



World Report 2013 - South Africa

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The killing of 34 miners at the Lonmin Platinum Mine in Marikana, North West Province, on August 16, 2012, shocked South Africans and highlighted increasing concerns over police brutality and underlying grievances over the government's failure to fulfill basic economic and social rights.

Despite South Africa's strong constitutional protections for human rights and its relative success at providing basic services, the government is struggling to meet public demands for better realization of economic and social rights. In addition, financial mismanagement, corruption, and concerns about the capacity of leadership and administration – especially at the local government level – have contributed to further delaying the progressive realization of economic and social rights.

Concerns that the ruling African National Congress (ANC) is increasingly encroaching on civil and political rights are exemplified by the Protection of State Information Bill which the National Assembly passed in 2011, but has not yet become law. Debates over its constitutionality regarding its impact on freedom of expression continued in 2012. At this writing, the Traditional Courts Bill, which parliament was considering, may have negative implications for vulnerable groups such as women, children, and lesbian, gay, bisexual, and transgender (LGBT) persons to access justice and other rights.

The Killing of Mine Workers

The tragedy at Lonmin Platinum Mine, which resulted in the death of 34 miners when police opened fire on illegal strikers, is one of the worst death tolls in violent protests since 1994. The tragedy highlighted the poverty and the grievances of many in the mining industry, the historical bastion of South Africa's migrant labor system.

The government acted swiftly to respond to public outcry and established a judicial commission of inquiry to ascertain the facts and investigate the conduct of the mining company, the trade unions, and the police. The inquiry will investigate the nature, extent, and application of any standing orders by police that gave rise to the tragedy, as well as whether the use of force was reasonable and justified in the circumstances.

Freedom of Expression

The controversial Protection of State Information Bill aims to regulate the classification, protection, and dissemination of state information, weighing state interests against the importance of freedom of expression. The National Assembly passed the bill in November 2011 and amended it in 2012 in response to criticism from civil society organizations and state institutions, such as the South African Human Rights Commission (SAHRC). Following the amendment, section 49 of the bill was expunged. It had criminalized the disclosure of information relating to any state security matter, even if those responsible were unaware that the information was a matter of state security. Section 43, which pertains to the publication of classified information, was also amended to offer whistleblowers more protection.

However, some concerns remain, such as the bill's relation to the Promotion of Access to Information Act (PAIA), which is based on the constitutional right of access to information held by the state and private bodies. Early versions of the new law gave it precedence over the PAIA. And while amendments in 2012 deleted the clause that pertained to the bill superseding the PAIA, it remains unclear whether it trumps the right of access to information.

The amendments improved the balance in the law between the importance of the right to freedom of expression and the state's interest in classifying information. Given the bill's contentious nature, it is almost certain that the government itself will itself take the bill to the constitutional court for certification before it is signed into law. If it does not do so, civil society organizations will challenge the bill before the constitutional court.

Women's Rights

Section 9 of South Africa's Constitution provides strong protection for women, prohibiting discrimination on the grounds of gender, sex, pregnancy, sexual orientation, and marital status. In addition to legislation such as the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 and the establishment of the Commission for Gender Equality, the government in 2010 created the Department of Women, Children and People with Disabilities. This illustrated the government's commitment to promote and protect the rights of women and matters related to women's equality and empowerment.

However, the reintroduction of the Traditional Courts Bill in 2012, after the government withdrew it in 2008 following widespread criticism, may have dire consequences for the rights of women.

The bill aims to affirm the traditional justice system based on restorative justice and reconciliation. As such, it emphasizes the position of traditional leaders in the administration of justice, and effectively centralizes their power as the arbiters of customary law. As it stood at time of writing, the bill will give traditional leaders the authority to enforce controversial versions of customary law such as the practice of *ukutwala* (forced marriage), adjudicate compliance, and enforce penalties. The penalties are of particular concern as section 10 of the bill imposes sanctions including fines, forced labor, and the withdrawal of customary benefits, such as the enjoyment of communal land.

Section 4 provides for the minister of justice to appoint traditional leaders who are recognized in the Traditional Leadership and Governance Framework Act as presiding officers of traditional courts. Most traditional leaders are men, and the bill does not assign women any role in the courts. A significant concern with the traditional justice system is its entrenchment of patriarchy, as well as discriminatory social and economic practices, such as access to land, inheritance, and forced marriage.

South Africa was a leading advocate for the adoption of International Labour Organization (ILO) Convention on Decent Work for Domestic Workers in 2011, but has not yet itself ratified it.

Moreover, the enforcement of its legislation covering the estimated 1 to 1.5 million domestic workers in South Africa remains weak.

Sexual Orientation and Gender Identity

South Africa continues to play a leading role on sexual orientation and gender identity at the United Nations Human Rights Council (HRC). A report by the Office of the UN High Commissioner on Human Rights (OHCHR), documenting violence and discrimination against LGBT people worldwide and compiled in accordance with a 2011 South Africa sponsored resolution on "Human Rights, Sexual Orientation and Gender Identity," was presented to the HRC in March 2012. This is the first time that any UN body approved a resolution affirming the rights of LGBT persons.

Farmworkers

Following the Human Rights Watch report on the living and working conditions of farmworkers in 2011, the government has shown a commitment to strengthening the rights of those in the farming community. As a result, during 2012, the government engaged extensively with civil society, academia, farmer associations, and trade unions about a draft document on land tenure security before it is submitted to parliament as a bill. The consultations have indicated that the document is vague on how the nature and content of rights of farmworkers and farm dwellers will be strengthened and protected, and will need to be more robust to protect the rights of workers.

Addressing the tenure insecurities of farmworkers is critical to South Africa's overall land reform agenda.

International Justice

South Africa continued to play a leadership role in affirming the need to uphold obligations to the International Criminal Court (ICC), although it has yet to block African Union decisions, which call for states not to cooperate with the court in the arrest of suspect Sudanese President Omar al-Bashir. The first domestic criminal case in South Africa for international crimes committed in Zimbabwe also commenced, although it was initially challenged by South's Africa's police and prosecuting authority.

Rights of Refugees

In defiance of court orders, the Department of Home Affairs closed three of its seven Refugee Reception Offices, which caused a crisis for asylum-seekers' and refugees' access to asylum and refugee procedures. The closures are part of the department's plan to move asylum-processing to the country's borders, which has limited access to work, adequate shelter, and assistance for asylum seekers.

Key International Actors

South Africa's role as a non-permanent member of the UN Security Council ended in December. Its tenure on the Security Council was marked by erratic stances on human rights concerns, particularly regarding UN engagement on Libya and Syria. South Africa abstained from voting on a draft UN security resolution threatening UN action in Syria in July 2012.

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