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country summary

## South Africa

Emerging from a history of institutionalized racial inequality, South Africa has made admirable progress in transforming the state and society to ensure respect for fundamental rights, including freedom of expression, an independent judiciary, and free and fair elections. Nevertheless, widespread poverty, unemployment, persistently high levels of violent crime, and gender inequality continue to inhibit the full enjoyment of human rights.

Poverty in South Africa has a strong rural dimension: the rural poor suffer from higher unemployment rates, lower educational attainment, and lower access to essential services. South Africa's Bill of Rights provides for binding and justiciable rights for all South Africans to education, housing, health care, food, water, and social security. A priority concern for the nongovernmental human rights sector in South Africa is to ensure that the government continues to address the progressive realization of socioeconomic rights and to hold the government accountable to fulfill these rights as binding obligations rather than programmatic aspirations.

### Socioeconomic Rights

Under South Africa's constitution, every child has the right to basic education. Serious concerns persist regarding the quality of rural education: many farm schools are staffed by unqualified teachers, and lack resources and infrastructure. State schools are required to waive fees for families that are unable to afford them, yet some local administrators refuse to do so. This contributes to de facto discrimination against very poor children and those from families affected by HIV/AIDS, who may consequently be excluded from attending school.

South Africa has undertaken commendable housing and land initiatives, including national housing subsidy schemes. However, many people continue to live in poor conditions in informal settlements, without access to basic services. In 2007 urban

evictions were carried out without due warning or provision for relocation or compensation. Commercial farm workers remain particularly vulnerable to eviction. In September the South African Human Rights Commission conducted public hearings to assess land tenure security for farm workers on commercial farms.

Access to public healthcare services and the quality of care provided remain inadequate, despite policy and legislation governing this sector. Many provincial hospitals in South Africa are dilapidated and lack sufficient trained staff, drugs, and supplies. In September Dr. Nokuzolo Ntshona, superintendant of Cecilia Makewane hospital in the Eastern Cape, was dismissed by the Eastern Cape Department of Health for “breaching protocol” after her investigation into, subsequent public criticism of, and letter to the president about appalling conditions and high infant mortality rates in Frere hospital. Her actions were followed by national media investigation and widespread publicity. The South African Medical Association affirmed that her whistleblowing about hospital conditions was an ethical and responsible intervention. South Africa’s Protected Disclosures Act, 2000, is intended to protect whistleblowers from retaliation in both the public and private sectors.

Inequitable access to antiretroviral treatment (ART) and lack of support services for people with HIV/AIDS, particularly for prisoners and people in rural areas, remain inadequately addressed by the government. The majority of prisons are unauthorized to distribute ART on-site. In 2006, after a protracted legal struggle and a hunger strike by hundreds of HIV-positive inmates, Westville Prison authorities were ordered by a High Court judgment to provide HIV testing and ART to prisoners in need. The prison was subsequently accredited by the Department of Health as an ART distribution site.

## **Refugees and Migrants**

Many asylum seekers in South Africa continue to encounter procedural obstacles and administrative delays throughout the refugee status determination process and face arbitrary arrest, detention, mistreatment, and extortion by immigration and police officers. In August 2007 South Africa’s parliamentary committee on home affairs condemned conditions in the country’s largest refugee reception centre, Marabastad, in Pretoria, reporting that the center was filthy, overcrowded, and

understaffed. The government subsequently agreed to upgrade this center, and has recognized the need to address corruption and expedite the administrative process for asylum applications.

Political repression and the economic crisis in Zimbabwe continue to cause a significant number of Zimbabwean nationals to seek entry into South Africa. Officials at the Lindela repatriation centre, situated near a South Africa-Zimbabwe border post in Limpopo province, are detaining illegal immigrants in overcrowded detention facilities and deporting large numbers of Zimbabweans without screening for refugee status. South Africa's Department of Home Affairs maintains that most Zimbabweans entering South Africa are economic migrants and cannot be classified as refugees as they are not facing persecution in their own country. Human rights groups dispute this.

Large numbers of Zimbabwean and Mozambican migrants continue to seek seasonal work in South Africa's commercial agricultural sector. Although South Africa's employment law affords rights to foreign migrant workers, many farmers openly disregard the minimum wage, do not pay overtime, and make unlawful deductions from workers' wages. Undocumented migrants are also frequently harassed by police and immigration officials and are subject to assault and extortion during farm raids.

