



2012 Country Reports on Human Rights Practices - South Africa

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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; prison overcrowding and abuse of prisoners, including beatings and rape by prison guards; and vigilante and mob violence.

Other human rights problems included: arbitrary arrest; prolonged pretrial detention and lengthy delays in trials; forcible dispersal of demonstrators; abuse of refugees and asylum seekers; corruption; pervasive violence against women and children; sexual harassment and societal discrimination against women; child prostitution; societal discrimination against persons with disabilities and the lesbian, gay, bisexual, and transgender community; trafficking in persons; attacks on foreigners; and child labor, including forced child labor.

Although the government investigated and prosecuted officials who committed abuses, 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 reports that the government or its agents committed arbitrary or unlawful killings. Police use of lethal and excessive force, including torture, resulted in numerous deaths and injuries. Politically motivated killings by opposition groups and the ANC also occurred. The country also had a high crime rate, and criminals were often better armed than police. Some perpetrators were punished during the year.

According to the governmental Independent Police Investigative Directorate (IPID) 2011-12 annual report, 932 persons died in police custody or as a result of police action during the year

ending March 31. Of that number, 48 deaths were from unnatural causes, eight of which implicated police. A death as a result of police action was defined as: an attempt to effect an arrest or to prevent an escape; a member's action taken in self defense or in the defense of another; a motor collision involving one or more South African Police Service (SAPS) vehicles; mass action where police were present, and any action or inaction that amounts to a criminal offence or misconduct as defined by SAPS disciplinary regulations.

On February 14, Police Constable Sipho Mbatha shot and killed 16-year-old Thato Mokoko during a raid to uncover a reported illegal weapon in Braamfischerville, Gauteng Province. According to witnesses, Mokoko was lying face down on the ground when Mbatha placed his foot on the back of Mokoko's neck and shot him with an automatic rifle. Mbatha claimed that the gun had discharged accidentally. On December 4, Mbatha was sentenced to 17 years in prison for murder.

A series of violent incidents between SAPS officers and striking miners resulted in the deaths of more than 60 persons at mines across the country (see sections 1.d. and 7.a.). On August 16 alone, SAPS officers shot 112 striking miners, killing 34.

Some killings by the ANC and opposition groups or political parties appeared to be politically motivated.

On September 10, two senior ANC members of the Oshabeni branch in KwaZulu-Natal – Chairman Dumosani Malunga and Secretary Bheki Chiliza – were killed in a drive-by shooting. On September 12, police arrested Sifiso Khumalo and Samuel "Hle" Cele, both of whom were competing with Malunga and Chiliza in an election for ward councilor. Alex Mbhele, a third suspect, was subsequently arrested in Bloemfontein, Free State. On September 19, Khumalo – who pled guilty to assisting in the killings – was convicted of murder and sentenced to 22 years in prison. The trials of Mbhele and Cele trial were ongoing.

On October 6, two men posing as police officers abducted Councilor Themba Xulu of the Inkatha Freedom Party (IFP) from his home in KwaMashu, KwaZulu-Natal. On October 7, Xulu's body was found with multiple gunshot wounds in a sugarcane field outside of Inanda, KwaZulu-Natal. Police arrested five suspects, including National Freedom Party (NFP) Councilor Bhungu Gwala, his two sons Bonginhlanhla Gwala and Celimpilo Gwala; and NFP members Malusi Sibusiso Ncengwa and Sikhumbuzo Nxumalo. Bhungu Gwala was released on bail, while the other four defendants were remanded in custody.

On September 9, police arrested Xolani Zulu in connection with the 2011 killing of ANC eThekweni regional leader Sbu Sibiya. The SAPS was unable to determine a clear motive but did not rule out the possibility that the killing was politically motivated. On November 19, Zulu's trial began, and on December 13, he was released on bail. The trial was ongoing at year's end.

On May 23, authorities charged 13 of the 14 police officers from the Bellville South Directorate of Priority Crime Investigation with assault, torture, and murder in connection with the 2009 killing of Sidwell Mkwambi, who was beaten and whipped to death. The status of the remaining police officer, who was not charged in connection with the case, was unclear.

Incidents of vigilante violence and mob killings continued, particularly in Gauteng, Eastern Cape, and KwaZulu-Natal provinces (see section 6).

Xenophobic attacks on foreign African migrants resulted in deaths, injuries, and displacement (see section 6).

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

Ritual ("muthi") killings, especially of children, to obtain body parts believed by some to enhance traditional medicine, remained a problem (see section 6).

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 Amnesty International, corroborated cases of torture included the use of electric shock and suffocation. Police also assaulted detainees with batons, fists, and booted feet. Police torture and physical abuse allegedly occurred during house searches, arrests, interrogations, and detentions, and sometimes resulted in death.

According to the IPID, reported assaults by police with the intent to cause grievous bodily harm increased from 920 cases in 2010 to 966 cases in 2011. There was also a notable increase from 2010 to 2011 in reports of torture. Unlike in previous years, the IPID did not release information on reported cases of assault or torture that occurred during the year.

Suspects in several cases were interrogated and assaulted while being detained by police, without any record being made of their arrest. Authorities gave officers found guilty of misconduct, following internal disciplinary hearings, sentences ranging from verbal warnings to fines and dismissal from service. Following internal disciplinary proceedings, police forwarded the more serious cases to the director of public prosecutions (DPP). The report stipulated that 545 recommendations for prosecution were made to the DPP and that 43 SAPS members were convicted of a range of crimes. Qualitative studies by monitoring organizations found that victims in many communities did not consider reporting police abuse due to a "normalization," or public acceptance of police torture and brutality.

Unlike in previous years, the IPID did not include the number of rape complaints in their 2012 annual report, although the report cited three cases of rape that it investigated.

On August 10, in Gugulethu, Western Cape Province, the IPID arrested a constable for raping a female sex worker; the constable reportedly approached the victim on July 27 and forced her to perform oral sex after threatening to arrest her if she refused. The constable, who also robbed the sex worker of R170 (\$18.87), was charged with rape and appeared at the Parow Magistrate's Court on August 13. The case was ongoing at year's end.

On August 22, following the August 16 arrest of 270 protestors at the Marikana mine (see section 7.a.), the media reported that police tortured and beat detainees with fists and batons. The IPID launched an investigation into alleged police brutality at five police stations and took 194 affidavits from miners, including 64 from detainees at Bethanie Police Station, 50 from Mogwase, and 40 each from the Jericho and Phokeng police stations. The investigation continued at year's end.

On September 20, the Southern Gauteng High Court awarded R650,000 (\$72,150) each to Charlie Godfrey Thabo and Moleko Taole Joel, who claimed they were wrongfully arrested in 2010 and repeatedly assaulted by police before their release eight days later. The men said they were bound at the wrists and ankles and repeatedly suffocated while being held in conditions the judge called "degrading and humiliating." The state attorneys representing the minister of state security conceded the claims of the two men.

The hearing for the lawsuit against Minister of Police Nathi Mthethwa for the alleged torture in January 2011 of Chinenye Juhu Onuegbu, a Nigerian citizen, was scheduled to begin in August

2013. Onuegbu claimed that five SAPS plainclothes officers attached electrodes to his ears while interrogating him; the theft charges were subsequently withdrawn.

