



JANUARY 2007

COUNTRY SUMMARY

South Africa

After 12 years of democracy, South Africa is still struggling to implement the progressive human rights protections guaranteed in the country's constitution. Particular areas of concern relate to the rights of migrants, refugees and asylum seekers, sexual violence against women and children, access to primary education in rural areas, and the government's response to one of the world's most serious HIV/AIDS epidemics.

Refugees, Asylum Seekers, and Migrants

During 2006, the number of people applying for asylum in South Africa noticeably increased. According to the United Nations High Commissioner for Refugees, from January to March alone, 18,800 applications were filed (28,000 were filed in all of 2005), and more than 100,000 applications are currently pending. While the greatest number of refugees and asylum seekers are from the Democratic Republic of Congo, the number of Zimbabwean asylum seekers has grown significantly: Zimbabweans were the largest group to file in early 2006 with 38 percent of applicants.

The Department of Home Affairs is making slow progress in tackling a backlog of applications; in the first quarter of 2006, it approved only 112 applications and rejected 1,144, and these were all pre-2006 applications. At present there are only 30,000 recognized refugees in South Africa.

In this context, implementation of the Refugees Act by government officials remains a serious concern. Persistent administrative obstacles and delays in the processing of claims for asylum put asylum seekers at constant risk of unlawful arrest and possible deportation. The government's inconsistent application of a court decision giving asylum seekers the right to work and study, corrupt practices and deficient procedures for unaccompanied minors seeking asylum continue to render protections for asylum seekers inadequate.

The number of migrants being deported from South Africa has also steadily increased. For example, in 2005, the number of Zimbabweans deported rose to almost 100,000 (up from 74,765 in 2004) out of more than 170,000 total deportations; this number continued to climb in 2006.

Migrants entering South Africa from Zimbabwe, documented or undocumented, are vulnerable to human rights abuses and are inadequately protected. The violations of immigration and employment laws by police and immigration officials—including routine breaches of the lawful procedures for arrest, detention, and deportation of undocumented foreigners established in the Immigration Act—and deficiencies in these laws, result in the infringement of migrants' rights under South Africa's Constitution. These rights include the right to personal freedom and security, and to conditions of detention that are consistent with human dignity and privacy. The South African government's failure to protect the constitutional rights of migrants also frequently violates the government's obligations under the International Covenant on Civil and Political Rights (ICCPR). The Constitution also protects the rights of at least documented migrants to fair labor practices.

In addition, commercial farm owners often do not provide foreign workers with basic protections they are entitled to under South Africa's labor laws. Farm owners employing foreign migrants openly flout the minimum wage and make unlawful deductions from workers' wages. Though migrant workers are legally entitled to workers' compensation, there are obstacles to receiving compensation settlements, such as providing South African identification and possessing a bank account, which foreign migrant workers often lack. In addition, the basic conditions of employment for farm workers create disincentives for employers to provide housing for workers, and the government has no housing policy for farm workers.

Violence against Women and Children

Between April 2005 and March 2006, 54,926 rapes and attempted rapes and 9,805 indecent assaults were reported to the South African Police Services (SAPS). While the national statistics for reported rapes are slightly lower than for 2005, some provinces experienced dramatic hikes. In Eastern Cape, for example, reported rapes increased by 21 percent and there was an 11.7 percent increase in indecent assaults.

However, SAPS itself has observed that sexual violence is largely underreported throughout South Africa, suggesting that the numbers of reported rapes in the last year underestimates the extent of the problem. Of those cases that are reported, the South Africa Law Commission found that only five percent of adult rape cases and nine percent of cases involving children end in conviction.

The South Africa Parliament has been considering amendments to existing criminal law on sexual offences for several years, and introduced the Sexual Offences Bill in 2003. The bill was intended to reform criminal law on sexual offenses to ensure that it conform with Constitutional principles and to improve access to justice and the efficiency of the justice system for survivors of sexual violence.

