



JANUARY 2009

COUNTRY SUMMARY

South Africa

Poverty, unemployment, gender-based and xenophobic violence, and crime remain significant barriers to the enjoyment of human rights; the government's commitment to address them is inadequate. Vulnerable groups and NGOs are increasingly using the courts to establish the principle of progressive realization of socioeconomic rights as stipulated in the constitution.

In September 2008 leadership battles within the ruling African National Congress (ANC) resulted in the early resignation of President Thabo Mbeki after a court finding of judicial interference. ANC Deputy President Kgalema Motlanthe took over until the 2009 elections. Judicial independence has been re-emphasized by the courts, the government, and civil society in the face of public attacks, disparaging judges, and scandals involving the conduct of individual judges. Incidents of police violence are reported to be increasing.

South Africa failed to utilize its non-permanent membership of the United Nations Security Council to support resolutions or initiatives that would help protect the rights of people in various countries, most notably Sudan and Zimbabwe.

Xenophobic Attacks on Foreign Nationals

In May 2008 xenophobic violence broke out in Alexandra, Johannesburg, and rapidly spread to seven of South Africa's nine provinces, resulting in 62 deaths, including 21 South Africans, 11 Mozambicans, five Zimbabweans and three Somalis; thousands were injured. Some 40,000 foreign nationals left the country and a further 50,000 remain internally displaced.

The attacks are indicative of growing xenophobia in South Africa, where isolated incidents of violence against foreign nationals have been documented since the mid-1990s. Intolerance of migrants partly provoked by competition for resources and by

increasing numbers of migrants, particularly from Zimbabwe, has created a volatile situation in poor communities, with foreign nationals becoming easy targets. Although over 1,000 people were arrested after the violence, there were fewer convictions. The climate of impunity for those responsible allowed the situation to escalate. Humanitarian measures were also inadequate. Temporary shelters constructed in June 2008 did not meet international standards, and there was insufficient clean water, food, and sanitation, and inadequate healthcare. Lack of protection for women and children resulted in incidents of sexual violence. Despite a pending Constitutional Court judgment, the Gauteng provincial government dismantled temporary shelters, leaving hundreds of people without shelter, water, food, and sanitation.

The government has yet to address longer-term issues of reintegration, resettlement, or xenophobic intolerance in local communities. While many victims of the May attacks have returned to communities from which they fled, some have experienced new attacks, with over 30 deaths being reported between June and November 2008. As a result, many are seeking greater assurances for their own safety before leaving government shelters.

Refugees and Migrants

The government opened a reception centre in Musina, near the Zimbabwean border, in response to increased migration from Zimbabwe and growing criticism from civil society organizations. However, deportation and status determination processes conducted by immigration officials and police who are insufficiently trained in basic refugee law and related procedures continue to thwart refugees' efforts to seek asylum. Tens of thousands of Zimbabwean nationals with valid refugee claims on the basis of fleeing Operation Murambatsvina or other well-founded fears of political persecution were refouled.

South Africa's reform of the Department of Home Affairs has yet to have impact on the procedural obstacles and administrative delays that plague refugee status determination. Asylum seekers remain subject to long queues in filthy conditions, face status determination officers ill-equipped to make fair decisions, and struggle

to access assistance for appeals because of limited resources within the Legal Aid Board.

Excessive Use of Force by the Police

In 2008 South Africa saw a 13 percent increase in the number of deaths as a result of police action and an eight percent increase in complaints against police. A January police raid on the Johannesburg Central Methodist Church saw the use of pepper spray and batons against 1,200 sleeping foreign nationals, including women and children seeking shelter. Some were refugees and asylum seekers. The police said they were looking for drugs, firearms, and “illegal immigrants.”

