



[Home](#) » [Under Secretary for Democracy and Global Affairs](#) » [Bureau of Democracy, Human Rights, and Labor](#) » [Releases](#) » [Human Rights Reports](#) » [2010 Country Reports on Human Rights Practices](#) » [Africa](#) » [South Africa](#)

## 2010 Human Rights Report: South Africa

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

### 2010 Country Reports on Human Rights Practices

April 8, 2011

South Africa is a multiparty parliamentary democracy in which constitutional power is shared between the president and the parliament. A progressive constitution, written after the end of apartheid and enshrining human rights, is the source of authority for the political system. The country has a population of approximately 50 million. In April 2009 the country held a largely free and fair national election in which the ruling African National Congress (ANC) won 65.9 percent of the vote and 264 of 400 seats in the National Assembly, which then elected ANC President Jacob Zuma as the country's president. Security forces reported to civilian authorities.

Principal human rights problems included police use of lethal and excessive force, including torture, against suspects and detainees, which resulted in deaths and injuries; vigilante and mob violence; prison overcrowding and abuse of prisoners, including beatings and rape by prison guards; arbitrary arrest; lengthy delays in trials and prolonged pretrial detention; forcible dispersal of demonstrations; pervasive violence against women and children; societal discrimination against women, persons with disabilities, and the lesbian, gay, bisexual, and transgender (LGBT) community; trafficking in persons; violence resulting from racial and ethnic tensions and conflicts with foreigners; and child labor, including forced child labor and child prostitution.

#### RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

Unlike in the previous year, there were no reports of politically motivated killings by the government or its agents; however, police use of lethal and excessive force, including torture, against suspects and detainees resulted in numerous deaths and injuries. Investigations into some of the killings committed during the year were ongoing, and some perpetrators had been punished by year's end.

The country had a high crime rate, and criminals were often better armed than police. In October 2009 Fikile Mbalula, the deputy police minister, called for the use of firepower against armed criminals, which the media and civil society groups criticized as a police "shoot to kill" policy; President Zuma denied the charge and attributed the use of excessive force to a lack of training and resources.

On September 1, the trial of Inkatha Freedom Party (IFP) member Siphamandla Mhlongo, who was being detained for the January 2009 killing of ANC stalwart Inkosi Mbongeleni Zondi, was remanded to the Scottsburg High Court, where a hearing was scheduled for February 2011. IFP member Makhosabo Mkhize, who was killed in July 2009 by unknown perpetrators, also had been charged in connection with Zondi's killing.

According to the governmental Independent Complaints Directorate (ICD), there were 294 deaths in police custody and 566 deaths as a result of other police action during the year ending March 31, a 6 percent decrease from the previous year. Of the 860 deaths, 479 resulted from being shot, 122 from assault, 112 due to suicide, 93 from natural causes while in custody, 27 as a result of injuries from being struck by a police vehicle, 15 as the result of an auto collision, seven as the result of torture, three from suffocation, and two from poisoning.

On April 8, at a tavern in the Free State, Police Constable Elliot Khaka shot and killed Sombane Lungile after Lungile allegedly attempted to steal a car belonging to another constable who was with Khaka. On November 15, the Free State High Court convicted Khaka of murder and sentenced him to 12 years' imprisonment.

On July 12, in Pretoria, police officers shot and killed unarmed sound engineer Nkosinathi Ntuli after he allegedly drove headlong into oncoming traffic, narrowly avoiding crashing into several police officers and other motorists. Ntuli allegedly drove away from where he had been stopped and dared police to shoot him, after which police fired six shots at his vehicle. Captain Rosina Mabena, Sergeant Lillian Tlhapi, Sergeant Jaco Ngobeni, and Warrant Officer Enoch Makgamatha were accused of murder and attempted murder and denied bail. After a successful appeal to the North Gauteng High Court in November, and after agreeing to relinquish their passports, the four were each granted bail of 3,000 rand (\$420). Their case was postponed to January 2011.

On November 25, Riaan Velloen was arrested for driving while intoxicated and taken to the Florida police station in Johannesburg. He was found dead in his cell the following morning. Friends and family accused the police of beating him to death; an ICD investigation was ongoing at year's end.

On November 29, Donnelle Jackson was arrested for armed robbery in Sofiatown, Johannesburg. Police claimed that Jackson hung himself in his cell with a blanket within three hours of his detention. The ICD investigated the incident and recommended that action be taken against the police officers involved; no further information was available at year's end.

Information surfaced during the year that in February 2009 members of the National Intervention Unit, an elite police unit responsible for high-profile cases, shot and killed Bongani Mkhize, chairperson of the Maphumulo Taxi Association, allegedly after Mkhize opened fire on them. His death, which appeared to be linked to investigations into the killing of Police Commissioner Zethembe Chonco, occurred despite a ruling three months earlier by the Durban High Court restraining police from targeting him. Mkhize was reportedly among a list of suspects in the killing, all of whom had been shot and killed by October 2009, several after being arrested and interrogated by police, according to the Amnesty International Report released in May. Mkhize's family employed a private investigator to investigate his death, but had not filed charges against the police by year's end. Mkhize's killing was investigated by the ICD, which found no evidence of police wrongdoing.

Amnesty International also reported in May that in October 2009 police shot an unidentified man suspected of vehicle theft. Witnesses heard gunshots and saw the man's body hanging on a security fence near an apartment building. Police

reportedly attempted to mislead independent investigators and also told the media that the man had electrocuted himself on the fence. Medical evidence subsequently revealed that the man had died from a high velocity gunshot injury to his spine.

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The two off-duty police officers who in November 2009 shot and killed a street vendor while intoxicated were charged with murder and released on bail; their court case was ongoing at year's end.

The trial of police officer Shadrack Malaka, who was charged with killing a three-year-old child in November 2009, was postponed to April 2011; Malaka was released on bail of 1,000 rand (\$140).

The 14 police officers from the Bellville South Directorate of the Directorate of Priority Crime Investigation (DPCI), who allegedly beat and whipped to death Sidwell Mkwambi in February 2009, were neither suspended nor arrested during the year. The ICD stated an investigation produced enough evidence to establish a murder case against the 14 officers from the specialized unit; however, the director of public prosecutions (DPP) had taken no action on the ICD's recommendation by year's end.

Incidents of vigilante violence and mob killings continued, particularly in Gauteng, Eastern Cape, and KwaZulu-Natal provinces in the rural areas and townships. Unlike in previous years, police efforts to control vigilante violence did not result in deaths.

On August 4, a mob in Lenasia South set on fire a small truck with three alleged thieves trapped inside the cab; the three were suspected of stealing electricity cables in an informal settlement. Police launched an investigation, but no arrests had been made by year's end.

The trial of ANC municipal councilor Vusi Khoza, Sean Thabo Jacobs, Patricia Ballantyne, and Mzokuthoba Mngonyama for their roles in a mob attack that resulted in the January 2009 deaths of a Zimbabwean citizen and a Tanzanian citizen was ongoing at year's end. Khoza was charged with public violence and conspiracy to commit assault; the other three were charged with murder.

Xenophobic attacks on foreign African migrants remained a problem; however, attacks did not occur on the scale of previous years (see section 6).

Killings and other violent crimes against white farmers and, on occasion, their families, continued in rural areas (see section 6).

There were reports that persons accused of witchcraft were attacked, driven from their villages, and in some cases murdered, particularly in Limpopo, Mpumalanga, KwaZulu-Natal, and Eastern Cape provinces, where suspected witchcraft sometimes resulted in assault, forced exile, and killings, particularly of elderly women. Traditional leaders generally cooperated with government educational programs and reported threats against persons suspected of witchcraft.

On February 1, residents attacked and killed Mbongeni Zungu for suspected witchcraft; the mob also burned his shack in Umlazi E section, KwaZulu-Natal Province. Police charged 11 suspects with murder, attempted murder, malicious damage to property, and arson; all were subsequently released on bail, and there were no further developments by year's end.

At year's end the 2008 trial continued of two brothers in Eastern Cape Province who admitted to killing their younger brother for suspected witchcraft.

Ritual killings (muthi killings), especially of children, to obtain body parts believed by some to enhance traditional medicine practices, remained a problem; specific muthi killing statistics were unavailable.

On January 8, the mutilated body of 10-year-old Masego Kgomo was found in a clump of bushes near her home in Shoshanguve. Five male suspects were arrested and charged with murder and abduction; a sangoma (an African practitioner of magic, medicine, and witchcraft) also was arrested, but then released for lack of evidence. There were no further developments by year's end.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The constitution and law prohibit such practices; however, police officers reportedly tortured, beat, raped, and otherwise abused suspects. According to the May Amnesty International report, corroborated cases of torture included the use of electric shock and suffocation. Police also assaulted detainees with batons, fists, and booted feet. Police torture and physical abuse allegedly occurred during interrogation, arrest, detention, and house searches, and sometimes resulted in death (see section 1.a.).

