



## South Africa

### Country Reports on Human Rights Practices - [2002](#)

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South Africa is a multiparty parliamentary democracy in which constitutional power is shared between the President and the Parliament. The Parliament consisted of the National Assembly and the National Council of Provinces. President Thabo Mbeki led the African National Congress (ANC) party, which held 266 seats in the 400-seat National Assembly. The Parliament was elected in free and fair elections in 1999; the Parliament, in turn, elected the President. The country continued to consolidate the democratic transformation initiated by the 1994 elections. The Government included ministers and deputy ministers from the ANC, the Inkatha Freedom Party (IFP), a predominantly Zulu-based party whose support is concentrated in KwaZulu-Natal, the Azanian People's Organization (AZAPO), and the New National Party (NPP), but was dominated by the ANC. In October 2001, the New National Party (NNP) formed a coalition with the ANC. In 2001 the ANC and NNP took control the Western Cape Province and appointed Marthinus van Schalkwyk as Premier of the Western Cape Province during the year. The judiciary, including the Constitutional Court, was independent but overburdened.

The South African Police Service (SAPS) has primary responsibility for internal security, although the Government continued 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 to a more accountable, community service-oriented police force; however, it remained ill-equipped, overworked, and undertrained. The SANDF and the SAPS border control and policing unit shared responsibility for external security. The Government continued to train and organize the new Directorate of Special Operations (DSO), dubbed the Scorpions, to coordinate efforts against organized crime and corruption. The civilian authorities maintained effective control of the security forces. Some members of the security forces committed serious human rights abuses.

The country has a population of approximately 44,560,000. The economy continued to undergo important fundamental changes as the manufacturing, wholesale and retail trades, transportation and travel services, and communication services continued to grow and the contributions of agricultural and mining sectors to the economy declined. The distribution of income and wealth remained highly skewed along racial lines and between urban and rural citizens. Official unemployment remained high at approximately 29 percent, with some studies indicating that it was even higher. More than one-third of employed persons worked outside the formal economy. The country suffered from a significant shortage in skilled workers, and many black citizens were poorly educated, ill housed, unemployed, and ill equipped to function in a globalized economy.

The Government generally respected the human rights of its citizens; however, there were serious problems in several areas. Some members of the security forces committed unlawful killings due to use of excessive force, and there also were deaths in police custody. Although declining in number, politically motivated or extrajudicial killings committed by nongovernment persons remained a problem. Some members of the security forces were responsible for torture, excessive use of force during arrest, and other physical abuse. Some members of the police beat, raped, tortured, and otherwise abused suspects and detainees. The Government took action to investigate and punish some of those involved and committed itself to curbing future killings and other abuses. Prisons were overcrowded, and prison employees and other prisoners abused prisoners. The judiciary was overburdened, and lengthy delays in trials and prolonged pretrial detention were problems. The Government generally respected citizens' privacy; however, the law provides for state monitoring of all telecommunications in criminal investigations. Legislation posed a potential threat to the independence of the media, and self-censorship existed. Police forcibly dispersed a demonstration during the year. Xenophobia continued to be a problem, and there were a number of violent attacks on foreigners, including refugees and asylum seekers. Violence against women and children remained serious problems, and discrimination against women and persons with disabilities also remained problems. Child labor, including forced child labor, was a problem. Child prostitution and trafficking

in persons were serious problems. Gang violence continued to be a serious problem in the Western Cape, and vigilante violence and mob justice continued throughout the country. South Africa was invited by the Community of Democracies' (CD) Convening Group to attend the November 2002 second CD Ministerial Meeting in Seoul, Republic of Korea, as a participant.

The Truth and Reconciliation Commission (TRC), created to investigate apartheid-era human rights abuses, made recommendations for reparations for victims, and granted amnesty in return for full disclosure of politically motivated crimes. The TRC concluded its activities at the end of 2001; however, the final report was not released by year's end.

## RESPECT FOR HUMAN RIGHTS

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

#### a. Arbitrary or Unlawful Deprivation of Life

Police use of lethal force during apprehensions resulted in numerous deaths, and deaths in police custody was a problem. The Government took action to investigate and punish some of those involved and to prevent future abuses. The Government's Independent Complaints Directorate (ICD) investigated deaths in police custody and deaths as a result of police action. During the period from April 2001 until March, there were 214 deaths in police custody and 371 deaths as a result of police action. The ICD's report listed subcategories under deaths in police custody, which included natural causes, suicide, injuries in custody, injuries prior to custody, and possible negligence. The Government's cooperation with the ICD was poor.

According to the ICD, shootings accounted for 88 percent of all deaths by police action. Of the killings committed by police, 90 occurred in KwaZulu-Natal, 82 in Gauteng, and 48 in the Eastern Cape. The Free State had the fewest with five killings. During the year, police in pursuit of fleeing suspects shot and killed 20 innocent bystanders. There also were 18 cases in which SAPS vehicles struck innocent bystanders or were involved in motor vehicle accidents that resulted in death. The ICD reported three cases of death as a result of Municipal Police Service (MPS) personnel shootings during the course of an arrest. Two cases involved the Durban Metropolitan Police Department and one case involved the Johannesburg Metro Police Department.

The ICD investigated a number of incidents during the year. For example, on June 21, Inspector Leonard Hlagala died after three police officers allegedly assaulted him. The police officers arrested him on suspicion of being involved in the theft of a car and took him for questioning to an office in Polokwane police station where he was assaulted. He later died of injuries sustained in the assault. The Directorate of Public Prosecutions (DPP) charged the three officers; the next court appearance for the accused is in January 2003.

On June 24, five gas station attendants were shot and killed during an armed robbery at a service station at Grassy Park on the Cape Flats. A SAPS sergeant, Ishmael Hendricks, surrendered voluntarily to police and confessed to the killings. Hendricks was referred to the Valkenberg psychiatric hospital for 30 days of observation. Prior to the killings, the SAPS authorities confiscated Hendericks' service pistol after complaints by colleagues about his mental state; however, subsequently he was issued a private gun license. The ICD completed its investigation, and ICD officials were awaiting a psychological report, which will determine whether Hendricks is competent to stand trial at year's end. If he is found to be incompetent to stand trial, the case will be dismissed.

In June the Cape High Court found the SAPS liable for millions of dollars in damages for issuing a firearm license to Erna McArdell, a diagnosed paranoid psychotic. She shot and paralyzed Ian Hamilton in 1994, during an argument about a parking spot. Hamilton then sued the Minister of Safety and Security for nearly \$1.9 million (19 million Rands) for negligence and failure to take McArdell's character and mental illness into consideration when issuing the permit.

Two police officers of a SAPS dog unit charged with the January 2001 killing of Thokozani Nhlapho in Newcastle, KwaZulu-Natal Province, appeared in Dundee Circuit Court on September 2 and 4; they were found not guilty.

A police captain, who allegedly shot and killed Makawe Makiti in March 2001, was not suspended. During the year, the SAPS completed its investigation of the case and forwarded it to authorities for a decision. There was no decision whether to prosecute by year's end.

There were no developments in the March 2001 case of a woman who died from injuries sustained during shooting

between the police and residents in Avilla Park.

The three police officers in the Eastern Cape Province charged with the murder of a 14-year-old boy in April 2000 still were awaiting trial at year's end.

On April 11, Dr. Wouter Basson, who was charged with murders of hundreds of members of the Namibian Liberation Movement between 1980 and 1987 when he was head of the chemical weapons program of the former government, was acquitted of all charges. State prosecutors stated they would appeal the verdict; however, no appeal was filed by year's end. Namibian authorities stated that they were considering an application to extradite Basson to stand trial.

Racial tensions in the military between white commanding officers and their black subordinates continued. There was one killing during the year. In February a black corporal, serving on the peacekeeping mission in Burundi, shot and seriously injured a white officer. Another member of the defense forces attempted to intervene and also was shot and injured by the corporal. He returned fire and killed the corporal; he later was found to have acted in self-defense for shooting the corporal. A 2001 Ministry of Defense report on the shootings and racism within the SANDF in general still was not released by the Parliament by year's end. However, the Defense Minister stated publicly that racism was likely a motivating factor in the past killings.

The South Africa Institute for Race Relations (SAIRR), a nongovernmental organization (NGO) concerned with political killings, reported 46 politically motivated killings during the first 7 months of the year, compared with 53 for the same period in 2001. Of the 46 killings, 29 took place in KwaZulu-Natal.

The 2001 kidnaping and killing of two members of the Zulu royal family likely were robbery related. No arrests were made in the case by year's end.

A peace process continued between the IFP and the ANC, the two parties most closely associated with the political violence in KwaZulu-Natal. Although violence in KwaZulu-Natal remained higher than in other provinces, resulting in dozens of deaths during the year, there was an increased level of tolerance attributable to the IFP-ANC peace process, as well as an increased police presence. Isolated rural areas in KwaZulu-Natal that previously experienced violence remained tense at times; however, the overall level of violence continued to decrease.

Factional and intraparty rivalry and violence in the Nongoma area increased during the year. Violence was mainly taxi-related but had political overtones. In March the IFP claimed that some of its top officials were on an ANC assassination list, which the ANC denied. The ANC reported several politically motivated deaths in KwaZulu-Natal during the year. For example, in August a member of the ANC died in political violence in the Abaqulusi area of KwaZulu-Natal. On October 24, a prominent municipal councilor and school principal, Bhekisisa Buthelezi, was shot and killed while walking in King Dinizulu suburb. No action was taken by year's end.

On August 16, two IFP supporters, Gcinokwakhe Lindinkosi and Victor Khumalo, were sentenced at the Durban High Court to life in prison for the 1999 murder of ANC leader Prince Zulu.

Unlike in the previous year, there were no reports of politically motivated murders by the United Democratic Movement (UDM) and the ANC in the Western Cape during the year.

There were no developments in September 2001 killings of a UDM branch leader and an ANC member in Philippi, Western Cape. There also were no developments in the investigation into the killings of UDM members primarily in the Cape Flats areas of Nyanga and Philippi.

Since witnesses did not show up for court proceedings in the 2000 killing of five persons during local elections near Johannesburg, the prosecutors dropped all charges and the accused were released.

Unlike in the previous year, there was a significant decrease in reports of taxi-related violence; however, in KwaZulu-Natal, 13 members of the Sundumbili Taxi Owners' Association were killed during the year.

There were no developments in the following 2001 cases of taxi-war deaths in KwaZulu-Natal: The March killing of a prominent taxi boss, Thula Maxwell Sithole, and his wife; the August killing of an 8-year-old child, Lungile Zikalala; the August killing of taxi-driver Musa Zondi; and the August killing of Mxwayiseli Ntuli and a passenger in his taxi.

In March a Western Cape Taxi Council was established, among other things, to work towards unity within the minibus taxi industry and eradicate violence and conflict by introducing mechanisms for conflict resolution.

There were no developments in the investigations of the 2001 killings of seven persons during a taxi-related violence near Cape Town or in the 2001 cases of more than 30 deaths related to taxi violence in the Eastern Cape.