At year's end the court had not reached a verdict on the 2010 torture case of Zipho Richard Ndlovu. In 2010 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 ear lobes. The IPID investigation of the incident 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.

Prison and Detention Center Conditions

The majority of the country's 236 operational prisons did not meet international standards, and prison conditions did not always meet the country's minimum legal requirements. On October 24, Vincent Smith, the chairman of parliament's Portfolio Committee on Correctional Services, said inmates in the country's prisons "were still subjected to serious overcrowding, a lack of medical care, and torture." The Judicial Inspectorate of Correctional Services (JICS) received 1,945 complaints of assaults on prisoners by correctional officers for the reporting period from April 2011 through March 2012. During the year there were reports of shortages of prison doctors, inadequate investigation and documentation of prisoner deaths, inadequate monitoring of the prison population, high suicide rates among prisoners, and a lack of independence in the JICS. Some detainees awaiting trial reportedly contracted HIV/AIDS through rape.

In July 2011 six prison officials allegedly used an electrified riot shield to torture Jonas Makhufola to ascertain the location of a cell phone. The incident came to light after an audio recording was released to the media. There were reports that the practice "had been going on for some time."

Physical Conditions: The country's correctional facilities housed 158,165 prisoners in facilities designed to hold approximately 118,000. Most prisons were severely overcrowded. Cape Town's Pollsmoor Prison, for example, was built to house 1,800 inmates but held 4,200. Many prisoners had less than 13 square feet in which to eat, sleep, and spend 23 hours a day. The recommended 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. To reduce overcrowding, the government transferred prisoners to facilities that were not at capacity. The JICS reported the prisoner transfer program resulted in a reduction in the number of prisons rated as "critically overcrowded" (prisoner population at more than 200 percent of capacity). In 2011 there were 18 critically overcrowded prisons, down from 45 in 2005.

Overcrowding and poor living conditions, including lack of ventilation, contributed to the spread of disease, particularly tuberculosis and HIV/AIDS. During the year Robin Wood of the Desmond Tutu HIV Center characterized communal cells, which held more than 20 prisoners, as a "total disaster" in terms of allowing the spread of communicable disease.

According to its 2011-12 annual report, the Department of Correctional Services (DCS) tested 42.5 percent of prisoners for HIV, exceeding its target of testing 23 percent of inmates. There were 23 DCS health centers within prisons that dispensed antiretroviral (ARV) therapy to inmates, an increase of two centers from the previous year; 43 percent of HIV positive prisoners received ARV therapy. 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. The DCS annual report noted that HIV awareness sessions were held in

prisons throughout the country during the year. Nongovernmental organizations (NGOs), such as The Aurum Institute and New Start, provided correctional centers with HIV testing and ARV therapy. Despite these measures, 34,202 inmates filed complaints about health care during the year; in 2007 there were 11,227 such complaints.

Prisoners were provided with potable water, but supplies were occasionally inadequate, and plumbing problems occurred, according to the JICS.

According to the JICS 2011-12 annual report, 592 children were in prison, one third of whom were in pretrial detention. Juveniles were sometimes held with adults. Pretrial detainees generally were held with convicted prisoners. The government continued efforts to lower the number of children held in detention and to provide them with adequate legal representation. Conditions for the country's 3,750 female prisoners were not reported to be worse than those for males.

According to the JICS report, there were 852 prison deaths during the 2011-12 reporting period. Of these, 804 were from natural causes, including HIV/AIDS; the remaining 48 deaths were the result of suicides, assaults, or accidents. The JICS reported that 12 female inmates, five juvenile inmates, and two infants of inmate mothers died of natural causes during the year.

The DCS requires that medical doctors complete and sign reports of inmate deaths to lessen the likelihood that a death caused by neglect is reported as "natural." However, many deaths were not investigated due to an insufficient number of doctors.

All detainees in police cells were provided with felt mattresses and blankets, and most cells had toilets and basins, but often lacked chairs, adequate light, and ventilation. Food, sanitation, and medical care in detention centers were similar to those in prisons. Detainee violence sometimes resulted in death.

For example, on April 21, in Durbanville, Cape Town, cellmates beat to death Eben Meyer while he was in police custody. Meyer, who was arrested for public drunkenness, shared a holding cell with eight other detainees and was killed after an argument with two of them. Authorities charged the two suspects with murder, and an investigation continued at year's end. Following the incident, the Ministry of Public Safety requested a review of the safety and conditions of police holding cells.

In its 2010 report *Monitoring Immigration Detention in South Africa*, local NGO Lawyers for Human Rights (LHR) indicated that the main abuses perpetrated in the Lindela Repatriation Centre, the country's largest detention facility for undocumented immigrants, included: physical and verbal abuse, corruption and bribery, insufficient food, lack of reading and writing materials, lack of access to recreational facilities or telephones, lack of access to and poor quality of medical care, indefinite detention without judicial review, detention of legally registered asylum seekers, and lack of procedural safeguards such as legal guidelines governing long-term detention.

Administration: Prisoners and detainees had reasonable access to visitors and 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; status and circumstances of confinement of juvenile offenders; or improvement in pretrial detention, bail, and recordkeeping procedures to ensure prisoners did not serve beyond maximum sentences for charged offenses. In 2010, however, the DCS signed a bail protocol with the ministers of police and of justice and constitutional development (DoJ) to allow

inmates who committed petty crimes and could not afford bail to be diverted through alternative programs.

Monitoring: The government permitted independent monitoring of prison conditions, including visits by human rights organizations. Human rights organizations were required to apply to the DCS for permission to visit. Organizations could also request permission to visit prisons to conduct specific research. The government permitted visits by the International Committee of the Red Cross, but none were conducted during the year.

The JICS also appoints an independent correctional center visitor (ICCV) for each correctional center to monitor prison conditions. ICCV visits were recorded in official registers kept at all correctional centers and were verified monthly. The ICCVs 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. In 2011 the ICCVs collectively recorded 8,346 visits to the country's 236 prisons, conducting private consultations with 78,883 inmates. According to an October 24 statement by the committee chairman of the parliamentary portfolio committee, however, it was "physically impossible" for the country's 214 ICCVs to adequately monitor the country's approximately 160,000 inmates and to respond to prison complaints. The chairman added that the lack of sufficient ICCVs left prisoners vulnerable to abuse and dehumanizing conditions.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, during the year security forces arbitrarily arrested numerous persons, including migrants and asylum seekers, striking miners, and trafficking victims.

Role of the Police and Security Apparatus

The SAPS, under the Department of Police, has primary responsibility for internal security. The South African National Defense Force, under the Department of Defense, is responsible for external security but also has domestic security responsibilities such as patrolling the borders. The SAPS Directorate for Priority Crime Investigation, also known as "the Hawks," coordinates efforts against organized crime and official corruption. Despite continued efforts to professionalize, the SAPS remained understaffed, ill equipped, and poorly trained. Corruption was a problem.