During the year the ICD reported 920 reports of assault with the intent to cause grievous bodily harm, seven of which it acknowledged involved torture. The report noted the investigation of three cases of torture from previous years, but did not indicate the results. Suspects in several cases were interrogated and assaulted while held without any record of their arrest. Officers convicted of this charge were given sentences ranging from verbal and written warnings to fines and dismissal from service. The report did not stipulate how many officers were convicted.

The ICD also reported 24 complaints of rape committed by police.

In May Zipho Richard Ndlovu claimed he was detained by two police officers at his workplace and taken to a police station, where he was tortured for allegedly participating in a robbery. Ndlovu claimed the two officers trussed him with a plank under his knees, put a black bag over his head, and attached electrodes to his ear lobes. Ndlovu sued the police for torture, and his case was pending at year's end.

During the year the ICD investigation into the alleged September 2009 kidnapping and torture of David Ndzumeka by DPCI officers in Cape Town determined there was sufficient evidence to establish a case against the officers. However, the DPP had not made a decision on the ICD's recommendation by year's end. Ndzumeka alleged that the officers placed a plastic bag over his head and repeatedly suffocated him until he was unconscious. Ndzumeka case was one of 29 completed investigations involving DPCI officers in Cape Town awaiting a decision by the DPP.

There were no developments in the following 2008 cases: the alleged torture in October of two brothers suspected of theft by 10 police officers from the Vosloorus Tracing Unit, the alleged beating and torture in November of a 17-year-old by six police officers from the Diepkloof Police Station, and the November death of Tefo Kgame after police allegedly beat him at the same station.

Incidents of police harassment of foreigners continued, particularly during coordinated police raids in areas where foreign nationals resided. In an August report to the Portfolio Committee on Police, the Consortium for Refugees and Migrants in South Africa asserted that police confiscated the legal documentation of foreign nationals, threatened them with arrest on spurious charges, and forced them to pay bribes to be released. Some state hospitals reportedly refused emergency treatment on a routine basis to indigent foreigners, despite regulations requiring that hospitals provide such treatment.

Prison and Detention Center Conditions

The majority of the 249 operational prisons did not meet international standards, and prison conditions did not always meet the country's minimum legal requirements. The Judicial Inspectorate of Correctional Services (JICS) received 2,189 complaints of assaults against prisoners by correctional officers for the reporting period from April 2009 through March 2010. There were several reports of physical and sexual abuse by both prison officials and prisoners. Some detainees awaiting trial reportedly contracted HIV/AIDS through rape. According to the JICS report, there were 1,047 prison deaths during the reporting period. Of these, 992 were from natural causes, including HIV/AIDS; the remaining deaths were the result of suicides, assaults, or accidents.

According to the JICS report released during the year, there were 163,312 prisoners in facilities designed to hold 118,159. In a report to Parliament on October 27, Inspecting Judge Deon van Zyl reported that 19 prisons were critically overcrowded, some by as much as 247 percent, such as King William's Town Prison, while others held less than their capacity, such as Barkley West, which held 22 percent of capacity. Unlike in previous years, no statistics were provided on the number of female and juvenile inmates. Due to severe overcrowding, many prisoners had less than 13 square feet in which to eat, sleep, and spend 23 hours a day. The nominal allotment of floor space per prisoner was approximately 36 square feet for communal space and 60 square feet for single cells, although this standard was seldom met.

The 2009-10 Department of Correctional Services (DCS) annual report indicated 22.8 percent of sentenced prisoners who were tested between the ages of 15 and 49 were HIV-positive. There were 21 centers dispensing antiretroviral (ARV) therapy during the year. Prisons without such centers were supposed to utilize outside clinics for ARV therapy; however, this seldom occurred. There were no HIV screening programs on intake or discharge of prisoners and no HIV prevention programs in prison, such as condom distribution.

All detainees in police cells were provided with felt mattresses and grey blankets, and most cells had toilets and basins, but there were seldom chairs, and cells often had inadequate light and ventilation.

In its September report *Monitoring Immigration Detention in South Africa*, the local nongovernmental organization (NGO) Lawyers for Human Rights (LHR) indicated that the main abuses perpetrated in the Lindela Repatriation Centre, the country's largest detention facility for undocumented immigrants, included physical and verbal abuse, corruption and bribery, insufficient food, lack of reading and writing materials, lack of access to recreational facilities or telephones, lack of access to and quality of medical care, indefinite detention without judicial review, detention of asylum seekers, and lack of **procedural safeguards such as legal guidelines governing long-term detention**.

Juvenile detainees were held in separate detention facilities; however, children up to three years old were sometimes held with their mothers. As of March 31, there were 129 infants and young children in detention with their mothers. During the year the DCS launched the Imbeleko program to provide a home-like environment for children below the age of two and to place children above that age in outside correctional facilities with sustainable family structures. Pretrial detainees generally were held with convicted prisoners.

Prisoners and detainees had reasonable access to visitors and were permitted religious observances. Authorities permitted prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions. Authorities investigated and documented the results of such investigations in a publicly accessible manner. The government investigated and monitored prison and detention center conditions.

The DCS did not have an ombudsman to consider such matters as alternatives to incarceration for nonviolent offenders to alleviate inhumane overcrowding; addressing the status and circumstances of confinement of juvenile offenders; or

improving pretrial detention, bail, and recordkeeping procedures to ensure prisoners did not serve beyond maximum sentences for charged offenses.

The JICS, an independent office under the Inspecting Judge, appoints an Independent Visitor for each correctional center to monitor prison conditions. In 2009 the Independent Visitors collectively recorded 8,346 visits to the 239 prisons, during which time they conducted private consultations with 78,883 inmates. Visits were recorded in official registers kept at all correctional centers and were verified on a monthly basis. Independent Visitors submitted monthly reports to the Inspecting Judge, listing the number and duration of visits, the number of inmates interviewed, and the number and nature of inmate complaints received.

The government permitted some independent monitoring of prison conditions, including visits by human rights organizations to some facilities. Human rights organizations were allowed to visit prisoners if they had a registered attorney acting as legal representative for the prisoner; organizations could also request permission to visit prisons to conduct specific research. The government permitted ICRC visits, but none were conducted during the year.

#### d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, security forces arbitrarily arrested Zimbabwean migrants and trafficking victims during the year.

#### Role of the Police and Security Apparatus

The South African Police Service (SAPS), under the Department of Police, has primary responsibility for internal security. The South African National Defense Force (SANDF), under the Department of Defense, is responsible for external security but also has domestic security responsibilities such as patrolling the borders. The DPCI, also known as "the Hawks," coordinates efforts against organized crime and official corruption. Despite continued efforts to professionalize, SAPS remained understaffed, ill equipped, and poorly trained. Law enforcement activities remained focused on wealthy residential and business areas.

During the year the ICD received 6,377 complaints against the police, including allegations of killings, assaults, and other misconduct, compared to 6,119 complaints in the previous year, according to the ICD 2009-10 report. Of the 6,377 complaints, Minister of Police Nathi Mthethwa noted 48 convictions of police officers for criminal conduct, including 25 convictions for deaths in police custody or as a result of police action, and 23 convictions for other criminal offenses. Additionally, the ICD made 526 recommendations to the DPP in criminal matters and 1,666 recommendations to SAPS management with regard to various misconduct offenses, such as abuse of a state vehicle, leaking information, or dereliction of duty.

SAPS provided annual training in corruption prevention, human rights, and ethics; it also provided officers with access to social workers, psychologists, and chaplains.

#### Arrest Procedures and Treatment While in Detention

The law requires arrest warrants to be based on sufficient evidence and issued by a magistrate or judge and provides that all detainees be informed promptly of the reasons for their detention, of their right to remain silent, and the consequences of waiving that right. Detainees must be charged within 48 hours of arrest; held in conditions respecting human dignity; allowed to consult with legal counsel of their choice at every stage of their detention or provided state funded legal counsel when "substantial injustice would otherwise result;" and permitted to communicate with relatives, medical practitioners, and religious counselors. The government often did not respect these rights. Detainees must be released (with or without

bail) unless the interests of justice require otherwise; however, bail for pretrial detainees often exceeded what suspects could pay.