Domestic terrorism resulted in deaths during the year. For example, in October a series of bomb explosions in Soweto resulted in at least one death and one injury. In November an extremist right-wing Afrikaaner group, the Boeremag, claimed responsibility for the bombings. The group threatened further attacks if 18 of its supporters (see Section 5) on trial in connection with a plot to overthrow the Government and reinstate apartheid were not released. In December five men believed to be members of the Boeremag were arrested in connection with the bombings; Brothers Wilhelm, Johan, and Kobus Pretorius, Herman van Rooyen, and Rudi Gouws were charged with terrorism, high treason, and sabotage, and remained in custody at year's end (see Section 1.c.).

Vigilante action and mob justice continued throughout the country during the year. The Institute for Security Studies (ISS) reported a continuation in vigilante action as a result of police inefficiency and the perception that the courts failed to deliver justice. The ISS reported that mob justice still was a major problem, although no figures were available. Gang violence still was rampant in the Cape Flats area of Cape Town and elsewhere in the Western Cape. In late April and early May, police and soldiers were sent into Cape Flats to quell unrest after 37 persons were killed in 4 weeks of intensive gang violence. During the year, vigilantes lynched at least 14 alleged gangsters in the Western Cape neighborhoods of Khayelitsha and Nyanga, causing at least 10 deaths. In activity apparently unrelated to organized vigilantism, in May three men hacked with axes and shot seven men who were alleged to have been robbing Khayelitsha homes. Three of the alleged robbers died of their injuries. The three men who perpetrated the axing and shootings were arrested and faced charges of murder and attempted murder at year's end.

A vigilante group called Mapogo A Mathamaga has grown in membership and offices in at least nine cities, including Pretoria. Mapogo A Mathamaga reportedly has more than 90 branches and 50,000 members throughout the country. Mapogo members attacked and tortured suspected criminals and beat persons with clubs and whips. Mapogo targeted persons whom they suspected of property crimes against their members.

On December 10, Mapogo members reportedly beat two men, Adam Potgeiter and Samuel Moletsane, for allegedly stealing construction equipment from a site where they worked. On December 13, Bertrams Pringle, the construction company owner, Willie Skhosana, and Mapogo A Mathamaga member Robert Van der Colff, appeared at the Delmas magistrate's court and were charged with murder. The case was postponed to February 2003.

During the year, two Mapogo members, Ockert Werner and Marius van Antwerp, were convicted on charges of attempted murder, assault with the intention to do grievous harm, and kidnaping in the 2000 case of the beating of two men and the death of one from injuries. Werner was sentenced to 16 years in prison and van Antwerp was sentenced to 14 years.

There were no further developments in the 2001 cases of two Mapogo members charged with murder in connection with the killing of a man in Kruger National Park in 2000.

During the year, Jan Lourens Botha, the former head of Mapogo in Bronkhorstspuit, was charged with the murder of Thulane Justice Nkosi in 1998. In February the charges were changed to defeating the ends of justice; however, in July prosecutors dropped all charges against Botha relating to the death of Nkosi. Two other Mapogo members, James Masia and Siphon Mkhatswa, admitted guilt on charges of culpable homicide and defeating the ends of justice in the Nkosi case.

Unlike in the previous year, there were no reports that People Against Drugs and Violence (PADAV), the Eastern Cape counterpart to People Against Gangsterism and Drugs (PAGAD), killed or attacked criminals in instances of vigilante violence. PAGAD is an Islamic-oriented, community-based organization with a mandate calling for stronger action against crime and drugs. In 2001 the Organized Crime Unit arrested 12 PADAV members for a series of vigilante crimes committed between September 2000 and July 2001, and a trial was underway at the Port Elizabeth Regional Court at year's end.

Numerous court cases involving PAGAD continued throughout the year. There were hundreds of cases under investigation against suspected members of PAGAD and scores of trials pending based on charges, which included murder, attempted murder, possession of explosives, possession of an unlicensed firearm, armed

robbery, and conspiracy to commit murder. Reportedly no PAGAD members were arrested and one was released on bail by year's end; there were no cases of bail denial during the year. The Muslim community protested the infrequent availability of bail and staged periodic small-scale protests, criticizing the treatment as unfair compared with the judicial treatment of non-Muslims. In May Anees Adams was convicted of murder and sentenced to 25 years in prison; however, his codefendant, Moegamat Zain Cornelison was acquitted. On September 19, Moegamat Isaacs was convicted of three counts of murder and was sentenced to life imprisonment. On December 20, Ebrahim Jeneker and Abdulla Maansdorp, alleged PAGAD members who were charged with the 2000 killing of a police captain, were convicted on numerous charges and sentenced to three concurrent life imprisonments. The one PAGAD member who escaped October 4, 2001, Abubakar Jacobs, was rearrested December 12. At year's end, he was in police custody awaiting trial for his suspected role in a drive-by shooting that killed four persons.

There were instances of murder and intimidation of witnesses who were testifying against PAGAD members; a total of eight witnesses (five named, three unnamed) were shot and killed during 2001. No action was taken against those responsible by year's end.

On March 6, the chief coordinator of PAGAD, Abdus Salaam Ebrahim, and his three fellow defendants in the Rashaad Staggie murder trial were found not guilty by the Cape High Court. The judge said there was not sufficient evidence to link them to the actual murder; however, three of them were found guilty on the charge of public violence. Abdus Salaam Ebrahim was sentenced to 5 years in prison, Abdur Razaq Ebrahim was sentenced to 3 years in prison, and Moegsien Mohammed received a 3-year suspended sentence. On May 14, the three were refused permission to appeal their convictions and sentences. Salie Abader was acquitted on both charges.

Murders of farm families in rural parts of the country continued. There was widespread concern among white farmers that they were targeted for racial and political reasons; however, according to police and academic studies of farm attacks, the perpetrators reportedly were common criminals motivated by financial gain. It also was reported that in the majority of cases, the perpetrators were not farm workers. Official statistics were not available; however, according to Agriculture South Africa (AgriSA), 1,000 farm attacks and 145 killings took place during the year, and that there were 639 farm attacks and 91 killings during 2001 and 905 attacks and 144 killings in 2000. AgriSA also reported that there were 5,972 attacks and 1,241 murders since 1991. In August 2001, HRW released a report titled, "Unequal Protection: The State Response to Violent Crime in South African Farms." The report concluded that the Government failed to protect adequately residents of commercial farms from attacks and that black farm residents, especially black women, were most vulnerable to abuse. The Government established Priority Committees, consisting of the South African Police Service (SAPS), South African National Defense Forces (SANDF), and farming communities to coordinate the activities of law enforcement and other relevant actors to address violent crime on farms. The committees were operational and attempted to prevent farm attacks; however, security forces actions largely were viewed as responding to attacks, not preventing them.

There were incidents of abuse and killings of black farm laborers by their white employers. NGOs claimed that rural police and courts refused to arrest or prosecute whites in many cases. In 2001 the South African Human Rights Commission (SAHRC) launched an inquiry into the human rights situation in farming communities, and a national conference was expected to prepare an action program in March 2003 (see Section 2.d.). AgriSA participated in the hearings; they alleged that unsubstantiated claims were made at the hearings that wrongly implicated farmers in human rights abuses.

In May the trial of nine white men accused of the March 2001 murder of teenager Tshepo Matloha ended in the acquittal of six and the conviction of two, Riaan Botha and Ben Korff, on charges of murder. Both were sentenced to 18 years in jail. Botha and another accused, Kobus Joubert, received 4-year sentences for attempting to defeat the ends of justice by putting Matloha's body into a dam.

Foreigners were killed in violent attacks during the year (see Section 2.d.). For example, in March a Nigerian man was beaten to death after escaping from the Lindela Repatriation Center.

Occasional witchcraft-related incidents occurred during the year, a number of which took place in KwaZulu-Natal (see Section 1.c.). For example, on May 10, a 56-year-old woman died after a mob accused her of witchcraft and set her on fire in Marianhill. On July 23, community members accused a 66-year-old man, Mr. Ntimbane, of witchcraft and allegedly assaulted him. He subsequently disappeared and was found hanging from a tree on July 25.

#### b. Disappearance

There were no reports of politically motivated disappearances.

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

The Constitution's Bill of Rights prohibits such practices and provides for the right to be free from all forms of violence from either public or private sources; however, some members of the police beat, raped, tortured, and otherwise abused suspects and detainees. Some incidents of torture and ill-treatment by the police and SANDF occurred during interrogation, arrest, detention, and searches of persons' homes. The ICD reported 37 incidents of torture and 14 rapes committed by police officers between April 2001 and March. During the year, the Government investigated these allegations and prosecuted some offenders. For example, in July Constable Mzamu Edward Mlomo was convicted of murder and sentenced to life imprisonment for the October 2000 murder of Phinidiwe Majobela. On September 25, SAPS Reservist Constable Ronald Mannie was convicted, and sentenced in November to 15 years imprisonment, for the April 2001 murder of Moses Makila.

The investigation was ongoing at year's end into the March 2001 injuring of six and the death of one civilian during a shooting between residents and police in Vredendal, Western Cape Province.

Incidents of police harassment and attacks against foreigners continued, particularly during coordinated police raids of areas where foreign nationals resided. Some state hospitals reportedly routinely refused treatment to indigent foreigners, despite regulations that required such treatment.

The 2001 trials of two police officers from the Pretoria SAPS dog unit, who pled not guilty to using their dogs to attack two Mozambican immigrants, were pending at year's end.

There were reports of police abuse of detainees awaiting deportation (see Section 2.d.). Problems remained at the Lindela Repatriation Center, the largest detention facility for undocumented immigrants in the country, particularly as a result of occasional overcrowding after Home Affairs conducted sweeps of squatter camps and sent illegal immigrants to Lindela to await repatriation. Some of the refugees alleged that Home Affairs employees assaulted them and requested bribes.

There were no new developments by year's end in the unresolved cases of police attacks on illegal immigrants in 2000.

During the year, police injured persons while forcibly dispersing a strike (see Section 2.b.).

The Government made efforts to address abuses with an official antitorture policy and training programs for police and SANDF officers. Broad efforts to reform police practices continued to reduce the number of abuses, and the ICD investigated reports of police misconduct and corruption (see Section 1.a.). During the year, the ICD reported 30 cases of corruption and 2,253 incidents of misconduct, including negligent or improper performance of duty and failure to perform duties and responsibilities. During the year, new material on human rights was introduced into the curriculum at the police basic training level, and the training division provided classes to police officers whose basic training took place prior to the introduction of the new material.

The SAPS continued to institute reforms designed to create partnerships between local police forces and the communities they served and establish metropolitan police forces in major cities with local control. However, the SAPS continued to have deficiencies in midlevel leadership and institutional memory that were harmful to its overall performance. The SAPS continued to be ill-equipped, overworked, and undertrained.

There was no action taken in the case of the September 2001 shooting and injuring of ANC councilor Wandile Nkwele in Philippi, Western Cape.

Conflict between warring taxi companies led to gun battles and other street violence and resulted in the deaths and injuries of bystanders (see Section 1.a.).

There were incidents of bombings during the year. For example, in October and November, a series of bombings attributed to the extremist right-wing Afrikaaner group the Boeremag resulted in one death and one injury (see Section 1.a.).

There were no developments in the numerous 2000 and 2001 bomb attacks by year's end.

Vigilante action and mob justice resulted in attacks on suspected criminals and drug dealers, some of whom were tortured (see Section 1.a.).