The government investigated and prosecuted security force members who committed abuses, although there were numerous reports of police impunity, including of high ranking members (see section 4). The IPID, an external body, investigates all complaints and makes recommendations to the SAPS inspectorate division that handles disciplinary matters and to the National Prosecuting Authority (NPA) on which cases to prosecute. The IPID investigated cases of police abuse. Law enforcement activities remained focused on wealthy residential and business areas.

During the 2011-12 reporting period, the IPID received 4,923 complaints against police, including allegations of killings, assaults, and other misconduct; 43 police officers were convicted of criminal conduct. There were 5,869 complaints filed the previous year. The IPID made 545 recommendations to the DPP in criminal matters and 1,276 recommendations to the SAPS management on issues of misconduct, such as unauthorized use of a state vehicles, leaking information, or dereliction of duty.

Security forces failed to prevent or respond to societal violence, particularly in response to attacks on foreigners (see section 6).

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

Arrest Procedures and Treatment While in Detention

The law requires arrest warrants to be based on sufficient evidence and issued by a magistrate or judge and provides that all detainees be informed promptly of the reasons for their detention, of their right to remain silent, and the consequences of waiving that right. Detainees must be charged within 48 hours of arrest; held in conditions respecting human dignity; allowed to consult with legal counsel of their choice at every stage of their detention or provided with 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. For example, the JICS reported that there were 500 remand (detained during trial) detainees without legal representation, but government officials and monitoring groups asserted the actual number was many times higher. 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 numerous cases of arbitrary arrest during the year.

Following the August 16 violence at Marikana, when police shot 112 striking miners, killing 34, police arrested 259 miners and trucked them to various police holding cells in North West and Gauteng provinces. By September 1, the number of detainees had increased to 270 due to arrests in the squatter camp near the site of the shootings and the detention of miners discharged from various hospitals in the area. In a controversial move, the government on August 30 charged the detainees with the murder of the 34 miners shot and killed by police on August 16. The government claimed the charges were made under the "common purpose" doctrine because the 270 workers were part of the crowd that confronted police. After the decision was widely criticized by the public, the charges were dropped. On September 3, police began releasing the miners, and all were released by year's end.

NGOs reported that victims of human trafficking were arbitrarily arrested if not in possession of appropriate documents detailing their immigration status. Numerous foreigners, particularly African migrants, also were arbitrarily arrested (see section 6).

Pretrial Detention: Lengthy pretrial detention was a problem. According to the JICS report, approximately 30 percent of inmates were categorized as remand or pretrial detainees. Approximately 33 percent of all remand detainees were held for a period exceeding six months; more than 2,470 had been held for more than two years. According to the JICS annual report, detainees waited an average of three months before a trial. The report found that 47,880 prisoners were awaiting trial as of March 31.

Detention of Rejected Asylum Seekers or Stateless Persons: The African Centre for Migration and Society, the LHR, and the media reported that security forces continued to arbitrarily arrest migrants and asylum seekers, even those with documentation. Although the law prohibits the detention of children, there were reports the Department of Home Affairs (DHA) arrested and detained unaccompanied minors for immigration violations during the year. According to the LHR, which regularly visited Lindela and other immigration detention centers, children were often only identified if an ICCV visited the detention center and pressured the facility to release them.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence. However, the judiciary was understaffed and underfunded, and there were reports that legal documents used in trials were lost. Judicial corruption was a problem,

although there were no reports that it occurred during the year. According to the presidentially mandated Criminal Justice System Working Group composed of ministers and deputy ministers, more than half of the estimated two million criminal cases reported annually were never resolved. Problems contributing to the country's low 10.3 percent conviction rate in criminal cases included inadequate collection of evidence at crime scenes, insufficient investigation, long trials, and ineffective court processes. The government operated 63 justice centers that provided legal assistance to the poor to expedite legal processes, reduce court rolls, and alleviate overcrowding in prisons. However, serious delays continued to be a problem.

The government sometimes ignored orders from provincial high courts (see section 1.e., Civil Judicial Procedures and Remedies).

Trial Procedures

Criminal defendants enjoy a legal presumption of innocence. The constitutional bill of rights provides for due process, including the right to a fair public trial within a reasonable time after being charged. 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. Every accused person has a right to a fair trial, which includes the right to have adequate time and facilities to prepare a defense. Defendants have access to government evidence before going to court and have the right not to be compelled to make any confession or admission that could be used as evidence against them. 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, permission is not required. Additionally, the law provides for an automatic review of all prison sentences longer than three months.

Political Prisoners and Detainees

The IFP maintained that 384 of its members had been imprisoned since 1994 for political reasons, although international human rights organizations did not list such persons as political prisoners or detainees. In 2010 President Zuma announced he had considered and rejected 230 of the 384 IFP applications for pardon. Since Zuma's announcement, an additional six cases were considered and rejected. The presidency continued to consider the remaining pardon requests on a case-by-case basis.

Civil Judicial Procedures and Remedies

Individuals and organizations may seek civil remedies for human rights violations; however, they may not appeal decisions to the African Court on Human and Peoples' Rights because the government has not made the obligatory declaration to accept the competence of the court. The government did not always comply with court decisions. For example, the DHA did not implement court orders resulting from three cases regarding closures of refugee reception centers in Johannesburg, Port Elizabeth, and Cape Town. Refugee rights advocacy organizations sued the government after the DHA closed refugee reception centers across the country on the grounds that the action would deprive migrants of their constitutional right to fair administrative action. In three separate rulings, high courts decided against the DHA and ordered that reception centers be reopened. At year's end, however, the DHA had neither appealed the rulings, nor reopened the centers.

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

The constitution and law prohibit such actions; however, search warrants were issued despite inadequate evidence, and there were reports that police abused citizens during sweeps and home searches.

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

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

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution and law provide for freedom of speech and press, and the government generally respected these rights. However, several apartheid-era laws and the 2004 Law on Antiterrorism permit authorities to restrict reporting on the security forces, prisons, and mental institutions.

During the year the Constitutional Court ordered the removal of a clause in the 2009 Film and Publications Act that requires any publisher not recognized by the press ombudsman to submit potentially pornographic or violence-inciting materials to a government board for approval. The court action was in response to a multiparty challenge to the law, which was widely criticized as a means of prepublication censorship.

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

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 South African Broadcasting Corporation (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 and reached an estimated 92 percent of the population.

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.

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.

On May 18, *City Press* newspaper published a review of an exhibition in Johannesburg that featured a painting of President Zuma in a reinterpretation of a Soviet-era propaganda poster casting Zuma in the mold of Vladimir Lenin with genitals exposed. Zuma filed a complaint at the Gauteng High Court, arguing that the artwork depicted him as a "philanderer, a womanizer, and one with no respect." *City Press* argued that its decision to publish the photo was lawful and "amounted to the publication of legitimate criticism" in light of the president's public admission of extramarital affairs and involvement in several sex scandals in office. In a May 24 statement, the ANC called for a boycott of *City Press* and said the newspaper was "a perpetrator of injustice and slander" and that it had singled itself out as being against Zuma, the ANC, "our democracy, and the majority of South Africans." At a rally organized and attended by senior members of the ANC and the South African Communist Party, protesters burned copies of the newspaper. The Committee to Protect Journalists reported that a *City Press* journalist was prevented from covering a union meeting following the call to boycott the newspaper. On May 28, *City Press* removed the offending image from its Web site, attributing the decision to concern for the welfare of individuals who were hurt by the image and fear of reprisal.