Unlike in the previous year, no statistics were kept on the number of detainees who were held because they could not post bail; 8,500 prisoners in 2009, including some school children, remained in detention because they were unable to post bail. During the year the Department of Correctional Services signed a bail protocol with the ministers of police and of justice and constitutional development to allow inmates who committed petty crimes and could not afford bail to be diverted through alternative programs.

Human rights groups, judges, and judicial scholars continued to express concern about the Criminal Procedure Second Amendment Act, which mandates minimum jail sentences, allows pretrial detention of children, and prohibits bail in certain cases.

There were cases of arbitrary arrest during the year.

LHR reported that security forces continued to arbitrarily arrest Zimbabwean migrants, even those with documentation. LHR and other NGOs also reported that victims of human trafficking were arbitrarily arrested if not in possession of appropriate documents detailing their immigration status.

In September 2009 40 local tavern owners in Durban ransacked and demolished the offices of Abahlali base Mjondolo (AbM), an organization that advocates for the rights of those who live in informal settlements; the AbM had been fighting the KwaZulu-Natal provincial government's attempts at forcibly removing inhabitants and demolishing the Kennedy Road informal settlement. Over two days the mob, allegedly ANC cronies, also demolished the homes of several AbM members, reportedly in the presence of local police; two persons were killed. Police subsequently arrested 13 AbM members, 12 of whom were charged with a range of crimes, including property destruction, public violence, and murder; one of the 13 was released without charge. Seven of the 12 were released on bail and awaiting trial, while the other five remained in pretrial detention. None of the 40 tavern owners who demolished the AbM offices and homes was arrested. Critics charged that the government arrested the AbM members to prevent them from returning to the Kennedy Road settlement. During the year the trial of the "Kennedy 12" was repeatedly postponed due to difficulties in getting witnesses to court.

Lengthy pretrial detention was a problem, and pretrial detainees constituted 30 percent of the total prison population. According to the JICS annual report, detainees waited an average of three months, but some as long as two years, before a trial. The report found that 49,030 prisoners were awaiting trial as of March 31.

#### e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence in practice. However, the judiciary was understaffed and underfunded, and there were reports that legal documents used in trials were lost. According to the presidentially mandated criminal justice system working group, made up of ministers and deputy ministers, more than a million of the two million criminal cases reported annually were never resolved. According to the group, a number of problems contributed to the country's low 10.3 percent conviction rate in criminal cases, including inadequate collection of evidence at crime scenes, insufficient investigation of crimes, long trials, and ineffective court processes. During the year the government operated 58 justice centers that provided legal assistance to the poor to speed the administration of justice, reduce the court rolls, and alleviate overcrowding in prisons. However, serious delays continued to be a problem.

#### Trial Procedures

Criminal defendants enjoy a legal presumption of innocence. 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. Judges and magistrates hear criminal cases and determine guilt or innocence. In lieu of juries, the law requires that a panel of lay assessors and a magistrate hear 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 adjudicating bail applications and sentences. Detainees and defendants have the right to legal counsel provided and funded by the state when "substantial injustice would otherwise result"; however, this right was restricted due to a general lack of information regarding rights to legal representation and the government's inability to pay for such services. Defendants have the right to be present in court and can question witnesses in court and present their own witnesses and evidence. Defendants have access to government evidence before going to court. There is no automatic right to appeal, but courts may give defendants permission to do so. For certain cases, such as when the accused is younger than 16 years of age, permission is not required. Additionally, the law provides for an automatic review of all prison sentences longer than three months.

#### Political Prisoners and Detainees

The IFP maintained that 384 of its members had been imprisoned since 1994 for political reasons, although international human rights organizations did not list such persons as political prisoners or detainees. In January 2008 the IFP petitioned both the president and the justice minister for their release. In February 2008 the IFP took the matter to the High Court, where the judge ordered the justice minister to consider all 384 applications for presidential pardons within three months. In April 2008 the IFP sent a letter to Amnesty International complaining that both former president Mbeki and the justice minister had ignored the matter. On September 2009 the Constitutional Court ruled that because the petition included the justice minister, the IFP had pursued the incorrect party for legal relief and that the president, not the justice minister, should be held fully accountable for the delay. The same day, the IFP instructed its lawyers to start legal action against President Zuma for the delay in processing the applications. On February 4, President Zuma announced he had considered and rejected 230 of the IFP applications for pardon; he also announced that decisions on the remaining 154 applications would be announced once the Constitutional Court rendered a judgment on another matter pertaining to the president's power to grant pardons.

#### Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary in civil matters. There also was access to the courts to bring lawsuits seeking damages for, or cessation of, a human rights violation.

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

The constitution and law prohibit such actions. However, there were allegations of police abuse during sweeps and home searches and criticisms of police and judicial procedures, including complaints that warrants were issued despite inadequate evidence.

The law authorizes state monitoring of telecommunications systems, including cellular telephones, the Internet, and e-mail, for criminal investigations. However, opposition parties and many civil society groups opposed such laws. In July 2009 the Regulation of Interception of Communications and Provision of Communication-Related Information Act came into effect, requiring all mobile operators, service providers, and cell-phone vendors to register on secure databases the identities, physical addresses, and telephone numbers of new and existing customers. All cell phone subscribers were required to show proof of identity and proof of residence to be registered.

The Promotion of Access to Information Act allows any person to access information from the government or any other individual for the exercise or protection of any right. Authorities can also use the act to obtain personal information in connection with criminal investigations. Opposition parties and human rights NGOs objected to its broadly defined provision that enabled the government to access an individual's personal information.

Farm owners continued to evict workers legally and illegally. An extensive national eviction survey by the NGO Nkuzi Development Association, which provided legal assistance to farm workers, indicated farm workers generally were unaware of their right to legal counsel during eviction proceedings. In Limpopo, where evictions took place, Nkuzi had only two attorneys and at times lacked funds for litigation.

## Section 2 Respect for Civil Liberties, Including:

### a. Freedom of Speech and Press

The constitution and law provide for freedom of speech and of the press, and the government generally respected these rights. However, several laws remained in effect that posed a potential threat to media independence, and some journalists expressed concern over government involvement in the media sector.

Individuals, organizations, journalists, and sectors of civil society were generally able to criticize the government openly without fear of reprisal, although many journalists expressed concern in reports, columns, editorials, and public fora that the government heavily influenced and increased its efforts during the year to control the media. The practice of appointing journalists to key positions as a reward for their political allegiance remained a problem with the South African Broadcasting Corporation (SABC), a government-funded television and radio network.

According to the South African Advertising Research Foundation, print media reached 52 percent of the population. Despite the number and diversity of publications, the concentration of media ownership in the hands of a few large media groups drew criticism from the government and some political parties, who complained that print media did not always adequately cover their points of view.

The independent media were active and expressed a wide variety of views without restriction.

The majority of citizens received news through radio broadcasts from the SABC and community radio stations. The SABC was the largest and most influential source of news for the majority of the population. It broadcast television and radio programs in the country's 11 official languages, with its signal received by an estimated 92 percent of citizens.

Low-power, nonprofit community radio stations continued to play an important role in informing the mostly rural public, although they often had difficulty producing adequate content and maintaining quality staff. Government broadcast regulators regularly issued new community radio licenses and withdrew others for noncompliance with the terms of issuance.

Government and political officials often criticized the media for lack of professionalism and reacted sharply to media criticism, often accusing black journalists of disloyalty and white journalists of racism. Some journalists believed that the government's sensitivity to criticism resulted in media self-censorship.

In 2009 the government enacted several laws that restricted press freedom, although none were enforced during the year. The 2009 Films and Publications Act requires that publications not regulated by the press ombudsman, including online material, be submitted to the Film and Publications Board for classification prior to publication if the publication contains references to "degrading sexual content, incitement to cause harm, promotion of propaganda for war, incitement of

violence, or the advocating of hatred based on any identifiable group characteristic." Media watchdog organizations, as well as individual media commentators, criticized the law as a possible vehicle for restriction of press freedom.

The February 2009 amendment to the Broadcasting Act allows the president to dismiss members of the SABC Board, a move that was widely criticized by opposition parties and the press as undue government interference. 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.

#### Internet Freedom

There were no government restrictions on access to the Internet; however, the law authorizes state monitoring of telecommunications systems, including the Internet and e-mail, for criminal investigation. In July 2009 the Regulation of Interception of Communications and Provision of Communication-Related Information Act came into effect, requiring all service providers to register on secure databases the identities, physical addresses, and telephone numbers of new and existing customers. Despite the law, there were no reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in peaceful expression of views via the Internet, including by e-mail. According to International Telecommunication Union statistics for 2009, approximately 8.8 percent of the country's inhabitants used the Internet.

#### Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

The Film and Publications Board reviews written and graphic materials published in, or imported into, the country. The board has the power to edit or ban books, magazines, movies, and videos, and it regularly exercised that power, mostly regarding pornographic material. Journalists, media houses, and industry associations continued to criticize efforts to extend the board's authority to newspapers and broadcast media.

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

##### Freedom of Assembly

The constitution and law provide for freedom of assembly; however, police forcibly dispersed several demonstrations during the year, which resulted in injuries.

Several protests over poor delivery of basic services took place across the country, including illegal, violent demonstrations in Gauteng, North West, Western Cape, Mpumalanga, and KwaZulu-Natal provinces. Police used batons and rubber bullets to control the demonstrations and quell the violence; several injuries were reported.

For example, on February 23, residents of Orange Farm protested lack of local service delivery by looting shops, burning tires, and pelting police with rocks. Police fired rubber bullets and tear gas to disperse the demonstrators; 30 persons were arrested and subsequently released. There was no information about persons injured.

On September 21, residents of Hangberg township in Hout Bay protested the decision by the City of Cape Town to dismantle homes illegally built on a firebreak, and some residents threw stones at police. Police fired rubber bullets to quell the protest, resulting in serious injuries to several residents and at least one journalist.

##### Freedom of Association

The law provides for freedom of association, and the government generally respected this right.

c. Freedom of Religion

For a description of religious freedom, see the *2010 International Religious Freedom Report* at [www.state.gov/g/drl/rls/irf/rpt](http://www.state.gov/g/drl/rls/irf/rpt).

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The government partially cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

The law does not prohibit forced exile; however, the government did not use it.

Protection of Refugees

The country's laws provide for the granting of asylum and refugee status, and the government has established a system for providing protection to refugees. In practice the government generally provided protection against the expulsion or return of those recognized as refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group or political opinion.

Although the law provides for access to basic services, education for refugee children, and access to police and courts, NGOs such as Human Rights Watch found that asylum seekers, migrants, and refugees faced discrimination at health-care facilities and by law enforcement representatives.

The government's policy prohibited encampment of foreign asylum seekers and refugees in favor of free movement and integration of documented migrants into local communities, with guarantees for the right to work and access to social services. While this generally offered greater liberty to foreigners, many NGOs criticized government protection of foreigners as inadequate.

Refugee advocacy organizations charged that police and immigration officials abused refugees and asylum seekers and forcefully repatriated some asylum seekers, particularly Zimbabweans, although there were no such reports during the year. Applicants for asylum and NGOs assisting refugees also reported that immigration authorities sought bribes from those seeking permits to remain in the country. The Department of Home Affairs (DHA) adopted anticorruption programs and punished officials or contracted security officers found to be accepting bribes.

In May 2009, following international and domestic criticism, the government suspended deportations of Zimbabweans; NGOs estimated there were between one and three million undocumented Zimbabweans in the country. The government also introduced a 90-day visa-free entry for Zimbabwean nationals and an associated right to work, and proposed a system of longer-term permits, known as special dispensation permits, for Zimbabweans already in the country under the Immigration Act. The permit system was never fully implemented; however, on September 20, the government began a three-month documentation and amnesty drive. Zimbabweans already in the country on or before March 31, 2009 were offered the chance to turn in any fraudulent South African identity documents without penalty and then apply for the appropriate study, work, or business permits. Requirements to obtain the permits were simplified, and the government worked closely with Zimbabwean authorities to try to ensure that all potential applicants would be able to obtain a valid passport. Those who did not take advantage of the documentation drive faced deportation. Asylum-seekers with pending claims had the option of withdrawing their application and reapplying under the new initiative or continuing with their original claim. As of December 31, 275,762 applications had been received, of which 42,779 applications had been

finalized and approved, with 10,166 awaiting review; 222,817 applications were awaiting adjudication. Amnesty was granted to 6,243 Zimbabwean nationals, and a total of 49,255 Zimbabwean nationals had surrendered their asylum status to obtain valid work and business permits.

Societal attacks on refugees occurred during the year.

There were no developments in the June 2009 stabbing death of Angolan refugee Sebastian Santana, who resisted an attempted robbery near the Nyanga Refugee Reception Center. A police investigation was ongoing.

The government also offered temporary protection to some individuals who may not have qualified as refugees under the 1951 Convention relating to the Status of Refugees or the 1967 Protocol.

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

The constitution and law provide citizens with the right to change their government peacefully, and citizens exercised this right through periodic, free, and fair elections based on universal suffrage.

#### Elections and Political Participation

In April 2009 the country held a largely free and fair national election in which the ruling ANC won 65.9 percent of the vote and 264 of 400 seats in the National Assembly, the dominant lower chamber of parliament. Parliament then elected ANC President Jacob Zuma as the country's next president. The leading opposition party, the Democratic Alliance (DA), won 67 seats, the Congress of the People (COPE) won 30 seats, and the IFP won 18 seats. The remaining 39 seats in parliament were allocated to 10 other political parties based on election results. In the upper house of parliament, the National Council of Provinces (NCOP), the ANC held 35 seats, the DA 10, and COPE seven. The remaining two seats were allocated to the IFP and the Independent Democrats. The NCOP is primarily a reviewing chamber that has the power to send legislation back to the National Assembly for retooling and can vote on legislation affecting the rights of the nine provinces.

Electoral violence occurred. In KwaZulu-Natal Province, for example, there were 162 violent incidents in the six weeks prior to the elections, including 25 cases of intimidation, four killings, four attempted killings, one case of arson, and one case of intimidation with a firearm. Other reported cases of election-related violence included 62 in the Northern Cape and 30 in Limpopo.

There also were reports of electoral irregularities, including attempted vote rigging.

In KwaZulu-Natal Province, for example, Ulundi election official Sindisiwe Mncube was arrested after being caught with illegally marked ballot papers favoring the IFP. In June 2009 Mncube was found guilty on five charges of forgery and violations of the electoral code and sentenced to five years in prison.

Women held 14 of 34 ministerial positions, including the ministerial portfolios of foreign affairs and defense, and 11 of 28 deputy ministerial positions. There were 172 women in the 400-seat National Assembly and 19 women among the 54 permanent members of the NCOP. Women occupied two of four parliamentary presiding officer positions, including the deputy speaker of the National Assembly and deputy chair of the NCOP.

There were an estimated 119 members of minorities (nonblack citizens) in the National Assembly. There were 18 minority members among the 54 permanent members of the NCOP. The cabinet included 19 members of minority groups.

### Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption, and the government continued efforts to curb corruption; however, the World Bank's worldwide indicators reflected that corruption remained a problem.

On August 3, former police chief and president of the International Criminal Police Organization (Interpol) Jackie Selebi was sentenced to 15 years in jail for corruption and defeating the ends of justice; Selebi, who received bribes of 1.2 million rand (\$168,000) from drug dealer Glenn Agliotti, also showed Agliotti secret police reports. On September 6, Selebi was released on bail. On September 9, the National Prosecuting Authority (NPA) confirmed that prosecutor Gerrie Nel and chief investigator Andrew Leask were being investigated for irregularities.

On August 12, President Zuma announced the start of an investigation by the Special Investigating Unit (SIU) of five ministries, two provincial departments, and the South African Social Security Agency. The investigation was ongoing at year's end.

On August 18, the minister of Human Settlements Tokyo Sexwale announced that his department had recovered 44 million rand (\$6,160,000) and arrested 1,910 government officials who were illegally benefitting from housing subsidies.

In November President Zuma signed a proclamation authorizing an SIU investigation into alleged financial irregularities in all 24 municipalities in North West Province; the investigation was ongoing at year's end.

Corruption remained a problem within prisons, although most correctional officials were either suspended or fired following an investigation. According to the JICS report released during the year, there were 691 complaints of corruption during the annual reporting period. The SIU identified irregularities in 23 contracts and recommended that 433 officials be penalized. It also charged 26 doctors and 10 officials with criminal offenses; an additional 433 officials were disciplined. There were no further developments in the 2008 investigation of malfeasance in prison tendering contracts.

At least 10 agencies, including the SIU, the Public Service Commission, the Office of the Public Prosecutor, and the Office of the Auditor General, were involved in anticorruption activities.

The SIU investigated corruption in government departments and identified civil servants alleged to have improperly received state housing subsidies. The government took administrative action to recover these subsidies. In November 2009 the government announced that a special SIU team dedicated to investigating housing fraud would investigate 800 officials at the national and provincial level and 123 in local government for corruption.

The Office of the Public Protector investigated government abuse and mismanagement and served as the office of last resort for citizens reporting unfair treatment by government entities. The office handled an increasing number of complaints but was hampered by severe resource constraints.