Xenophobia continued to worsen during the year. Xenophobia was expressed in institutional and social interactions with foreigners, particularly those from other African countries. There were a number of violent attacks on foreigners, including refugees and asylum seekers (see Sections 1.a. and 2.d.). Many of those attacked were hawkers and street vendors.

There were incidents of abuse of black farm laborers by their white employers, and NGOs claimed that rural police and courts refused to arrest whites in many incidents (see Section 1.a.). According to AgriSA, many of the claims of human rights abuses against farm workers were unfounded and untrue.

There were a few illegal strikes that resulted in some worker violence, in particular incidents of intimidation and threats of violence by striking workers against nonstriking and replacement workers (see Section 6.b.). No government action was likely to be taken in the 2000 killing of two guards in Cape Town in what police believed was a strike-related attack.

There was no action taken against students responsible for the March 2001 attack and robbery of bystanders, motorists, and journalists in central Johannesburg.

In Limpopo Province, where traditional beliefs regarding witchcraft remained strong, there were occasional reports of attacks on persons accused of witchcraft by their rural communities (see Section 1.a.). The Ministry of Safety and Security, with the assistance of the quasi-governmental Commission on Gender Equality, and traditional leaders instituted programs to end violence against suspected practitioners of witchcraft during 2001. Traditional leaders cooperated with the programs and reported threats against persons suspected of witchcraft to the police. In March an off-duty police sergeant at Paulpietersburg in northern KwaZulu-Natal shot a 70-year-old woman he accused of killing his father, mother, and son by witchcraft. The woman was seriously injured.

Prisons did not meet international standards, and prison conditions did not always meet the country's minimum legal requirements. Severe overcrowding in some prisons led to poor health; as many as 75 inmates may occupy a cell designed to hold 40 inmates. The Department of Correctional Services (DCS), which manages prisons, reported that in January there were 176,588 prisoners in custody, with 5,576 awaiting sentences, in facilities designed to hold only 105,000. In January it was reported that 68 percent of prisons were overcrowded. Prisoners often were required to sleep in shifts because of a lack of space. Overcrowding was cited as the main reason for the high rate of HIV/AIDS infection in prisons and a reported increase of more than 300 percent in deaths among inmates.

Concerns have been raised over the potential health threat to thousands of juvenile offenders. In the first 7 months of 2001, 1,101 inmates died of HIV/AIDS. Prison employees and other prisoners abused and assaulted prisoners physically and sexually. Press reports indicated that some detainees awaiting trial contracted HIV/AIDS through rape. Food, especially for prisoners with HIV/AIDS and other medical problems, frequently was of poor quality and insufficient quantity. NGOs reported that prison employees stole food from prisoners. Although prisoners generally had access to health care, prison officials sometimes withheld prescribed treatment as punishment.

Male and female prisoners were held separately; however, female prison wards often were on the same grounds as male wards, and Amnesty International reported that male prisoners raped women prisoners. DCS statistics from September 2001 documented that there were 29,873 youth offenders (prisoners under age 21), 3,556 of whom were 17 years of age or younger. Juveniles normally were not housed with adults; however, in April 2001, 320 juveniles under 18 years of age awaiting trial were transferred to secure care centers after it was discovered that they were detained with adult prisoners at Pollsmoor Prison near Cape Town. There were credible reports that youths from juvenile wards were sold to adult prisoners for sexual exploitation, including rape. Juveniles between the ages of 14 and 18 accused of serious crimes, including murder or rape, sometimes were placed in pretrial detention in prisons with adult offenders (see Section 5). Pretrial detainees were not held separately from convicted prisoners.

Immigrant children detained in the Lindela Repatriation Center received the same general treatment as adult detainees, were not provided with separate sleeping facilities from adults, and were not always provided with food and clothing by the facility (see Section 1.c.).

On June 18, a television news program aired footage from a hidden video camera showing prison employees at the Grootvlei prison in Bloemfontein selling a gun to a prisoner serving a sentence for double murder, bringing a juvenile prisoner to another prisoner for sex, selling illegal drugs to prison inmates, purchasing frozen chickens stolen from the prison kitchen, and fraternizing and drinking alcohol with prisoners. Authorities suspended 22 implicated prison employees. After their hearings, four of the prison employees were dismissed, and another

resigned. The hearings for the other 17 employees continued at year's end.

C-MAX prisons were 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. In May an additional C-MAX prison was opened in Kokstad, KwaZulu-Natal.

The Government generally permitted independent monitoring of prison conditions, including visits by human rights organizations; however, only those organizations that were able to send lawyers were allowed to visit prisons. Other prisoners' rights organizations routinely were denied access. The Judicial Inspectorate visited prisons during the year.

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

The Bill of Rights prohibits detention without trial; however, prolonged pre-trial detention was a problem. The Bill of Rights also provides that every detained person has the right to be informed promptly of the reasons for the detention; to be advised promptly 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 respected these rights; however, there continued to be a problem with bringing detainees to trial expeditiously.

Legislation regulates 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.

Human rights groups, judges, and judicial scholars have expressed concern about the Criminal Procedure Second Amendment Act of 1995, which mandates minimum jail sentences and prohibits bail in certain cases, thus raising concerns about judicial independence and civil liberties. The laws have contributed to prison overcrowding by imposing an increased number of long-term prison sentences.

According to the SAHRC, prisoners waited an average of 6 months to be tried in the regional courts and 6 months to 1 year in the high courts; however, in extreme cases detention may extend up to 2 years. This problem primarily was the result of an understaffed, underfunded, and overburdened judiciary (both magistrates and prosecutors), with more cases than it can handle efficiently (see Section 1.e.). In June 2001, the Government initiated a pilot project called the Court Process Project (CPP), which was designed to control criminal cases in a more structured way, from the police stations where they originated through the adjudication process until the convicted person was handed over to the appropriate prison or welfare/health authorities. This process included electronically storing the fingerprints and picture of the accused, which assisted authorities in minimizing the incidence of mistaken identity or deliberate identity switching by detainees, thereby limiting the chances of escape. The system also was designed to prevent docket thefts and to curtail the activities of corrupt police and court officials. The CPP in Durban was effective in eliminating lost dockets, prioritizing certain crimes such as violence against women and children cases, and electronically managing dockets.

There were reports that authorities abused detainees awaiting deportation. Under the provisions of the law, an illegal immigrant may be detained for 48 hours pending the determination of his or her status. A person declared illegally in the country may be detained for an additional 30 days pending his or her removal from the country. In practice persons may be held in detention for several days before being declared as an illegal immigrant or released, and those declared as illegal regularly were held for more than 30 days. In March an investigation by the SAHRC found that conditions at the Lindela Repatriation Center had improved and met every provision under the Constitution; however, some problems remained (see Section 1.c.).

There were no reports of forced exile.

#### 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 generally respected 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 were the courts of original jurisdiction in criminal cases.

Judges and magistrates hear criminal cases. There is a presumption of innocence for criminal defendants. The presiding judge or magistrate determines guilt or innocence. The law requires that 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. The two assessors may overrule magistrates on questions of fact. Magistrates also can use assessors in an advisory capacity in bail applications and sentencing. The Office of the National Director of Public Prosecutions exercised national control over prosecution policy and applied a consistent national policy for the prosecution of offenses. There were nine provincial directors and offices to coordinate and streamline prosecutions.

The Bill of Rights provides for due process, including the right to a fair, public trial within a reasonable time after 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 functioned as intended; however, 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 services were continuing problems. The Government planned to open 60 justice centers in the country, comprised of the Departments of Justice, Correctional Services, Welfare and Health, along with the SAPS, to speed up the administration of justice, free up the court rolls, and alleviate overcrowding in prisons; 23 such centers were established during the year. There were serious backlogs in the numbers of cases that have gone to trial. The ISS reported that there were 2.58 million crimes recorded by the police in 2000. Of 610,000 criminal cases, the prosecution service actually prosecuted 271,000. The other cases were withdrawn or settled out of court. Of the initial 2.58 million cases, slightly more than 210,000 or 10.5 percent ended in convictions. For serious crimes, the conviction rates were lower: Carjacking 2.3 percent, aggravated robbery 2.8 percent, and rape 8 percent.

In February 2001, justice officials began a program called Saturday Courts to address the huge backlog of cases in the courts. It was estimated that it would take 2 years for this program to clear the backlog completely. Officials also instituted privately contracted Additional Courts, which operated in specific districts where there were significant backlogs and where space was available in existing court buildings. The Additional Courts used private sector employees or retirees with judicial experience. In September the National Director of Public Prosecutions reported that there were 3,027 Saturday and Additional Courts that had 10,153 additional court days and had completed 24,570 cases; however, there were 128,656 cases in district courts and 42,758 in regional courts that remained backlogged at the end of July.

In 2001 business managers from the private sector and the NGO Business Against Crime were appointed by the Minister of Justice and Constitutional Development to oversee the overall functioning of the courts; however, there were no results reported by year's end.

There was public concern about the capacity of the criminal justice system to deal with the high level of crime, and the increasing incidence of vigilante justice reflected this concern (see Section 1.a.).

The Promotion of Equality and Prevention of Unfair Discrimination Act provides for the establishment of Equality Courts within magistrates' courts and High Courts to adjudicate complaints. All High Courts were equality courts for their areas of jurisdiction. During the year, Parliament passed legislation amending the Equality Act to simplify the accreditation of magistrates as equality court judges.

The amnesty committee of the TRC finished the last two volumes of the final report in September, and the Cape High Court was expected to hear an IFP suit to remove or correct parts of the final report in January 2003. At year's end, the National Directorate of Public Prosecutions (NDPP) was reviewing all cases that were considered by the TRC to determine which cases to prosecute. The NDPP considered for prosecution only those cases in which amnesty was not granted or those in which the individual did not apply for amnesty.

In May the Eastern Cape 33 prisoners, mostly ANC and PAC members, who were refused amnesty by the TRC, received presidential pardons. The pardoning of the Eastern Cape 33 generated criticism from many, including the former chairperson of the TRC. The Justice Minister stated that between April 2001 and March, 339 presidential pardons were granted from 846 applications. According to opposition parties, these pardons undermined the TRC amnesty process. On September 19, one of the Eastern Cape 33 prisoners, Dumisani Ncamazana, was arrested on charges of murder and illegal possession of a firearm and charged with the May slaying of East London businessman Martin Whitaker. In December Ncamazana and his brother were found guilty and sentenced to life imprisonment.

There were no reports of political prisoners.

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

The Constitution prohibits such practices, and the Government generally respected these prohibitions. Violations generally were subject to effective legal sanction; however, there were reports of police abuses during sweeps and home searches (see Section 1.c.).

On November 1, more than 10 police officers entered the house of the Mchunu family in Soweto, looking for someone not known to the family. The police officers entered without any warning and broke the back and front doors. Sam Radebe, a visitor, was allegedly sprayed in the face with a spray can and assaulted by the police officers. No action was taken against the responsible officers by year's end.

The Transvaal Agricultural Union accused the SAPS of harassing and intimidating citizens during November and December pre-dawn raids on homes and farms without warrants. No action was taken against the responsible officers by year's end.

In November the Parliament passed the Regulations of Interception and Provision of Communication-Related Information Bill that provides for state monitoring of all telecommunications systems for criminal investigations, including cell phones, the Internet, and e-mail. The Bill requires an order from a judge in most cases; however, in some cases, high-ranking police or army officers were authorized to grant permission. The President had not signed the legislation into law by year's end.

