



Freedom in the World 2013 - South Africa

Publisher [Freedom House](#)

Publication Date 9 May 2013

Cite as Freedom House, *Freedom in the World 2013 - South Africa*, 9 May 2013, available at: <http://www.refworld.org/docid/5194a2ee5dc.html> [accessed 2 January 2014]

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2013 Scores

Status: Free
Freedom Rating: 2.0
Civil Liberties: 2
Political Rights: 2

Overview

Following a heated leadership battle within the ruling African National Congress (ANC) and a related increase in political violence, President Jacob Zuma was reelected as president of the ruling party in December 2012, putting him in prime position to win a second term as state president in 2014. Also during the year, South Africa was rocked by a wave of violent strikes in the mining, agricultural, and transport sectors that resulted in over 50 deaths, including the August killing of 34 mineworkers by police near Marikana.

In 1910, the Union of South Africa was created as a self-governing dominion of the British Empire. The Afrikaner-dominated National Party (NP) came to power in 1948 on a platform of institutionalized racial separation, or "apartheid," designed to maintain white minority rule. Facing growing British and regional pressure to end apartheid, South Africa declared formal independence in 1961 and withdrew from the Commonwealth. The NP went on to govern South Africa under the apartheid system for 33 years. Mounting domestic and international pressure prompted President F. W. de Klerk to legalize the antiapartheid African National Congress (ANC) and release ANC leader Nelson Mandela from prison in 1990. Between then and the first multiracial elections in 1994, almost all apartheid-related legislation was abolished, and an interim constitution was negotiated and enacted.

The ANC won the 1994 elections in a landslide, and Mandela was elected president by the National Assembly, the lower house of Parliament. As required by the interim constitution, a national unity government was formed, including the ANC, the NP, and the Zulu-nationalist Inkatha Freedom Party (IFP). A Constitutional Assembly produced a permanent constitution, which was signed into law in 1996. The ANC claimed almost two-thirds of the vote in 1999 elections, and Thabo Mbeki, Mandela's successor as head of the ANC, won the presidency. In 2004 balloting, the ANC won nearly 70 percent of the national vote and majorities in seven of nine provincial legislatures. Mbeki easily secured a second five-year term.

In late 2007, former deputy president Jacob Zuma defeated Mbeki in a heated battle for the ANC presidency; Mbeki had sacked Zuma in 2005 after he was implicated in the corruption trial of his financial adviser, Schabir Shaik. Relations between the ANC and Mbeki's government were strained throughout 2008, and in September – after the remaining corruption charges against Zuma were set aside due to prosecutorial misconduct – the ANC's national executive committee forced Mbeki to resign as state president. The party nominated its deputy president, Kgalema Motlanthe, to serve as interim state president, and he was quickly confirmed by the National Assembly. After Mbeki's ouster, recently resigned defense minister Mosiuoa "Terror" Lekota quit the ANC and formed the opposition Congress of the People (COPE) party; he was joined by a series of ANC leaders, nearly all of them Mbeki allies.

Despite new competition from COPE, the ANC won another sweeping victory in the April 2009 elections, taking 65.9 percent of the national vote, 264 seats in the 400-seat National Assembly, and clear majorities in eight of nine provinces. The Democratic Alliance (DA) remained the largest opposition party, winning 67 National Assembly seats and outright control of Western Cape Province. COPE won 30 seats, and the IFP took 18. Zuma was easily elected state president by the National Assembly the following month, winning 277 of the 400 votes.

The ANC won 62 percent of the vote in May 2011 municipal elections, while the DA took just under 24 percent, including outright control of Cape Town and 11 of 24 municipalities in the Western Cape. The ANC won the vast majority of municipalities in every other province. The IFP secured just over 3.5 percent of the vote, and COPE took just over 2 percent.

Another leadership battle within the ANC – this time pitting Zuma against backers of Deputy President Motlanthe – dominated politics in 2012. Although Zuma defeated Motlanthe decisively at the party's December conference at Mangaung, the run-up to the gathering was marked by significant political violence and allegations of fraud and vote buying. Court challenges by ANC members from Free State and North West Provinces disqualified some Free State delegates from voting. The prominent ANC figure and business tycoon Cyril Ramaphosa, a former labor leader, was elected deputy president of the party, replacing Motlanthe, who remained deputy president of the republic at year's end.