Public officials were subject to financial disclosure laws, and most officials complied with the law, although not always in a timely manner.

The law provides for access to government information; however, the government did not always comply with the law. If a government department refuses to provide information, the requester can launch an internal appeal. If this also fails, the requester may appeal a decision to the High Court, a lengthy and expensive process. The Open Democracy Advice Center continued to report that many requests for information went unanswered or were answered outside the period provided for in the legislation.

Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

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

The South African Human Right Commission (SAHRC), which was created by the government but operates independently, is responsible for promoting the observance of fundamental human rights at all levels of government and throughout the general population. The SAHRC also has the authority to conduct investigations, issue subpoenas, and hear testimony under oath. SAHRC enjoyed support from the government without interference, and the government reacted positively towards SAHRC reports. During the year the SAHRC issued reports on xenophobia, economic and social rights, and indigenous people's rights.

The government cooperated with international governmental organizations and permitted visits by UN representatives and other organizations. UN Development Program chief Helen Clark visited the country in May to highlight progress towards the Millennium Development Goals, and a UN working group on the use of mercenaries visited in November.

There were no parliamentary committees that dealt exclusively with human rights; however, certain parliamentary committees looked into human rights issues for their constituencies.

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

The constitution and law prohibit discrimination on the grounds of race, disability, ethnic or social origin, color, age, culture, language, sex, pregnancy, sexual orientation, or marital status. However, entrenched attitudes and practices often resulted in the denial of these rights in practice.

#### Women

Rape, including spousal rape, is illegal but remained a serious and pervasive problem. Minimum sentencing for rape convictions is 10 years in prison for the first offense, 15 years for the second, and 20 for the third. Under certain circumstances--such as multiple rapes, gang rapes, or the rape of a minor or a person with disabilities--conviction results in a minimum sentence of life imprisonment (25 years), unless substantial and compelling circumstances exist to justify a lesser sentence. Perpetrators with previous rape convictions and perpetrators aware of being HIV-positive at the time of the rape also face a minimum sentence of life imprisonment, unless substantial and compelling circumstances exist to justify a lesser sentence. According to the 2009-10 SAPS annual report, there were 55,097 cases of rape and indecent assault during the year; many of the victims were elderly women. According to a 2008 study by SAPS and the Centre for the Study of Violence and Reconciliation, only 4.1 percent of reported rape cases resulted in conviction. In most cases attackers were friends or family members of the victim, which contributed to a reluctance to press charges. A poor security climate and societal attitudes condoning sexual violence against women contributed to the problem. A 2005 study by the Medical Research Council estimated that only one in nine rape victims reported the crime to SAPS. A June 2009 report released by the Medical Research Council found that more than 25 percent of men interviewed in KwaZulu-Natal and Eastern Cape provinces admitted to committing at least one rape, and more than half of those persons admitted to raping more than one person.

Allegations of rape, sexual assault, and sexual harassment of black and foreign female farm workers by farm owners, managers, and other farm workers were common.

In 2007 parliament passed amendments to the law that broadened the physical definitions of rape and indecent assault, included males as victims, and restricted admission of victims' sexual histories as evidence in court to improve the government's capacity to punish perpetrators and protect victims. Victims' rights groups, however, criticized the law's

conditional provision of post-exposure prophylaxis only to victims who filed charges with SAPS or reported the alleged offenses to designated health establishments.

The government operated 42 sexual-offenses courts throughout the country that included designated facilities such as waiting rooms, court preparation rooms, and closed caption television rooms for victims. Although judges in rape cases generally followed statutory sentencing guidelines, women's advocacy groups criticized judges for using criteria such as the victim's behavior or relationship to the rapist as a basis for imposing lighter sentences. Critics also charged that support for dedicated sexual-offenses courts had eroded, and that some of the previously dedicated courts were hearing other types of cases. As a result, sexual offense cases took longer to resolve, and conviction rates--which were previously the highest in the country--had decreased. The NPA's Sexual Offenses and Community Affairs Unit (SOCA) unit reported a 66.7 percent conviction rate during the year, which was a decrease from previous years, but still higher than the rates reported for other regional courts where convictions in sexual offenses cases averaged less than 54 percent.

During the year SOCA opened seven and operated 18 Thuthuzela Care Centers (TCC) that specialized in rape care management and streamlined a network of existing investigative, prosecutorial, medical, and psychological services in the hospitals where they were located.

Domestic violence was pervasive and included physical, sexual, emotional, and verbal abuse, as well as harassment and stalking by former partners. The law 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 to arrest abusers without a warrant. Violating a protection order is punishable by a prison sentence of up to five years, or 20 years if additional criminal charges are brought. Penalties for domestic violence include fines and sentences of between two and five years' imprisonment.

According to NGOs, about one in four women were in an abusive relationship, but few reported it. A June 2009 report released by the Medical Research Council found that more than two-fifths of men interviewed in KwaZulu-Natal and Eastern Cape provinces had been physically violent toward an intimate partner. TCC counselors also alleged that doctors, police officers, and judges often treated abused women poorly.

The government financed 39 shelters for abused women, but more were needed, particularly in rural areas. The government continued to conduct domestic violence awareness campaigns. In honor of Women's Month, the government hosted numerous events focused on empowering women in business, government, health, sports, and the arts.

Although the law prohibits sexual harassment, it remained a widespread problem. The government left enforcement primarily to employers, with criminal prosecution a rare secondary step at the initiative of the complainant. The Department of Labor (DOL) issued guidelines to employers on how to handle workplace complaints, which allowed for remuneration of the victim's lost compensation plus interest, additional damages, legal fees, and dismissal of the perpetrator in some circumstances. Tougher punishments could be generated for assault, which carries a range of penalties depending on the severity of the act, but only if the complainants press charges.

Couples and individuals have the right, and were able in practice, to decide freely and responsibly the number, spacing, and timing of their children, and to have the information and means to do so free from discrimination, coercion, and violence. Contraception was widely available, and women could access it for free at government clinics. According to a 2008 Department of Health (DOH) report, 94 percent of women had access to prenatal care while 84 percent had access to a skilled attendant at birth, except in the poorest communities where the rate was 68 percent. According to the UN Development Program, the maternal mortality ratio was 625 per 100,000 live births. To improve postnatal care, the DOH 2009-10 Annual Report indicated that 164 of the 549 identified maternity facilities implemented the Basic Antenatal Care

program. During the year 30 percent of women were examined within three postpartum days. Women were equally diagnosed and treated for sexually transmitted infections, as well as HIV.

Discrimination against women remained a serious problem despite their equal rights under the law governing inheritance, divorce, and child custody. Women experienced economic discrimination in areas such as wages, extension of credit, and ownership of land. For example, township housing transfer schemes favored existing titleholders, who tended to be men.

Many rural areas were administered through traditional patrilineal authorities, such as a chief or a council of elders, who did not grant land tenure to women, a precondition for access to housing subsidies.

Women, particularly black women, typically had lower incomes and less job security than men. Most women were engaged in poorly paid domestic labor and microenterprises, which did not provide job security or benefits. The Department of Trade and Industry (DTI) provided incentive grants to promote the development of small- and medium-size businesses and microenterprises for women, young persons, and persons with disabilities. DTI also established the Isivande Women's Fund to improve women's access to formal finance in the absence of personal savings and gender-biased institutions.

According to the annual census conducted by the Businesswomen's Association, the number of women in top leadership positions remained constant. Women held only 19.3 percent of executive-level and 16.6 percent of director-level positions. The Employment Equity Commission released statistics showing that 63 percent of top managers in private companies were white men, while black women comprised only 3 percent and colored and Indian women made up only 1 percent.

Female farm workers often experienced discrimination, and their access to housing often was dependent on their relationship to male farm workers. Female farm workers on maternity leave who could not obtain timely compensation via the Unemployment Insurance Fund often had no choice but to return to work shortly after giving birth, according to NGOs working with farm workers in Limpopo Province.

A number of governmental bodies, particularly the Gender Commission and the Ministry for Women, Children and Persons with Disabilities, and numerous NGOs monitored and promoted women's rights.

#### Children

The law provides for citizenship by birth, descent, and naturalization. However, registration of births was inconsistent, especially in remote rural areas or among parents who were foreign nationals and themselves unregistered. This resulted in lack of access for children to public services such as education, health care, and financial grants.

The law mandates compulsory education from ages seven to 15 and ensures that children cannot be refused admission to public schools due to a lack of funds. The law provides for access to education for disadvantaged children (who traditionally are black children) through a uniform system for the organization, governance, and funding of schools. However, public education was fee based and the government did not fully subsidize education. Even when children qualified for fee exemptions, parents who were poor had difficulty paying for uniforms, books, and supplies. Some children who were enrolled did not attend school.

