

SOUTH AFRICA

EXECUTIVE SUMMARY

South Africa is a multiparty parliamentary democracy in which constitutional power is shared between the president and the parliament. In 2009 the country held a largely free and fair 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; and prison overcrowding and abuse of prisoners, including beatings and rape by prison guards.

Other human rights problems included 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.

The government investigated and prosecuted officials who committed abuses, but there were numerous reports of impunity.

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

a. Arbitrary or Unlawful Deprivation of Life

There were no reports of politically motivated killings by the government or its agents; however, police use of lethal and excessive force, including torture, toward 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 often were better armed than police. In 2009 then deputy police minister Fikile Mbalula called for changes to the Criminal Procedures Code to clarify and extend rules governing police use of

deadly force in pursuing suspects. Media and civil society groups criticized the change 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 July 11, ANC eThekweni regional leader Sbu Sibiyi was shot dead outside his home after returning from work. The South African Police Service (SAPS) was not able to determine a clear motive and did not rule out a political motivation. On September 9, police arrested Xolani Zulu in connection with the murder of Sibiyi. SAPS officers killed another suspect, Zamani Sikhane, while they attempted to apprehend him. On December 13, Zulu was released on bail. The trial was ongoing at year’s end.

According to the governmental Independent Complaints Directorate (ICD), a constitutionally mandated body significantly strengthened since 2010 through increased budget and staff, there were 257 deaths in police custody (not including prisons) and 540 deaths as a result of other police action from April 2010 through March 2011. The total of 797 reported deaths was a 7 percent decrease from the 860 reported deaths for the same period in 2010. According to the ICD, of the 257 deaths in police custody, 48 were considered deaths from unnatural causes, and police officials were implicated in eight of those cases.

In November 2010 Riaan Velloen died while in detention at Florida police station in Johannesburg after being arrested for driving while intoxicated. Friends and family accused the police of beating him to death. According to a May news report by ICD investigators, the SAPS members allegedly responsible for the murder were sent for corrective counseling after being found guilty in a departmental hearing. According to the ICD, the case was later closed.

In July 2010 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, and after agreeing to relinquish their passports, the four were each granted bail of 3,000 rand (\$371). The trial was ongoing.

On February 22, the ICD, exercising its police oversight authority, arrested warrant officer Abel Baloyi of SAPS Mokopane on charges of assault with intent to cause grievous bodily harm, common assault, and corruption. In October 2010 Baloyi allegedly assaulted a foreign national working at a small store after taking merchandise without paying. The victim was then arrested on false charges. When the victim filed a complaint, Baloyi and a colleague allegedly coerced him into withdrawing the charges. The ICD took over the investigation, and as a result Baloyi was charged. After his arrest, Baloyi allegedly threatened key witnesses with violence and deportation. On March 28, Baloyi appeared before Mokopane Magistrates' Court for a bail application. The trial was ongoing at year's end.

The trial of police officer Shadrack Malaka, who was charged with killing a three-year-old child in 2009, was postponed to April 2011; Malaka was released on bail of 1,000 rand (\$124). The trial was ongoing at the end of the year.

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 2009, were neither suspended nor arrested during the year. Although the ICD passed a recommendation to the director of public prosecutions (DPP) in 2009 stating its investigation produced enough evidence to establish a murder case against the officers, the case was still under consideration by the DPP.

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 tortured, beat, raped, and otherwise abused suspects. According to the 2011 Amnesty International report, corroborated cases of torture included the use of electric shock and suffocation. Police also assaulted detainees with batons, fists, and boot-clad feet. Police torture and physical abuse allegedly occurred during house searches, arrest, interrogation, and detention, and sometimes resulted in death.

During the year the ICD reported a 5 percent increase in the number of reported assaults with the intent to cause grievous bodily harm committed by police; there were 966 cases compared to 920 reported in 2010. The report noted an increase in the number of allegations of torture cases from five to 41. Suspects in several

cases were interrogated and assaulted while held, without any record being made 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 stipulated that 501 recommendations for prosecution were made to the DPP and that 59 SAPS members received convictions for a range of crimes.

The ICD also reported 46 complaints of rape committed by police compared with 24 complaints in 2010.

On January 25, SAPS and Metro Police members arrested Nigerian-born Chinenye Jehu Onuegbu at his home. Onuegbu was not immediately charged and was transported to the Midrand police station. Onuegbu claims that during his two-day incarceration there, he was subjected to torture by five SAPS officers dressed in plain clothes; electrodes were attached to his ears and he received electric shocks several times. On January 27, Onuegbu was charged with theft but was able to obtain bail. Onuegbu sued Minister of Police Nathi Mthethwa; his lawsuit was ongoing.

In May 2010 Zipho Richard Ndlovu claimed he was detained by two police officers at his workplace and taken to the Midrand 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 bag over his head, and attached electrodes to his earlobes. Ndlovu sued the police for torture. His case was reported to the ICD and was ongoing.

Incidents of police harassment of foreigners continued, particularly during coordinated police raids in areas where foreign nationals resided. In a 2010 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 routinely refused emergency treatment to indigent foreigners, despite regulations requiring that hospitals provide such treatment. On August 4, a judge in the North Gauteng High Court ordered the Steve Biko Hospital, located in the capital city of Pretoria, to renew treatment for an undocumented four-year-old Zimbabwean girl with brain cancer. The hospital had ceased to treat the girl, and representatives told her father that they would not begin again unless he presented legal immigration papers or paid a 30,000 rand (\$3,713) fee.