Libel Laws/National Security: Libel is not criminalized, but civil cases, sometimes involving large fines, were brought against members of the press. In November 2011 lawyers for presidential spokesman Mac Maharaj threatened the independent weekly and online daily *Mail and Guardian* with criminal prosecution for running a story about Maharaj's alleged involvement in an arms scandal in the late 1990s. The newspaper subsequently censored most of the article. Maharaj later filed criminal complaints against the two reporters responsible for the story, alleging they stole records from the government's investigation.

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 investigations. The Regulation of Interception of Communications and Provision of Communication-Related Information Act requires 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. Approximately 33 percent of the population used the Internet during the year.

Academic Freedom and Cultural Events

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

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

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

A series of violent incidents between the SAPS and striking miners resulted in the deaths of more than 60 persons at mines across the country (see section 7.a.). On August 16 alone, SAPS officers shot 112 striking miners, killing 34.

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, rubber bullets, and water cannons to control the demonstrations and quell the violence; several injuries were reported.

On April 23, charges were dropped against one of eight SAPS officers charged with murder and assault in connection with the death of Congress of the People (COPE) member Andries Tatane, who died in April 2011 after being shot at close range with a rubber bullet during a demonstration in Meqheleng Township near Ficksburg. The trial of the remaining seven officers continued.

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](#).

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; however, the government did not always respect these rights. 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 case backlogs and susceptibility to corruption and abuse.

Internally Displaced Persons (IDPs)

Businesses owned by foreigners were regularly targeted for looting by rioters. Although precise statistics were unavailable, monitoring groups reported these attacks displaced at least 2,000 foreigners during the year (see sub-subsection on Refugee Abuse below).

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. The country hosted approximately 83,000 recognized refugees and nearly 400,000 asylum seekers; two thirds of the asylum seekers were Zimbabweans. NGOs criticized the government's implementation of that system, however, as inadequate.

Refoulement: Observers reported that during the year the government refused entry to asylum seekers who could not show positive identification or who passed through a "safe country of transit," and expressed concern that this could result in refoulement if refusals were not coordinated with other countries.

In October 2011 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. 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 (see section 6).

Much of the xenophobic violence in the country was directed at foreign nationals running small grocery stores known as "spaza" shops in townships and informal settlements; many spaza shops were owned and registered by refugees. Citizens who blamed immigrants for job and housing losses and increasing crime generally perpetrated such attacks. Attacks on migrant traders during the year resulted in deaths, injuries, arson, and destruction of property (see section 6).

During August, in 28 separate locations around the city of Polokwane, Limpopo, police closed more than 700 foreign-owned shops, many of which were owned by registered Somali refugees. Many shop owners reported that police confiscated their stocks without providing receipts. Hangwani Malaudzi, a SAPS brigadier, claimed the raids did not target foreigners, but rather unlicensed shop owners. The SAPS regional legal advisor, however, did not cite licensing (small shops typically do not require licenses) when he justified the policy. Instead, he claimed that a refugee's "right to work" did not include the right to own a business. Legal representatives for migrant groups countered that the Revenue Service has stated explicitly that right to work includes the "right to trade and do business." On September 1, local government ward councilors publicly told police that shops with Somali, Bangladeshi, and Ethiopian owners must be allowed to reopen; however, no shops had reopened and no confiscated stocks had been returned by year's end.

Although the Department of Home Affairs had anticorruption programs in place and punished officials or contracted security officers found to be accepting bribes, NGOs and asylum applicants continued to report that immigration authorities sought bribes from those seeking permits to remain in the country.

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 personnel.

Some state hospitals routinely refused emergency treatment and abused patients despite regulations requiring hospitals to provide such treatment. According to human rights advocates, indigent foreigners were particularly at risk of abuse. Documented examples of abuse included refusing treatment to pregnant women in labor and critically ill and injured children.

The government cooperated with the UNHCR and with the International Organization for Migration 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.

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

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

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

Elections and Political Participation

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. 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, COPE won 30, and the IFP won 18. The remaining 39 seats in parliament were allocated to 10 other political parties based on election results. In the National Council of Provinces (NCOP), the upper house of parliament, the ANC held 35 seats, the DA 10, and COPE seven. The remaining two seats were allocated to the IFP and the Independent Democrats. 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. There were 62 reported cases of election-related violence 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 foreign affairs and defense, and 15 of 28 deputy ministerial positions. There were 157 women in the National Assembly and 17 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 112 members of minorities (White, Indian, Colored citizens) in the National Assembly. There were 16 minority members among the 54 permanent members of the NCOP. There were 17 minority members in the 69-member cabinet.

Section 4. Corruption and Lack of Transparency in Government

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.

The government took action against police corruption during the year.

On April 5, Hawks captain Esmeralda Bailey, who was arrested in 2011 for corruption, appeared in the Bellville Specialized Commercial Crime Court in Cape Town. In addition to corruption, she was charged with possession of ammunition and drugs, and five counts of defeating the ends of justice. On October 24, the NPA confirmed that Bailey was fit to stand trial despite her claim that she suffered from bipolar disorder and agoraphobia. Bailey's trial was scheduled for April 2013.

On June 12, the president replaced former police commissioner Bheki Cele after a board of inquiry recommended his dismissal following an investigation into Cele's role in irregularities uncovered in a 2010 lease agreement to pay R500 million (\$55.5 million) to house police services headquarters. In 2011 former minister of public works Gwen Mahlangu-Nkabinde was dismissed for her involvement in the lease arrangements.

The government prosecuted political parties for corruption during the year.

In April the public protector released a report that accused the Moqhaka Municipality in Free State Province of approving a grant of R500,000 (\$55,500) to local political parties before the 2009 national election in contravention of the constitution. According to the report, as much as R398,000 (\$44,178) of the grant was paid to political parties in proportion to their voter support: the ANC received 76 percent of the funds, the DA 10 percent, and three other parties split the remaining 14 percent. The report found that "political parties that benefitted from the grant were unjustly enriched by the unauthorized and fruitless and wasteful expenditure incurred by the municipality." The case was referred to the public protector by a DA member of parliament who had accepted the money, but put it in escrow pending the outcome of the investigation.

Corruption remained a problem within prisons. According to the 2010-11 DCS annual report, the department conducted 3,627 disciplinary hearings for various offences and dismissed 183 members of staff. According to the 2010-11 JICS report released during the year, there were 1,544 complaints of corruption during the annual reporting period. At least 10 agencies, including the SAPS Special Investigation Unit, Public Service Commission, Office of the Public Prosecutor, and Office of the Auditor General were involved in anticorruption activities.

The Office of the Public Protector, which collaborated with civil society, investigated government abuse and mismanagement and served as the office of last resort for citizens reporting unfair treatment by government entities. Despite inadequate funding, the office investigated thousands of cases during the year and was considered independent and effective.

Public officials were subject to financial disclosure laws, and most officials complied, although not always in a timely manner. Government officials are required to publicly declare their interests when they enter office, and there were administrative and criminal sanctions for noncompliance. There was no defined unit mandated to monitor and verify disclosures of government officials. Declarations by government officials were made public but not those of their spouses or children.