According to the 2008 Education Statistics Report by the Department of Education, 92 percent of grade 1 to 12, school age children were enrolled in school. Those not enrolled tended to be children with special needs. Most children attended school until the age of 16, when eligibility for the Child Support Grant ends. There were an equal number of boys and girls in grades 1 to 12, with boys slightly outnumbering girls in primary school (grades 1-7), but 5 percent more girls than boys were in secondary school (grades 8-12).

There continued to be reports of rape, sexual abuse, sexual harassment, and assaults at school of girls by teachers, students, and other persons in the school community. The law requires schools to disclose sexual abuse to the authorities; however, administrators often concealed sexual violence or delayed disciplinary action. 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.

Although the law prohibits corporal punishment in schools, there were reports that teachers used physical violence to discipline students. Student-on-student violence, including racially motivated violence, continued to be a major concern of educational authorities and parents. Teacher organizations, parents, and police worked together in the "Safe Schools Program" to address these problems. Many schools implemented "Adopt-a-Cop" programs, inviting SAPS officers into their schools for training and security.

HIV/AIDS remained one of the leading causes of death among women and children, accounting for 43.7 percent of maternal deaths and 35 percent of deaths of children under age five. During the year the government revised its eligibility criteria to extend antiretroviral (ARV) treatment to women, infants, and persons also infected with TB who were not previously covered. Based on the new guidelines, eligible individuals received ARV treatment at all government clinics and hospitals. HIV-positive women who had not been eligible for ARVs under the previous guidelines received Prevention of Mother to Child Transmission regimens at 14 weeks of pregnancy and, among other things, an annual pap smear. HIV/AIDS activists, physicians, and opposition parties who had criticized the previous administration's denial of the causes and existence of HIV/AIDS, lauded President Zuma's commitment to lead the fight against the pandemic. To reduce maternal and infant mortality rates and HIV transmission from mother to newborn to a stated goal of less than 5 percent by 2011, the government worked with experts and the World Health Organization to revise the 2008 Prevention of Mother to Child Transmission guidelines to provide enhanced regimens of ARV therapy to pregnant women, as well as postnatal prophylaxis and early treatment for at-risk or HIV-infected infants.

Violence against children, including domestic violence and sexual abuse, remained widespread. While there was increased attention to the problem, a lack of coordinated and comprehensive strategies to deal with violent crime continued to impede the delivery of needed services to young victims. According to the 2009-10 SAPS report, 27,417 children were victims of sexual offenses between April 2009 and March 2010. Of that total, 965 were killed, and 12,062 were assaulted with intention to do grievous bodily harm. Observers believed that these figures represented a small percentage of the actual incidence of child rape since most cases involving family members were not reported. According to the NGO Childline, 25 percent of girls and 20 percent of boys were at risk of being raped before age 16. According to a June 2009 report released by Solidarity, the country's largest independent trade union, 45 percent of all rapes were perpetrated against children, and more than 88 percent of child rapes were never reported to the police.

The law states that no child under the age of 12 can consent to any sexual activity and sets 16 as the lowest age for consensual sex with another minor. Statutory rape is defined as sexual intercourse between anyone under 18 and an adult more than two years older. The statutory sentence for rape of a child is life in prison; however, the law grants judicial discretion to issue more lenient sentences. The country had a low conviction rate for rape and child abuse.

The traditional practice of "ukuthwala," the forced marriage of girls as young as 12 to adult men, continued in remote villages in the Western Cape, Eastern Cape and KwaZulu-Natal provinces. In May 2009 the government and traditional leaders launched a "Together We Are the Solution" campaign aimed at eliminating the practice with girls younger than 18.

Penalties for the sexual exploitation of a child include fines and imprisonment of up to 20 years. Some NGOs claimed the country was a destination for child sex tourism, although the government denied the charge. The law prohibits child

pornography and provides for penalties including fines and imprisonment of up to 10 years. The Film and Publication Board ran a Web site and a toll-free hotline during the year to enable the public to report incidences of child pornography.

The high incidence of HIV/AIDS resulted in an increase in the number of child-headed households. These children sometimes turned to prostitution to support themselves and their siblings. Other children were trafficked and forced into prostitution. NGOs provided shelter and medical and legal assistance for children in prostitution and a hotline for victims of child abuse.

AIDS activists alleged that children in prostitution were often highly sought after because of the widely held belief that sex with a virgin provided a cure for HIV/AIDS. SAPS officials, however, stated that under questioning perpetrators usually admitted they knew this claim was false.

Despite outreach programs to discourage the practice, ritual circumcision of males, including children, usually by medically unqualified practitioners, was still a prevalent initiation tradition in several provinces, particularly in Eastern Cape Province. The practice sometimes resulted in death. Circumcision was considered a precondition for adult status, which permits marriage, inheritance, and other societal privileges. The House of Traditional Leaders attempted to address unsafe initiation practices and designed strategies to prevent deaths and the spread of diseases, such as HIV/AIDS. However, discussing the practice was taboo in many communities, where it was considered a matter for chiefs to decide. Some traditional leaders spoke out against government interference in initiation and circumcision practices, while others declared moratoriums on circumcisions in parts of Eastern Cape Province in response to the rising number of deaths resulting from the practice.

The Department of Health in Eastern Cape Province provided surgeons, health officials, and vehicles during the June initiation season to monitor initiation practices. The government also began a countrywide voluntary male medical circumcision campaign, offering free circumcision by qualified medical personnel as an alternative to circumcision by unqualified practitioners. Nevertheless, 41 circumcision-related deaths, 100 hospitalizations, and several penis amputations at the hands of unmonitored practitioners were reported in Eastern Cape Province during the June initiation period, according to press reports. In December, the first month of the summer initiation period, 21 boys died from the procedure in Eastern Cape Province. From 2001 through 2007, Eastern Cape Province recorded nearly 2,600 hospital admissions, 156 genital mutilations or amputations, and 232 deaths due to dehydration and infection from unsafe and unsterile procedures. On June 5, Mtshiyelwa Mtshayina Ndoda, a 55-year-old unregistered traditional surgeon who had been arrested several times for operating an illegal initiation school, was again arrested for the offence. Neither this case, nor a pending case of operating an illegal initiation school, had been concluded by year's end.

The country is a party to the 1980 Hague Convention on Civil Aspects of International Child Abduction. For information on international parental child abduction, please see the Department of State's annual report on compliance at [http://travel.state.gov/abduction/resources/congressreport/congressreport\\_4308.html](http://travel.state.gov/abduction/resources/congressreport/congressreport_4308.html).

#### Anti-Semitism

The Jewish community was estimated at 75,000 to 80,000. During the year Jewish graves in Bloemfontein were defaced with anti-Semitic graffiti, and there were reports of verbal abuse, hate mail, and distribution of anti-Semitic literature in the country.

#### Trafficking in Persons

For information on trafficking in persons, please see the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/g/tip](http://www.state.gov/g/tip).

## Persons with Disabilities

The law prohibits discrimination on the basis of physical, sensory, intellectual, and mental disability; however, government and private-sector discrimination in employment existed. The law mandates access to buildings for persons with disabilities, but such regulations were rarely enforced, and public awareness of them remained minimal.

There were more than 100,000 students with disabilities in mainstream schools, and the Department of Basic Education allocated part of its budget for assistive devices, material resources, and assistive technology. To date, eight schools had been fully converted to full-service, inclusive schools, with 20 more identified for future conversion.

The law provides persons with disabilities protection from harassment and, 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. Enforcement of this law was limited. The law also requires employers with more than 50 workers to create an affirmative action plan with provisions for achieving employment equity for persons with disabilities. Persons with disabilities constituted 7.9 percent of the general population, but only an estimated 0.9 percent of the public service workforce and 1 percent of the private-sector workforce. The Ministry for Women, Children and Persons with Disabilities launched a Web site linking persons with disabilities with civil service positions, but the government did not meet its target of 2 percent of government positions occupied by persons with disabilities.

The law does not allow persons with mental disabilities to vote.

The Ministry for Women, Children, and Persons with Disabilities is charged with protecting the rights of persons with disabilities, enhancing their development opportunities, and monitoring government departments to ensure that disability issues are addressed in policies, hiring practices, building plans, and other matters. NGOs also advocated for the rights of persons with specific disabilities such as blindness.