The Promotion of Access to Information Act is to assist authorities in obtaining personal information and is used solely in criminal investigations; however, opposition parties and human rights NGOs objected to its broadly defined provision that enabled the Government to access an individual's personal information.

During the year, the Department of Home Affairs conducted sweeps of squatter camps and sent illegal immigrants to Lindela Repatriation Center to await repatriation (see Section 1.c.).

The Land Claims Court settled cases previously screened and evaluated by the Commission on Restitution of Land Rights. Claims only could be filed for land disposessions that occurred after the promulgation of the Natives Land Act of 1913, although this does not include disposessions that occurred in 1913, the year of the former Government's most significant land redistribution. The various forms of compensation offered to claimants were the return of the original land, a deed to another piece of land, financial remuneration, or preferential access to government housing. The Commission ceased accepting applications after 1998, but the cases have moved slowly, which has caused increasing tension and frustration and has resulted in some land occupations by squatters. In March 2001, the Commission began a process to determine which claims were valid, and the process was 92 percent complete by year's end. The Ministry of Land Affairs was authorized to offer settlements without first going to court, which has expedited the resolution process. At year's end, 36,279 restitution claims, involving 85,005 households and 437,145 beneficiaries had been settled. There was no action taken, nor was any likely to be taken, against those responsible for the 2001 illegal selling of land to squatters in the East Rand.

There were reports that farm residents were evicted illegally by farmers; however, the Department of Land Affairs could not substantiate some alleged illegal evictions and many such evictions apparently were not reported.

There were reports that persons accused of witchcraft were driven from their villages in rural communities (see Sections 1.c. and 5). Some survivors of attacks and their families were driven from their villages and were living in "witch villages" for safety in Limpopo Province. The villages have no running water or electricity. Although some persons accused of witchcraft returned to their homes, many persons remained in the villages and requested government assistance for schools and basic infrastructure. During the year, in KwaZulu-Natal, individuals or mobs attacked and, in some cases, killed persons who they accused of witchcraft-related activities.

On June 16, three members of a family in Ezibeleni in northern KwaZulu-Natal were arrested after they allegedly set fire to a house of a woman they believed to be practicing witchcraft. The owner of the house was unharmed, and the three were charged with arson.

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 generally respected these rights in practice; however, these rights can be limited by law in some circumstances. Several apartheid-era laws that remained in force posed a potential threat to media independence; the South African National Editors' Forum (SANEF) recommended that between 13 and 15 laws should be reviewed for possible revocation. The Justice Department agreed to establish a committee with SANEF to review the legislation in question; however, the review had not occurred by year's end. The Constitution bans the advocacy of hatred based on race, ethnicity, gender, or religion that constitutes incitement to cause harm. The press criticized both the Government and the opposition during the year.

In May songwriter Mbongeni Ngema released a song called Ama-Ndiya (Indians). The song immediately was viewed as racist and anti-Indian. The Broadcasting Complaints Commission said the lyrics were "inflammatory" and "promoted hate in sweeping, emotive language against Indians as a race." On June 11, a Durban scriptwriter won an interim injunction against the distribution or sale of the song. In July the South African Human Rights Commission and the Broadcasting Complaints Commission criticism led to the banning of the song from the airwaves.

All newspapers were owned by conglomerates. One of the prominent companies, New Africa Media, was a black-owned consortium that controlled the country's largest circulated daily newspaper, The Sowetan, as well as a larger publishing business, Times Media Limited.

Print media reached approximately 20 percent of the population. This was due to high levels of illiteracy, the lack of newspapers in rural areas, and the cost of newspapers. The majority of the population received the news through radio broadcasts from the national broadcaster (SABC) and community radio stations.

The Government used both legislative and structural means to encourage greater diversity in the media. The media offered a broad range of news, opinion, and analysis. Coverage of news and expression of opinion were vigorous. High-ranking government officials on occasion reacted sharply to media criticism of government programs and problems and at times accused journalists, particularly black journalists and editors, of disloyalty and white journalists and editors of racism.

Several laws remained in effect that permitted the Government to restrict the publication of information about the police, the national defense forces, prisons, and mental institutions. While these laws were not used often, journalists perceived them to be a threat to constitutional free press rights. The Criminal Procedure Act may be used to compel reporters to reveal their sources. The Western Cape Provincial Director of Public Prosecutions invoked a section of the Criminal Procedure Act and subpoenaed two photographers and an editor of Die Burger newspaper because of their film footage of the events on the night drug lord Rashaad Staggie was killed. The photographers and the editor contested their subpoenas in court under the clauses related to media freedom and freedom of speech in the Bill of Rights. In 2001 the Government first withdrew then reissued the subpoenas. In February the Cape High Court decided that the photographers could submit affidavits confirming they had taken certain published photographs rather than providing direct testimony in the trial.

Some journalists expressed concern that the Government wanted to control the media. A larger number of journalists believed that the Government's sensitivity to criticism caused self-censorship in the media. SANEF and the Freedom of Expression Institute (FXI) were concerned that the Government's alleged attempts to silence expressions of dissent eventually could be codified into law.

The government-owned SABC, a limited liability company, continued to own and control the majority of the television and radio outlets. The SABC was scheduled to be split into two operational units--a public broadcasting company and a commercial entity; however, the restructuring had not occurred by year's end. The SABC was managed by black executives, provided broadcasting in the country's main African languages, and offered news coverage of the Government and the leading opposition parties. The SABC maintained editorial independence from the Government, although the balance between editorial independence and national interest remained a delicate topic with governmental officials. Critics alleged that top officials were chosen for political reasons without regard for media expertise or relevant experience.

The only commercial television station, e-TV, reaches 75 percent of the population; however, its share of the viewership was only approximately 10 percent. Most of e-TV's schedule consisted of newscasts and foreign-produced programs; the Government urged e-TV to meet its licensing conditions, which required programming to include at least 30 percent local content. Majority ownership of e-TV was held by Midi Television, a black-owned consortium composed of a number of associations and syndicates representing workers, women, and persons with disabilities.

In addition to e-TV, the SABC competes with two pay-per-view broadcasters, M-NET (encoded UHF transmissions) and MultiChoice (satellite broadcasts); several commercial radio broadcasters; and a large number of low-power, not-for-profit community radio stations.

Government broadcast regulators regularly issued community radio licenses; many of the more than 80 stations operating continued to experience financing and personnel problems. Nevertheless, community radio provided special event information and news tailored for specific interest groups. In March 2001, Radio Islam, the Muslim community radio station, applied for and was granted a 12-month temporary license. During the year, it received an additional 12-month extension and applied for a 4-year license, which was pending at year's end.

There were several government agencies with media-related responsibilities such as the Independent Communications Authority of South Africa (ICASA). The ICASA has less independence from the Ministry of Telecommunications than previously was granted to the Independent Broadcast Authority. In September 2001, the Department of Telecommunications introduced a bill to Parliament that included further limits to the power of ICASA and gave greater authority to the Minister of Communications. This bill was the subject of a great deal of domestic and foreign media scrutiny and criticism. SANEF regarded it as a regressive step by the Government that could result in very little independence for the regulator of the broadcasting and telecommunications media. The bill was passed by the Parliament in November 2001; however, the President had not signed it into law by year's end.

The Minister of Communications has a direct role in the awarding of telecommunication-service licenses.

The Foreign Publication Board, formerly the Government Board of Censors, reviewed and judged written and graphic materials published in or imported into the country. The Board had the power to edit or ban books, magazines, movies, and videos, and it regularly exercised that power, mostly regarding pornographic material. The Government Communications and Information Service (GCIS) coordinated and facilitated communications with the citizenry through its Directorate for Media Diversity and Development.

Internet access was unrestricted for persons with the ability to pay for the service. The number of Internet users continued to expand quickly. All major newspapers maintained Internet sites, most of which were updated daily with the latest news and features. In November the Parliament passed a bill that provides for state monitoring of telecommunications, including the Internet and e-mail (see Section 1.f.).

The Government did not restrict academic freedom.

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

The Constitution provides for freedoms of assembly and association, and the Government generally respected these rights in practice. However, on July 11, police used tear gas and rubber bullets to disperse forcibly a crowd of approximately 100 persons during a South African Municipal Workers' Union strike in Cradock; 10 persons were injured.

There was no action taken against the responsible police officers who forcibly dispersed approximately 100 persons in February 2001, injuring 2 of them, and who forcibly dispersed striking postal workers in March 2001.

#### c. Freedom of Religion

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

The Bill of Rights prohibits the State from unfairly discriminating directly or indirectly against anyone on religious grounds, and it states that persons belonging to a religious community may not be denied the right, with other members of that community, to practice their religion and to form, join, and maintain religious associations. Cases of discrimination against a person on the grounds of religious freedom can be taken to the Constitutional Court.

Relations between the various religious communities generally were amicable.

For a more detailed discussion, see the 2002 International Religious Freedom Report.

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

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

The law provides for the granting of asylum and refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Refugees Act provides that no person shall be expelled, extradited, or returned to any other country if he or she faced persecution due to race, religion, or political affiliation, or when "his or her life, physical safety, or freedom would be threatened." The act also stipulated 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 changed; however, the act stipulated that in order to renew their temporary residency permits, asylum seekers must return to the town in which they originally submitted their applications to be recognized as refugees. Permits that were lost, stolen, or destroyed were not renewed. If found without a valid permit, asylum seekers were subject to arrest, detention, and deportation. The act was supported by the new Immigration Bill that was passed by the Parliament and signed into law in May.

The U.N. High Commission for Refugees (UNHCR) assisted the Government in processing asylum applications. The Department of Home Affairs was required to interview asylum seekers within 14 days of entry and to determine their status within 180 days of the interview; however, asylum applications were not processed efficiently due to poor management and insufficient resources. There were interview delays of up to 3 months, followed by a 6-month adjudication period; under new procedures, applicants were prohibited from working or attending school until asylum was granted. NGOs continued to encourage the Government to give equal access to health, education, and legal protection to foreigners. Human rights groups criticized the Department of Home Affairs for not following the provisions of the act. New applicants for asylum and NGOs assisting refugees reported abuse and assaults by immigration authorities and requests for bribes to process applications for permits to remain in the country. Human rights groups also reported asylum seekers being turned away at borders or repatriated immediately upon arrival at airports without benefit of formal asylum processing. The SAHRC lawsuit against the Department of Home Affairs to compel it to process all applications by asylum seekers as required by the Refugees Act still was pending at year's end. The UNHCR, the National Consortium on Refugee Affairs, and the SAHRC continued their "Roll Back Xenophobia" campaign to raise public awareness of the situation and rights of refugees and the difference between refugees and economic migrants. The campaign produced publications, organized several public relations events, and instituted a Police Training Initiative in cooperation with the SAPS to sensitize police officers on the need to protect refugees and to deal properly with foreign nationals.