Also during the year, police killed 34 striking mineworkers during a violent confrontation near Marikana in August, marking the worst incident of state violence in the postapartheid era. Earlier clashes between rival unions had left 10 dead, and subsequent violence during a spate of wildcat strikes resulted in at least another six fatalities and scores of injuries. A government-sponsored inquiry into the violence at Marikana was pending at year's end.

Political Rights and Civil Liberties

South Africa is an electoral democracy. Elections for the 400-seat National Assembly, the lower house of the bicameral Parliament, are determined by party-list proportional representation. The 90 members of the upper chamber, the National Council of Provinces (NCOP), are selected by the provincial legislatures. The National Assembly elects the president to serve concurrently with its five-year term, and presidents can serve a maximum of two terms.

The ANC, which is part of a tripartite governing alliance with the Congress of South African Trade Unions (COSATU) and the South African Communist Party, dominates the political landscape. The DA is the leading opposition party, followed by COPE and the IFP. Factionalism within the ANC and COSATU, as well as tensions between the alliance partners, has been a hallmark of South African politics in recent years and was especially pronounced in advance of the ANC's December 2012 conference. Political violence marked ANC nomination contests in North West, Mpumalanga, and most severely in Kwa-Zulu Natal, where at least 38 ANC members were killed in 2011 and 2012, along with at least 13 other political killings in that province. Meanwhile, allegations of "ghost voters" and vote buying delayed ANC nominations at

conferences in Limpopo, North West, and Western Cape. In December, the Constitutional Court (CC) ruled the election of the ANC's Free State executive committee null and void, disqualifying those delegates from voting at the national conference.

Several agencies are tasked with combating corruption, but enforcement is inadequate. Public servants regularly fail to declare their business interests as required by law, and the ANC has been criticized for charging fees to business leaders for access to top government officials. The tender process for public contracts is often politically driven and opaque, while the delivery of government services is undermined by maladministration. In an especially notable example from 2012, textbooks destined for schoolchildren in Limpopo were dumped as part of a wide-ranging corruption scandal. President Jacob Zuma, who was charged with corruption three times between 2005 and 2009 in connection with the so-called "arms deal" scandal, continued to face scrutiny in 2012 over past charges and his use of state funds to build a homestead near Nkandla. A Zuma-appointed commission to reinvestigate the arms-deal scandal ran into a number of obstacles in 2012, including accusations of bias and corruption against the panel's head, Judge Willie Seriti. South Africa was ranked 69 out of 176 countries surveyed in Transparency International's 2012 Corruption Perceptions Index.

Freedoms of expression and the press are protected in the constitution and generally respected in practice, though press freedom has deteriorated in recent years. A number of private newspapers and magazines are sharply critical of powerful figures and institutions. Most South Africans receive the news via radio outlets, a majority of which are controlled by the South African Broadcasting Corporation (SABC). The SABC also dominates the television market, but two commercial stations are expanding their reach. Internet access is unrestricted and growing rapidly, though many South Africans cannot afford the service fee.

The government is highly sensitive to media criticism and has increasingly encroached on the editorial independence of the SABC. Some government critics have been barred from SABC programs, and a number of documentaries and specials produced by the broadcaster have been canceled due to political considerations. In December 2012, editors at the SABC radio station Metro FM quashed an interview about the ANC national conference with three political journalists because no ANC representative was present. The government has also recently enacted or proposed several potentially restrictive laws. In September 2012, the CC found sections of the 2009 Film and Publications Amendment Act that require prepublication classification of material dealing with "sexual conduct" to be unconstitutional; the act obliged any publisher not recognized by the press ombudsman to submit potentially pornographic or violence-inciting materials to a government board for approval.

The National Assembly passed the controversial Protection of Information Bill in 2011, allowing state agencies to classify a wide range of information as in the "national interest" and thus subject to significant restrictions on publication. Vociferous objections from civic groups and opposition parties forced the government to amend the legislation. The NCOP passed a revised version in November 2012 that removed a clause criminalizing the disclosure of information about state security, though the bill still did not allow a "public interest" defense for violations. The amended measure awaited review by the lower house at year's end.

