prestigious universities, including the University of Pretoria.

Social programs known as "Presidential Initiatives," which were included in the former Reconstruction and Development Program, continue to receive government support. These initiatives offer free health care to pregnant women and to children under 6 years of age and provide nutritious meals for primary school children.

Violence against children remains widespread. While there has been increased attention to the problem by the Government, the public, and the media, a lack of coordinated and comprehensive strategies to deal with such crimes continues to impede the delivery of needed services to young victims.

Traditional circumcision rituals are still practiced on teenage boys in rural areas of the Eastern Cape and KwaZulu-Natal and resulted in the hospitalization, mutilation, or death of several youths.

Child prostitution is on the rise, primarily in Cape Town, Durban, and Johannesburg. An increase in the number of children who live on the streets has contributed to the growing number of child prostitutes. The child sex industry increasingly has become organized, with children either being forced into prostitution or exploited by their parents to earn money for the family.

Female genital mutilation (FGM), which is widely condemned by international health experts as damaging to both physical and psychological health, traditionally still is practiced in some rural areas of the Eastern Cape and KwaZulu-Natal, although it is not thought to be widespread. There is no that addresses FGM; however, a person who subjects another to FGM is subject to the common-law offense of assault.

Legislation passed in 1995 prohibiting the detention of unconvicted juveniles in prisons, police cells, or lock-ups. A 1996 law gave courts limited discretion to detain in prison

14- to 18-year-old children who were awaiting trial for serious crimes such as murder or rape. The measure was expected to be temporary pending the establishment of "places of safety" for the detention of juveniles. However, due to delays in the establishment of such centers, provisions of the 1996 law lapsed midyear. Amid concerns that dangerous juvenile offenders were being released to return to the streets, additional legislation was passed late in the year to regulate limited pretrial detention of juvenile offenders accused of serious crimes. The law states that any child under the age of 14 must be released within 24 hours into the custody of a parent or guardian when possible.

### **People With Disabilities**

The Constitution prohibits discrimination on the basis of disability. Society continues to promote an increasingly modern concept of persons with disabilities as a minority whose civil rights must be

protected. The Government attempts to ensure that all government-funded projects take account of the needs of disabled citizens. However, in practice government and private sector discrimination in employment of the disabled still exists. According to an NGO, the Affirmative Action Monitor, less than two-thirds of companies target the disabled as part of their affirmative action programs. The law mandates access to buildings for persons with disabilities, but such regulations rarely have been enforced, and public awareness of them remains minimal. The Employment Equity Act requires private firms with more than 50 workers to create an affirmative action plan with provisions for achieving employment equity for the disabled. The National Environmental Accessibility Program, an NGO comprising disabled consumers as well as service providers, has established a presence in all nine provinces in order to lobby for compliance with the regulations and to sue offending property owners when necessary.

### **Religious Minorities**

In December a synagogue in Wynberg was bombed. The investigation was ongoing at year's end.

The People Against Gangsterism and Drugs, an Islamic-oriented community-based organization, continued to engage in acts of intimidation and violence against suspected drug dealers, gang leaders, and critics of PAGAD's violent vigilantism (see Section 1.a). PAGAD also targeted the homes of anti-PAGAD Muslim clerics, academics, and business leaders.

In January 1997, a mosque in Rustenberg was bombed in a series of bombings that also struck a post office and general store and injured two persons. Authorities arrested two suspects for the bombings, but their trials were still pending at year's end.

### **Indigenous People**

The Constitution provides for the recognition of "the institution, status, and role of traditional leadership," and requires the courts to "apply customary law when that is applicable, subject to the Constitution and any legislation that specifically deals with customary law."

The Constitution further permits legislation for the establishment of provincial Houses of Traditional Leaders and a National Council of Traditional Leaders, to deal with matters relating to traditional leadership, the role of traditional leaders, indigenous and customary law, and the customs of communities observing a system of customary law. Six provinces have established houses of traditional leaders. Under the terms of the Constitution and implementing legislation, the National Council of Traditional Leaders was inaugurated in April 1997. The Council is to advise the Government on matters related to traditional authorities and customary law. However, much work remains to be done to integrate traditional leadership and customary law into the formal legal and administrative system.