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.

Government Human Rights Bodies: 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 government reacted positively to the SAHRC reports and was responsive to their views.

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

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

The constitution and law prohibit discrimination on the grounds of race, disability, ethnic or social origin, color, age, culture, language, sex, pregnancy, sexual orientation, or marital status. However, entrenched attitudes and practices often resulted in gender-based violence and employment inequities.

Women

Rape and Domestic Violence: Rape, including spousal rape, is illegal but remained a serious and pervasive problem. The minimum sentence for rape 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 2011-12 SAPS annual report, there were 31,299 sexual offense reports against women during the year; the actual incidence of rape was thought to be much higher. Numerous elderly women were among the victims. A 2009 report released by the Medical Research Council (MRC) stated 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.

In most cases attackers were friends or family members of the victim, which contributed to a reluctance to press charges, as did a poor security climate and societal attitudes condoning sexual violence against women. According to a 2008 study by the SAPS and the Center for the Study of Violence and Reconciliation, only 4.1 percent of reported rape cases resulted in conviction. Poor police training and overburdened courts contributed to the low conviction rate.

On June 15, the Supreme Court of Appeal (SCA) overruled a decision by the Western Cape High Court entitled "S v Prins," which stated that because there were no sentencing guidelines or penalties specified under the Sexual Offences Act of 2005, no offense covered under the act was punishable by law. The SCA ruled that courts had discretion to set sentences under common law, even when no sentences are specified in legislation. On June 23, President Zuma signed a new version of the act to close the loopholes in the law. The original ruling caused concern among advocates, who feared the decision would make it impossible for courts to punish sexual assaults until new legislation was passed. Observers noted, however, that rape convictions were never in danger of being overturned because rape penalties are covered in other legislation.

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-offense courts throughout the country that included 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-offense 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 in 2011 the dedicated sexual offense courts functioned at a 38 percent higher conviction rate in comparison to non-specialized courts.

SOCA operated 52 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 cases were prosecuted under the charges of rape, indecent assault, damage to property, and violating a protection order. 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 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 25 percent of women were in an abusive relationship, but few reported it. A 2009 MRC report stated 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 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 issued guidelines to employers on how to handle workplace complaints, which allow for remuneration of the victim's lost compensation plus interest, additional damages, legal fees, and dismissal of the perpetrator in some circumstances. Tougher punishments can be generated for assault, which carries a range of penalties depending on the severity of the act, but only if the complainants press charges.

Reproductive Rights: Couples and individuals have the right, and were able 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 free at government clinics. According to the Department of Health, 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, 72 percent of identified maternity facilities implemented the Basic Antenatal Care Program, up from 30 percent during the previous year. In 2011 health department personnel contacted 27 percent of new mothers within six postpartum days after they were discharged from a health facility.

In August 2011 HRW released the report *Stop Making Excuses*, which identified weaknesses in maternity care, particularly in Eastern Cape Province. The report attributed the country's high maternal mortality rate 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 and included cases in which neglect resulted in patient death.

Discrimination: Discrimination against women remained a serious problem despite legal equality in inheritance, divorce, and child custody matters. 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. Such authorities 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.

According to the 2011-12 Employment Equity Report, women held only 19.1 percent of top-level management positions and 28.2 percent of senior management positions, rates significantly lower than the government-mandated target of having 44.4 percent management positions filled by women. The Commission for Employment Equity released statistics showing that 62 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 South African Government) and Indian women made up only 1.4 and 1.6 percent, respectively.

Female farm workers often experienced discrimination, and their access to housing frequently depended on their relationship to male farm workers. Female farm workers on maternity leave who could not obtain timely compensation through the Unemployment Insurance Fund often had 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 Department of Women, Children, and Persons with Disabilities monitored and promoted women's rights, as did numerous NGOs.

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. Children without birth registration had no access to public services such as education, health care, and financial grants.

Education: The law mandates compulsory education from ages seven to 15. Public education was fee-based, and the government did not fully subsidize education. The law provides that children cannot be refused admission to public schools due to a lack of funds, and disadvantaged children (who traditionally were black) were eligible for assistance. However, even when children qualified for fee exemptions, parents who were poor had difficulty paying for uniforms and supplies.

Child Abuse: Violence against children, including domestic violence and sexual abuse, remained widespread. The country had a low conviction rate for rape and child abuse.

According to the 2011-12 SAPS report, 50,688 children were reported victims of violent crime during the reporting period. Of that total, 793 were killed, 25,862 were sexually assaulted, and 10,630 were assaulted with intention to do grievous bodily harm. Observers believed the incidence of sexual assault was much higher since most child rapes 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 country's largest independent trade union, 45 percent of all rapes were perpetrated against children, and more than 88 percent of child rapes were never reported to the police.

There continued to be reports that teachers, students, and others harassed, abused, assaulted, and raped girls in school. The law requires schools to disclose sexual abuse to 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, was a problem.

Child Marriage: The age of majority was 18, and anyone under that age could not marry without the consent of the parents or a magistrate judge. Nevertheless, the traditional practice of "ukuthwala," the forced marriage of girls as young as 12 to adult men, continued in remote villages in Western Cape, Eastern Cape, and KwaZulu-Natal provinces.

Harmful Traditional Practices: Ritual circumcision of young males, 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 and 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 criticized government interference in initiation and circumcision practices, while others declared moratoriums on circumcision in parts of Eastern Cape Province after numerous deaths resulted 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, Limpopo, and Free State provinces during the June initiation period, according to press reports. According to media reports, there were 42 deaths resulting from circumcisions performed at initiation schools – facilities where traditional rituals were performed on boys to mark their passage into adulthood – in Eastern Cape, compared with 26 deaths during the initiation season in 2011. There were also five reported amputations and 300 hospitalizations reported by the media in the Eastern Cape.

On July 12, four unregistered traditional surgeons, all in their 20s, appeared in the Botshabelo magistrate's court on charges of murder and assault after four teenage initiates died from injuries received during circumcision. The SAPS investigated the school and found 30 initiates, 11 of whom had to be hospitalized, and the bodies of three initiates who did not survive the procedure.

Sexual Exploitation of Children: Penalties for the sexual exploitation of a child include fines and imprisonment of up to 20 years. The law states 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 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 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.

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 for the public to report incidents of child pornography.

In 2010 approximately 100,000 (5 percent) of children lived in child-headed households, according to Statistics South Africa's *Social Profile of Vulnerable Groups in South Africa*. 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.

Children were trafficked mainly within the country, from poor rural areas to urban centers, such as Johannesburg, Cape Town, Durban, and Bloemfontein, for prostitution. Nigerian syndicates dominated the commercial sex trade within the country through local criminal rings and street gang that organized child prostitution in those cities.

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."

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 annual report on compliance at www.travel.state.gov/abduction/resources/congressreport/congressreport_4308.html, as well as country-specific information at www.travel.state.gov/abduction/country/country_5783.html.

Anti-Semitism

The Jewish community was estimated at 75,000 to 80,000 people. There were no reports of attacks on Jewish persons or property. There were, however, reports of verbal abuse, hate mail, and distribution of anti-Semitic literature in the country.