Prison and Detention Center Conditions

The majority of the 249 operational prisons did not meet international standards and did not always meet the country's minimum legal requirements. The Judicial Inspectorate of Correctional Services (JICS) received 2,276 complaints of assaults on prisoners by correctional officers for April 2010 through March 2011, including 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 879 prison deaths during the reporting period. Of these, 831 were from natural causes, including HIV/AIDS; the remaining deaths were the result of suicides, assaults, or accidents.

For example, on August 27, Christopher Lockyer was arrested by SAPS officers of the Douglasdale Police Station for allegedly being drunk in public. An hour after his arrest, Lockyer was found hanging in a holding cell at the police station. Closed circuit television footage showed that Lockyer had hung himself. SAPS members attempted to resuscitate Lockyer without success. This was the second suicide reported in the Douglasdale Police Station within two months. The ICD opened an investigation into the matter. There were no further developments at year's end.

On July 12, six prison officials using an electrified riot allegedly tortured Jonas Makhufola. The incident came to light after an audio recording was released to the media. There were reports the incident is not isolated but that "the practice had been going on for some time."

The JICS reported there were 160,545 prisoners in facilities designed to hold 118,154. In a report to the parliament in October 2010, inspecting judge Deon van Zyl reported that 18 prisons were critically overcrowded, some by as much as 254 percent, such as King William's Town Prison, while others held less than their capacity, such as Barkley West, which was at 22 percent of capacity. Of the 160,545 prisoners, 3,750 were female and 1 percent were below the age of 18. 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.

Prisoners were provided with potable water; however, the JICS reported occasional fresh water shortages in the Thohoyandou, Kutama Sinthumule, and Makhado

facilities. The JICS reported that all water shortage problems had been addressed and corrected by April.

The government took measures to reduce overcrowding by transferring prisoners to facilities that were not at capacity. The JICS reported the prisoner transfer program resulted in a reduction in the total number of prisons rated as “critically overcrowded” (occupied at more than 200 percent capacity). During the year there were 18 critically overcrowded prisons, down from 45 in 2005.

The JICS reported that the Department of Correctional Services (DCS) improved the quality of its investigations and reporting on the circumstances surrounding the deaths of inmates. The department now requires that reporting forms be fully and properly filled out by medical officers. The JICS stated that these requirements raise the quality of initial reporting done by prison wardens, and lessen the likelihood that a death caused by neglect will be reported as “natural.”

Conditions for female prisoners were not reported to be worse than those for male prisoners.

The 2010-11 DCS annual report indicated 19.1 percent of sentenced prisoners who were tested were HIV-positive. There were 21 health centers within prisons dispensing antiretroviral (ARV) therapy to 9 percent of correctional facilities during the year. Correctional facilities without such centers were supposed to utilize public clinics for ARV therapy; however, this seldom occurred. There were no HIV screening programs on intake or discharge of prisoners, but the DCS conducted HIV prevention programs in prisons, including a condom distribution program and awareness sessions. During the year nongovernmental organizations (NGOs) such as The Aurum Institute and New Start supported correctional centers with HIV treatment and prevention services such as HIV testing and ARV therapy. The DCS annual report noted that 6,422 HIV awareness sessions were held in prisons throughout the country during the year. The JICS reported that the number of complaints filed by inmates regarding health care has gone up 255 percent in recent years. In 2007 there were 11,227 complaints, and in 2010 there were 39,868.

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

In its 2010 report *Monitoring Immigration Detention in South Africa*, the local NGO Lawyers for Human Rights (LHR) indicated the main abuses perpetrated in the Lindela Repatriation Centre, the 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 poor 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. In 2010 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 facilities with sustainable family structures. Pretrial detainees generally were held with convicted prisoners. In 2010 the government took measures mandated in the Child Justice Act of 2008 to lower the number of children held in detention. These measures included diverting incarcerated children to secure care facilities, and increasing access to adequate legal representation. Between May and October 2010, the government reduced the number of children being held in detention from 1,155 to 922. Civil society organizations asserted the government needed to better capture accurate statistics on child rights issues so they could be properly addressed.

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 2010 the independent visitors collectively recorded 8,346 visits to the 249 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 International Committee of the Red Cross 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 and Somali migrants and trafficking victims during the year.

On November 16, SAPS police officers arrested three Somali shopkeepers in Ivory Park, Gauteng. The shopkeepers reported that they presented their residency permits, but police refused to acknowledge them and told them they were charged with not possessing proper documentation. The shopkeepers claimed they were beaten while in custody and were forced to sign a declaration that they were selling fraudulent merchandise. The merchandise in their shop was then seized, and reportedly included more than 200,000 rand (\$24,752) of mobile phone airtime credits. The shopkeepers were later released without being formally charged, and most of their merchandise was returned.

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 Directorate for Priority Crime Investigation, 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.

From September 2010 through August 2011, the ICD received 5,869 complaints against the police, including allegations of killings, assaults, and other misconduct, compared with 6,377 complaints in the previous reporting period. The ICD noted 59 convictions of police officers for criminal conduct in the latest reporting period. The ICD made 501 recommendations to the DPP on criminal matters and 2,261 recommendations to SAPS management with regard to misconduct offenses, such as unauthorized use 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 based on sufficient evidence and issued by a magistrate or judge and requires that all detainees be informed promptly of the reasons for their detention, 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.