The Government cooperated with the UNHCR and other humanitarian organizations in assisting refugees. The Government provided first asylum. The Department of Home Affairs reported that as of August, 65,798 persons had applied for asylum since 1994. Of this number, 58,721 applications had been finalized, including 19,106 granted asylum and refugee status, 35,268 refused, and others falling into various other categories such as applications withdrawn, cancelled, or manifestly unfounded; 7,077 were awaiting a decision at year's end. At year's end, there were approximately 89,000 asylum seekers in the country; 23,000 had been granted refugee status. The majority of recognized refugees came from Somalia, the Democratic Republic of the Congo (DRC), and Angola; there also were refugees from Rwanda, Burundi, and the Republic of the Congo.

The majority of illegal immigrants came from Mozambique and Zimbabwe. Illegal immigrants were processed for deportation at a central facility and sent back to Mozambique and Zimbabwe by weekly trains. Inadequate security on the trains allowed many deportees to jump from the train en route, perpetuating the illegal immigration problem. Despite numerous procedural safeguards, efforts to combat a growing illegal immigration problem occasionally resulted in the wrongful deportation of aliens who legally were in the country; however, there were no reports of the forced return of persons to countries where they feared persecution.

There were 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 (see Section 1.c.).

Unlike in the previous year, there were no reports that police used their dogs to attack immigrants (see Section 1.c.).

Xenophobia led to a number of violent attacks on foreigners (see Section 1.a.). In January three Angolans and one citizen were killed and a house burned in clashes between locals and refugees in the Joe Slovo area in Milnerton, a Cape Town suburb. Detectives were investigating the case at year's end; however, they were hampered seriously by the lack of witnesses willing to testify.

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

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic free and fair elections held on the basis of universal suffrage. In June 1999, national elections were held that observers deemed to be free and fair. There was an improved level of overall tolerance during the campaigning and voting period compared with the 1994 elections, attributable to IFP-ANC talks, as well as to an increased police presence. Complaints primarily concerned posters being removed or defaced, individuals being threatened because of political affiliation, and other incidents of intimidation. In May a commission led by Dr. Frederik van Zyl Slabbert was appointed by the Minister of Home Affairs to study possible alternatives for the electoral system which would become effective in the 2004 general elections. A consultative process was completed and final recommendations were pending at year's end.

The country has a bicameral parliament, an executive state presidency, and an independent judiciary, including a constitutional court.

The two houses of Parliament are the National Assembly, with 400 members, and the National Council of Provinces (NCOP), consisting of 6 permanent and 4 rotating delegates from each of the 9 provinces. The NCOP, created to give a greater voice to provincial interests, was mandated to approve legislation that involved shared national and provincial concerns according to a schedule in the Constitution and to concur on other legislation. There was an 18-member Council of Traditional Leaders, which the Constitution accords an advisory role in matters of traditional law and authority.

Four parties--the ANC, the IFP, AZAPO, and the NNP--shared executive power. The ANC dominated the Government and gained in parliamentary strength in the 1999 elections. ANC members occupied 24 of the 27 ministerial positions. In 1999 the ANC leader, Thabo Mbeki, succeeded Nelson Mandela as President and Head of State. As a result of the 1999 national elections, the official opposition party in the National Assembly was the Democratic Party (DP), which joined with the smaller Federal Alliance (FA) to constitute the Democratic Alliance (DA). In November 2001, the NNP left the DA and reached an agreement to cooperate in government with the ANC at national, provincial, and local levels. The National Assembly also included the UDM, the African Christian Democratic Party, the Pan-Africanist Congress, the United Christian Democratic Party, the Freedom Front, the Afrikaner Unity Movement, the AZAPO, and the Minority Front.

The UDM challenged in the Constitutional Court legislation that allows elected officials to change political parties without losing their seat in the legislature. On October 4, the Constitutional Court ruled that it was constitutional for elected officials at the municipal and local levels of government to defect ("cross the floor") to another party without losing their seats on city or municipal councils. As a result, power could change hands on many local councils. The court also ruled that defections at provincial and national levels satisfied constitutional requirements; however, the court held that a procedural flaw in the legislation necessitated a constitutional amendment.

The questions surrounding traditional leaders and their authority at the local level and participation in local councils were not resolved by year's end. The traditional leaders claimed that municipal demarcations split and diminished their hereditary status and power bases. They also complained that new municipal structures and legislatures denied them voting rights in local councils, which controlled development funds for local communities. In February President Mbeki implied that the Government would address this issue; however, it had not done so by year's end. There were reports that leaders in some areas actively hindered government activities where they infringed upon areas under traditional rule.

There were very few reports of violence or irregularities during the 2000 local elections; however, in the East Rand area of Johannesburg, there were reports that five persons were killed in acts that may have been politically motivated. On March 28, the case came before the Germiston Regional Court and was withdrawn since all the witnesses failed to appear in court. The witnesses allegedly were intimidated into not testifying.

There were no legal impediments to women's participation in government or politics. There were 117 women in the 400-seat National Assembly, and there were 18 women among the 54 permanent delegates of the NCOP. Women occupied three of four parliamentary presiding officer positions (speaker and deputy speaker of the National Assembly, and chair of the NCOP). Women held 9 of 27 ministerial positions, as well as 8 of 16 deputy ministerial slots.

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

A number of domestic and international human rights groups operated without government restriction, investigating and publishing their findings on human rights cases. Government officials generally were cooperative and

responsive to their views. Many organizations participated in governmental bodies that sought to gather public input and to fashion policies related to human rights.

The government-created SAHRC was tasked with promoting the observance of fundamental human rights at all levels of Government and throughout the general population. The SAHRC also has the power to conduct investigations, issue subpoenas, and hear testimony under oath. In 2001 the SAHRC began research into allegations of abuse of black farm workers, local justice system prejudice against farm workers, and violence against white farm owners (see Section 1.a.). In July and August, there were public hearings in the nine provinces concerning the human rights situation in farming communities. National hearings were conducted in Johannesburg in October. The SAHRC undertook a number of other activities during the year, including a national action plan and strategy to combat racism, the "Roll Back Xenophobia" campaign, a study of socio-economic rights, and an inquiry into sexual offenses against children (see Section 5).

The Office of the Public Protector investigated abuse and mismanagement by the Government, and acted as an office of last resort to which citizens reported unfair treatment by government entities. Such complaints generally took the form of concerns over lost pension checks or unfair hiring practices. The office handled an increasing number of complaints but was hampered by severe resource constraints.

The TRC was empowered by legislation to investigate 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 amnesty committee concluded its proceedings in June 2001, but a committee of the TRC still was compiling the last two volumes of the seven-volume TRC report. The two volumes--one by the amnesty committee and the other a comprehensive victims list--will end formally the TRC's work and activate the state's obligation to consider the recommendations of the commission. The final report was scheduled for submission to the President in September; however, it was delayed, pending a court decision on IFP leader Mangosuthu Buthelezi's suit to prevent publication of the report. An estimated 80 to 90 percent of the 7,112 applications for amnesty were from persons already incarcerated. A total of 1,146 applicants were granted amnesty.

The Department of Justice was tasked with making a final decision on the reparations issue and implementing the decisions. The TRC officially expressed concern regarding delays in implementing reparation measures and doubt about the level of government support for reparation funding. Final decisions could only be made after the final report has been given to the President. The more than 21,000 victims identified by the TRC have received some interim reparations but have been waiting 5 years longer than expected for final reparations.

On June 26, the Khulumani support group filed a suit in the Cape High Court, demanding access to information held by the TRC. Archbishop Tutu, Justice Minister Maduna, and President Thabo Mbeki were named as correspondents. Khulumani claimed that attempts to get access to the state's draft reparation policy have been blocked repeatedly. The goal of the Khulumani Victims Support Group was to become involved in the discussions on reparations and to speed up the process.

The Human Rights Investigative Unit has authority to prosecute those persons who failed to ask for amnesty or to whom amnesty had been denied. All human rights abuses addressed by the TRC's amnesty committee were scrutinized by the unit. In October 2001, the TRC's amnesty committee submitted its final report; it was estimated that no more than 20 cases potentially could be prosecuted, which could take up to 5 years. The case against Dr. Basson was the first case pursued by this unit to go to trial; in April Dr. Basson was acquitted of all 46 charges (see Section 1.a.).

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

The Constitution prohibits discrimination on the grounds of race, disability, ethnic or social origin, color, age, culture, language, sex, pregnancy, or marital status. The Promotion of Equality and Prevention of Unfair Discrimination Act places a responsibility on the State and any person in the public domain to promote equality. The act addresses discrimination in a broad context in the workplace, health care, education, services, pensions, and other socio-economic areas. Legal recourse was available to those who believed that they have been discriminated against; however, entrenched attitudes and practices, as well as limited resources, restricted the practical effect of these protections.

#### Women

There was a high rate of domestic violence, including physical, sexual, emotional, and verbal abuse, as well as

harassment and stalking of former partners. Entrenched patriarchal attitudes towards women were a significant factor in underreporting. It was difficult for abused women's cases to be prosecuted effectively, and abused women often were treated poorly by doctors, police officers, and judges.

A study conducted in 1999 in three provinces by the Medical Research Council (MRC), a statutory body, found that 27 percent of women in the Eastern Cape, 28 percent of women in Mpumalanga, and 19 percent of women in the Northern Province had been abused physically in their lifetimes by a current or ex-partner. In a 1999 study by the MRC of 1,394 men working for 3 Cape Town-area municipalities, approximately 44 percent admitted to abusing their female partners. In a MRC study of 1,800 working men in the Western Cape Province over a 10-year period, 22 percent reported forcing their wives or girlfriends to have sexual intercourse.

The law defines victims of domestic violence, facilitates the serving of protection orders on abusers, requires the police to take victims to a place of safety, and allows police to seize firearms at the scene and arrest abusers without a warrant. The law defines marital rape as a criminal offense and permitted women to obtain injunctions against abusive husbands in a simple, less expensive, and more effective manner. The law extends legal protection from domestic abuse to persons who are not in legal or common-law marriages. Violating a protection order is punishable by a prison sentence of up to 5 years, or 20 years if additional criminal charges, including indecent assault, rape, incest, attempted murder, malicious damage to property, or pointing a firearm, are made.

The implementation of domestic violence legislation was hampered by societal attitudes and a lack of infrastructure, resources, and training for law enforcement officials. Researchers at the University of Cape Town's Institute of Criminology reported that while many police and other judicial system officials were committed to complying with the law, it was not implemented adequately. It was believed that the number of women who filed complaints represented only a fraction of those who suffered abuse. Statistics on prosecution and conviction of domestic abusers were not available at year's end. In August 2001, the Constitutional Court ruled that a woman could be awarded damages on the basis that the Government failed to protect her security.

Domestic violence was the subject of extensive media coverage, much of which was focused on the need to improve implementation of domestic violence legislation and to impose longer sentences on convicted abusers. The parliamentary monitoring committee on women's affairs completed consultations with NGOs and local and national government officials regarding defects in the domestic violence laws. During the year, the Parliament's Joint Monitoring Committee on the Quality of Life and Status of Women approved a report on defects in the domestic violence laws, and the National Assembly adopted the report. The committee followed up the report with an active monitoring program and remained concerned about problems in this area.

The Government financed 25 shelters for abused women. This number was inadequate, particularly in the rural areas. The SAPS operated 12 Family Violence, Child Protection, and Sexual Offenses (FCS) Units, which dealt specifically with these issues and which were intended to increase victims' confidence in the police and lead to increased reporting of such crimes. Six training courses for FCS Investigating Officers were held annually, and there were numerous additional workshops and seminars for other members of the police force, including gender sensitivity training. The Government conducted domestic violence awareness campaigns such as the 16 Days of Activism of No Violence Against Women and Children campaign in December and counseling services in partnership with the Network of Violence Against Women, an NGO consortium.

