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Head of state and government: **Jacob G. Zuma**

Police use of excessive force against protesters, suspected extrajudicial executions and torture triggered national concern and some steps were taken towards accountability. Discrimination and targeted violence against asylum-seekers and refugees and barriers to accessing the asylum system increased. Progress was slow in addressing systematic hate-motivated violence based on victims' sexual orientation or gender identity. Despite continued expansion in access to treatment and care for people living with HIV, HIV-related infections remained the main cause of maternal deaths. Human rights defenders remained at risk of harassment and violence.

Background

President Zuma was re-elected as President of the African National Congress (ANC) in December. The leadership elections followed months of tension and incidents of violence between contending factions within the party. Apparent political interference, rivalries and corruption led to increased instability at senior levels within the police and crime intelligence, impacting on the integrity and efficiency of services.

Significant court rulings upheld human rights and protected the independence of the prosecution service.

There were widespread strikes in the mining and farming sectors and protests in poor urban communities over local government corruption, failures in education and other services and working conditions. In October, the government released national census data, which revealed continuing significant racial disparities in household incomes and rates of employment.

South Africa ratified the International Covenant on Economic, Social and Cultural Rights.

Deaths in custody and extrajudicial executions

In April, the Independent Police Investigative Directorate (IPID) Act became operational, making the police liable to criminal charges for failure to co-operate with its investigations. The IPID informed parliament that it had received 720 new cases for investigation of suspicious deaths in custody or in other policing contexts from April 2011 to March 2012.

- Also in April, a Burundian asylum-seeker, Fistos Ndayishimiye, died while being interrogated by police at his home in KwaZulu-Natal province. Witnesses prevented by police from entering the house reported hearing him screaming for some time. He suffered multiple blunt force injuries to the head and body and severe internal injuries. An investigation was initiated by IPID but had not concluded by year's end.
- In May, after numerous delays and obstructions, 12 police officers from the former Bellville South Organized Crime Unit were charged in court with the abduction and murder of Sidwell Mkwambi in 2009 and the abduction and alleged torture of Siyabulela Njova, who had been arrested with him. Sidwell Mkwambi's body showed multiple blunt force injuries to his head and body, which were inconsistent with the police account of how he died.
- In June, members of the Cato Manor Organized Crime Unit appeared in Durban magistrate's court, facing a range of charges. After further arrests and court appearances, a total of 30 officers were facing trial at year's end on 116 counts, including racketeering, murder, assault with intent to cause grievous bodily harm and unlawful possession of firearms and ammunition. The offences covered a four-year period from 2008. All of the accused were released on bail pending trial. Families of victims expressed continued fear for their own safety. The arrests resulted from new investigations by the IPID and the police "Hawks" unit.

Excessive use of force

On 16 August, the policing authorities deployed units armed with assault rifles and live ammunition to crush a mine workers' strike at the LONMIN Marikana platinum mine in North West Province. Sixteen miners died at the scene and 14 others at another location where they had fled to escape police fire. There were indications that the majority had been shot while attempting to flee or surrender. Four other miners died later that day from their injuries. The striking miners had been involved in a wage dispute with LONMIN. The scale and visibility of the killings, as well as the growing unrest across the mining sector, caused a national crisis.

The National Commissioner of Police stated at a press conference on 17 August that the police actions were justified on the grounds of self-defence. Nevertheless, President Zuma ordered a judicial commission of inquiry into the circumstances of the deaths and those of 10 other people in the preceding week, including two LONMIN security guards and two police officers.

The start of the Commission, chaired by retired judge Ian Farlam, was delayed by the late issuing of regulations and critical problems affecting the Commission's integrity and accessibility; these included difficulties in securing support for the participation of the families of those killed and funding for legal representation to ensure witnesses were supported and measures taken for their protection. In October, Daluvuyo Bongo, a witness from the National Union of Mineworkers, was shot dead after assisting Commission officials; four witnesses assisting lawyers representing the Association of Mineworkers and Construction Union and injured miners were allegedly hooded, assaulted and detained after leaving the Commission venue. The Legal Aid Board denied a request for funding to ensure representation for scores of miners injured by police on 16 August and others arrested and allegedly tortured in the aftermath of the shootings.

Before the Commission's closure in December, and its resumption in January, it began to hear evidence on the police actions on and prior to 16 August. Police evidence did not clarify why officers had advanced the operation to disarm and disperse the miners to a stage which relied on

police units armed only with lethal force. In addition, a police witness tasked with investigating the scene of the 16 August shootings told the Commission that the scene had been altered; making it impossible for him and other investigators to link any of the deceased miners with weapons they were allegedly carrying before being shot.

- In October, the South African Human Rights Commission issued a report criticizing the police for using excessive force, which led to the death of Andries Tatane during a community protest in Ficksburg in April 2011. He had been beaten with batons and shot with rubber bullets at close range despite posing no threat to the police or members of the public. In December, the trial of seven police officers charged with Andries Tatane's murder was postponed until March 2013.

Legal, constitutional or institutional developments

In November, the Parliamentary Portfolio Committee on Justice and Constitutional Development adopted amendments to the Prevention and Combating of Torture of Persons Bill for full parliamentary debate in 2013. This followed public hearings on the Bill in September. Legal, human rights and other civil society organizations, as well as Amnesty International, gave evidence and made recommendations to strengthen the draft legislation. While some were accepted, the provisions for reparations for victims of torture fell short of international standards.