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

The Constitution and Bill of Rights prohibit discrimination on the basis of race, ethnic or social origin, and culture. The Government continued efforts to reorganize and redesign the educational, housing, and health care systems to benefit all racial and ethnic groups in society more equally. The Government has instituted an effective affirmative action program, and, under the Employment Equity Act, also requires private firms with more than 50 employees to institute affirmative action programs. According to a 1996 Department of Labor survey, 82 percent of private sector firms already have instituted affirmative action programs.

According to the Affirmative Action Monitor, affirmative action policies have had little impact on the top echelons in business. Based on a consultants' survey in 1996, one-third of the organizations with no affirmative action program did not intend to implement one. Twelve percent of the companies surveyed stated that they had experienced a drop in standards or deterioration in quality of work due to affirmative action. However, the country's black majority increasingly is making inroads into the previously all-white entrepreneurial sector through pooled investments and acquisitions.

## **Section 6 Worker Rights**

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

The Constitution provides for freedom of association and the right to strike, and these rights are given statutory effect in the 1996 Labor Relations Act (LRA). All workers in the private sector are entitled to join a union. Most workers in the public sector, with the exception of members of the South African National Defense Force, the National Intelligence Agency, and the South African Secret Service, also are entitled to join a union. No employee can be fired or discriminated against because of membership in or advocacy of a trade union. Union membership has continued to decline steadily in the last few years as a result of job layoffs and declining employment, including in sectors that have been heavily unionized, such as mining. According to official estimates, there are 248 registered trade unions and between 30 and 40 unregistered trade unions, with a total approximate membership of 2.9 million persons, about 30 percent of the formally employed, economically active population.

The largest trade union federation, the Congress of South African Trade Unions (COSATU), is aligned formally with the African National Congress (ANC) and the South African Communist Party (SACP). Over 60 former COSATU members serve in national and provincial legislatures and administrations, and scores more entered local government. However, the ANC largely excluded COSATU members from its election lists for the 1999 elections. COSATU's closest rival, the Federation of Unions of South Africa (FEDUSA), is an apolitical, multiracial federation that was formed in 1997 by merging several smaller worker organizations. A relatively minor labor federation, the National Council of Trade Unions, while officially independent of any political grouping, has close ties to the PAC and the Azanian Peoples Organization.

The LRA seeks to create an industrial relations regime that is stable and recognizes that basic worker rights need to be protected. The act protects workers against unfair dismissal, recognizes their right to form trade unions, provides for the right to strike, and establishes a simple set of procedures that protect striking workers from the threat of dismissal. Essentially, for a strike to proceed, all that is required is that a dispute be referred for conciliation. If conciliation fails to resolve the dispute, then a trade union is entitled to advise an employer of an intent to strike. Such a strike is not liable to criminal or civil action. Organized labor also has the right to engage in "socioeconomic protest," whereby workers can demonstrate, without fear of losing their jobs, in furtherance of broader social issues. The LRA also allows employers to hire replacement labor for striking employees, but only after giving 7 days' notice to the striking trade union. Employers have the right to lock out workers if certain conditions are met.

The LRA applies to public sector as well as private sector workers. Public sector employees, with the exception of essential services and the three components of the security services, also are provided with the right to strike. While this right first was asserted in the Public Sector Labor Relations Act of 1993, the LRA simplifies and rationalizes collective bargaining in the public sector and the resort to industrial action.

The Government does not restrict union affiliation with regional or international labor organizations.

## b. The Right to Organize and Bargain Collectively

The law defines and protects the rights to organize and bargain collectively. The Government does not interfere with union organizing and generally has not interfered in the collective bargaining process. The LRA statutorily entrenches "organizational rights," such as trade union access to work sites, deductions for trade union subscriptions, and leave for trade union officials, which strengthens the ability of trade unions to organize workers.

Union participation as an equal partner with business and government in the National Economic Development and Labor Council, a tripartite negotiating forum, ensures a direct voice for labor in the formulation of economic, social, and labor policy.