Rape, including spousal rape, was illegal. There was an extremely high incidence of rape for reasons that included a poor general security climate and societal attitudes condoning sexual violence against women. In the large majority of rape cases, the perpetrator went unpunished.

The SAPS reported that between January and March 2001, there were 144.2 rapes reported per day or 29.5 rapes per 100,000 persons; however, according to a 1998 SAPS survey cited in the Statistics South Africa (StatsSA) report, only half of all respondents who were raped reported the incident to the police. Of the cases reported, 47.6 percent were referred to court after an investigation. The Rape Crisis Organization of South Africa reported that only 8.9 percent of reported rapes resulted in a conviction (see Section 1.e.).

Rape, sexual assault, and sexual harassment of black female farm workers by farm owners, managers, and by other farm workers was common.

The Office on the Status of the Women, located in the Presidency, reported in the 2000 National Policy Framework for Women's Empowerment and Gender Equality that "there are few support structures for victims of rape. At police stations, rape victims face a lack of facilities coupled with the unsympathetic treatment women frequently receive from both the police and the justice system." Although judges in rape cases generally followed statutory

sentencing guidelines, judges occasionally were criticized by women's advocacy groups for using questionable criteria, such as the victim's behavior or relationship to the rapist, as a basis for imposing lighter sentences.

The Government established 22 sexual offense courts throughout the country, designated waiting rooms for victims, established counseling, installed more than 2,000 intermediary facilities at courts, and trained judicial officers.

The issue of rape was covered widely in the media during the year. There were a number of demonstrations against rape, such as the October massive protest against child abuse and child rape, which culminated with the presentation of a petition to Minister of Home Affairs Mangosuthu Buthelezi.

Unlike in the previous report, there were no reports that female immigrants and asylum seekers were abused sexually during detention.

Female genital mutilation (FGM) was practiced in some areas of the Eastern Cape and KwaZulu-Natal; however, it was not considered to be widespread and was confined to isolated cases. The law specifically prohibits FGM as unfair discrimination.

Prostitution was illegal, but it was widespread and practiced rather openly. In August 2001, the Pretoria High Court ruled that sections that prohibited prostitution in the Sexual Offences Act were unconstitutional. There were incidents of harassment by policemen demanding sexual favors of prostitutes under threat of penalizing them for lewd conduct or public loitering. There was no law that specifically prohibited sex tourism, although it was covered under the general prohibition against prostitution. The Government was not involved in sex tourism.

There were reports that women were trafficked into the country for prostitution (see Section 6.f.).

Although no official statistics were available, there was anecdotal evidence that sexual harassment was a widespread problem. An attorney from the Women's Legal Center, an NGO, estimated in July 2001 that 76 percent of women had experienced some form of sexual harassment; 40 percent of these women had left their jobs or changed jobs as a result of the harassment. Perpetrators of sexual harassment can be prosecuted under a number of laws; however, there were few successful prosecutions.

Discrimination against women remained a serious problem despite equal rights under family law and property law with regard to inheritance, divorce, and custody of children, and equal legal rights under the judicial system.

Polygyny continued to be practiced by several ethnic groups. Exacting a bride price ("lobola") also was a traditional practice of some ethnic groups. The Recognition of Customary Marriages Act of 2000 recognizes customary marriages, both monogamous and polygynous; however, it did not address religious marriages, which were not recognized by the law.

Discrimination against women in the workplace was prohibited under the law, which included both antidiscrimination and affirmative action provisions; however, in practice women experienced economic discrimination in areas such as wages, extension of credit, and access to land. For example, township housing transfer schemes favored existing titleholders who tended to be men, and women in rural areas found it hard to obtain security of tenure, which was a precondition for accessing housing subsidies. Women, especially black women, typically had lower incomes and less job security than men. Most women were engaged in poorly paid domestic labor and micro-enterprises, which did not provide job security or benefits. Domestic workers usually did not have contracts with their employers and had little recourse for unfair treatment or abuse. Female farm workers often experienced discrimination. Female farm workers' access to housing often was dependent on their relationship to male farm workers. Women generally occupied the less well-paid farming jobs or received lower wages than men who performed the same type of work. Many female farm workers were denied maternity leave in violation of the law or were allowed only the minimum time to give birth and return to work.

According to data supplied in 2000 by employers with 50 or more employees, women held 13 percent of all top management positions, 20 percent of all senior management positions, and 43 percent of professional and middle management positions. This last figure was high because of the disproportionate representation of women within the nursing and teaching professions, which were included in those categories. Approximately 17 percent of women who worked were domestic laborers; the majority of these workers were black women with little or no education.

The Department of Trade and Industry ran a program to provide incentive grants to promote the development of small and medium businesses and microenterprises for women, young persons, and persons with disabilities in the areas of manufacturing, tourism, arts and crafts, and imports and exports.

A number of governmental and nongovernmental organizations monitored and promoted women's human rights. The Office on the Status of Women, located in the Office of the President, coordinated departmental gender desks, which developed strategies to ensure integration of gender concerns into governmental policy and planning. The Commission on Gender Equality (CGE), a constitutionally mandated body, was authorized to investigate allegations of gender discrimination and make recommendations to Parliament on any legislation affecting women; however, the CGE was hampered by a lack of funding during the year. Parliament's Joint Committee on Improvement of Quality of Life and Status of Women was mandated to monitor the effects of government programs and policies on women. In 2001 the committee devoted special attention to monitoring gender equity in the government budget process. In October the Parliament approved a 2000 report by the committee on the impact of HIV/AIDS on women, which included a recommendation that the Government provide pregnant women who are HIV-positive with antiretroviral medication.

There were numerous active women's rights groups that focus on such areas as violence against women and the economic advancement of women.

### Children

The Constitution stipulates that children have the right "to security, education, basic nutrition, and basic health and social services." The Government remained committed to providing 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 exceeded the resources available. The Government was unable to provide for the rapidly growing number of children who were affected by HIV/AIDS, including both infected children and AIDS orphans.

The law provides greater educational opportunities for disadvantaged children--traditionally black children--through a uniform system for the organization, governance, and funding of schools. It mandated compulsory education from ages 7 to 15 and ensured that children cannot be refused admission to public schools due to a lack of funds. According to the Department of Education, approximately 90 percent of 7- to 15-year-olds and 83 percent of 16- to 19-year-olds were enrolled in school. In its 2001 South Africa Statistics report, StatsSA reported that 50.3 percent of all students in public and independent schools were girls, and women comprised 55 percent of all university students and 43 percent of all technicon (technical colleges) students; however, the Office of the Status of Women reported in the 2000 National Policy Framework for Women's Empowerment and Gender Equality that a number of factors, including unplanned pregnancies, domestic responsibilities (particularly in rural areas), and gender stereotypes contributed to high drop-out rates and lower secondary school pass rates for girls. Although girls comprised 55 percent of those taking senior certificate exams, they only represented 52 percent of those passing, according to the StatsSA report.

The school funding formula, based on norms and standards tied to physical resources and performance, devoted 60 percent of nonpersonnel resources toward the 40 percent that were the most needy schools. Each of the nine provincial departments of education had responsibility for the schools in their provinces, which resulted in the uneven distribution of educational facilities. The disparity affected the areas of Eastern Cape, the Northern Province, and KwaZulu-Natal most severely. The availability and quality of primary schooling still was a problem, especially in rural areas where schools may not be easily accessible or where children worked (see Section 6.d.). Most schools in rural and urban KwaZulu-Natal reportedly faced many problems of inadequate learner support materials, long-vacant teaching posts, overcrowding, late pupil registration, and vacation time vandalism; however, despite the setbacks and poor matriculation pass rate, school principals said there was a promise of improved support and delivery from provincial officials, greater community involvement, and better inter-school cooperation. To address this problem, the Government continued to build new schools and introduced basic skills development and prevocational training into the curriculum.

Student populations on university campuses were becoming more representative of the general population, with the most prestigious government-administered universities making an active effort to recruit students from disadvantaged communities.

There were a number of governmental social welfare programs for children, known as "Presidential Initiatives," including free health care for pregnant women and children under 6 years of age and school meal programs for primary school children. In practice it sometimes was difficult for persons in rural areas to obtain access to health

care facilities and other social welfare programs. NGOs called for reforms of social security programs, including programs targeted at children, particularly in response to the increasing number of HIV/AIDS orphans. The Government was criticized widely by HIV/AIDS activists for failing to protect adequately young children from HIV/AIDS transmission through the provision of antiretroviral medication to pregnant and breast-feeding women. The Cabinet continued to withhold approval for programs to reduce the rate of mother-to-child transmission of HIV/AIDS during the year; however, the director of AIDS programs allowed provincial governments to implement the programs without cabinet approval. The Constitutional Court has ruled that the National Government has a constitutional responsibility to provide an effective HIV/AIDS prevention program to reduce mother to child HIV transmission.

Violence against children, including domestic violence, remained widespread. The law prohibits domestic violence against children and requires medical, educational, and other practitioners working with children to report such abuse immediately. While the Government, the public, and the media paid increased attention to the problem, a lack of coordinated and comprehensive strategies to deal with violent crimes continued to impede the delivery of needed services to young victims. In July 2001, a senior police officer reported to a parliamentary committee that there was a significant increase in reports of child abuse. Although corporal punishment in schools was prohibited by law, there were reports that teachers used physical violence to discipline their students. In addition, there continued to be racially motivated violence among students in schools.

Reports of child rape increased significantly, as have reports that men were committing rape due to a growing myth that having sexual intercourse with a virgin can cure HIV/AIDS. Between January 2000 and June 2001, the police reported 31,780 cases of rape and attempted rape of children; however, observers believed that these figures represented a small percentage of the actual incidents of child rape, because most cases involved family members and were not reported. The country had a low conviction rate for rape and child abuse. The conviction rate in cases of child abuse in Johannesburg reportedly was 2.6 percent. The minimum sentence for rape of a child was life in prison, but judges have the discretion to grant more lenient sentences. In November 2001, a 9-month-old girl was raped in Upington; six men were arrested for the crime, but later released when DNA tests showed no link between the men and the rape. The incident was part of a series of rapes of baby girls that continued during the year.

In March 2001, HRW released a report entitled "Scared at School: Sexual Violence Against Girls in South African Schools," which documented widespread rape, sexual abuse, sexual harassment, and assaults of girls at school by teachers, students, and other persons in the school community. According to the report, girls "are confronted with levels of sexual violence and sexual harassment in schools that impede their access to education on equal terms with male students." The report stated that the Government was working to improve its responses to domestic and sexual violence, but recommended "a more proactive, coordinated, and system-wide response." In July the Minister of Education requested that schools establish hot lines to the local police stations and that trauma centers be set up wherever possible to support the Department of Education's commitment to a national toll free line that would deal with all aspects of violence in schools. The law requires schools to disclose sexual abuse to the authorities; however, administrators often disregarded the obligation by concealing sexual violence or delaying disciplinary action. The report further noted that "sexual violence and harassment in South African schools erect a discriminatory barrier for young women and girls seeking an education."