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.

Arbitrary Arrest: 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 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 composed of 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. None of the 40 tavern owners who demolished the AbM offices and homes were arrested. Critics charged that the government arrested the AbM members to prevent them from returning to the Kennedy Road settlement. The "Kennedy 12" were all acquitted of all charges on July 18 in the Durban Regional Court.

Pretrial Detention: Lengthy pretrial detention was a problem, and pretrial detainees constituted approximately 30 percent of the total prison population, or 47,880 inmates. The JICS report indicated that approximately 48 percent (23,032) of all remand detainees were held for a period exceeding three months. In 2010 the DCS signed a bail protocol with the ministers of police and justice to allow inmates who committed petty crimes and could not afford bail to be diverted through alternative programs.

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 one million of the estimated two million criminal cases reported annually were never resolved. According to the group, a number of problems contributed to the 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. The government operated 63 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 limited 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 Inkatha Freedom Party (IFP) claimed 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 2010 President Zuma announced he had considered and rejected 230 of the 384 IFP applications for pardon. The presidency was considering the remaining pardon requests on a case-by-case basis.

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. The African Court on Human and Peoples’ Rights, in partnership with the government, conducted a sensitization visit on October 25 to raise public awareness and encourage appeals to or other contact with the court.

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 cell phones, the Internet, and e-mail, for criminal investigations. However, opposition parties and many civil society groups opposed such laws. In 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 also can 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.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Status of 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.

Freedom of Speech: Individuals, organizations, and sectors of civil society were generally able to criticize the government openly without fear of reprisal.

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

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 government efforts to extend the board's authority to newspapers and broadcast media.

Although journalists were generally able to criticize the government openly without fear of reprisal, many journalists expressed concern in reports, columns, editorials, and public forums that the government increased its efforts during the year to control the media.

The South African Broadcasting Corporation (SABC), a government-funded television and radio network, appointed individuals to key positions as a reward for their political allegiance.

According to the South African Advertising Research Foundation, print media reached 48 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 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.

Violence and Harassment: Mzilikazi Wa-Afrika, a prominent investigative reporter, claimed that police harassed him on multiple occasions starting in August 2010 when he was arrested and charged with fraud and defeating the ends of

justice for possessing an allegedly fraudulent resignation letter from the Mpumalanga Province premier. The charges were dismissed after two days for lack of evidence and he was released. Journalists and civil society organizations alleged the arrest was designed by SAPS to intimidate, since the arrest occurred shortly after Wa-Afrika published details of irregularities in the signing of a lease for a new, 500 million rand (\$61.9 million) police headquarters. In July he submitted a sworn statement that in December 2010 he had been pulled out of his car by two men wearing police uniforms, who then pointed a gun at his head before pushing him to the ground and driving away. In October Faith Radebe, the inspector general of intelligence, confirmed that the government was intercepting Wa-Afrika's telephone calls, as well as those of journalist Stephen Hofstatter, for reasons "pertaining to the allegations of crime, and not for the reason that he is a journalist."

Censorship or Content Restrictions: 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 the government's sensitivity to criticism resulted in media self-censorship.

Libel Laws/National Security: Journalists and civil society organizations expressed great concern that proposed legislation could greatly restrict freedom of the press through the use of national security laws targeting access to and possession of information.

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 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.

Academic Freedom and Cultural Events

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

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 April 13, residents of Meqheleng Township near Ficksburg in the Free State demonstrated to protest poor service delivery. Police used rubber bullets and a water cannon to disperse the protesters. During the protest, SAPS officers shot Congress of the People member Andries Tatane at close range with a rubber bullet when Tatane scuffled with them during the protest. He died minutes later. On April 17, six members of SAPS were arrested; two were charged with murder and four with assault. Two other SAPS members were later charged. The ICD conducted an investigation and recommended the case to the DPP. The trial was postponed twice and at year's end was scheduled for April 2012 in the Ficksburg Regional Court.

Freedom of Association

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

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/j/drl/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 cooperated with the Office of

the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern. However, refugee advocacy groups criticized the government's processes for asylum and refugee status determination, citing large backlogs of cases along with its susceptibility to corruption and abuse.

Protection of Refugees

Access to Asylum: The law provides 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. Government policy allows for freedom of movement of refugees and asylum seekers with guarantees for the right to work, study, and access social services. Many NGOs criticized the government's commitment to these rights and actual implementation as inadequate.

Nonrefoulement: Observers reported there was a large increase in the number of asylum seekers who were refused access to South African territory during the reporting period. They reported that the government was now refusing asylum seekers who could not show positive identification and may also be denying asylum seekers who passed through a "safe third country." Advocates worried these practices could result in refoulement if they were not coordinated with other countries, or may lead to an increase in illegal border crossings.

In October the Department of Home Affairs ended a moratorium on deportations of undocumented Zimbabwean nationals, which began in 2009. The International Organization for Migration (IOM) reported that during October and November the South African government deported approximately 5,000 of the estimated one to three million Zimbabweans living in South Africa. Press reports alleged that Zimbabweans with legal residency status had been arrested and deported along with undocumented migrants. Refugee and migrant advocacy groups criticized the government for beginning the deportations before it had finished issuing residency permits to Zimbabweans who had complied with a government program to register previously undocumented migrants, and stated that this increased the risk of legal residents being deported.