Trafficking in Persons

See the Department of State's [Trafficking in Persons Report](#).

Persons with Disabilities

The law prohibits discrimination in employment, access to health care, and education on the basis of physical, sensory, intellectual, and mental disability. Department of Transportation policies on providing services to persons with disabilities were consistent with the constitution's prohibition on discrimination. Nevertheless, 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 country had 413 specialized schools for students with special needs. In 2011 UNESCO reported, however, that South African children with disabilities between the ages of seven and 15 were 20 percent less likely to attend school than children without disabilities. The Department of Basic Education allocated part of its budget for assistive devices, material resources, and assistive technology; however, it noted resources were inadequate and that teachers reported insufficient skills in special needs education. For example, many blind and deaf children in mainstream schools received only basic care rather than education.

The law prohibits harassment of persons with disabilities and, in conjunction with the Employment Equity Act, also provides guidelines on the recruitment and selection of persons with disabilities, reasonable accommodation for persons with disabilities, and guidelines on proper handling of employee medical information. Enforcement of this law was limited. The law also requires employers with more than 50 workers to create an affirmative action plan with provisions for achieving employment equity for persons with disabilities. Nevertheless, 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 to civil service positions, but the government had not met its target of filling 2 percent of government positions with persons with disabilities by year's end.

Persons with disabilities were sometimes subject to abuse and attacks. For example, on March 31, in Soweto, Gauteng Province, seven persons between ages 13 and 20 digitally recorded themselves raping a 17-year-old girl with mental disabilities. According to press reports, the attackers laughed and joked during the assault, even while the victim begged them to stop. One of the perpetrators was filmed offering the girl R2 (\$0.22) for her agreement not to report the rape. On April 17, police arrested the seven, six of whom were awaiting trial at year's end; the seventh, who was 13 years old, was judged "not criminally capable" and was released. The victim's mother said her daughter, who was missing from the time of the attack until April 18, had been raped multiple times since 2009.

Prisoners with mental disabilities often received no psychiatric care. On June 1, the JICS reported that Isak Coetzee, a prisoner with mental disabilities in the Springbok Correctional Center in Northern Cape Province, had been held as a remand detainee for more than four years without appearing before a judge. A JICS investigation revealed that Coetzee had received no medical attention because there were no psychiatric hospitals in the province. Following the investigation, Coetzee was transferred to psychiatric care.

At year's end there were 21 persons with disabilities in the upper and lower houses of parliament. The law does not allow persons identified by the courts as mentally disabled to vote.

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

The Mental Health Information Center of South Africa noted that 20 percent of the population suffered from a mental illness that significantly impaired living.

National/Racial/Ethnic Minorities

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. Nevertheless, Blacks remained underrepresented, particularly at the professional and managerial levels, although the percentage of professional positions filled by Blacks continued to increase. According to the Department of Labor's 2011-12 Employment Equity Analysis, Blacks held 18.5 percent of top management positions (up from 13.4 in 2010-11), 21.8 percent of senior management positions (up from 17.6 in 2010-11), and approximately 36.3 percent of all professional positions (up from 31 percent in 2010-11). The report also indicated Black representation in the skilled labor sector had increased to 57 percent, up from 44 percent in 2007. Black women remained by far the most disadvantaged group in number and quality of management jobs.

Random xenophobic attacks on foreign African migrants and ethnic minorities occurred and sometimes resulted in death, injury, and displacement. Incidents of xenophobic violence were generally concentrated in areas characterized by poverty and lack of services. According to researchers from the African Center for Migration and Society, perpetrators of crimes against foreigners enjoyed relative impunity.

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 perpetrators.

On July 3, in Botshabello Township, Free State Province, rioters attacked and looted more than 200 foreign-owned shops. Several of the shops were burned, and more than 900 migrants and asylum seekers were temporarily displaced. The riots began after police began closing illegal street "hawker" stands in the town center. A group of locals responded by attacking licensed businesses owned by foreigners, and these riots spread through neighboring districts. According to newspaper reports, police arrested more than 100 rioters.

On November 2, in Malmesbury Township, Cape Town, three armed gangsters shot and killed Abdikadir Isse Abdullahi, a Somali shop owner. The incident marked the seventh killing of a Somali national in the country during the week.

Killings and attacks on commercial farms and small agricultural holdings continued in rural areas. According to the Agricultural Union of South Africa, which criticized police for not maintaining their own statistics, 22 white farmers were killed during 70 attacks by black perpetrators during the year. These attacks, widely referred to as "farm killings," targeted farm owners, residents, and employees. According to the South African Institute for Race Relations, commercial farmers, who are predominantly white, were twice as likely to be killed as the average citizen. There also were reports that white employers abused and killed black farm laborers, and complaints that white employers received preferential treatment from the authorities.

On September 9, the bodies of Johan and Cecile Fourie were found on their farm in Trompsburg, Free State Province. Media reports suggested the couple was killed with an axe and a spade. Police arrested Moeketsi Hlassa, Nkululeko Mvumvu, and Phinias Mothibi, all of whom were charged with murder and housebreaking. The men remained in custody awaiting trial at year's end.

There were no arrests during the year in connection with the February 2011 killing of white farmers Deon van Staden and Babs Strecker, who were stabbed multiple times and beaten with a shovel.

On August 22, Chris Mahlangu was sentenced to life imprisonment for the 2010 killing of Eugene Terre'Blanche, leader of the extremist white right-wing Afrikaner Resistance Movement. Co-accused Patrick Ndlovu was acquitted of murder but found guilty of housebreaking and given a two-year suspended sentence. Mahlangu's lawyer announced his intention to appeal the sentence.

Ritual ("muthi") killings, especially of children, to obtain body parts believed by some to enhance traditional medicine, remained a problem.

For example, on November 11, 13-year-old Neo Ramaswe was found dead in Mmakau village, North West Province. The boy was last seen on November 8 talking to two men while playing soccer. According to police, Ramaswe's face was skinned and his throat, tongue, and kidneys removed, indicators of a muthi killing. Police opened an investigation, and the provincial government appealed to the public for information; however, no arrests had been made by year's end.

On September 20, Solomon Mzamani Mathebula was sentenced to life imprisonment for the February 2011 rape and muthi killing of 74-year-old Tsatsawani Maria Maceke Maceke. The cases of four other suspects charged in the case continued.

Indigenous People

The NGO Working Group of Indigenous Minorities in Southern Africa estimated there were approximately 6,000 indigenous San in the country, some of whom worked as farmers or as farm laborers. By law the San have the same political and economic rights as other citizens; however, the government did not always effectively protect those rights or deliver basic services to 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, and there were no reports of official mistreatment or discrimination based on sexual orientation. However, in its annual Social Attitudes Survey released in 2008, the Human Sciences Research Council found widespread public intolerance of consensual 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 the lesbian, gay, bisexual, and transgender (LGBT) community was subject to hate crimes, gender violence targeting lesbians, and killings. In 2011 the Triangle Project, the country's largest lesbian and gay rights organization, reported it received a weekly average of 10 new cases of lesbians being targeted for "corrective" rape in Cape Town, in which men raped lesbians as punishment and to attempt to change their sexual orientation.