In May, the High Court set aside as unlawful the decision by the authorities not to investigate allegations of torture by named perpetrators in Zimbabwe. The Southern African Litigation Centre and the Zimbabwe Exiles Forum brought the application in relation to South Africa's obligations under the Rome Statute of the International Criminal Court. The High Court ordered the authorities to undertake the necessary investigations.

In July, the Constitutional Court rejected the government's appeal against an earlier High Court judgement, which had declared unlawful its attempts to transfer two Botswanan nationals to Botswana without prior assurances that the death penalty would not be applied. Amnesty International intervened as an *amicus curiae*, or friend of the court, in the Constitutional Court hearing.

Refugees and asylum-seekers

Far-reaching changes to the asylum system continued, with an increasing impact on non-discriminatory access to asylum determination procedures. Documents submitted by the government during court hearings indicated an intention to relocate services to the borders.

The partial or full closure of services at refugee reception offices in Port Elizabeth and Cape Town, as well as the closure of the Johannesburg office in 2011, had an increasing impact on asylum-seekers' and recognized refugees' ability to lodge applications, renew their temporary permits or extend refugee status documents. Testimonies by those affected, in particular the poorest and those with families, showed that they were at risk of fines, detention and direct or constructive refoulement.

Challenges to these practices, brought in the High Courts by refugee associations, service providers and human rights lawyers in Port Elizabeth and Cape Town, led to rulings against the Department of Home Affairs in February, May, July and August. Despite this, monitors observed that services continued to be denied at reception offices.

The ANC, at its National Policy Conference in June, adopted recommendations on immigration, including establishing "centres [camps] for asylum-seekers". In December, participants at the ANC's leadership election conference reportedly accepted the recommendations in a resolution on "peace and stability".

During the year, numerous incidents of looting and destruction of shops and displacement of recognized refugees, asylum-seekers and migrants were documented in most of the nine provinces. In one of the worst incidents, beginning in late June, large-scale property destruction occurred in Free State province with almost 700 mainly Ethiopian refugees and asylum-seekers displaced following the looting of their shops. In this and in many other incidents, the police response was slow and in some cases witnesses reported that police were complicit in the violence.

In Limpopo province, police forcibly closed at least 600 small businesses run by asylum-seekers and refugees, as part of operation "Hard Stick". The police raids took place without warning, were indiscriminate and also involved the seizure of trading stock. Some asylum-seekers and refugees were subjected to xenophobic verbal abuse, detention and charged or fined for running their businesses. The resulting loss of livelihood and homes increased their vulnerability to other abuses. In September, 30 displaced Ethiopians were forced to flee a house they had been sheltering in after it was petrol-bombed.

Unlawful, prolonged detentions of undocumented migrants as well as individuals in need of international protection remained a concern. In November, a court application by the South African Human Rights Commission and the NGO, People Against Suffering, Suppression, Oppression and Poverty, prompted the authorities to release 37 immigration detainees who had been held on average for 233 days without a court warrant.

Rights of lesbian, gay, bisexual, transgender and intersex people

Hate-motivated violence, in particular against lesbian women, continued to cause public concern and fear. Between June and November at least seven people, five of them lesbian women, were murdered in what appeared to be targeted attacks based on their sexual orientation or gender identity.

The government and civil society "Task Team", set up in 2011 to prevent further incidents, made slow progress. In September, South Africa's human rights record was assessed under the UN Universal Periodic Review; the government confirmed that a "policy framework on combating hate crime, hate speech and unfair discrimination" was at an "advanced stage of finalization".

In December, Justice Ministry officials publicly condemned hate crimes and gender-based violence as an assault on the right to life and human dignity and acknowledged the "dire need" for public education to combat prejudice based on sexual or gender identity.

Violence against women and children

High levels of sexual violence against women persisted, with police reporting 48,003 cases of rape from April 2011 to March 2012. In the same period, of the 64,514 recorded sexual offences, including rape, women were victims in 40.1% and children in 48.5% of cases. There were renewed calls for the revival of specialized sexual offences courts to address impunity for these crimes.

Women's rights, HIV and maternal health

Access to antiretroviral medication for people living with HIV continued to expand, with two million people on treatment by October. High levels of HIV-infection among pregnant women remained a concern, with KwaZulu-Natal province recording an infection rate of 37.4% among women attending antenatal clinics.

In August, a Ministry of Health-supported report on trends in maternal mortality noted that the deaths of 40.5% of the 4,867 women who died during pregnancy or within 42 days of delivery

between 2008 and 2010 were due to non-pregnancy-related infections, in particular HIV. Delays in access to antenatal care and antiretroviral treatment were contributing factors.

Human rights defenders

Harassment of human rights defenders and improper pressure on institutions, including the Office of the Public Protector and senior prosecutors, continued.

- In January, Ayanda Kota, chairperson of the Unemployed People's Movement, was assaulted by police and unlawfully detained at Grahamstown police station. He had gone to the police station voluntarily following a complaint made against him. Charges against him, including of resisting arrest, were later withdrawn.
- In July, an environmental rights activist and survivor of torture, Kevin Kunene, was shot dead 10 days after he and three others lodged a complaint of corruption with the Public Protector against the KwaMbonambi Tribal Authority. No suspects had been brought to trial by the end of the year.
- In October, Social Justice Coalition members Angy Peter and her partner Isaac Mbadu were arrested on a murder charge. Prior to their arrest, they had lodged a complaint against a senior police officer for corruption. Angy Peter was also assisting a judicial Commission of Inquiry, ordered by the Premier of the Western Cape, into alleged service failures by police. They were released from remand custody before the end of the year but continued to experience harassment. In November, the National Commissioner of Police instituted legal proceedings to halt the inquiry.

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