Refugee Abuse: Refugee advocacy organizations charged that police and immigration officials abused refugees and asylum seekers and forcefully repatriated some asylum seekers, particularly Zimbabweans.

In October the government resumed deportations of Zimbabweans found to be in the country without legal documentation, with at least 5,000 returned by year's end. Some Zimbabweans possessing legal documentation were reportedly included with those returned.

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 adopted anticorruption programs and punished officials or contracted security officers found to be accepting bribes.

Societal attacks on refugees and migrants occurred during the year.

On October 13, a group of rioters in Atteridgeville, North West Province, gathered near a Somali shop with its owner inside and began to throw rocks at it. In response, the shop owner fired a gun and killed a bystander. Following the shooting, a larger riot formed and looted nine other Somali-owned shops in the area. The police arrested two of the rioters for theft and charged the shop owner with murder. The cases were ongoing at year's end.

Access to Basic Services: 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 (HRW) found that asylum seekers, migrants, and refugees faced discrimination at health-care facilities and by law enforcement representatives.

The government cooperated with the UNHCR and IOM to address issues relating to the discrimination and exclusion of migrants and refugees from the health-care system. The issue was most acute at health-care facilities with scarce financial and human resources.

The South African National AIDS Council (SANAC) is working to include refugee and migrant health issues into the National Strategic Plan for HIV and AIDS. For example, the Musina Municipality in Limpopo Province is working with the IOM to respond to emerging health challenges faced by Zimbabwean migrants.

Temporary Protection: The government also offered temporary protection to some individuals who may not have qualified as refugees.

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

Recent Elections: In 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. The parliament then elected ANC President Jacob Zuma as the country's next president. The leading opposition party, the Democratic Alliance (DA), won 67 parliamentary seats, the Congress of the People (COPE) won 30, and the IFP won 18. The remaining 39 seats in the 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.

Participation of Women and Minorities: Women held 14 of 34 ministerial positions, including the ministerial portfolios of foreign affairs and defense, and 14 of 28 deputy ministerial positions. There were 184 women in the National Assembly and 15 women among the 54 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 126 members of minorities (non-African citizens) in the National Assembly. There were 17 minority members among the 54 permanent members of the NCOP. The cabinet included 17 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 most recent Worldwide Governance Indicators reflected that corruption remained a problem. In August 2010 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.

In 2010 the Department of Public Works signed a controversial 500 million rand (\$61.9 million) lease agreement to house the new South African Police Services Headquarters. Allegations of improper procurement procedure involving police commissioner Bheki Cele and Minister of Public Works Gwen Mahlangu-Nkabinde arose and prompted the public protector to report the incident. The initial report of the probe indicated that both Cele and Mahlangu-Nkabinde were responsible for irregularities with the lease agreement. On March 3, SAPS members allegedly looking for evidence related to the controversial lease agreement raided the Cape Town offices of the public protector. Senior SAPS officials condemned the raid and claimed that they did not sanction it. On October 24, President Jacob Zuma replaced Mahlangu-Nkabinde. The public protector accused her of wrongdoing for her role in a lease deal. President Zuma also announced the creation of a board of inquiry to investigate the allegations and suspended Commissioner Cele pending the outcome of the inquiry.

On October 24, the president replaced Minister of Cooperative Governance Sicelo Shiceka. The Office of the Public Protector accused Shiceka of spending more than 500,000 rand (\$61,880) on unsanctioned luxury travel, including visits to a girlfriend imprisoned in Switzerland for drug smuggling.

In August 2010 Minister of Human Settlements Tokyo Sexwale announced his department had recovered 44 million rand (\$5.4 million) and arrested 1,910 government officials who were illegally benefitting from housing subsidies. In November 2010 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 2010-11 DCS annual report, the department conducted 4,074 disciplinary hearings for various offences and dismissed 88 staff members. According to the 2010-11 JICS report, there were 2,646 complaints of corruption during its annual reporting period. 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 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.

SIU investigations into the Department of Public Works were ongoing. The SIU was investigating 41 tenders with a total value of three billion rand (\$371 million).

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, 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 a formal 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 were answered outside the period provided for in the legislation or went unanswered.

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 Rights 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. The SAHRC enjoyed support from the government without interference, and the government reacted positively to SAHRC reports. During the year the SAHRC issued reports on child rights and the effects of mining on surrounding communities, as well as a public guide on using the Access to Information Bill.

UN and Other International Bodies: The government cooperated with international governmental organizations and permitted visits by UN representatives and other organizations.

Government Human Rights Bodies: 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 exemplified in gender-based violence and employment inequities often resulted in the denial of these rights in practice.

Women

Rape and Domestic Violence: 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 2010-11 SAPS annual report, there were 56,272 reported cases of rape and indecent assault during the year and a total of 66,196 reported sexual offense cases; many of the victims were elderly women. The true incidence of rape was thought to be much higher. 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. Studies by the Medical Research Council (MRC) estimated that only 4 to 11 percent of rape victims reported the crime to SAPS. A 2009 Medical Research Council (MRC) report 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. In a 2011 study conducted in Gauteng province by the MRC and Gender Links, 37.4 percent of men admitted to having committed one or more rapes.

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.