There were a number of reported homophobic killings during the year, including five killings during the months of June and July.

For example, on June 9, Thapelo Makhutle, an openly gay man, was approached by a man who confronted him about his sexuality and started an argument, according to press reports. The following day, Makhutle's body was found in his home, his throat slit, his tongue cut out, and his genitals inserted into his mouth. Police subsequently arrested Sizwe Jajini, who confessed to the killing and whose trial continued in the Mothibistad Magistrate's Court.

A 2011 HRW report highlighted violence and discrimination faced by lesbians and transgender persons. The report documented cases of "secondary victimization" of lesbians, including cases in which police harassed, ridiculed, and assaulted victims of homophobic violence when they reported crimes.

Despite legal protections for LGBT persons and government policies affirming LGBT rights, advocacy groups claimed they faced discrimination from government officials, including health care workers, social workers, teachers, and police officers who were not sensitized to LGBT lifestyles.

There was no reported progress on the investigation into April 2011 killing in Kwa-Thema township, Gauteng Province, of lesbian activist Noxolo Nogwaza after an altercation at a bar. Nogwaza's 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.

On February 1, four of the nine men originally accused of the 2006 killing of a lesbian in Cape Town were sentenced to 18 years in prison with four of those years suspended.

During the year two civil society members of the DoJ task force created in May 2011 to reduce homophobic violence resigned. Other task force members criticized the DoJ for lack of action. The DoJ responded by noting a number of accomplishments, including research and awareness training sessions for government officials.

Other Societal Violence or Discrimination

According to anecdotal reports, the social stigma associated with HIV/AIDS continued to decline as a result of the availability of life-saving ARV treatments. Civil society organizations such as the Treatment Action Campaign and government campaigns also worked to reduce discrimination against persons with HIV/AIDS.

The HIV/AIDS epidemic contributed to the number of households headed by children, although 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.

HIV/AIDS remained one of the leading causes of death in the country. The UN estimated that between 240,000 and 300,000 people died of AIDS-related illnesses in 2011. The government continued to improve care for HIV-positive mothers, and the mother-to-child transmission rate dropped below 3 percent during the year.

Incidents of vigilante violence and mob killings continued, particularly in Gauteng, Eastern Cape, and KwaZulu-Natal provinces. According to the SAPS 2011-12 Crime Statistics Report, 5 percent of the 15,609 killings recorded during the year resulted from vigilantism.

For example, on October 14, police in Mfuleni, Cape Town, found the body of Siphiwo Rowan Mbevu, who was severely beaten and burned to death in a practice called "necklacing." Commonly used by vigilantes, "necklacing" involves placing a rubber tire soaked in gasoline around a victim's neck and setting it on fire. Police arrested four persons, including Angy Peter, a leading member of the Social Justice Coalition's anti-vigilante campaign. Peter appeared briefly in the Blue Downs Magistrate's Court on November 1 along with her three co-accused. The trial was expected to begin in February 2013.

On August 16, Mzokuthoba Mngonyama was acquitted of all charges in connection with the mob attack that resulted in the 2009 deaths of both a Zimbabwean and a Tanzanian citizen. The trial of the three other persons charged in connection with the attack continued at year's end.

There were reports that persons accused of witchcraft were attacked, driven from their villages, and in some cases killed, particularly in Limpopo, Mpumalanga, KwaZulu-Natal, and Eastern Cape provinces. Victims were often elderly women. Traditional leaders generally cooperated with authorities and reported threats against persons suspected of witchcraft.

On August 13, Ntombikhona Mnguni was shot and killed at her home in Amanzimtoti, KwaZulu-Natal. On September 9, police arrested three suspects, a 16-year-old boy, a 35-year-old female, and a 60-year-old male. The boy claimed the other two suspects told him to kill Mnguni because she was a witch. The three suspects were awaiting trial.

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 in essential services are 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 the SAPS. However, the government and labor unions were unable to agree on a more detailed list of essential services that are prohibited from striking. Laws are permissive of a worker's ability to strike. Legally, workers are allowed to strike over issues of mutual interest, such as wages, benefits, organizational rights disputes, and similar measures. Workers are not permitted to strike on issues where other legal recourse exists, including disputes of rights which

are resolved through arbitration. Additionally, Section 77 of the Labor Relations Act allows "protest action to promote or defend the socioeconomic interests of workers" for employees not engaged in essential services or a maintenance service to take part in protest action by a registered trade union or federation that has served notice on the National Economic Development and Labor Advisory Council.

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 law includes all groups of workers, including legally-resident foreign workers.

The government effectively protected freedom of association and the right to collective bargaining. A labor court and labor appeals court effectively enforced the right of association. Worker organizations are independent of the government and political parties, although the Congress of South African Trade Unions (COSATU) is a member of the ANC-led ruling alliance. There were no known cases of government interference in collective bargaining.

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

Workers exercised their right to strike frequently, and strikes were often violent and disruptive. Although essential service providers are 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.

On March 7, COSATU organized its largest strike in years in major cities across the country to rally against labor brokering and e-tolling (whereby a vehicle is identified electronically by means of an e-tag, the vehicle license plate number, or other electronic means to affect the payment of a toll) on highways in the key business districts of Gauteng Province. The strike, which involved between 50,000 and 70,000 protesters, was peaceful but resulted in millions of rand in lost production.

Strikes during the year in the mining and transport sectors were among the most violent in the country's history and resulted in deaths and property damage. Mine workers protesting wage and work conditions that were illegal under the Gatherings Act disregarded formal labor relations structures and their own unions during their protests. These wildcat strikers gave entities with no legal authority, including churches and unorganized worker delegates, power to negotiate and conclude agreements on their behalf. Mining companies eventually engaged the illegal strikers and their representatives, which observers noted could encourage similar wildcat strikes in the future.

Illegal protests began in February at the Impala Platinum mine in Rustenburg, resulting in three deaths, numerous injuries, and millions of rand in lost production. Rivalry between the National Union of Mineworkers and the Association of Mineworkers and Construction Union over union representation in the platinum sector was one alleged trigger of the wildcat strike. On August 10, this rivalry resulted in violence at the Lonmin Western Platinum mine in Marikana, Northwest Province. There were 45 deaths during the seven-week strike. On August 16 alone, SAPS officers shot 112 striking miners, killing 34. The Marikana strike rapidly spread throughout the rest of the mining sector, and hundreds of thousands of workers participated in four months of wildcat strikes over wages and the leadership of the National Union of Mineworkers. On August 22, following the arrest of 270 protestors at the Marikana mine, the media reported allegations of police torture

of detainees. The government appointed a Marikana Commission of Inquiry, which started on October 1, to investigate the violence. The IPID launched an investigation into alleged police brutality at five police stations and took 194 affidavits from miners. At the Anglo American Platinum mine in Rustenburg, police were investigating whether four deaths at the mine were related to the strike.

While many considered the strikes and unrest as part of normal union activity during the strike season, others suggested that conflict between rival mining sector unions and union members' loss of confidence in their leadership contributed to an unprecedented level of labor unrest nationwide. Labor turmoil during the year caused platinum and gold output to drop, the rand to fall, foreign investors' confidence to drop, the country's sovereign credit rating to be downgraded, and loss of confidence in the ANC's ability to handle the crisis.

