



January 2011

country summary

## South Africa

South Africa's pro-human rights constitution, stable government, democratic institutions, independent judiciary, and strong economy mean it has great potential to become a global human rights leader. However, government efforts to realize this potential at home have been inconsistent, and recent trends suggest possible constriction of civil and political rights. In addition, inadequate policies and poor implementation of good ones has slowed the realization of social and economic rights for many South Africans.

In the international arena, South Africa's government has refrained in recent years from condemning abuses in China, Sri Lanka, Iran, Burma, Sudan, and the Democratic Republic of Congo, dashing hopes that it would be a reliable partner in promoting human rights. South Africa's foreign policy role will be in the international spotlight again following its assumption of a seat on the United Nations Security Council on January 1, 2011.

### Freedom of Expression

Two separate but interrelated developments in 2010 led to widespread criticism and concern that the government is trying to limit freedom of expression. Ahead of its policy conference in September the ruling African National Congress party (ANC) resurrected a 2007 resolution pushing for the establishment of a Media Appeals Tribunal, arguing that media cannot be counted on to regulate themselves, and that "freedom of the press is not an absolute right and must be balanced against individuals' rights to privacy and human dignity." The ANC's proposal seeks to establish a regulatory mechanism accountable to the ANC-dominated Parliament, which would constitute a back-door path to censorship and suppression of dissent.

On August 4 Mzilikazi Wa-Afrika, a prominent journalist with the *Sunday Times* who had exposed corruption by officials, was arrested without a warrant by 20 policemen in six vans. He was then taken to a secret location in Mpumalanga and interrogated at 2 a.m. without a lawyer. The police also searched his home and took notebooks without a search warrant. Wa-Afrika was eventually released on R5,000 (US\$725) bail after his newspaper went to the High Court; the charges cited upon his arrest have since been dropped. The incident

heightened fears that such politically motivated intimidation of the press could become the norm if the ANC-proposed tribunal is established.

In April 2010 the Department of State Security tabled a draft of the Protection of Information Bill (PIB) for parliamentary consideration. In 2008 Parliament first tabled and rejected the bill—which aims to replace the existing, expansive 1982 apartheid-era law that prevents and penalizes disclosure of state secrets—for being too draconian. Parliament instructed the Department of State Security to revise the bill in line with the constitution. But when it was re-presented in July 2010, offending elements of the bill had been retained and even made harsher.

The PIB currently gives the government sweeping powers to classify information and impose jail terms of up to 25 years for publishing classified information. It sets no limits on which officials or state bodies can classify information, and has no clear criteria for classifying information. The bill also extends the protection of secrecy to commercial entities, exempts intelligence agencies from scrutiny, and imposes serious punitive measures against those who disclose information.

If enacted as currently written, the bill would seriously impede the free flow of information, erode the right of access to information, and violate key constitutional provisions. The Right to Know Campaign, which represents a broad spectrum of civil society groups, has pressured to squash the bill in its current form. Parliament gave the adhoc committee tasked with finalizing the bill until January 28, 2011 to incorporate all inputs and present a final draft.

## **Refugees and Migrants**

On May 11 the Consortium for Refugees and Migrants in South Africa (CoRMSA) reported 10 incidents of xenophobic violence in Siyathemba, Atteridgeville, Mamelodi, Orange Farm, and Sasolburg, where large crowds looted foreign-owned shops.

CoRMSA also reported mounting threats of violence following the football World Cup, held in South Africa in June and July, leading thousands of migrants—mainly Zimbabweans—to flee South Africa or relocate to other communities. Responding to public pressure, the government moved swiftly, establishing a heavy police presence and deploying the military in Alexandria, Katlehong, and other townships where xenophobic violence had been predicted. The anticipated violence did not materialize, but migrants in South Africa continue to report scattered incidents of xenophobic attacks.

In September South Africa moved to “regularize the presence of Zimbabweans in South Africa” by ending the special dispensation for Zimbabwean nationals that the government introduced in April 2009, and resuming deportations of those without the new special permits. After the January 2011 lifting of the moratorium on deporting Zimbabweans, they have two options to lawfully enter and remain in South Africa: apply for asylum, or apply for a temporary residence permit under the Immigration Rules’ work, study and business provisions. Most are unlikely to qualify under either regime. South Africa’s Department of Home Affairs already had a backlog of 309,794 unresolved applications at the end of 2009, according to the UN High Commissioner for Refugees.

