

# **SOUTH AFRICA 2022 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

South Africa is a multiparty parliamentary democracy that has constitutional power shared among the executive, judiciary, and parliamentary branches. In 2019 the country held a credible national election in which the ruling African National Congress won 58 percent of the vote and 230 of 400 seats in the National Assembly. In 2019 African National Congress President Cyril Ramaphosa was sworn in for his first full term as president of the republic.

The South African Police Service has primary responsibility for internal security. The police commissioner has operational authority over police. The president appoints the police commissioner, but the minister of police supervises the commissioner. The South African National Defense Force, under the civilian-led Department of Defense, also has domestic security responsibilities. There were reports that members of the security forces committed numerous abuses.

Significant human rights issues included credible reports of: unlawful or arbitrary killings; torture or cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest or detention; serious government corruption; trafficking in persons; and crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, or intersex persons.

Although the government investigated, prosecuted, and punished some officials who committed human rights abuses or were accused of corruption, there were numerous reports of impunity.

## **Section 1. Respect for the Integrity of the Person**

### **a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were several reports that the government or its agents committed arbitrary or unlawful killings. As of August, approximately 5,500 persons were arrested in

connection with the July 2021 violence. The Independent Police Investigative Directorate (IPID) investigates allegations of police brutality. Police use of lethal and excessive force resulted in numerous deaths and injuries, according to the IPID, Amnesty International, and other nongovernmental organizations (NGOs). IPID investigations were ongoing.

In March police officers killed a man who questioned police why his girlfriend was placed under arrest in an informal settlement in KwaZulu-Natal; the police beat the woman under arrest in front of her children.

In June a court acquitted four security force members accused in March 2021 of killing a bystander after firing rubber bullets at close range during reportedly peaceful student protests in Johannesburg.

Watchdog groups noted deaths in custody often resulted from physical abuse combined with a lack of subsequent medical treatment or neglect (see section 1.c.). According to the *Independent Police Investigative Directorate Report 2021/2022*, deaths in police custody (223 cases) increased by 3 percent from 2020/2021. The Judicial Inspectorate for Correctional Services (JICS) 2020-21 annual report stated, “A particularly disturbing feature was a sharp rise in cases where the use of force caused the deaths of inmates.”

In 2020 three police officers allegedly shot and killed Nathaniel Julies, age 16, who had Down syndrome. The officers were released on bail in 2021. Following the February death of the judge in the officers’ trial, a new trial began in October and was ongoing.

There were attacks against whistleblowers. In a prominent example, in August 2021 Babita Deokaran, an accountant in the Gauteng Department of Health, was killed after she discovered and exposed personal protective equipment tender corruption in the Gauteng premier’s office. Six suspects remained in custody. In July civil society members demanded the investigation and arrest of the individuals who ordered her killing. The case launched a debate concerning inadequate protections for whistleblowers.

## **b. Disappearance**

There were no reports of disappearances by or on behalf of government authorities.

## **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and Other Related Abuses**

Although the constitution and law prohibit such practices, there were reports of police and National Defense Force use of torture and physical abuse, some of which resulted in death. The 2021/2022 IPID report cited 99 reported inmate rapes by police officers, 192 reports of torture, as well as reports of assault. According to the interim 2021/22 IPID annual report, enforcement of COVID-19 restrictions and the July unrest in Gauteng and KwaZulu-Natal resulted in more cases of police misconduct, particularly assault. These cases involved a total number of 311 police officers. The directorate stated it secured 239 disciplinary convictions with 53 officers dismissed from the service.

According to the *Daily News*, in July three police officers assaulted a magistrate's court officer in Cape Town after he assisted in an investigation of a rape crime. Three men claimed police in Mbombela tortured them after their arrest for the killing of the former Economic Freedom Fighters (EFF) secretary general's daughter in May.

The JICS received 694 complaints relating to use of force by correctional officials on inmates between April 2020 and March, an almost 94 percent increase compared with the previous year.

In July IPID arrested 16 law enforcement officials, including three security officials, who were accused of assaulting several individuals for contravening COVID-19 lockdowns in 2020, leading to the death of one person. All 16 law enforcement officials were granted bail and the case was ongoing.

Impunity was a significant problem in the security forces. In June 2021, the national police commissioner admitted that the South African Police Service (SAPS) needed to improve its "discipline management" for police officers accused of violence. The police watchdog organization IPID documented the lack of police accountability for thousands of annually registered police brutality complaints.

The factors contributing to widespread police brutality were a lack of accountability and training. The government did not take any action during the year to increase respect for human rights in the security forces.