A 2000 survey documented that 39 percent of sexually active teenage girls reported being raped. According to HRW, girls who experienced sexual violence often left school temporarily, changed schools, or quit attending school to escape continuing abuse; those who remained in school had difficulty completing their studies. The level of sexual violence in schools also increased the risk for girls of contracting HIV/AIDS or other sexually transmitted diseases, as well as unwanted pregnancies.

The Government introduced initiatives to address school violence; however, it does not have a national policy to address sexual violence and harassment in schools. HRW reported an absence of standard procedural guidelines governing how schools should treat persons accused of sexual violence or harassment.

Virginity testing on young girls and traditional male circumcision still were prevalent in various parts of the country. Virginity testing was a violation of the law. In 2001 HRW reported that virginity tests were conducted at some schools in KwaZulu-Natal. Several teenage boys died or were mutilated and hospitalized as a result of unsafe practices during traditional circumcision rituals in Eastern Cape and KwaZulu-Natal. In June five boys died of wounds and exposure during a traditional initiation process near Heidelberg, and another 18 boys were admitted to a hospital after suffering from complications. The initiation school was closed. In June a 30-year-old traditional surgeon in the Eastern Cape was arrested for performing 90 unlawful circumcisions without parental consent. The Eastern Cape Provincial Government introduced legislation to regulate traditional male circumcision and improve health standards during the ritual; however, at least 8 initiates died in the Eastern Cape alone during the winter circumcision season, and at least 49 initiates were hospitalized.

FGM still was performed on young girls in some rural areas of the Eastern Cape and KwaZulu-Natal (see Section 5, Women).

Child prostitution was a problem (see Section 6.f.).

#### Persons with Disabilities

The Constitution prohibits discrimination on the basis of disability; however, in practice government and private sector discrimination against persons with disabilities in employment existed. Society increasingly was open to the concept of persons with disabilities as a minority whose civil rights must be protected. The Government attempted to ensure that all government-funded projects take account of the needs of citizens with disabilities. The law mandates access to buildings for persons with disabilities; however, such regulations rarely were enforced, and public awareness of them remained minimal. The law requires employers with more than 50 workers to create an affirmative action plan with provisions for achieving employment equity for persons with disabilities. The National Environmental Accessibility Program, an NGO comprising consumers with disabilities as well as service providers, established a presence in all nine provinces to lobby for compliance with the regulations and to sue offending property owners when necessary. In August the Ministry of Labor introduced a new code to protect persons with disabilities from any kind of harassment. The code, which works in conjunction with the Employment Equity Act, also provides guidelines on the recruitment and selection of persons with disabilities, reasonable accommodation for persons with disabilities, and guidelines on proper handling of employee medical information. In August 2001, the Public Service Commission reported to a parliamentary committee that persons with disabilities constituted only 0.02 percent of the public service workforce, compared with 5.9 percent of the general population.

#### National/Racial/Ethnic Minorities

The law prohibits discrimination on 19 grounds and requires employers with 50 or more employees to ensure that previously disadvantaged groups--defined as blacks, women, and persons with disabilities--are represented adequately at all levels of the workforce. However, these previously disadvantaged groups remained underrepresented in the workforce, particularly at the professional and managerial levels. 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. A comprehensive analysis of workforce profiles by an NGO based on 2000 and 2001 Department of Labor data indicated that blacks held 9 percent of top management positions, 59 percent of the skilled position, and 83 percent of semi-skilled and unskilled positions. The employers cited a lack of training and development, poor recruitment processes, and an antagonistic corporate culture as the main impediments to affirmative action. The armed forces have struggled with the process of integrating blacks into the predominantly white officer corps (see Section 1.a.).

Xenophobia led to a number of attacks on foreigners (see Section 2.d.). Foreigners faced harsh reactions from anti-immigrant groups such as the Unemployed Masses of South Africa, which criticized immigrants for job losses.

The continued killings of mostly white farm owners by black assailants created concern among white farmers that they were being targeted for racial and political reasons (see Section 1.a.). There also were reports that white employers abused and killed black farm laborers but avoided penalty due to collusion with the authorities (see Section 1.a.).

During the year, police arrested 18 right-wing conspirators who allegedly planned to overthrow the Government and reinstate apartheid. At year's end, they were being held on charges of high treason, contravening the Internal Security Act, and a variety of weapons charges. The 18 men allegedly were members of the Boeremag, an extremist right-wing Afrikaaner group.

#### Section 6 Worker Rights

##### a. The Right of Association

The Constitution provides for freedom of association, and this right was given statutory effect in the Labor Relations Act (LRA). All workers in the private sector were entitled to join a union. Workers in the public sector, with the exception of members of the National Intelligence Agency (NIA) and the Secret Service, also were entitled to join a union. Members of the SANDF were allowed to join a union, but they were prohibited from striking. Union membership in the private sector continued to decline steadily, as a result of job layoffs and declining formal sector employment, including in industries that were heavily unionized, such as mining and manufacturing. The largest trade union federation, the Congress of South African Trade Unions (COSATU), lost approximately 200,000

members in the past 5 years, bringing its membership down to 1.8 million. However, some public sector unions experienced growth. Total union membership was approximately 3.3 million persons, which constituted 26 percent of the economically active population.

COSATU was aligned formally with the ANC and the South African Communist Party (SACP). Several ANC members of Parliament and the Cabinet had a COSATU leadership background, and the premier of Gauteng, the country's richest province, was a former COSATU general secretary. COSATU's largest rival, the Federation of Unions of South Africa (FEDUSA), was a nonpartisan labor federation. A relatively minor labor federation, the National Council of Trade Unions (NACTU), was independent of any political grouping. Some unions did not belong to any federation.

Although labor laws protected farm workers, the COSATU-affiliated South African Agricultural, Plantation and Allied Workers, Union (SAAPAWU), and the NACTU-affiliated National Union of Farmworkers have encountered difficulties trying to organize farm workers, because union organizers were considered trespassers on private property. In addition, farm workers or farm residents who attempted to organize were harassed and evicted. The Department of Labor (DOL) and unions have enlisted the cooperation of the national farmers' organization to educate farmers about worker rights. The DOL reported that 4.5 percent of the agricultural labor force was unionized. In 2000 the DOL conducted a survey on the prevailing conditions in the agricultural sector; however, the results were not yet available. According to DOL statements and media reports, the survey found that the majority of farm workers were not unionized and were exploited by employers. In December the Minister of Labor announced minimum wage standards for farm workers that were expected to take effect in March 2003.

The Government did not restrict union affiliation with regional or international labor organizations. COSATU, FEDUSA, and NACTU were affiliated with the International Confederation of Free Trade Unions (ICFTU).

#### b. The Right to Organize and Bargain Collectively

The law defines and protects the rights of workers to organize and bargain collectively. The Government did not interfere with union organizing and generally has not interfered in the collective bargaining process; however, some COSATU unions claimed that NIA agents have infiltrated their ranks. The LRA statutorily provides for "organizational rights," such as trade union access to work sites, deductions for trade union dues, and leave for trade union officials, which strengthened the ability of trade unions to organize workers.

The LRA was designed to create an industrial relations regime that is stable and recognizes that basic worker rights need to be protected. The law, which applies to both the public and private sectors, 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 was required was that a dispute be referred for conciliation. There was no time limit on conciliation efforts; however, if conciliation failed to resolve the dispute or lasted more than 30 days, a trade union was entitled to advise an employer of intent to strike as long as it gave 48-hours notice to a private sector employer or 7-days notice to a state employer. Organized labor also had the right to engage in "socioeconomic protest," whereby workers may demonstrate, without fear of losing their jobs, in furtherance of broader social objectives. 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 were met. Public sector employees, with the exception of essential services and the three components of the security services, also had the right to strike. Strikes by workers in essential services, such as police and hospital workers, were prohibited. If disputes between workers in essential services and their employers cannot be resolved through collective bargaining or conciliation, they were referred to arbitration.

There were several strikes over wage disputes throughout the year, including a 1-day strike of the Communication Workers' Union in May and a 2-day strike of brick makers in Grahamstown in August. In July the South African Clothing and Textiles Workers' Union (SACTWU) members at the Team Puma factory in Cape Town went on strike for 15 weeks. In a landmark decision, the Labor Court ruled in September that a solidarity strike by non-Puma workers was legal and protected.

In July one man was killed and another injured during a 3-week municipal strike when a senior municipal official allegedly opened fire on demonstrators in the Louis Trichardt municipality in Limpopo province. Another man was injured during the same strike when fireworks exploded in a crowd of strikers in Cape Town.

In October there was an antiprivatization strike, which was organized by COSATU. Both the Government and businesses adopted a "no work, no pay" policy. Most workers did not heed COSATU's call for a mass stay-away

action.

During a wage-related strike at the East Rand Proprietary Mines (ERPM), which was organized by members of the National Union of Mineworkers, two security guards allegedly opened fire on the ERPM employees after they attempted to enter the mine, killing two and injuring 14. A court injunction was in place restricting miners from gaining access. The security guards were terminated and the security company lost its contract with the mine. The 5-day ERPM strike coincided with COSATU's October antiprivatization stay-away action and involved casual employees who were contracted by the private recruiting company "Circle Labour." The illegal strike culminated in the firing of the striking workers, 2,300 of whom were rehired by ERPM after being interviewed. ERPM terminated its contract with "Circle Labour."

A November taxi strike in Durban was in response to "Operation Shanela," a government crackdown on unlicensed or unroadworthy taxis. The KwaZulu-Natal Taxi Council members struck for a week at the end of November and early December, protesting "Operation Shanela." The strike reportedly turned violent when strikers stoned private and municipal buses and their passengers.

Union participation as an equal partner with business and Government in the National Economic Development and Labor Council (NEDLAC), a tripartite negotiating forum, ensured a direct voice for labor in the formulation of economic, social, and labor policy. Through NEDLAC, organized labor has been able to participate in the formation of the country's labor legislation as well as initiatives such as the 1998 Presidential Job Summit.

To further reduce the adversarial nature of labor relations, the LRA also created a Commission for Conciliation, Mediation, and Arbitration (CCMA). The CCMA has resolved successfully many disputes referred to it and remained critical to the emergence of a less confrontational business climate. The CCMA also gradually was beginning to play an interventionist role by becoming involved in disputes before they deteriorated into full-fledged strikes or lockouts. Other important mechanisms created by the LRA included a labor court and a labor appeals court. The labor court has jurisdiction to resolve disputes that the CCMA was unable to mediate to the satisfaction of both parties. Notwithstanding the existence of the CCMA and specialist courts for labor disputes, the aim of industrial relations was to minimize the need for judicial intervention in labor relations, leaving it to the contending parties to resolve disputes whenever possible. No employee may be fired or discriminated against because of membership in or advocacy of a trade union.

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, could be established by trade unions only in businesses with more than 100 employees. Although trade unions in only a few factories reportedly have established workplace forums, the intent of the law was to build wide support within the trade union movement and business for such cooperative workplace relationships.

There were no export processing zones.

#### c. Prohibition of Forced or Bonded Labor

The Constitution prohibits forced or bonded labor, including by children; however, there were reports that children were forced into prostitution or exploited by their parents to earn money for their families (see Section 5). According to a survey conducted by StatsSA, up to 2,000 children worked to pay off outstanding debts to employers or obligations to their landlords (see Section 6.d.).