In the original draft, the bill obliged the state to provide and bear the costs of medical care, treatment, and counseling for sexual violence survivors who may have sustained physical injuries or psychological harm or been exposed to sexually transmitted infections as a result of a sexual offense. This would include, but not be limited to, HIV post-exposure prophylaxis (PEP), the short course of antiretroviral (ARV) drugs that can reduce the risk of HIV after rape. The current version of the bill excised this provision, limiting available services to PEP. Moreover, access to PEP is dependent on the victim laying criminal charges or reporting the incident at a “designated health establishment.” These requirements may prevent rape survivors from receiving PEP within the required 72 hours and can impede the ability of medical and police officials to obtain medical evidence that may be crucial for successful prosecution of a case.

Other important changes to the bill include the removal of several protective measures for vulnerable witnesses (including children) and the reinsertion of the element of consent in defining rape.

At this writing, while the Sexual Offences Bill was approved for submission to parliament on November 10, it was not voted on. The delay appears to be related to discussions over government provision of PEP to victims of sexual assault, which parliament's legal advisers have suggested should be in a separate bill. Adoption is likely to be delayed for several months.

Violence—including sexual violence—and crime in schools is an ongoing problem. South Africa's 27,000 schools, serving approximately 12 million children are ill-prepared to respond to these abuses and few have policies and procedures in place to address them. In September 2006 public hearings on "School Based Violence" were held under the auspices of South Africa's Human Rights Commission. Testimonies revealed that the situation is much more serious than initially thought, with witnesses referring to the prevalence of students with weapons, pupils inflicting violence on other pupils, as well as the rape of teachers. While violence is being perpetrated by pupils, teachers, and principals, girl pupils are the main victims of sexual assault.

Access to Education in Rural Areas

While South Africa's education system has experienced considerable reform since 1994, much-needed improvements are still required, particularly in access to primary education in rural areas.

According to the Department of Education, 300,000 children still do not attend school across the country; the reasons vary from a lack of services for children with special needs to a child's inability to pay school fees. Rural education is confronted by even more problems, such as the generally poor condition of schools on commercial farms; the high level of illiteracy; lack of parental participation in school governing bodies; poor transportation; and the non-attendance and shortage of teachers.

In 2006 the government made a commitment to implement a no-fee school policy for primary education in South Africa's poorer areas to address the problem of pupils too poor to pay the required school fees. As of September 2006, the provinces of KwaZulu-Natal and Gauteng had started to identify schools that will be declared no-fee schools; the other South African provinces are still compiling their lists of no-fee schools.

HIV/AIDS

An estimated 5.5 million people—more than 11 percent of the population—are living with HIV/AIDS in South Africa; this is one of the largest national totals of people living with HIV/AIDS in the world. The prevalence is highest among women aged 15 and up; UNAIDS estimates there are some 3,100,000 South African women living with HIV/AIDS.

The government response to the epidemic has been weak. For example, South Africa's efforts to introduce ARVs have been impeded by international pressure to protect multinational pharmaceutical companies' patents on ARV drugs, as well as by misguided political leadership on the national level. This includes misleading statements about the safety and efficacy of ARVs by the Health Minister and other high level government officials. A new AIDS strategy to strengthen the government's response to HIV/AIDS is expected to be announced in December 2006.

Civil society continues to play a critical role in forcing South Africa to address its HIV/AIDS epidemic. In 2006, for example, following actions taken by the AIDS Law Project, the Durban High Court issued an order compelling the Durban prison to provide ARV treatment, a decree upheld despite a government appeal. In September the government produced a plan to provide treatment to the prisoners.

International Role

South Africa continues to play a key international and regional role within the African Union. It continues to provide troops in peace support operations in Darfur through the African Union Mission in Sudan and as part of the UN Mission in the Democratic Republic of Congo. South Africa also supports post-conflict reconstruction in Burundi and Ethiopia and Eritrea, and mediation efforts in Cote d'Ivoire.

International disunity and controversy persisted regarding the strategy to address the deteriorating human rights situation in Zimbabwe. South Africa, Zimbabwe's neighbor and a leader within the African Union and the Southern African Development Council, continued to insist upon a strategy of quiet diplomacy despite enduring insistence by many countries in the West that it had not yielded visible improvements to date.