### **Prison and Detention Center Conditions**

Prison conditions were harsh and life-threatening due to overcrowding, poor sanitation, inadequate medical care, disease (particularly tuberculosis), as well as inmate-on-inmate rape and physical abuse.

**Abusive Physical Conditions:** Civil society groups reported gross overcrowding of prisons was a problem. According to the *2021/2022 Department of Correctional Services Annual Report*, in March the country held 143,223 prisoners in facilities with a capacity of 110,836 persons.

Prisons generally held pretrial detainees with convicted prisoners, although in some large urban areas dedicated pretrial facilities were available.

The *Mail & Guardian* reported on shortages of prison doctors, inadequate investigation and documentation of prisoner deaths, inadequate monitoring of the prison population, and high prisoner suicide rates. Food, sanitation, and health care in prisons and detention centers were inadequate. Prisons provided inmates with potable water, but supplies and food were occasionally inadequate, and sanitation was poor. Most cells had toilets and basins but often lacked chairs, adequate light, and ventilation. The Department of Correctional Services (DCS) required doctors to complete and sign reports of inmate deaths due to natural causes to lessen the incidence of deaths caused by neglect.

According to the *Mail & Guardian*, NGOs reported some inmates with mental disabilities who had committed no crime or other infraction were incarcerated rather than being cared for in a mental-health facility. Such prisoners also were often denied medical services. The JICS 2020-21 annual report also indicated patients were confined at correctional facilities because there was insufficient accommodation at mental health facilities, and that the DCS lacked sufficient mental health professionals to provide care to suicidal inmates. During the year 66 attempted suicides were reported.

**Administration:** Authorities did not always conduct proper investigations of credible allegations of mistreatment.

**Independent Monitoring:** The government usually permitted monitoring by independent nongovernmental observers of prison conditions, including visits by the International Committee of the Red Cross and the independent JICS.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention and provide for the right of any person to challenge the lawfulness of arrest or detention in court. The government generally observed these requirements; however, there were numerous cases of arbitrary arrests of foreign workers, asylum seekers, and refugees.

##### **Arrest Procedures and Treatment of Detainees**

The law requires that a judge or magistrate issue arrest warrants based on sufficient evidence. Police must promptly inform detainees of the reasons for their detention, their right to remain silent, and the consequences of waiving that right. Police must charge detainees within 48 hours of arrest; hold them in conditions respecting human dignity; allow them to consult with legal counsel of their choice at every stage of their detention (or provide them with state-funded legal counsel); and permit them to communicate with relatives, medical practitioners, and religious counselors. The government often did not respect these rights. Police must release detainees (with or without bail) unless the interests of justice require otherwise, although bail for pretrial detainees often exceeded what suspects could pay.

**Arbitrary Arrest:** During the year there were numerous cases of arbitrary arrest, particularly of foreign workers, asylum seekers, and refugees. NGOs and media outlets reported security forces arbitrarily arrested migrants and asylum seekers, including those with proper documentation, often because police were unfamiliar with migrant and asylum documentation. In some cases, police threatened documented migrants and asylum seekers with indefinite detention and bureaucratic hurdles unless they paid bribes. The law prohibits the detention of unaccompanied migrant children for immigration law violations, but NGOs reported the Department of Home Affairs (DHA), and SAPS detained them.

Legal aid organizations reported police frequently arrested persons for minor crimes for which the law stipulates the use of a legal summons. Arrests for offenses such as common assault, failure to provide proof of identity, or petty theft sometimes resulted in the unlawful imprisonment of ordinary citizens alongside hardened criminals, which created opportunities for physical abuse.

**Pretrial Detention:** Lengthy pretrial detention was common. According to the *Department of Correctional Services 2021/2022 Annual Report*, the pretrial population averaged 46,426 of 143,223 detainees, 32 percent of the total inmate population. According to the DCS, detainees waited an average of 176 days before trial. Observers attributed the high rate of pretrial detention to arrests based on insufficient evidence for prosecution, overburdened courts, poor case preparation, irregular access to public defenders, and prohibitive bail amounts. Police often held detainees while prosecutors developed cases and waited for court dates. Legal scholars estimated less than 60 percent of those arrested were convicted. The law requires a review in cases of pretrial detention of more than two years' duration. The pretrial detention frequently exceeded the maximum sentence for the alleged crime.

## **e. Denial of Fair Public Trial**

The law provides for an independent judiciary, and the government generally respected judicial independence and impartiality. There were numerous reports of lost trial documents, often when the accused was a government official. NGOs stated judicial corruption was a problem.