In recent years, government officials have used gag orders to block reporting on alleged corruption, and journalists are occasionally subject to harassment and legal action. Three *Mail & Guardian* reporters are still facing criminal charges for their November 2011 investigation into allegedly corrupt dealings by Zuma's spokesman, Mac Maharaj, which was censored by legal order. Journalists' coverage of wildcat mining strikes in August and September 2012 were occasionally inhibited by security forces.

Freedom of religion and academic freedom are constitutionally guaranteed and actively protected by the government.

Freedoms of association and peaceful assembly are secured by the constitution. South Africa hosts a vibrant civil society. Nongovernmental organizations (NGOs) can register and operate freely, and lawmakers regularly accept input from NGOs on pending legislation. Freedom of assembly is generally respected, and South Africa has a vibrant protest culture; demonstrators must notify police ahead of time but are rarely prohibited from gathering. In recent years, however, a growing number of community protests over public-service delivery have turned violent and been forcibly dispersed by police. In September 2012, the government deployed security forces and banned all demonstrations in the Marikana and Rustenberg areas to contain a spate of violent marches and wildcat strikes following the previous month's fatal confrontation between strikers and police at a Marikana mine operated by the London-based firm Lonmin. In the process, some nonviolent protests were forcibly broken up by police. Police also conducted a number of raids in nearby informal settlements to confiscate weapons from strikers and their supporters.

South Africans are free to form, join, and participate in independent trade unions, and the country's labor laws offer unionized workers a litany of protections; contract workers and those in the informal sector enjoy fewer safeguards. COSATU, the nation's largest trade union federation, claims about two million members. Strike activity is very common, and unionized workers often secure above-inflation wage increases. Strikes are increasingly violent; the wildcat strikes in the mining sector during 2012 resulted in at least 50 deaths and massive damage to the economy. In September, the South African Transport and Allied Workers Union (SATWU) and other unions staged a legal three-week strike that turned violent, leaving one worker dead and several injured. In November, wildcat strikes by vineyard workers in the Western Cape resulted in one death and the temporary deployment of police to the de Doorns area.

Judicial independence is guaranteed by the constitution, and the courts – particularly the CC and the Supreme Court – operate with substantial autonomy. Nevertheless, judicial and prosecutorial independence has come under pressure in recent years amid the Zuma corruption cases, prompting several instances of judicial and political misconduct. In a positive step for judicial independence, Parliament in September 2012 approved a 17th amendment to the constitution, making the CC the apex court and the Supreme Court of Appeal a general appellate court. An accompanying Superior Court Bill made the CC chief justice – and not the justice minister – South Africa's chief judicial authority. In October, the CC confirmed lower court rulings that Zuma's appointment of an ally, Menzi Simelane, as head of the National Prosecuting Authority (NPA) was invalid because Simelane gave dishonest testimony to a commission investigating former NPA head Vusi Pikoli.

Judicial staff and resource shortages undermine defendants' procedural rights, including the rights to a timely trial and state-funded legal counsel. Pretrial detainees, who make up 30 percent of the prison population, wait an average of three months before trial, and some wait up to two years. Lower courts have proven more susceptible to corruption than the higher panels, and there have been reports of physical intimidation of judges and magistrates.

Despite constitutional prohibitions and government countermeasures, there have been many reports of police torture and excessive force during arrest, interrogation, and detention. Prisons often feature overcrowding, inadequate health care, and abuse of inmates by staff or other prisoners; both HIV/AIDS and tuberculosis are problems. The Judicial Inspectorate for Correctional Services (JICS) investigates prisoners' complaints but has limited resources and capacity. A October 2012 JICS report found that 17 percent of prison assaults are committed by guards, and that of 71 complaints of abuse in 2011-12, only one resulted in disciplinary action. The government paid out R1.3 billion (\$161 million) to compensate prisoners and families for assaults and rape during the report's coverage period, but prevention programs are almost nonexistent.