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

The law prohibits the employment of a child under 15 years of age. It was a criminal offense to employ a child between 15 and 18 years of age if such employment "places at risk the child's well-being, education, physical or mental health, or spiritual, moral, or social development." This policy was enforced effectively in the formal nonagricultural sector and less effectively in other sectors by DOL inspectors. The DOL was required to ensure that all of its inspections addressed child labor problems; however, many inspectors were so poorly trained that investigations of cases involving child labor often were dismissed by courts. The inspectors attempted to resolve most problems by counseling employers, child workers, and parents, and by cooperating with the Departments of Welfare and Education. The violation of the laws regulating child employment was a criminal offense, punishable by a maximum prison sentence of 3 years; however, criminal prosecution frequently was reserved for "extreme circumstances," and there were no prosecutions by year's end. Inspectors often had difficulty gaining access to farms where children may have been employed.

Many children, especially in the rural areas of the country, were expected to help with household chores and school maintenance. According to a survey conducted by StatsSA, 45 percent of children between the ages of 5 and 17 worked for 1 hour or more per week in an economic activity, 5 hours or more per week in school labor, or 7 hours or more in household chores. The most common economic activity for children was gathering wood and water for domestic use, which occupied 4.5 million of the 13.4 million children between the ages of 5 and 17 years for 1 hour or more per week. Of the 2 million children who spent at least 1 hour per week in activities for pay, profit, or family economic gain, 59 percent were involved in agriculture and 33 percent in trade.

Child laborers from Zimbabwe and Mozambique worked in the country on commercial farms, for the taxi industry, or as domestic servants.

The Government was preparing an action program for coordinating interdepartmental action on child labor; however, the program had not been announced by year's end. The Government has prepared training manuals and conducted a number of courses on enforcing child labor laws. The Child Labor Intersectoral Group (CLIG) was composed of representatives of trade unions, employers, organizations, NGOs, and officials of the Departments of Labor, Welfare, and Education. The CLIG debates policy options and ensures coordination of initiatives between these different groups.

The DOL began provincial consultations in order to develop and complete a comprehensive program of action to implement the International Labor Organization's Convention 182. The DOL released its survey of child labor at year's end.

There were reports that children were forced into prostitution and that some children work in conditions that amount to bondage (see Sections 5 and 6.c.).

#### e. Acceptable Conditions of Work

There was no legally mandated national minimum wage. Unionized workers in the formal sector of the economy set wage rates on an industry-by-industry or plant-by-plant basis through annual negotiations with employers or employer organizations. Such wages generally were sufficient to provide a decent standard of living for a worker and family. In those sectors in which workers were not organized sufficiently to engage in the collective bargaining process, the law gives the Minister of Labor the authority to set wages, including for farm laborers and domestic workers; however, income disparities between skilled and unskilled workers and the income distribution gap between rural and urban workers meant that many unskilled or rural workers were unable to provide a decent standard of living for themselves and their families. On September 1, new regulations outlining conditions of employment and minimum wage for domestic workers took effect.

The law standardizes time-and-a-half pay for overtime, establishes a 45-hour workweek, and authorizes 4 months of maternity leave for women. 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 were a top priority of trade unions, especially in the mining and heavy manufacturing industries. Although attention to these issues increased significantly, the country's industrial and mining processes were dangerous and sometimes deadly. The law provides for the right of mine employees to remove themselves from work deemed dangerous to health or safety. In addition, a tripartite mine health and safety council and an inspectorate of mine health and safety, were tasked with enforcing the act and monitoring compliance with its provisions. The law specifically made it an offense for a company to discriminate against an employee who asserted a right granted by the law (for example, to leave a hazardous work site) and required mine owners to file annual reports that provided statistics on health and safety incidents for each mine being worked. During the year, 288 persons were killed in mine accidents.

Working conditions on farms generally were poor. There were many incidents of physical abuse of farm workers, nonpayment of wages, and other forms of arbitrary treatment generally by white farm owners (see Section 1.a.). In September 2001, the DOL published a report on employment conditions in the agricultural sector which found that "most South African farm workers live in circumstances of absolute and relative poverty" and recommended minimum farm wages ranging from \$40 to \$75 (400 to 750 Rands), depending on the farm's location. Many farmers did not measure accurately working hours, and they often required their laborers to work 11 hours per day and 6 days per week. In addition, 12-hour days were common during harvest time, and few farmers provided overtime benefits. HRW reported low wages and the absence of basic services in farm workers' housing. There were reports that farmers ignored laws relating to health and safety and other labor rights for their workers. Health and safety regulations often were not observed during the use of chemicals in agricultural work.

There were no laws or regulations in other industries that permitted workers to remove themselves from work situations deemed dangerous to their health or safety without risking loss of employment; however, the law protects employees from retaliation who with "reasonable belief that the health or safety of an individual has been, is being, or is likely to be endangered," disclosed dangerous workplace conditions to the appropriate authorities.

Illegal foreign workers had no protection under the law. They often were underpaid and forced to work long hours in very poor, unsanitary, and unsafe conditions. Several "sweatshop" type locations were uncovered, and their owners were fined during the year. In May the owner of a Newcastle factory was ordered by the DOL to pay his 87 workers \$50,129 (501,287 Rands) in backpay. At the same factory, an investigation found workers locked in the building overnight. There were no accurate numbers on Zimbabweans entering the country and working on farms; however, it was reported that the Government deported approximately 40,000 illegal Zimbabweans during the year.

#### f. Trafficking in Persons

The law does not prohibit specifically trafficking in persons, and the country was a transit and destination point for the trafficking of persons from other countries in Africa, Asia, Eastern Europe, and the states of the former Soviet Union for prostitution and forced labor. Women and children were trafficked into the country by domestic and international organized crime syndicates for the sex industry.

Child prostitution increased, primarily in Cape Town, Durban, and Johannesburg. NGOs estimated that there were 10,000 children working as prostitutes in Johannesburg and at least 1,000 in Cape Town. Along trucking routes, child prostitutes were sought after because of the belief that they were more likely to be disease-free or that, if they were virgins, sex with them cured diseases such as HIV/AIDS. The child sex industry increasingly has become organized, with children either forced into prostitution by gangs or exploited by their parents to earn money for the family. The law prohibits the commercial sexual exploitation of children, sexual intercourse with children under 16, and permitting a female under 16 to stay in a brothel for the purpose of prostitution. The Government established a task force to develop a plan of action to combat the sexual exploitation of children and created training courses for the police force and the judiciary regarding the problem; however, the 33 SAPS Child Protection Units lacked the capacity to deal adequately with the problem of child prostitution.

The country has laws that can be applied to prosecute offenses related to trafficking, including laws dealing with illegal aliens, employment, occupational health and safety, sexual offenses, domestic violence, and organized crime. Various entities of the Government investigated trafficking cases on an ad hoc basis. The Government made efforts to address the trafficking problem with investigations and arrests by the police. These efforts were hampered by police corruption, lack of training, and understaffing. The 2001 criminal case against the owner of brothel in Johannesburg in which prostitutes from Thailand, Bulgaria, Russia, the Czech Republic, Romania, and Zambia were found and various civil cases were pending at year's end. The courts generally dealt with trafficking through deportations and fines, rather than exacting criminal penalties.

The extent of trafficking operations was not known; however, it was estimated that an average of 1,000 women were trafficked across the country's borders every month. In 2000 Molo Songololo, an NGO in Cape Town, conducted a study of 44 women working in the sex industry in the country and found that women who were trafficked to the country were 18 to 25 years of age with limited English skills, limited job opportunities, and dependent families. Ten of the 44 women surveyed were trafficked from Thailand, Eastern Europe, and the states of the former Soviet Union; the remaining women were South African.

Women and children were lured by traffickers with the promise of jobs and decent wages and then forced to work as prostitutes, in some cases to pay off debts to those who smuggled them into the country. While many women came willingly, some claimed that they were tricked into coming or that they were forced to continue working as prostitutes until they had paid off the cost of their transport. The Eastern European syndicates contacted women through acquaintances and offered employment opportunities in the South African hospitality industry, usually offering to pay airfare and obtain travel documents; the women usually entered the country with a holiday visa or claimed political asylum. The women generally traveled alone; upon arrival they were met by an agent at the airport and taken to a house in Gauteng Province, Eastern or Western Cape, or KwaZulu-Natal. Trafficked women usually were threatened if they did not comply, and their documents were confiscated.

In Asia employment agencies, female agents, and newspaper advertisements were used to recruit women with promises of employment in the hospitality, catering, teaching, or service industries. These agencies created "books" with photographs and personal information on the women, which were circulated among prospective buyers who were either agents or brothels and escort service owners. The women were "ordered" and brought to

South Africa, where they resided in the same house and were monitored closely. The women usually were debt-bonded to the agent who recruited them and were required to make a profit for both their trafficker and employer.

African women were trafficked from neighboring countries including Angola, Zimbabwe, Lesotho, Swaziland, Zambia, Cameroon, Malawi, and Rwanda. Namibia and Botswana reportedly were transit countries. The trafficking operations were run by Nigerian, Angolan, and Congolese networks; South Africans also were involved in trafficking syndicates. The method of recruiting in Africa reportedly was with promises of employment in the hospitality industry, and women were transported via roads into the country; the trafficked victims were indebted to the recruiting organizations.

The country also was a transit point for trafficking operations between developing countries and Europe, the United States, and Canada. Migrants from foreign countries, particularly China, India, the Middle East, Eastern European countries, and other African countries, were lured to the country with accounts or promises of money and jobs in the West. Once in the country they were provided with documentation and accommodation before being moved to final destinations, where they were forced into prostitution, drug dealing, or other criminal activity until they paid off the debt of their travel expenses. Traffickers apparently had identified the country as one in which temporary entry permission often was granted without difficulty, fraudulent documents were easy to obtain, and direct flight and shipping routes were available to most countries in the developed world.

There were four major criminal syndicates in the country that trafficked women: The Chinese Mafia, Bulgarian syndicates from Eastern Europe, the Russian Mafia, and African criminal groups, mainly from Angola, Nigeria, and the DRC. The African syndicates appeared to be the managers and owners of specific establishments within the sex industry. Individual criminals from South Africa and neighboring countries also engaged in trafficking. It was reported that women from Eastern Europe were trafficked by a well-organized syndicate that was run by ex-military personnel of senior rank.

Trafficked women who worked in the sex industry lived with other trafficked victims in segregated areas; were under constant surveillance; had no money or identifying documents; were indebted to the agents who arranged their travel; worked up to 18 hours each day; worked double shifts, on weekends, and when ill; were fined for infractions of strict rules; and had little communication with other workers.

The Government did not focus on trafficking, and allocated few resources to combat it. There was no plan or program in place to assist trafficking victims. There was no specialized training for dealing with trafficking victims; however, during the year, the border police set up a special Trafficking Unit at the Johannesburg International Airport, the major entry point for trafficked women and children from outside the Southern Africa region.

There were no reported government antitrafficking awareness campaigns or other programs to prevent trafficking. Terre D'Homme, an NGO working in the trafficking field, conducted a media campaign to promote awareness of trafficking in persons in the Southern African region. In addition, magazines and local newspapers published several articles on the subject during the year.