The government operated six dedicated 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. However, the National Prosecuting Authority's Sexual Offenses and Community Affairs Unit (SOCA) reported that the dedicated sexual offenses courts functioned at a 38 percent higher conviction rate in comparison to nonspecialized courts during the year.

SOCA operated 45 Thuthuzela Care Centers (TCC) that specialized in rape care 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, an estimated one in four women was in an abusive relationship, but few reported it. A 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. In a 2011 report conducted by the MRC in Gauteng Province, more than 50.5 percent of men admitted to being physically violent towards women during their lifetime. TCC counselors also alleged that doctors, police officers, and judges often treated abused women poorly.

The government financed 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.

Sexual Harassment: 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 complainant presses charges.

Reproductive Rights: Couples and individuals have the right, and were able in practice, to decide freely 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 the Department of Health (DOH), 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 2010-11 Annual Report indicated 72 percent of identified maternity facilities implemented the Basic Antenatal Care Program, up from 30 percent during the previous year. During the year 27 percent of women were reviewed within six postpartum days after being discharged from a health facility. Like men, women were diagnosed and treated for sexually transmitted infections, including HIV.

HRW released a report called “Stop Making Excuses” on August 8 that diagnosed shortfalls in maternity care in the country and especially in the Eastern Cape Province. Its research suggested that the country’s high maternal mortality rate was due to HIV/AIDS, poor administrative and financial management, poor quality of care, and lack of accountability in the health care system. The report documented alleged cases of neglectful and abusive behavior towards maternity patients by health-care workers, including cases where neglect caused the death of a patient.

HIV/AIDS accounted for 43.7 percent of maternal mortality and 35 percent of deaths of children under age five. During the year the government extended eligibility for antiretroviral (ARV) treatment to all infants less than 12 months old, pregnant women, and persons coinfecting with TB, not previously covered, at all government clinics and hospitals. To reduce maternal and infant mortality rates and HIV transmission from mother to newborn to less than 5 percent, the government provided enhanced ARV regimens and postnatal prophylaxis to pregnant women and early treatment for at-risk or HIV-infected infants. During the reporting period, transmission rates fell from 8.5 percent to 3 percent.

Discrimination: 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 operated the Isivande Women's Fund to improve women's access to formal finance in the absence of personal savings and in the face of gender-biased institutions.

According to the annual census covering 2010 conducted by the Businesswomen's Association, the number of women in top leadership positions remained essentially constant. Women held only 21.6 percent of executive-level and 15.8 percent of director-level positions. The Commission for Employment Equity released statistics showing that 63 percent of top managers in private companies were white men, while black women comprised only 3 percent, and Coloured (a heterogeneous, mixed race ethnicity recognized by the government) 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 Commission for Gender Equality and the Ministry for Women, Children and Persons with Disabilities, and numerous NGOs monitored and promoted women's rights.

Children

Birth Registration: 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 unregistered foreign nationals. This resulted in lack of access for children to public services such as education, health care, and financial grants.

Education: 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. Those not enrolled tended to be children with special needs.

Child Abuse: 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.

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 2010-11 SAPS report, 54,225 children were victims of social contact crimes (where the perpetrator and victim were known to each other) or violent crimes between April 2010 and March 2011. Of that total, 906 were killed, 28,128 were sexually assaulted, and 11,018 were assaulted with intention to do grievous bodily harm. Observers believed 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 2009 report released by Solidarity, the 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.

Child Marriage: 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.

Harmful Traditional Practices: Ritual circumcision of males, including children, often 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 numerous deaths resulting from the practice.

The government conducted a countrywide voluntary medical circumcision campaign, offering free circumcision by qualified medical personnel as an alternative to circumcision by unqualified practitioners. Nevertheless, hospitalizations and penis amputations at the hands of unmonitored practitioners were reported in Eastern Cape Province during the June initiation period, according to press reports. 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. In June 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 offense. Neither this case, nor a pending case of operating an illegal initiation school, had been concluded by year’s end.

Sexual Exploitation of Children: 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 law criminalizes all consensual sexual activities between minors under the age of 16, and defines sexual activities to include kissing and “petting.” Child rights advocacy groups complained that this effectively contradicted previous legislation that required the government to provide free contraceptives to minors and could prevent pregnant teens from seeking appropriate medical attention for fear of being criminally charged. They also asserted the law could deter child victims of sexual assault from reporting attacks perpetrated by other minors because, in the event of an acquittal, the victim would technically be considered a criminal for having sex underage.

On August 12, Director of Public Prosecutions Menzi Simelane authorized the prosecution of six students from the Mavalani High School in Limpopo Province on charges of consensual sexual penetration while under the age of 16 years. The students were charged in court but were diverted to social programs in place of a full trial. Five of the accused were boys and one was a pregnant girl.

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. The South African Department of Tourism, Department of Social Development, and Department of Trade and Industry, as well as 50 other tourism industry organizations were signatories to the Tourism Child Protection Code of Conduct, an international agreement endorsed by the UN World Tourism Organization designed to provide “increased protection to children from sexual exploitation in travel and tourism.” The law prohibits child pornography and provides for penalties including fines and imprisonment of up to 10 years. The Film and Publication Board maintained a Web site and a toll-free hotline during the year to enable the public to report incidents of child pornography.

The high incidence of HIV/AIDS resulted in a large number of child-headed households. A 2009 survey by the Children’s Institute at the University of Cape Town estimated that there were 122,000 children living in 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, medical, and legal assistance for children in prostitution and a hotline for victims of child abuse.