Government agencies sometimes ignored orders from provincial high courts and the Constitutional Court.

## **Trial Procedures**

The law provides for the right to a fair and public trial, and an independent judiciary generally enforced this right. Police did not always inform detainees promptly and in detail of the charges against them, nor did they always accurately complete corresponding paperwork. Provision of free interpreter assistance depended on availability and cost. Limited access to interpreters sometimes delayed trials. According to civil society groups, interpretation standards were low

and sometimes compromised the accuracy of exchanges between a defendant and officers of the court. Judges sometimes transferred cases from rural to urban areas to access interpreters more easily.

Although detainees and defendants have the right to legal counsel provided and funded by the state when “substantial injustice would otherwise result,” this right was limited due to a general lack of information regarding rights to legal representation and inadequate government funding of such legal services. There is no automatic right to appeal unless a convicted individual is younger than age 16, but courts may give defendants permission to do so.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

Individuals and organizations may seek civil remedies for human rights abuses through domestic courts, including equality courts designated to hear matters relating to unfair discrimination, hate speech and harassment, and the South African Human Rights Commission, but the government did not always comply with court decisions. Individuals and organizations may not appeal domestic court decisions to the African Court on Human and Peoples’ Rights, because the government does not recognize the competence of the court.

### **f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

The constitution and law prohibit such actions. The NGO Freedom House reported in 2021 that government agencies employed spyware, social media analytics, and surveilled journalists, usually to identify their confidential sources. Most of these activities required court orders, but it was reportedly easy for agencies to obtain court orders. In February 2021, the Constitutional Court ruled the law does not allow authorities to engage in bulk interception of communications.

## **g. Conflict-related Abuses**

As of October, the UN's *Conduct in UN Field Missions* portal reported 15 allegations of sexual exploitation and abuse reported during the year against South African peacekeepers in the Democratic Republic of the Congo, up from two allegations in 2021. These included 14 allegations of sexual exploitation involving an adult; one allegation of attempted sexual assault involving an adult; and two allegations of rape involving a child. Investigations into all 17 allegations remained pending.

## **Section 2. Respect for Civil Liberties**

### **a. Freedom of Expression, Including for Members of the Press and Other Media**

The constitution and law provide for freedom of expression, including for members of the press and other media, and the government generally respected this right. An independent press, a generally effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for members of the press. Nevertheless, the law permits authorities to restrict reporting on security forces, prisons, and mental institutions.

**Freedom of Expression:** Civil society groups complained regarding a steady shrinking of free expression space with particular concern for backlash received on social media for expressing opinions or publishing articles. Vehement attacks in social media have led some journalists to self-censor or not publish, notably women journalists and foreign journalists who allegedly felt more vulnerable to attack. According to Amnesty International, in August the Ministry of Justice condemned attacks and death threats against the human rights law firm, Socio-Economic Rights Institute (Seri), which had to close its offices after defending the rights of informal traders.

In August the Johannesburg High Court dismissed the lobby group AfriForum's case against the EFF over the party's singing of an antiapartheid struggle song *Dubul' ibhunu*, which translates to "Shoot the Boer," outside the 2020 courtroom trial of farm manager Brendin Horner for murder, as a form of hate speech.

**Violence and Harassment:** There were instances of journalists, in particular women journalists, who were subjected to violence, harassment, or intimidation by authorities or political party representatives due to their reporting. In September members of the Inkatha Freedom Party marched to headquarters of the *City Press* newspaper. The party was unhappy with an opinion article penned by the newspaper's editor in chief in which he described the role of its leader during the apartheid era. The South African News Editors' Forum (SANEF) noted that journalists were not above criticism and there were independent bodies available to handle complaints, such as the Press Council and the Broadcasting Complaints Commission of South Africa.

EFF Deputy President Floyd Shivambu, accused of assaulting a Media24 photographer in 2018 on the parliamentary precinct, was acquitted by the Cape Town magistrate court in July.

In October 2021, SANEF issued a statement condemning criminal attacks and robberies on journalists, especially those attempting to provide election coverage in the lead-up to the November 2021 municipal elections. SANEF's statement declared, "South Africa is becoming a very dangerous place for journalists and apart from attacks on the field, journalists also face cyberbullying and severe attacks on social media platforms."