The indiscriminate use of rubber bullets and other non-lethal weapons during public protests—from student protests to service delivery protests—and the number of resulting injuries call into question policing methods used during public demonstrations. During an authorized service delivery protest in Sydenham, Durban, in September 2007, police used water cannon, stun grenades and fired rubber bullets without adequate warning; six protesters required hospitalization. Rubber bullets and assaults using batons during protests injured eight people in Orange Farm in May 2008, 16 refugees in the Western Cape in July and another 18 people in Orange Farm in September. South African law clearly limits the use of weapons likely to cause bodily injury or death to situations where other methods have failed, and requires the use of proportionate force. In many reported incidents, the police failed to give adequate warning and did not try other methods to disperse demonstrations.

Socioeconomic Rights

Delivery on health rights remains inadequate, with progress being won through civil society litigation. In May 2008 the High Court ruled that the health classification policy of the South African Defence Forces was unconstitutional, ordering it to halt discrimination on the grounds of HIV status and to change policy that precluded members from external deployment because of HIV status. The increasing incidence of drug-resistant and multi-drug-resistant tuberculosis has raised concerns about the delivery of effective TB therapy and infection-control practices in South African

hospitals, the confinement of patients, the conditions of confinement, and patient access to treatment.

Despite the South African government's "Breaking New Ground" housing policy, which includes development of socially inclusive housing projects, an informal settlement upgrading program, and provision of infrastructure and services for low-income communities, more than 14 percent of South Africans continue to live in inadequate housing; while over 20 percent do not have access to basic services. During his visit to South Africa in February 2008, the UN special rapporteur on adequate housing commented that living conditions in South Africa's informal settlements fall short of safe and sustainable conditions.

In April the Phiri community affirmed the right to adequate water for poor communities when it won its High Court case against the City of Johannesburg. The landmark ruling ordered the City to provide residents of Phiri with 50 liters of free water per person per day, noting that the current daily allocation of 25 liters of free water per person was insufficient, particularly for people suffering from HIV/AIDS. The City of Johannesburg halted installations of pre-paid water meters while it appealed the High Court decision.

Women's Rights

Violence against women, including rape and domestic violence, remained unacceptably high. The so-called Sexual Offences Act—officially titled the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007—finally came into effect on December 16, 2007. It amends the common law definition of rape to include men and boys and no longer focuses only on penetrative offenses. It provides additional protective measures for child victims of sexual offenses and adults with mental disabilities.

Children's Rights

The Children's Act became law in April 2008 and offers increased protection for children and the promotion of children's rights. The Child Justice Act passed in June established a separate criminal justice procedural system for child offenders. It also

increased the minimum age of criminal capacity from seven to 10 years, but allows for mandatory minimum sentences—including life sentences for offenses such as murder and the rape of a minor—to be applicable to children ages 16 and 17 years. This is despite constitutional provisions that children should be detained only as a last resort and for the shortest appropriate period of time, and despite the call by the UN Committee on the Rights of the Child for life imprisonment of child offenders to be abolished.

Around 122,000 children live in child-headed households, making them particularly vulnerable to discrimination, ostracism, social exclusion, and sexual exploitation. Unaccompanied refugee and asylum-seeking children face obstacles and delays in accessing the courts to formalize their status, resulting in informal foster placements and delays in accessing social welfare.

International Role

South Africa ended its two-year period as a non-permanent member of the UN Security Council in December 2008. South Africa opposed or declined to support resolutions for victims of human rights violations in Sudan, Belarus, Uzbekistan, Burma, Iran, Zimbabwe, and North Korea. Together with Libya, South Africa played a leading role in seeking to make renewal of the United Nations-African Union Mission in Darfur, conditional on a Security Council intervention to rein in the International Criminal Court, by ordering it not to proceed with the requested arrest warrant for Sudan's President Omar al-Bashir. The South African move, which would have been damaging to the court, was ultimately defeated. South Africa was a strong supporter of the court when it was founded. South Africa was reviewed under the Universal Periodic Review mechanism of the UN Human Rights Council in April, but did not make clear its commitments during the process.

South Africa's former president Mbeki continued as the Southern African Development Community mediator in Zimbabwe throughout the year but failed to confront the major election-related human rights violations committed by the Zimbabwean government.