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## South Africa

As South Africa enters its eleventh year of democracy, its challenge lies in implementing policies in line with the country's far-reaching and progressive constitution. Areas of particular concern relate to the rights of detained and accused persons, excessive use of force by police, the rights of refugees and asylum seekers, and access to education on commercial farms.

### **Police**

The decrease in 2005 in the number of deaths in police custody and as a result of police action is welcome. Reforms in policing particularly in the conduct of arrests and detention had a positive effect. By April 2005, 652 deaths involving law enforcement had been reported—down from 714 by March 2004. Of these 652 cases, 286 occurred in police custody and included deaths by suicide, natural causes, and injuries sustained prior to detention. The remaining 366 deaths were the result of law enforcement action, including fatalities incurred in the course of arrests, beatings in detention, and shooting of innocent bystanders.

Of concern is a gradual increase in the number of cases of inappropriate use of force by the police—a matter that has been raised and investigated by the Independent Complaints Directorate (ICD), an independent oversight body. Increasingly, police have been involved in violent confrontations with communities protesting against a lack of services. In May, police used rubber bullets to control residents of an informal settlement of Happy Valley, Kommetjie who were protesting against tardy delivery of housing and basic services. On September 21, in a protest against the local municipalities' slow response to a typhoid outbreak in Botleng, Delmas, the police used rubber bullets against protestors, injuring at least six people. On July 12, police used teargas and rubber bullets to disperse a peaceful demonstration to protest against the lack of progress in the dispensing of antiretroviral medication for the treatment of HIV/AIDS in Queenstown, Eastern Cape.

In June, the ICD completed its investigation into the death of a seventeen-year-old boy following the firing of rubber bullets on peaceful protestors of eNtabazwe—a township previously designated for Africans—outside Harrismith on August 30, 2004. It recommended that the state should prosecute the police officers who fired at the protestors. These officers are due to stand trial on February 6, 2006. The ICD urged that police officers should not use lethal ammunition such as birdshot and buckshot to manage protestors. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that police shall, as far as possible, use nonviolent means before resorting to the use of force and firearms. Whenever the lawful use of force and firearms is unavoidable,

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police must exercise restraint in such use and act in proportion to the seriousness of the offense and the legitimate objective to be achieved, and also minimize damage and injury.

### ***Prisons***

The entry into force of sections addressing the treatment of prisoners in the Correctional Services Act 111 of 1998 on July 31, 2004 provides a framework to safeguard the human rights of prisoners. Overcrowding in South Africa's prisons remains high. As of September 30, 2005, 155,770 prisoners were being held in facilities that should accommodate 113,825. The number of sentenced prisoners decreased from 133,764 in March 31, 2004 to 110,971 in September. The number of pre-trial prisoners dropped from 52,326 as of January 31, to 44,799 in September 31, 2005. This marginal drop from the previous year is due, in part, to the early release of 31,865 qualifying prisoners between May and August. Despite these steps, 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. The Inspecting Judge of Prisons—an independent oversight body—has raised concerns at the high prison population, and has recommended the early release of prisoners who are too poor to afford bail in order to reduce the number of inmates. As of March 31, 2005, 13,880 detained prisoners—about a third of the pre-trial population—could not afford bail.

Following, in part, a constitutional court order requiring the substitution of the death sentence in May 2005, sixty-three inmates were no longer imprisoned under the death sentence. As of September 30, forty three prisoners were awaiting the substitution of their sentences.

### ***Children in Detention***

Juveniles continue to be incarcerated while awaiting trial despite international legal requirements that child offenders not be detained except as a last resort. Notably, however, the number of children awaiting trial in detention has dropped significantly from between two to three thousand in March 2004 to 1227 as of September 30, 2005. The total number of children in detention is 2314. International standards stipulate that juveniles should be held in separate quarters from adults; however, this is not always the case in South Africa. Children in detention are reportedly victims of sexual abuse, violence, and gang related activities. The Child Justice Bill, deliberated in the South African Parliament 2005, proposes a restorative justice approach in an attempt to move children out of the criminal justice system. The bill establishes one-stop child justice centers.