### **Socioeconomic Rights**

Millions of South Africans suffer from inadequate access to shelter, water, education, and health care. South Africa is unlikely to meet the UN health-related Millennium Development Goals (MDGs), and is one of only eight countries in the region where the rate of maternal deaths seems to be increasing. The South African government estimates that the maternal mortality ratio was 625 deaths per 100,000 live births in 2007, up from 150 deaths per 100,000 live births in 1998. The under-five mortality rate was 104 deaths per 1000 live births in 2007, up from 59 deaths in 1998, while the infant mortality rate was 53 deaths per 1,000 live births in 2007, compared to 54 in 2001.

South Africa also has one of the world’s largest populations affected by HIV/AIDS, with more than 5 million people living with HIV, and more than 1 million needing AIDS treatment. The country’s response to the epidemic has significantly improved under Health Minister Aaron Motsoaledi. On April 25 the government launched the HIV Testing and Counseling campaign (HTC), which aims to see 15 million people accepting voluntary HIV testing and counseling by 2011, and 1.5 million receiving antiretroviral treatment by June 2011. However, weaknesses in South Africa’s public health system are already hampering the campaign’s success.

### **Sexual Orientation and Gender Identity**

While South Africa has attempted to foster a culture of tolerance by outlawing discrimination based on sexual orientation and by legalizing same-sex unions, social conservatism means that gays, lesbians, and gender-nonconforming individuals remain vulnerable to violence and discrimination. In a study by the Human Sciences Research Council (HSRC) in 2008, over 80 percent of respondents across age groups “consistently” expressed the view that sex between two men or two women “was always wrong,” and that gays and lesbians were “un-African.” The cases of Sizakele Sigasa and Salome Masooa, who were tortured, raped, and brutally murdered on July 7, 2007, in Soweto, as well as subsequent cases of Eudy

Simelane, Zoliswa Nonkonyane, and others has highlighted the vulnerability of black lesbians and gender-nonconforming individuals to violence and hate crimes. The 07-07-07 Campaign continues to take up cases of violence against black lesbians and gender-nonconforming individuals, and advocate for an end to hate crimes. However, the government has yet to develop and implement measures to end these human rights abuses.

## **International Role**

South Africa plays a significant role on the African continent, where it is one of the largest contributors to peacekeeping missions and a key player on regional bodies, such as the African Union and the Southern African Development Community.

South Africa continues to drive mediation efforts in Zimbabwe, which have taken a bolder approach toward President Robert Mugabe under President Jacob Zuma's stewardship. Yet South Africa has not publicly pushed Zimbabwe's coalition government on key rights reforms and the need to end ongoing violations. It failed to condemn the violence that erupted in Zimbabwe during September's constitution-outreach process, and neglected to speak out against abuses committed in the Marange diamond fields in eastern Zimbabwe, despite ample evidence that the Zimbabwean military is using forced adult and child labor.

At a high-level meeting on Sudan in September, organized by UN Secretary-General Ban Ki-moon, International Relations Minister Maite Nkoane-Mashabane appealed for international support to guarantee a peaceful referendum outcome in January in South Sudan and Abyei. South Africa has also supported the work of the AU Panel on Sudan and contributed to the joint AU-UN operation in Darfur (UNAMID).

In 2010 South Africa lobbied aggressively and successfully to regain a non-permanent seat at the UN Security Council, which will allow it to exert influence on key international issues. Its past performance in multilateral institutions has been disappointing from a human rights perspective. As a member of the Security Council in 2007-2008, South Africa opposed a resolution condemning abuses by the military junta in Burma, while at the UN Human Rights Council in 2007, South Africa attempted to block discussions of rights abuses in Zimbabwe and voted to end monitoring of abuses in Iran and Uzbekistan. South Africa's seat on the UN Security Council beginning in 2011 affords the country an opportunity to translate its constitutional commitment to human rights into critical involvement on international issues where protecting human rights is a central concern.