AIDS activists alleged that children 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 perpetrators under questioning usually admitted they knew this claim was false.

International Child Abductions: The country is a party to the 1980 Hague Convention on Civil Aspects of International Child Abduction. For information see the Department of State's report on compliance at http://travel.state.gov/abduction/resources/congressreport/congressreport_4308.html as well as country-specific information at http://travel.state.gov/abduction/country/country_3781.html.

Anti-Semitism

The Jewish community was estimated to number 75,000 to 80,000 people. There were no reports of serious attacks on Jewish persons or property, and the Jewish Council of Deputies NGO reported a 40 percent drop in the number of anti-Semitic attacks compared to the previous year. There were, however, reports of verbal abuse, hate mail, and distribution of anti-Semitic literature.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

Persons with Disabilities

The law prohibits discrimination on the basis of physical, sensory, intellectual, and mental disability; however, government and private sector discrimination 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. In a 2010 speech, Minister of Basic Education Angie Motshekga stated eight schools had been converted to full-service, inclusive schools, and 20 more identified for future conversion. The UN Educational, Scientific and Cultural Organization reported during the year that children with disabilities between the ages of seven and 15 were 20 percent less likely to attend school than children without disabilities.

The law prohibits harassment of persons with disabilities and, in conjunction with the Employment Equity Act, 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 only an estimated 0.8 percent of the workforce. The Ministry for Women, Children, and Persons with Disabilities launched a Web site linking persons with disabilities with civil service job information, 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 identified by the courts as mentally disabled to vote. The Mental Health Information Center of South Africa noted that 20 percent of the population suffered from a mental illness that significantly impairs living.

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. All provincial and local governments also have offices charged with protecting the rights of persons with disabilities, and there are representatives advocating for persons with disabilities at the Commission for Gender Equality and the SAHRC. NGOs also advocated for the rights of persons with specific disabilities such as blindness.

At year's end there were 16 persons with disabilities with seats in the upper and lower houses of parliament.

National/Racial/Ethnic Minorities

Random xenophobic attacks on foreign African migrants and ethnic minorities occurred and sometimes resulted in death, injury, and displacement. Citizens who blamed immigrants for job and housing losses and increasing levels of crime generally perpetrated such attacks. 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.

For example, in July 2010 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 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 criminals using xenophobia to destabilize communities had orchestrated the attacks. 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.

In February 2010 the SAHRC released its report on the 2008 xenophobic attacks against foreign African migrants and ethnic minorities, which resulted in 62 deaths, injuries to 670 persons, and the displacement of 80,000 migrants, most of whom had reintegrated into their communities by the end of 2009 in Western Cape, Gauteng, and KwaZulu-Natal provinces. The report made more than 100 recommendations, including the development of an early warning system, better protection of foreign nationals, and prosecution of perpetrators. Field studies by the Institute for Security Studies and the Forced Migration Studies Program (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; 109 suspects were charged and the conviction rate was 16 percent. NGOs claimed none of the arrests or prosecutions was for murder, but the FMSP reported one suspect was convicted of murder and sentenced to 15 years in prison.

The continued killings of mostly white farm owners by black assailants sustained concern among white farmers that they were being targeted for racial and political reasons. 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 Agricultural Union of South Africa called for the minister of police to keep closer track of "farm violence" statistics and issued its

own report on April 1, alleging there had been 16 attacks resulting in eight deaths during the period from January 1 to March 31.

On February 2, Deon van Staden, 51, and Babs Strecker, 73, were found murdered in their home in Bethanie, North West Province. They had been stabbed multiple times and beaten with a shovel. The perpetrators fled with van Staden's truck.

In April 2010 Eugene Terre'Blanche, leader of the extremist white right-wing Afrikaner Resistance Movement, was bludgeoned to death at his farm near Ventersdorp, North West Province. Two of Terre'Blanche's farm workers, Chris Mahlangu and a 15-year-old boy, later contacted police and claimed to have committed the crime. In April 2010 the two were charged with murder and the trial was ongoing at year's end.

The law requires employers with 50 or more employees to ensure that previously disadvantaged groups, legally defined as "Blacks" (including "Africans," "Coloured," and "Asians" and collectively constituting more than 90 percent of the population) are represented adequately at all levels of the workforce. Notwithstanding antidiscrimination legislation, however, the DOL's 2010-11 Employment Equity Analysis reported that Blacks remained underrepresented, particularly at the professional and managerial levels. According to the report, Blacks held only 13.4 percent of top management positions, 17.6 percent of senior management positions and approximately 31 percent of all professional positions. However, the report also indicated that Black representation in the skilled labor sector had increased to 51 percent from 39.2 percent in 2006. Black women remained by far the most disadvantaged group in number and quality of management or skilled jobs.

Indigenous People

The NGO Working Group of Indigenous Minorities in Southern Africa estimated there were 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 formal participation in government and the economy 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. 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 same-sex sexual 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-based 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 on average 10 new cases of lesbians being targeted for “corrective” rape, in which men raped lesbians to punish them for being lesbian and to attempt to change their sexual orientation.

A December HRW report highlighted violence and discrimination faced by lesbians and transgender men. The report documented cases of “secondary victimization” of lesbian victims, including cases where police harassed, ridiculed, and assaulted victims of homophobic violence when they reported crimes.