In September a two-week, long-distance trucker strike resulted in at least two deaths of non-striking truck drivers and millions of rand in property damage. The transportation union SATAWU led the strike over a wage dispute with employers, involving up to 28,000 truck drivers. The trucker strike resulted in Royal Dutch Shell's decision to declare force majeure, allowing its clients to take delivery of petroleum products from alternative sources.

On November 5, farm workers in the Hex Valley region of Western Cape Province began a wildcat strike that resulted in two deaths, injuries, and considerable property damage, including the burning of vineyards. The farm workers went outside of union structures to demand a doubling of the minimum wage in their sector from 69 to 150 rand per day, threatening to conduct further strikes during the harvest if their demands were not met. The Department of Labor responded that it was not legally possible to initiate the minimum wage determination process until March 2013. The workers vowed to protest again in January 2013 but called a month-long hiatus for the holiday season in December.

Government labor inspectors were insufficient in numbers and training to investigate reports of labor abuses.

During the year there were no credible cases of antiunion discrimination or employer interference in union functions. Approximately 17,000 workers at Implats who were dismissed for participating in an illegal strike were reemployed with new terms and conditions. Approximately 12,000 Amplats workers dismissed for conducting an unprotected strike were reinstated.

b. Prohibition of Forced or Compulsory Labor

Although the law prohibits all forms of forced or compulsory labor, the government did not consistently and effectively enforce the law.

Forced labor occurred, including domestic servitude. There were reports of isolated cases of forced labor involving children and women, which occurred primarily in domestic and agricultural labor. Migrant women and girls were subjected to domestic servitude and forced labor in the service sector. Boys, particularly migrant boys, were forced to work in street vending, food service, begging, criminal activities, and agriculture. Migrant men were forced to work in mobile sweatshop factories in Chinese urban enclaves and farms in the country.

See also the Department of State's [Trafficking in Persons Report](#).

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits employment of a child less than 15 years of age. Children more than 15 but under 18 years old are also prohibited from work that places at risk the child's wellbeing, education, physical or mental health, or spiritual, moral, or social development. Children may not work more than eight hours a day or before 6:00 a.m. or after 6:00 p.m. A child who is not

enrolled at school may not work more than 40 hours in any week, and a child who is enrolled in school may not work more than 20 hours in any week during school term.

Children are prohibited from performing hazardous duties, including deep sea fishing, commercial diving, manufacturing, rock and stone crushing, and work in casinos or other gambling establishments. Employers may not require a child to work in a confined space or to perform piecework (in which remuneration is based on the quantity of work done) and task work (in which remuneration is based mainly on the completion of set tasks.) Children under age 15 were allowed to work in the performing arts if their employers received permission from the Department of Labor and agreed to follow specific guidelines.

Violation of child labor law is punishable by a maximum prison sentence of three to six years or a fine of 15,000 rand (\$1,665).

The government generally enforced child labor laws in the formal sector of the economy, which was monitored by strong and well-organized unions. However, enforcement of child labor law in the informal and agricultural sectors was ineffective. The government employed 1,318 labor inspectors for the entire country, and there were no specialized child labor inspectors. During the year the Department of Labor exceeded its target of 115,110 routine inspections to protect vulnerable workers, including children, and 172,300 routine inspections and reported a compliance level of 74 percent, or 123,181 cases. The Labor Department also exceeded its target of 15,000 blitz inspections of all workplaces (including but not restricted to child labor cases) by carrying out 21,394 blitz inspections nationally. The department further broke down the blitz inspections by high-risk sectors. The Department of Labor conducted 1,003 inspections of construction sites, 1,618 inspections in the hospitality sector, four inspections in the sawmill sector, 1,720 inspections in the wholesale and retail sector, 1,338 inspections in agriculture (exceeding its 1,180 target), 1,332 inspections in the private security sector, 1,913 inspections in domestic workplaces (of a target of 1,618), 722 inspections in the iron and steel sector, and 144 inspections in the chemical sector. According to its 2011-12 annual report, the Department of Labor settled 73.79 percent of all labor related complaints within 14 days of receipt, exceeding its goal of 70 percent.

An important factor in reducing child labor was the government's Child Support Grant, a direct cash transfer between R265 (\$29) and R280 (\$31) per month to primary caregivers for vulnerable children age 18 and under. There were no other government efforts to reduce child labor, and penalties were not adequate to deter child labor.

Also see the Department of Labor's [*Findings on the Worst Forms of Child Labor*](#).

d. Acceptable Conditions of Work

There is no legally mandated national minimum wage, although the law gives the Department of Labor authority to set wages by sector. The minimum wage for farm workers is approximately 7.71 rand (\$0.85) per hour. The minimum hourly wage for domestic workers employed more than 27 hours per week ranges from 4.85 rand (\$0.53) to 7.06 rand (\$0.78). Immigrant workers are covered by law and entitled to all benefits and equal pay.

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 law equally applies to all workers, including workers in informal sectors and foreigners and immigrant workers.

The government set occupational health and safety standards through the Department of Minerals Resources for the mining industry and through the Department of Labor 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 law and requires mine owners to file annual reports providing statistics on health and safety incidents for each mine.

There are harsh penalties for violations of occupational health in the mining sector, which had separate legislation with strict deterrents to protect mine workers. Employers are subject to heavy fines or imprisonment for 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 are no laws or regulations that permit workers to remove themselves from work situations deemed dangerous to their health or safety without risking loss of employment, although the law provides that employers may not retaliate against employees who disclose dangerous workplace conditions.

The Department of Labor is responsible for enforcing wage standards outside the mining sector, and a tripartite Mine Health and Safety Council and an Inspectorate of Mine Health and Safety enforced such standards in the mining sector. Penalties for violations of wages and work hour standards outside the mining sector were not sufficient to deter violations. The government employed 1,318 labor inspectors for all inspections and enforcement of labor laws, which was insufficient. For example, in Western Cape Province 107 government labor inspectors had responsibility for more than 6,000 farms.

Labor inspectors conducted routine and unplanned inspections at various workplaces that employed vulnerable workers. The government provided free housing for employees earning less than R3,500 (\$388.50) per month, free health care, and, in some areas, no-fee schooling to assist the children of low income earners.

While labor conditions improved on large commercial farms, COSATU and leading agricultural NGOs complained that labor conditions on small farms remained harsh. Underpayment of wages and poor living conditions for workers, most of whom were black, were common. Many owners of small farms did not measure working hours accurately, 12-hour days were common during harvest time, and few farmers provided overtime benefits.

On May 8, at the Beatrix gold mine near Welkom, 12 mineworkers were killed in an explosion that occurred approximately 850 meters underground. A broken fan was reported the night before, which would have reduced air circulation and increased the danger of methane gas, which was thought to have triggered the blast. Four senior members of staff – two electricians, a vent officer and a production supervisor, who had been sent down the mine to investigate the breakage, were among the dead.

On July 1, a fire at the Gold Fields mine in Carletonville resulted in five deaths and numerous injuries. The workers were in an area with no air ventilation or water supply.

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