### ***Rights of Refugees and Asylum Seekers***

Since the inception of the 1998 Refugees Act, which formally protects the rights of asylum seekers and refugees in line with international law, South Africa has witnessed a steady increase in the number of asylum seekers. In 2003 the asylum seeker and refugee population was 110,643. By the end of 2004, this number had increased to 142,907. 32,600 new asylum applications were lodged with the Department of Home Affairs in 2004. The implementation of the Refugees Act remains problematic. Delays in the refugee status determination process, inconsistency in application of a court decision

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allowing for the right to work and study for asylum seekers; corrupt practices and inadequate procedures for unaccompanied minors seeking asylum render protections for asylum seekers inadequate. The number of applications for asylum pending at the end of 2004 was 115,220, while only 27,683 applications had been granted refugee status. These administrative difficulties can present a risk of unlawful arrest and possible deportation for asylum seekers. South Africa deported a total of 167,137 foreign nationals in 2004. Between January and September 30, South Africa deported 156,893. The majority of the deportees are from Southern Africa.

### ***Violence against Women and Children***

Violence against women and children is widely recognized as a serious concern in South Africa: 55,114 rapes and attempted rapes were reported to the South African police between April 2004 and March 2005 (though the real number is almost certainly significantly higher.) This is an increase from the previous year over a similar period. The South African Parliament considered the Sexual Offenses Bill to remove anomalies from the existing law by broadening the definition of rape and focusing on the victim rather than the perpetrator with respect to violence against women in 2005. Police and the court officials continue to receive training in handling cases of violence against women and children. The government established fifty-two sexual offenses courts to adjudicate and focus specifically on cases related to gender violence by end 2004.

### ***Social and Economic Rights***

South Africa has a number of good policies intended to safeguard social and economic rights. However, the government continues to face challenges in a number of areas including land reform, provision of services such as health care and education in rural areas, and broadly finding a solution to poverty (between 40 and 50 percent of the population can be considered poor). 2005 saw several demonstrations against poor delivery of services in impoverished communities in the Western Cape, Free State, Eastern Cape and Gauteng provinces.

People living in rural areas continue to face difficulties in accessing their rights to health care and social services. For example, although access to public schooling for children is widely available and enrollment continues to increase, conditions of schools in poor areas remain inadequate. Insecure buildings, lack of water, and unhygienic sanitation facilities are some of the conditions pupils face. Physical access to education in rural areas remains difficult for a number of rural learners. Walking distances can reach thirty kilometers each day to and from school, exposing learners to dangers such as sexual violence and contributing to high dropout rates. With respect to public schools on farms, there has been marginal progress in concluding contractual agreements between government and farm owners. These contracts delineate the roles and responsibilities of each party in providing education. Since 1997, when legislation was enacted providing for these contracts, only approximately half these schools have such contractual agreements. The lack of contracts hinders children's abilities to receive a quality education. A government ministerial committee on rural education released a report in May that makes a number of key recommendations to improve schooling in rural areas. The national Department of

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Education indicated that it was preparing a policy document on the recommendations. The South African Human Rights Commission—an independent statutory body—conducted public hearings on the right to a basic education in October 2005.

### ***Key International Actors***

In the promotion of human rights, democracy and peace, South Africa continues to play a key role in Africa under the auspices of the African Union. South Africa has provided troops in peace support operations, supported post-conflict reconstruction and led mediation efforts in the Democratic Republic of Congo, Burundi, Darfur, western Sudan and Côte d'Ivoire respectively.

The South African government began a national consultative process of the African Peer Review Mechanism (APRM)—a self-monitoring, voluntary mechanism—as agreed to by the African Union and Government Implementation Committee of the New Partnership for Africa's Development to review the country's practice of democracy, governance and social and economic development in September. The APRM country review team will consider this report when it visits South Africa in 2006.