**Censorship or Content Restrictions:** Government and political officials often criticized media for lack of professionalism and reacted sharply to media criticism. Claims of political interference emerged after the South African Broadcasting Corporation (SABC) dismissed its Head of News Phathiswa Magopeni in January. Magopeni stated she was dismissed because Minister of Transport Fikile Mbalula blamed SABC coverage for the ruling African National Congress' (ANC) poor performance in the November 2021 municipal elections. Some journalists believed the government's sensitivity to criticism resulted in a higher degree of self-censorship.

**Libel/Slander Laws:** The law makes defamation a criminal offense, but there were no prosecutions for defamation during the year. The law also prohibits blasphemy, although reports indicated the last known prosecution for blasphemy was in 1968.

**Nongovernmental Impact:** SANEF described the September serving of a criminal summons by Jacob Zuma's legal representatives against *News24* journalist Karyn Maughan as a case of intimidation. The law allows a person directly affected by a crime to bring a private criminal prosecution against an individual if prosecutors decline to bring a case, as happened in Maughan's case. Zuma's representatives charged Maughan improperly published documents that were held by prosecutors on Zuma's medical condition.

## **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. The law authorizes state monitoring of telecommunication systems, however, including the internet and email, for national security reasons. The law requires all service providers to register on secure databases the identities, physical addresses, and telephone numbers of customers.

## **b. Freedoms of Peaceful Assembly and Association**

The constitution and law provide for freedom of assembly and association, and the government generally respected these rights. Nevertheless, NGOs reported many municipalities continued to require protest organizers to provide advance written notice before staging gatherings or demonstrations.

### **Freedom of Peaceful Assembly**

In prior years protest organizers could be legally required to notify local authorities before staging gatherings or demonstrations. In 2018 the Constitutional Court ruled unanimously against this requirement. Legal experts noted the ruling did not address the question of assuring security by local authorities during protests.

Despite the court ruling, NGOs reported many municipalities continued to require protest organizers to provide advance written notice, especially in small rural communities where organizers were often unaware of their rights. The antixenophobia civil society group Kopanang Africa's Anti-Xenophobia challenged the Johannesburg Metropolitan Policing Department's decision to deny

its permit to march against rising xenophobic violence on Human Rights Day, March 21. The police argued that the march would risk a threat of violence to the participating groups. The march was eventually held on March 26.

Police on occasion used excessive force in response to demonstrations but were almost never held accountable or disciplined for their actions (see sections 1.a. and 1.c.).

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

### **d. Freedom of Movement and the Right to Leave the Country**

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

### **e. Protection of Refugees**

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, or asylum seekers, as well as other persons of concern.

**Access to Asylum:** The law provides for the granting of asylum and refugee status, and the government has an established system for providing protection to refugees. Refugee advocacy groups criticized the government's processes for determining refugee status, citing low approval rates, large case and appeal backlogs, a lack of timely information provided to asylum seekers on their asylum requests and status of their cases, inadequate use of country-of-origin information, an inadequate number of processing locations, and official corruption. Despite DHA anticorruption programs that punished officials found to be accepting bribes, NGOs and asylum applicants reported immigration officials sought bribes. According to civil society groups, the system lacked procedural safeguards for seeking protection and review for unaccompanied children, trafficked victims, and victims of domestic violence. During the year government services continued to

strain to keep up with the caseload, and NGOs criticized the government's implementation of the system as inadequate. The DHA closed its offices for the year due to the COVID-19 pandemic. Although the DHA issued a blanket extension on refugee and asylum certificates, these were often not recognized. The lack of documentation had far-ranging impacts including limiting refugee travel and accessing civil registry services. As of October, the DHA had not opened the Cape Town Refugee Reception Office, closed since 2012, following a High Court order in May that it be reopened.

**Abuse of Migrants and Refugees:** Refugee advocacy organizations stated police and immigration officials physically abused refugees and asylum seekers (see also section 1.d., Arbitrary Arrest). Xenophobic violence was a continuing problem across the country, especially in Gauteng Province. Those targeted often owned or managed small, informal grocery stores in economically marginalized areas that lacked government services (see section 6, Other Social Violence and Discrimination). On October 4, two Somali refugees in the Eastern Cape Province died after their shop was robbed. The perpetrators tied the refugees together, doused them with petrol, and set them and the shop afire.

**Employment:** The law permits refugees to work lawfully. Asylum seekers must obtain DHA approval to work, which was generally granted. According to NGOs, refugees regularly were denied employment due to their immigration status.

**Access to Basic Services:** Although the law provides for asylum seekers, migrants, and refugees to have access to basic services, including education, health, social support, police, and judicial services, NGOs reported that health-care facilities and authorities discriminated against asylum seekers, migrants, and refugees. Some refugees reported they could not access education for their children because schools refused to accept asylum documents as proof of residency. NGOs reported banks regularly denied services to refugees and asylum seekers if they lacked government-issued identification documents.