South Africa has one of the highest rates of violent crime in the world. As in 2011, however, rates of murder, attempted murder, armed robbery, and carjacking declined significantly in 2012. The

Zuma administration has given the police more latitude to use force against criminals. Mostly due to police incapacity, vigilantism is a problem.

The constitution prohibits discrimination based on a range of categories, including race, sexual orientation, and culture. State bodies such as the South African Human Rights Commission and the Office of the Public Protector are empowered to investigate and prosecute cases of discrimination. Affirmative-action legislation has benefited previously disadvantaged groups (defined as "Africans," "Coloureds," "Asians," and as of 2008, "Chinese") in public and private employment as well as in education. Racial imbalances in the workforce persist, and a majority of the country's business assets remain white owned. The government's Black Economic Empowerment program aims to increase the black stake in the economy, mostly by establishing race-based ownership thresholds for government tenders and licenses.

Increased illegal immigration, particularly from Zimbabwe, Mozambique, and Somalia, has spurred xenophobic violence by police and vigilantes. Sporadic attacks occurred in 2012, often tied to wider service-delivery protests in which immigrants were scapegoated.

The number of foreign nationals in South Africa is contested, with estimates ranging from two to seven million, including between one and three million Zimbabweans. Although the country had a backlog of over 400,000 asylum applications by the end of 2012, the government closed three of seven refugee reception offices during the year. The 2011 Immigration Amendment Act reduced the period asylum seekers have to make a formal application at refugee reception centers after entering the country, from 14 days to 5 days; also that year, the government resumed deportations of Zimbabwean migrants, which had been halted in 2009. About 40,000 Zimbabweans were deported in 2012, including 600 unaccompanied minors. Conditions at migrant detention centers are poor, and deportees are subject to physical and sexual abuse by police and immigration officers.

Separately, the nomadic Khoikhoi and Khomani San peoples, indigenous to South Africa, suffer from social and legal discrimination.

South Africa has one of the world's most liberal legal environments for LGBT (lesbian, gay, bisexual, and transgender) people. The 2006 Civil Unions Act legalized same-sex marriage, and a 2002 Constitutional Court ruling held that gay couples should be allowed to adopt children. Nevertheless, societal bias remains strong. LGBT people are routinely subject to physical attacks, including an increase in instances of so-called corrective rape, in which lesbians are raped by men who believe this can change the victim's sexual orientation.

The state generally protects citizens from arbitrary deprivation of property. However, some 80 percent of farmland is owned by white South Africans, who make up 14 percent of the population. As a result, thousands of black and colored farmworkers suffer from insecure tenure rights; illegal squatting on white-owned farms is a serious problem, as are attacks on white owners. The government has vowed to transfer 30 percent of land to black owners by 2014; however, only about 6 percent of land had been transferred by the end of 2011, and about 90 percent of the redistributed farms had failed or were failing, according to the Ministry for Land Reform and Rural Development. In 2012, the ANC resolved to replace the government's "willing buyer, willing seller" approach to land reform with a more aggressive "just and equitable" approach, although the details of transfer and compensation under such a framework have not been articulated. The government will complete a long-awaited audit of land ownership in early 2013.

Equal rights for women are guaranteed by the constitution and promoted by the Commission on Gender Equality. While the constitution allows the option and practice of customary law, it does not allow such law to supersede women's rights as citizens. Nevertheless, women suffer de facto discrimination with regard to marriage (including forced marriage), divorce, inheritance, and property rights, particularly in rural areas. A draft Traditional Courts Bill, set for a vote in

Parliament in 2013, would strengthen the legal authority of traditional leaders, sparking concerns among civic groups about women's rights. Despite a robust legal framework criminalizing domestic violence and rape, both are extremely grave problems. South Africa has one of the world's highest rates of sexual abuse, although the reported rate of "sexual offenses" declined by 3.7 percent in 2012, and rape declined by 1.9 percent. About 60,000 women reported having been raped in 2012, with many more cases likely going unreported. Women are also subject to sexual harassment and wage discrimination in the workplace, and are not well represented in top management positions. Women are better represented in government, holding some 42 percent of the seats in the National Assembly and leading five of nine provincial governments. The main opposition DA party is led by Helen Zille, the premier of Western Cape Province.

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