## National/Racial/Ethnic Minorities

Random xenophobic attacks on foreign African migrants and ethnic minorities occurred and sometimes resulted in death, injury, and displacement. Such attacks were generally perpetrated by citizens who blamed immigrants for job and housing losses and increasing levels of crime. The government sometimes responded quickly and decisively to xenophobic incidents, sending police and soldiers into affected communities to quell violence and restore order. However, civil society organizations criticized the government for failing to address the root causes of the violence, for not facilitating opportunities for conflict resolution in affected communities, and for failing to deter such attacks by vigorous investigation and prosecution of participants.

On July 11, citizens attacked foreign-owned spaza shops (small retail enterprises) and looted homes in Mbekweni, Paarl East, Wellington, and Nyanga in Western Cape Province. Approximately 70 foreign nationals sought refuge at the Mbekweni police station in Paarl; 22 at the Wellington police station; and about 100 foreign nationals at a campsite outside Wellington. In response, the government deployed police and SANDF troops to townships in Western Cape Province with instructions to take harsh action to stamp out xenophobic threats. Police Minister Nathia Mthethwa and Defense Minister Lindiwe Sisulu, who flew to the province to survey the situation, determined that the attacks had been orchestrated by criminals using xenophobia to destabilize communities. All those who had fled their homes had returned to their communities or moved elsewhere by year's end. Police arrested seven men in the Nyanga area and charged them with public violence; there were no further developments.

On July 19, a robbery in the township of Kya Sands sparked a confrontation between locals and foreign nationals. Attackers, some armed with axes and pangas (large, heavy knives), kicked down doors demanding money and identity documents. Spaza shops owned by foreign nationals were looted. Sixteen people, including South Africans, were injured. The government, insisting that the attacks were not related to xenophobia, sent in a heavy police and military presence. Ten suspects were arrested; the investigation was ongoing at year's end.

There were no further developments in the following 2009 xenophobic attacks: the May burning by a mob in Darling of a shop belonging to Somali citizens Omar Josef and Hazim Amad, both of whom were killed in the fire; the December attack by residents of the Westernburg Township outside Polokwane of Zimbabwean nationals, which resulted in serious injuries and the displacement of more than 200 persons; and the December stoning by hundreds of Franschhoek residents of Somali-owned businesses.

In November 2009 a mob chased approximately 3,000 Zimbabwean migrants out of the town of De Doorns by attacking and destroying the migrants' shacks; the attacks were reportedly sparked by competition for seasonal farming jobs, with residents accusing the Zimbabweans of agreeing to work longer hours for less pay. Police fired rubber bullets to disperse the mob and arrested 24 persons for public violence. The minister of home affairs subsequently sent a delegation to the town to assist those migrants who had lost their identification documents during the attack. The migrants set up an informal IDP camp on a local rugby field, although most subsequently left. In December 2009 the Witwatersrand University's Forced Migration Studies Project (FMSP) released a study that indicated that dissatisfied local labor brokers had pressured local leaders and residents to chase the Zimbabweans away because they were angered by income losses blamed on Zimbabwean labor brokers. On May 17, the municipality served notice on 369 IDPs who still remained in the informal camp, giving them until September 6 to relocate. The municipality promised to pay each person 1,200 rand (\$168) and provide transport, but subsequently claimed it did not have sufficient funds, resulting in the IDPs' refusal to move until the agreement was honored. During the year the IDPs reported being intimidated and pressured by the municipality. Meetings between the community, local NGOs, and the municipality continued at year's end with little sign of progress.

In September 2009 the Equality Court in Cape Town postponed until later that month a xenophobia compensation claim by 111

In February the SAHRC released its report on the 2008 xenophobic attacks against foreign African migrants and ethnic minorities, which resulted in 62 deaths in Western Cape, Gauteng, and KwaZulu-Natal provinces; injuries to 670 persons; and the displacement of 80,000 migrants, most of whom had reintegrated into their communities by the end of 2009. The report made more than 100 recommendations, including the development of an early warning system, better protection of foreign nationals, and the successful prosecution of perpetrators. Field studies by the Institute for Security Studies and FMSP implicated local ward politicians in orchestrating attacks to gain political influence with residents, although no related arrests were made. According to the Department of Justice and Constitutional Development, more than 1,000 suspects were identified, resulting in the referral of 597 cases to court, of which 109 were charged; the conviction rate was 16 percent. NGOs claimed that none of the arrests or prosecutions was for murder, but the FMSP reported that one suspect was convicted of murder and sentenced to 15 years in prison.

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, although studies showed perpetrators were generally common criminals motivated by financial gain. There also were reports that white employers abused and killed black farm laborers and complaints that white employers received preferential treatment from the authorities. The Freedom Front Plus, an Afrikaner minority political party, accused Minister of Police Nathi Mthethwa of shying away from farm murders by refusing to record them as a separate statistic in the SAPS Annual Report. The provincial government of KwaZulu-Natal

established forums to increase contact between farmers and the police and to devise strategies to stop farm attacks as part of the national government's "Building a United Front Against Crime" campaign.

On April 3, Eugene Terre'Blanche, leader of the extremist white right-wing Afrikaner resistance movement, was bludgeoned to death at his farm near Ventersdorp, Limpopo Province. Two of Terre'Blanche's farm workers, a man and a 15-year-old boy, later contacted police and claimed to have committed the crime. On April 6, the two were charged with murder and remained in prison awaiting trial, which had been postponed to May 2011.

The law requires employers with 50 or more employees to ensure that previously disadvantaged groups, legally defined as "Blacks" (including "Africans," "Colored," and "Asians" and collectively constituting more than 90 percent of the country's population) are represented adequately at all levels of the workforce. Notwithstanding the country's antidiscrimination legislation, however, the DOL's 2009 Employment Equity Analysis reported that Blacks remained underrepresented, particularly at the professional and managerial levels. According to the report, Blacks held only 17.9 percent of top management positions, 20 percent of senior management positions and approximately 32.8 percent of all professional positions. Black women remained by far the most disadvantaged group in number and quality of management or skilled jobs. Employers cited a lack of training and development, poor recruitment processes, and an antagonistic corporate culture as the main impediments to affirmative action.

#### Indigenous People

The NGO Working Group of Indigenous Minorities in Southern Africa estimated that there were approximately 6,000 indigenous San in the country, some of whom worked as farmers or as farm laborers. By law the San have the same political and economic rights as other citizens; however, the government did not always effectively protect those rights or deliver basic services to the San communities. Their participation was limited due to fewer opportunities, minimal access to education, and relative isolation.

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

The post-apartheid constitution outlaws discrimination based on sexual orientation, and in 2006 the country legalized same-sex marriage. There were no reports of official mistreatment or discrimination. However, in its annual Social Attitudes Survey released in 2008, the Human Sciences Research Council found widespread public intolerance of homosexual activity, with 80 percent of respondents believing sex between two persons of the same gender to be "wrong" and "un-African."

Rights groups reported that the LGBT community was subject to societal abuses including hate crimes, gender violence targeting lesbians, and killings. The Triangle Project, the country's largest lesbian and gay rights organization, reported it received each week in Cape Town 10 new cases of lesbian women being targeted for "corrective" rape, in which men raped lesbians to punish them for being lesbian and to change their sexual orientation.

The trial of seven men accused of the 2006 murder of Zoliswa Nkonyana, a lesbian, in Cape Town, was postponed several times during the year. On September 15, the trial was again postponed because one of the defense attorneys had not arrived in court. While the court was waiting, four of the accused escaped their holding cell at the court, but were rearrested four days later. A police sergeant at the jail was also arrested for allegedly helping the men escape. In December the trial was postponed to March 2011.

#### Other Societal Discrimination

With availability of life-saving ARV treatments, civil society activities, such as the Treatment Action Campaign, and government campaigns to reduce discrimination against persons with HIV/AIDS, the social stigma associated with HIV/AIDS declined, according to anecdotal reports.

## Section 7 Worker Rights

### a. The Right of Association

The law allows all workers with the exception of members of the National Intelligence Agency and the Secret Service to form and join unions of their choice without previous authorization or excessive requirements, and these laws were applied. The two unions in the military were governed by provisions in the National Defense Bill that state that unions cannot affiliate with any existing union federation and do not have the right to strike. A labor court and labor appeals court enforced the right of association. Trade union membership is estimated at three million persons and is largely divided between three major union federations: the Congress of South African Trade Unions (COSATU), the Federation of Unions of South Africa; and the National Coalition of Trade Unions.

