

South Africa

South Africa's third general elections marked that country's tenth year of its constitutional democracy. The institutional and policy framework have laid the foundation for the promotion and protection of human rights. However, human rights concerns remain; particularly in relation to the rights of detained and accused persons; excessive use of force by police; the rights of foreign nationals; and violence against women. Ten years since the first democratic elections, the realization of social and economic rights—such as access to primary education in rural areas—has become a pressing human rights issue. Although many human rights problems can be partly attributed to the legacy of apartheid, the current government could do more to implement policies that address and prevent abuses.

Police

Although the government has introduced significant reforms, inappropriate and excessive use of force by police remains a serious human rights issue. From April 2003 to March 2004, the Independent Complaints Directorate (ICD), a statutory oversight body, received reports of 383 deaths in police custody, with twenty percent of these deaths resulting from deaths in police cells. Other deaths are in course of effecting arrest. While it is encouraging that the reporting mechanism is in place, the increasing number of deaths, particularly in police custody, is worrying. The police have prevented the ICD from initiating inspections at police holding cells absent a complaint. Police have also on occasion used excessive force against peaceful demonstrators. Increasingly, police have been involved in violent confrontations with communities protesting against a lack of services. Police officers killed a seventeen-year-old boy and injured more than twenty children after firing rubber bullets on protestors of eNtabazwe—a township previously designated for Africans—outside Harrismith on a national road on August 30, 2004. On October 5, in a protest against the installation of pre-paid water meters in Chiawelo, Soweto, police used stun grenades and batons to disperse demonstrators.

Prisons

Overcrowding in South Africa's prisons continues to be a problem. As of March 31, 2004, 187,640 prisoners were being held in facilities that should accommodate 110,787. The numbers of sentenced has increased from 92,581 in January 1995 to 133,764 as of March 31, 2004. Overcrowding continues to threaten the health and living conditions of prisoners and impedes rehabilitation efforts. Sexual assaults and gang violence are a further threat to the safety of prisoners. To ease overcrowding, the Inspecting Judge of Prisons—an independent oversight body—has recommended the early release of prisoners who are too poor to afford bail. As of March 31, 2004, thirteen thousand detained persons—about a third of the pre-trial population—could not afford bail.

Despite almost a decade since the death penalty was declared unconstitutional and abolished in South Africa, 106 prisoners remain incarcerated under the death sentence. The government is yet to commute their sentences to life imprisonment.

Children in Detention

Despite international law requirements that child offenders not be detained except as a last resort, the number of juveniles in detention facilities- mostly jails - awaiting trial continues to increase. There are currently more than two thousand child offenders in detention awaiting trial—up from around five hundred in 1995. While in some cases juveniles are held separately from adults, this is not always the case, leaving them particularly vulnerable to sexual abuse, violence, and gang related activities. The Child Justice Bill, deliberated in the South African Parliament during 2004, proposes a restorative justice approach in an attempt to move children out of the criminal justice system.

Rights of Foreign Nationals

South Africa has seen a large increase in the number of undocumented migrants from Southern Africa and asylum seekers from the rest of Africa since 1994. As of 2003, the department of home affairs has received 152, 414 asylum applications since 1994. Although the 1998 Refugee Act provides a legal system to protect the rights of asylum seekers and refugees that incorporates international standards, significant problems remain in its administration. Concerns have been raised about intolerance of foreign nationals, particularly in effecting arrests for deportation. The ICD is investigating police officers for unlawful arrest of a South African woman who was “too dark,” and subsequently prepared for deportation on September 29. Close to fifty thousand undocumented migrants from Mozambique and Zimbabwe work on commercial farms. Yet, South Africa deports around four thousand people per month mostly to Mozambique and Zimbabwe, who return illegally to South Africa.

Violence against Women and Children

Violence against women and children is widely recognized as a serious concern in South Africa: 52, 733 rapes and attempted rapes were reported to the South African police between April 2003 and March 2004 a slight increase from the previous. The South African government has taken important legislative steps to try to combat violence against women, including introducing a new Sexual Offences Bill to remove anomalies from the existing law, which was discussed in Parliament during 2004. Police continue to receive training in handling rape cases. Specialized courts are being established, yet conviction rates remain low. In a country where one quarter of adults are HIV-positive, rape can mean a death sentence. In April 2002, the government pledged to provide rape survivors with post-exposure prophylaxis (PEP)—antiretroviral drugs that can reduce the chances of contracting the virus from an HIV-positive attacker. Government inaction and misinformation by high-level officials as well as administrative delays in dispensing the antiretroviral drugs continues to impede access to this lifesaving program. Children, an estimated 40 percent of rape and attempted rape survivors, are especially harmed by government failure to address their needs.

Social and Economic Rights

South Africa's economic disparities contribute to human rights concerns. It is estimated that twenty-two million people—roughly half the population, the great majority of them Africans—live in extreme poverty. About a fifth of the South African population receives government financial assistance.

People living in rural areas apparently have particular difficulty in accessing their rights to health care and social services. Regarding education, although access to public schooling for children is widely available and enrollment has increased since 1994, there are wide disparities in schools' resources: about 40 percent of state-run schools—mostly those in rural areas—have no electricity and approximately 30 percent no clean water. Physical access to education in rural areas is of particular concern. Some learners must walk up to thirty kilometers each day to and from school, exposing them to dangers such as sexual violence and contributing to high drop-out rates. The government established a ministerial committee on rural education in May to examine concerns about schooling in rural South Africa.

South Africa's Regional Role

In the promotion of human rights, democracy and peace, South Africa has played a key role in the first year of the Peace and Security Council of the African Union, and is hosting the Pan-African Parliament. South Africa has increased its role in seeking peaceful solutions to conflicts in Africa by providing military personnel in peace support operations, and monitoring and supporting post-conflict reconstruction in the Democratic Republic of Congo and Burundi and conflict resolution in Darfur, Sudan.