Noxolo Nogwaza, a 24-year-old lesbian activist, was raped and murdered on April 24 in Kwa-Thema township after an altercation at a bar. Her body was discovered in an alley after she was killed with a large rock. Evidence also indicated she had been repeatedly raped and stabbed with glass shards. A police investigation continued and no suspects had been identified by year’s end.

Four of the nine men originally accused of the 2006 murder in Cape Town of Zoliswa Nkonyana, a lesbian, were convicted on October 7. Sentencing was pending at year’s end.

In May the government formed a task force led by the Department of Justice and Constitutional Development to consult with human rights advocates and LGBT rights activists on how to build the government’s capacity to respond to homophobic violence. The task team includes representatives from several government departments as well as civil society organizations. The task force established a number of goals, including awareness training for law enforcement and victim service providers, statistical tracking, and possible new legislation.

Other Societal Violence or Discrimination

According to anecdotal reports, the social stigma associated with HIV/AIDS has declined as a result of the availability of life-saving ARV treatment. Civil society organizations such as the Treatment Action Campaign and government campaigns have contributed to the reduction of the discrimination against persons with HIV/AIDS.

The HIV/AIDS epidemic contributed to the number of households headed by children who supported themselves and often younger siblings. However, in its 2010-11 *Child Gauge Report*, the Children's Institute at the University of Cape Town stated there was little evidence of rapid growth in the orphan population due to HIV/AIDS. Child-headed households accounted for 0.5 percent of all households, or approximately 95,000 households in 2009, a decrease of 23,000 since 2002.

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 killings by police.

The trial of ANC municipal councilor Vusi Khoza and Sean Thabo Jacobs, Patricia Ballantyne, and Mzokuthoba Mngonyama for their roles in a mob attack that resulted in the 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. After a series of delays, the trial resumed in September and was ongoing at year's end.

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

Killings and other violent crimes against white farmers and, on occasion, their families, continued in rural areas.

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 March 21, Cynthia Lemaho (26) and Mupala Motopela (81) were stoned to death by a mob after being accused of practicing witchcraft in Bokgaga village outside Tzaneen, Limpopo. The two women were dragged from their home, stoned to death, and dragged back into the house, which was then burned. SAPS in the province responded swiftly and arrested 32 suspects, who appeared in the Naphuno Magistrate's Court on March 25. Two suspects, Leonard Mokhomole and Godfrey Senyolo were charged with murder and arson. They were scheduled to appear in court on January 31, 2012.

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.

For example, on February 6, the body of 74-year-old Tsatsawani Maria Maceke was found in her house. Her genitals, breasts, lips, and eyes had been removed. On February 9, SAPS were alerted to a discarded plastic bag containing body parts, which were believed to belong to Maceke. SAPS arrested five suspects, and they have been charged with murder in the Malamulele Magistrate's Court.

In January 2010 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) named Jan Maleka also was arrested, but then released for lack of evidence. Later, one male suspect, Brian Mangwale, was put on trial for murder. On November 28, Judge Billy Mothle sentenced Mangwale to six years' imprisonment for kidnapping and life imprisonment for murder. Speaking to the crowd outside the court after sentencing was passed, the minister for women, children, and people with disabilities, Lulu Xingwana, welcomed the judge's sentencing but cautioned listeners that Mangwale's accomplices were still at large. Xingwana urged community members to work with police in order to apprehend other suspects.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

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. The law allows unions to conduct their activities without interference and provides for the right to strike;

however, workers considered to be providing essential services were prohibited from striking, and employers are prohibited from locking out essential service providers. The government characterizes essential services as (a) a service, the interruption of which endangers the life, personal safety, or health of the whole or part of the population, (b) the parliamentary service, or (c) members of SAPS. The law protects collective bargaining and prohibits employers from discriminating against employees or applicants due to past, present, or potential union membership or participation in lawful union activities. The law provides for the automatic reinstatement of workers dismissed unfairly for conducting union activities. The law provides a code of good practices for dismissals, which includes procedures for determining the “substantive fairness” and “procedural fairness” of a given dismissal. The constitution includes all groups of workers, including foreign residents, illegal or legal, in its worker protections. Labor laws also extend to farm workers. The National Defense Bill states that military unions cannot affiliate with any existing union federation and do not have the right to strike.

The government effectively protected freedom of association and the right to collective bargaining, and workers routinely exercised these rights. A labor court and labor appeals court effectively enforced the right of association. The Food and Allied Workers’ Union (FAWU) alleged that in isolated instances individual employees on small farms in the Western Cape and Northwest provinces were fired for union organizing activities. No actions were brought against employers in response to these firings. Worker organizations were independent of the government and political parties. There were no known cases of government interference in union activities.

The right of workers to form and join unions was effectively enforced. No violations were reported.

Workers frequently exercised their right to strike. Although workers considered to be providing essential services were prohibited from striking, strikes occurred throughout the year involving these individuals. 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 sometimes marked by violence. Police in some instances 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 workers who were blocking entrances to public facilities.

In December three FAWU officials who intervened in an unprotected strike at a poultry farm in Stellenbosch, Western Cape, were attacked by private security guards, who sprayed them with pepper spray and kicked them in the face while they were held to the ground. The victims claimed that although they were attempting to mediate the dispute, they were attacked once the guards recognized them as union officials, and that the guards' employer did not compel the perpetrators of the attack to report to the police as instructed.