## **Women's Rights**

Strong women's organizations in South Africa continue to challenge the patriarchal attitudes that persist in society and to pressure the government to address gender-based abuses and discrimination. At the 2007 Women's Parliament, South Africa's deputy president acknowledged the need for government to create partnerships with civil society to expedite the implementation of the country's progressive legislation.

Rape and other forms of gender-based violence continue to be under-reported and complaints often receive inadequate response by police officials. The government has established 52 specialized sexual offenses courts throughout the country, which have had relative success in improving conviction rates. In close proximity to these courts, the government has also established Thuthuzela Care Centers where

survivors of rape are able to report the crime, access specialist investigators and prosecutors, and obtain medical care and counseling.

On May 22, Parliament passed the Sexual Offences and Related Matters Amendment Bill, which acknowledges the high incidence of sexual offenses committed in South Africa, broadens the definition of rape, and acknowledges the link between rape and HIV infection. The bill provides for victim-initiated compulsory HIV testing for rape perpetrators; compels test results to be made available to the victims; and entitles victims to receive, at state expense, post-exposure prophylaxis (PEP), a course of antiretroviral drugs that can reduce the risk of contracting HIV by up to 80 percent if taken within 72 hours of exposure. However, although the bill mandates designated public health facilities to provide rape survivors with PEP, it does not mention other treatment or counseling services and makes access to PEP dependent on the survivor laying criminal charges. Important recommendations by the South African Law Reform Commission that would have improved conviction rates by improving the court experiences of claimants have not been included in the bill.

## **Children's Rights**

The Children's Act (2005) remains to be enacted, although certain parts of the Act came into effect in July 2007, including provisions that grant children from age 12 the right to access medical services for HIV testing and treatment and that allow children to acquire contraceptives without parental consent. The Act prohibits child trafficking, for which South Africa continues to be a source and destination country, and makes the UN Protocol to Prevent Trafficking in Persons applicable as part of South African law. Delays in passing the Act have been caused by parliamentary debate over the complementary Children's Amendment Bill (2007), which was passed on November 6 and is currently being reviewed by the National Council of Provinces. The bill scales up delivery of social welfare services for children, provides for well resourced strategies to facilitate child protection in instances of abuse and neglect, and provides greater integrated support to child-headed households, as determined by a vulnerability criterion.

Sexual violence, corporal punishment, bullying, gang-related activities, and occasional murders continue to occur in some South African schools. In September

Parliament proposed that legislation to curb violence in schools be included in the Education Laws Amendment Bill, currently under consideration.

### **Lesbian, Gay, Bisexual, and Transgender Rights**

Although South Africa's constitution outlaws discrimination based on sexual orientation, and same-sex marriage has been legalized, gay and lesbian people remain vulnerable. In 2007 a spate of homophobia-induced murders of lesbians prompted the South African Human Rights Commission to develop a program of action to combat escalating hate crimes and determine whether South Africa needs legislation in this regard. The commission recommended concerted action from the criminal justice system. Nongovernmental organizations have recommended that diversity sensitization should be part of a preventative curriculum in schools.

### **International Role**

South Africa continues to play a prominent role in international affairs. It actively supported the establishment of the African Court on Human and Peoples' Rights, which began its first session in September 2007, and has been involved in conflict mediation in the DRC, Western Sahara, Côte d'Ivoire, and other countries. In March the Southern African Development Community mandated South Africa to mediate in the Zimbabwean crisis, where it has focused on encouraging dialogue between the Zimbabwean government and the main opposition party. South Africa continues to contribute to peacekeeping efforts in the DRC, Burundi, Sudan, and along the Ethiopian-Eritrean border.

South Africa's voting record during its first year as a non-permanent member of the United Nations Security Council has been criticized. In January it opposed a resolution condemning human rights abuses by the military junta in Burma, on the grounds that domestic human rights violations in Burma do not constitute a threat to international peace and security and, therefore, that the matter does not fall within Security Council jurisdiction. In the UN Human Rights Council South Africa has been criticized by Council members and the international media for attempting to block discussion of human rights abuses in Zimbabwe and for voting to end monitoring of rights abuses in Iran and Uzbekistan.