The LRA allows for the establishment of workplace forums that are intended to promote broad-based consultation between management and labor over issues such as work organization, corporate downsizing, and changes in production processes. The forums, in order to receive statutory protection, can be established by trade unions only in businesses with more than 100 employees. Although trade unions in less than a handful of factories have established workplace forums, the intent of the law is to build wide support within the trade union movement and business for such cooperative workplace relationships.

To further reduce the adversarial nature of labor relations, the LRA also created a Commission for Conciliation, Mediation, and Arbitration (CCMA). Since its inception in November 1996, the CCMA has resolved successfully many disputes referred to it and remains critical to the emergence of a less confrontational business climate. The CCMA also gradually is beginning to play an interventionist role by getting involved in disputes before they deteriorate into a full-fledged strike or lockout. A labor court and a labor appeals court are other important creations of the LRA. The labor court has jurisdiction to resolve disputes that the CCMA is unable to mediate to the satisfaction of both parties. Notwithstanding the existence of the CCMA and specialist courts for labor disputes, the thrust of industrial relations is to minimize the need for judicial intervention in labor relations, leaving it to the contending parties themselves to resolve disputes whenever possible.

There are no export processing zones.

## Prohibition of Forced or Compulsory Labor

Forced labor by either adults or children is illegal under the Constitution and is not practiced.

## d. Status of Child Labor Practices and Minimum Age for Employment

The law prohibits the employment of minors under the age of 15. However, the law gives discretionary powers to the Minister of Welfare to exempt certain types of work to allow individual employers or groups of employers to hire children under certain conditions (for example, on weekends and holidays when they are not in school). This is common practice in the agricultural and informal sector. Child labor also is used in the informal economy.

The fact that children between 15 and 18 years of age are not protected by child labor laws has caused some debate within the Government. Labor Director General Siphon Pityana has stated that there were about 200,000 children working in 1997, mostly in the agricultural sector of the brick-making industry. Some working children are as young as 5-years-old. This figure did not include unpaid domestic work or children working in the informal sector. Child labor figures for the informal sector are nearly impossible

to quantify, since the Government has yet to identify the size of the informal sector's contribution to employment and the economy in general. The Government states a continuing commitment to abolishing child labor through new legislation and improving the enforcement of current child labor laws.

#### e. Acceptable Conditions of Work

There is no legally mandated national minimum wage. Instead, unionized workers in the formal sector of the economy set wage rates on an industry-by-industry basis through annual negotiations with employer organizations. Such wages generally are sufficient to provide a decent standard of living for a worker and family. In those sectors where workers are not organized sufficiently to engage in the collective bargaining process, the Wage Act gives the Minister of Labor the authority to set wages. While the Wage Act does not apply to farm laborers or domestic workers, the Government regulates such wages. However, income disparities between skilled and unskilled workers and the income distribution gap between rural and urban workers means that many workers are unable to provide a decent standard of living for themselves or their family.

The Basic Conditions of Employment Act, which went into effect in December 1997, standardizes time and one-half pay for overtime, establishes a 45-hour workweek and longer maternity leave for women (4 months instead of 3). A ministerial determination exempted businesses employing fewer than 10 persons from certain provisions of the act concerning overtime and leave.

Occupational health and safety issues are a top priority of trade unions, especially in the mining and heavy manufacturing industries. Although attention to these issues has increased significantly, including passage in 1993 of the Occupational Health and Safety Act, the country's industrial and mining processes are dangerous and sometimes deadly. Government attempts to reduce mining fatalities culminated in the 1996 Mine Health and Safety Act, which went into effect in January 1997. The act provides for the right of mine employees to remove themselves from work deemed dangerous to health or safety. Moreover, it establishes a tripartite mine health and safety council and an inspectorate of mine health and safety tasked with enforcing the act and monitoring compliance with its provisions. The act specifically makes it an offense for a company to discriminate against an employee who asserts a right granted by the act (for example, to leave a hazardous work site) and requires mine owners to file annual reports that provide statistics on health and safety incidents for each mine being worked.

There are no laws or regulations in other industries that permit a worker to remove themselves from work situations deemed dangerous to their health or safety.

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