The Labor Relations Act was not consistently enforced. The Congress of South African Trade Unions (COSATU) alleged that employers frequently used temporary employment services, known locally as labor brokers, to circumvent the tenets of the Labor Relations Act protecting the rights of workers to bargain collectively. There were no lawsuits filed for antiunion discrimination during the year.

COSATU and leading agricultural NGOs complained that labor conditions on farms remained harsh, including underpayment of wages and poor living conditions. Union officials stated that unionization of farm workers remained difficult. According to HRW, the government did not enforce labor laws fully in the agricultural sector.

HRW cited cases in Western Cape where employers denied farm workers in the fruit and wine sector their constitutional right to unionize.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor. However, the government did not consistently and effectively enforce the law. There were reports of isolated cases of forced labor involving children (see section 7.c.) and women, which occurred primarily in domestic and agricultural labor. Girls were subjected to domestic servitude and prostitution, and boys were forced to work in street vending, food service, begging, criminal activities, and agriculture. Women and girls from Thailand, Cambodia, the Congo, India, Russia, Ukraine, China, Taiwan, Mozambique, and Zimbabwe are recruited for legitimate work in South Africa, then subjected to prostitution, domestic servitude, and forced labor in the service sector. Migrant men from China and Taiwan are forced to work in mobile sweatshop factories in Chinese urban enclaves in South Africa. Young men and

boys from Mozambique, Malawi, and Zimbabwe voluntarily migrate to South Africa for farm work. In some cases they labor for months with little or no pay in conditions of involuntary servitude before employers have them arrested and deported as illegal migrants.

The DOL worked with the National Prosecuting Authority (NPA) Child Unit on issues related to child labor and child trafficking, and during the year attended three court cases related to child labor from the steel and iron sector in the Vaal area. Each case takes 12 months to finalize at a minimum. The process involved coordination with SAPS, the Department of Social Development, the Department of Home Affairs, and embassies where necessary.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

c. Prohibition of Child Labor and Minimum Age for Employment

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 well-being; education; physical or mental health; or spiritual, moral, or social development. Underage children were allowed to work in the performing arts if their employer received Department of Labor permission and agreed to follow specific guidelines. Violation of laws regulating child employment is punishable by a maximum prison sentence of three years or a fine of 15,000 rand (\$1,856).

The government generally enforced child labor laws in the formal sector of the economy, which was monitored by strong and well-organized unions.

Enforcement of child labor laws in the informal and agricultural sectors was ineffective. According to the DOL, during the year it increased the number of labor inspectors from approximately 650 to 986 inspectors, close to its target of 1,000 inspectors. Exact figures on inspections were unavailable. 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.

An important factor in reducing child labor was the government's 250 rand (\$31) per month Child Support Grant to primary caregivers of children under the age of 17. The age was scheduled to be increased to 18 in January 2012. There were no

other government efforts to reduce child labor, and penalties were not adequate to deter child labor.

Although statistical information is lacking, child labor was reported in the informal sector and extralegal market, particularly in the agriculture sector, especially the former homeland areas, as well as in domestic work. The Children's Institute at the University of Cape Town reported periodic difficulty educating rural families about the rights of children enshrined in the law, given linguistic and cultural barriers.

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.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/programs/ocft/tda.htm.

d. Acceptable Conditions of Work

There was no legally mandated national minimum wage, although the law gives the DOL authority to set wages by sector. There are wage standards for multiple economic sectors including the retail sector, farm laborers, domestic workers, and taxi (minibus) drivers. The minimum wage for farm workers was approximately 6.31 rand (\$0.78) per hour. The minimum hourly wages for domestic workers employed more than 27 hours per week ranged from 4.85 rand (\$0.60) to 7.06 rand (\$0.87).

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. A ministerial determination exempted businesses employing fewer than 10 persons from certain provisions of the law concerning overtime and leave. Farmers and other employers could apply for variances from the law by showing good cause. The rights of foreigners and immigrant workers are legally protected under the Labor Reform Act.

The government set occupational safety and health (OSH) standards through the Department of Minerals and Energy for the mining industry and through the DOL for all other 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.

Employers are subject to heavy fines or imprisonment for the serious injury, illness, or death of employees due to unsafe mine conditions, and mine inspectors are allowed 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.

Depending on the province, compliance with the minimum wage rate generally ranged from 65 to 90 percent, according to 2007 DOL figures. Work hour and OSH standards were effectively enforced in the formal sector, and labor unions and labor courts focused on compliance. The number of labor inspectors was not sufficient to fully document nonconformance with safety regulations and labor laws. Labor inspectors on farms were inadequate. In Western Cape Province, for example, 107 government labor inspectors had responsibility for more than 6,000 farms.

While labor conditions improved on large commercial farms, they remained harsh, especially for workers on small holdings, most of whom were black. Many owners of small farms did not measure working hours accurately. Twelve-hour work days were common during harvest time, and few farmers provided overtime benefits.

Among the estimated 121,000 farm workers in the Western Cape, HRW documented widespread examples of exploitative work conditions and other human rights abuses. For example, one elderly couple was forced to live in a former outhouse for years, and another was forced to live in a pigsty without electricity, water, or protection from the elements for 10 years. Workers using

pesticides were not provided with adequate safety gear. Employers routinely denied requests for sick and maternity leave, in contravention of the law.