Labor laws extend to farm workers. President Zuma reported at the July 30 National Farm Workers Summit that there were 7.5 million persons who were farm dwellers and farm workers. Zuma reported that they were protected under the South African Constitution and all labor laws but that exploitation of farm workers continued. The government and unions enlisted the cooperation of AgriSA, the national farmers' organization, to continue to improve the farm environment. COSATU and leading agricultural NGOs complained that labor conditions on farms remained harsh, including underpayment of wages and poor living conditions. The union estimated that 10 percent of the agricultural labor force was unionized and that unionization of farm workers remained difficult.

The law provides for the right to strike, and workers exercised this right frequently; however, workers considered to be providing essential services were prohibited from striking. Nevertheless, strikes throughout the year involved essential service staff. Disputes between workers in essential services and their employers that were not resolved through collective bargaining, independent mediation, or conciliation were referred to arbitration or the labor courts.

Strikes were frequently chaotic and marked by destruction of municipal property, alleged acts of worker sabotage, and violence perpetrated against non-striking workers. Police occasionally used force to disperse demonstrators blocking main roads and blocking entrances to hospitals and schools. During the Public Sector Strike on August 19, police used rubber bullets, water cannons, and tear gas to disperse a strike by public servants who were blocking entrances to hospitals and barricading main roads to bring traffic to a standstill.

Strikes were routine. Approximately 1.2 million public servants, including most public school teachers and nurses at public healthcare facilities, were on strike between August 18 and September 6. The strike crippled services at public hospitals and schools. Workers frequently blocked access to those facilities, and the SANDF was called to both restore order and assist with medical care. President Zuma criticized civil servants for deaths due to limited hospital services

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

The law allows unions to conduct their activities without interference. The government protected these rights, and workers exercised them. Collective bargaining is protected by law. The law prohibits employers from discriminating against employees or applicants due to past, present, or potential union membership or participation in lawful union activities. There were no lawsuits filed for antiunion discrimination.

There are no export processing zones.

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

The law prohibits forced or compulsory labor, including by children; however, there were reports that such practices occurred, primarily in domestic labor.

See also the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/g/tip](http://www.state.gov/g/tip).

#### d. Prohibition of Child Labor and Minimum Age for Employment

Child labor is prohibited by law. However, reports of child labor were received in informal and agricultural sectors, particularly in the former homeland areas. The law prohibits employment of a child less than 15 years of age. Children over 15 but under 18 are also prohibited from work that places at risk the child's wellbeing, education, physical or mental health, or spiritual, moral, or social development. The government generally enforced child labor laws in the formal sectors of the economy. Underage children were allowed to work in the performing arts if their employer received DOL permission and agreed to follow specific guidelines.

The HIV/AIDS epidemic contributed to the number of households headed by children who supported themselves and often younger siblings. However, in its 2007-08 *Child Gauge Report*, the Children's Institute at the University of Cape Town stated that there was little evidence of recent rapid growth in the orphan population due to HIV/AIDS. The South African Institute of Race Relations, a research and policy organization, reported that child-headed households accounted for 0.5 percent of all households, or approximately 148,000 households in 2007. The Children's Institute noted that levels had remained relatively stable since the 2002 General Household Survey.

Child labor was extremely limited in the formal economy, which is monitored by strong and well organized unions, and sources could not provide information about specific cases of child labor exploitation. Despite a lack of statistical information, child labor was reported to exist in the informal and extralegal market, particularly in the agricultural sector as well as in domestic work. NGOs alleged that many children in rural areas carried water for their families for excessive hours under physically demanding conditions. Some children were exploited by adults and forced to sell drugs and commit robberies, including armed robbery.

The DOL attempted to employ an estimated 1,000 labor inspectors to investigate reports of violations of child labor and trafficking and to submit any evidence to the SAPS. However, due to a shortage of skilled labor in the country, the DOL reported it was not always able to meet the goal and exact figures were unavailable. Other reports indicated that the actual number of inspectors was closer to 650. Violation of laws regulating child employment is punishable by a maximum prison sentence of three years or a fine of 15,000 rand (\$2,100). In some cases DOL inspectors opted to resolve child labor cases by counseling of employers, parents, and children, or by enlisting the services of professionals in the welfare and education departments. There were reports that inspectors had difficulty gaining access to farms where child labor was reported.

The government's Child Labor Program of Action integrated the priorities of government ministries to combat child labor with a variety of government financial support mechanisms. The Children's Amendment Act No. 41 of 2007, signed into law by President Mbeki in 2008, was officially implemented on April 1. This Act strengthens the Children's Act No. 38 of 2005, which set national regulations outlining the care and protection of children, the responsibilities of parents, and the prosecution procedures in the case of violations. The original act also reduced the majority age from 21 years to 18 years. The 2007 Amendment Act expands the scope of the Children's Act by delegating responsibility over which both the national and provincial governments share functions and duties. However, the largest factor in reducing child labor remained the government's 250 rand (\$35) per month Child Support Grant to primary care givers of children under the age of 16. The age was scheduled to be increased to 17 in January 2011 and 18 in January 2012.

See also the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/g/tip](http://www.state.gov/g/tip).

e. Acceptable Conditions of Work

There was no legally mandated national minimum wage, although the law gives the DOL authority to set wages by sector. Minimum wages were established for multiple economic areas including the retail sector, farm laborers, domestic workers, and taxi (minibus) drivers. The minimum wage for farm workers was approximately 6.31 rand (\$.88) per hour. The minimum hourly wages for domestic workers employed more than 27 hours per week ranged from 4.85 rand (\$.67) to 7.06 rand (\$.98). Depending on the province, compliance with the minimum wage rate generally ranged from 65 to 90 percent, according to 2007 DOL figures. According to COSATU, sector minimum wages did not provide a decent standard of living for a worker and family.

Annual negotiations between employers and employee associations or unions set wage rates on an industry or plant basis for unionized workers in the formal economy. Wage negotiations for civil servants resulted in numerous strikes during the year. Most unions demanded double-digit wage increases; economists lamented these were not tied to productivity or inflation. President Zuma, speaking at the National Farm Workers Summit, stated that "the evictions, human rights abuses, and super exploitation of farm workers and farm dwellers remain a blight on the conscience of our society and a serious obstacle to the creation of a vibrant rural economy. The establishment of the Department of Rural Development and Land Reform indicates our seriousness in ensuring an intense focus on rural development."

The law establishes a 45-hour workweek, standardizes time-and-a-half pay for overtime, and authorizes four months of maternity leave for women. No employer may require or permit an employee to work overtime except by agreement, and overtime may not be more than 10 hours a week. The law stipulates rest periods of 12 consecutive hours daily and 36 hours weekly, which must include Sunday. The law allows for adjustments to rest periods by mutual agreement. These standards were effectively enforced in the formal sector, as labor unions and labor courts focused on compliance. A ministerial determination exempted businesses employing fewer than 10 persons from certain provisions of the law concerning overtime and leave. Farmers and other employers could apply for variations from the law by showing good cause.

The law protects both foreigners and immigrant workers. In 2008 the Commission for Conciliation, Mediation, and Arbitration (CCMA) ruled in favor of a foreign employee whose employment contract had been terminated by Discovery Health Limited when the employee's temporary work permit expired. The CCMA's ruling established that foreign workers are included and protected by the Labor Reform Act.

The government set occupational health and safety standards through the Department of Minerals and Energy for the mining industry and through the DOL for all other industries. Occupational health and safety issues were a top priority of trade unions, especially in the mining, construction, and heavy manufacturing industries. The law provides for the right of mine employees to remove themselves from work deemed dangerous to health or safety. The law prohibits discrimination against an employee who asserts a right granted by the law, and requires mine owners to file annual reports providing statistics on health and safety incidents for each mine. In addition, a tripartite mine health and safety council and an inspectorate of mine health and safety were responsible for enforcing the law and monitoring compliance with its provisions.

In 2008 parliament passed amendments to the Mine Health and Safety Act, making employers subject to heavy fines or imprisonment for the serious injury, illness, or death of employees due to unsafe mine conditions. The amendments provide for mine inspectors to enter any mine at any time to interview employees and audit records.

Outside the mining industry, there were no laws or regulations that permitted workers to remove themselves from work situations deemed dangerous to their health or safety without risking loss of employment; however, the law provides that employers may not retaliate against employees who disclose dangerous workplace conditions.

While labor conditions improved on large commercial farms, they remained harsh, especially for small holdings' workers, most of whom were black. Many owners of small farms did not measure working hours accurately. Twelve-hour days were common during harvest time, and few farmers provided overtime benefits. At the July 30 National Farm Workers Summit, President Zuma mentioned that farm workers still lack proper housing and access to basic services and amenities. He said workers struggle to gain access to education and healthcare and generally do not feel safe. Zuma said that workers in the sector "do not feel they are an integral part of the South African society."

[Back to Top](#)