**Durable Solutions:** The law allows for some refugees to obtain permanent residency and a pathway to citizenship, and, in collaboration with the International Organization for Migration and UNHCR, assisted others in returning voluntarily to their countries of origin.

**Temporary Protection:** The government offered temporary protection to some individuals who may not qualify as refugees. The government allowed persons who applied for asylum to stay in the country while their claims were adjudicated and, if denied, to appeal.

## **f. Status and Treatment of Internally Displaced Persons**

Floods in KwaZulu-Natal in April and May claimed more than 450 lives and left hundreds homeless. According to reports, floods destroyed an estimated 5,704 houses and left 9,659 significantly damaged. The government accommodated the flood victims in more than 50 emergency shelters where the living conditions were said to be poor due to overcrowding.

## **g. Stateless Persons**

The law allows children with no other nationality born to foreign national parents who arrived in the country on or after January 1, 1995, always lived in South Africa, and are in possession of a birth certificate, to apply for citizenship.

Foreign nationals have a separate two-step process to register a child's birth. In addition, the foreign national must have legal status in the country to engage in this process. Registration must happen within 30 days of the birth, extended to 12 months during COVID-19 closures, or the applicant must engage in the late registration process that advocates state may take up to four years. Advocates stated that this process left many foreign nationals at risk of statelessness as well as South Africans without valid identity documents. Following birth registration, foreign nationals must obtain official birth certificates from their country of origin.

In October 2021, the Constitutional Court ruled that unmarried fathers may register their children under their surname without the mother's consent. The landmark ruling was to avoid placing children at risk of statelessness if the mother is undocumented, missing, or deceased. In a September submission to parliament, Lawyers for Human Rights estimated that there were more than 10,000 stateless persons in the country because of a lack of access to birth registration, lack of an administrative process for citizenship application, inaccessible pathways to documentation for unaccompanied or separated migrant children, the government's

invalidation (or blocking) of foreign identity documents, and a host of other administrative barriers for foreign nationals.

### **Section 3. Freedom to Participate in the Political Process**

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

#### **Elections and Political Participation**

**Recent Elections:** In 2019 the country held National Assembly, National Council of Provinces, and provincial legislature elections. The ANC won 58 percent of the vote, the leading opposition Democratic Alliance (DA) Party 21 percent, and the EFF party 11 percent. According to the Electoral Institute for Sustainable Democracy in Africa, voter turnout was 66 percent, the lowest turnout for national elections since the end of apartheid. The institute stated the elections were transparent, fair, credible, and in line with the constitutional and legal framework for elections.

The ruling ANC won 230 of 400 seats in the National Assembly, the dominant lower chamber of parliament. Election observers, including the African Union and the Southern African Development Community, characterized the elections as largely credible. The government, however, restricted diplomatic missions from assigning more than two election observers each, effectively excluding diplomatic missions from broad observation of the elections. The DA won 84 parliamentary seats, the EFF won 44 seats, the Inkatha Freedom Party (IFP) won 14 seats, and the Freedom Front Plus (FF+) won 10 seats. The remaining 27 seats were allocated to nine other political parties based on a proportional vote-count formula. In the National Council of Provinces, the upper house of parliament, the ANC won 29 seats, the DA 13 seats, the EFF nine seats, the FF+ two seats, and the IFP one seat. ANC leader Cyril Ramaphosa was sworn in for his first full term as president of the republic.

**Political Parties and Political Participation:** Opposition parties claimed the ANC used state resources for political purposes in the provinces under its control. ANC membership conferred advantages. Through a cadre deployment system, the

ruling party controlled and appointed party members to thousands of civil service positions in government ministries and in provincial and municipal governments (see section 4, Corruption).

**Participation of Women and Members of Minority Groups:** No law limits the participation of women or members of minority groups in the political process, and they did participate. Civil society groups reported that fewer women participated as candidates and as voters in the 2021 municipal elections compared to national elections. Concerns regarding violence around municipal voting stations affected women's voter turnout more than men's voter turnout.

## **Section 4. Corruption and Lack of Transparency in Government**

The law provides for criminal penalties for conviction of official corruption, and the government generally did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year.

At least 10 agencies, including the SAPS Special Investigation Unit, Public Service Commission, Office of the Public Prosecutor, and Office of the Auditor General, were involved in anticorruption activities. During the year the Office of the Public Protector, which is constitutionally mandated to investigate government abuse and mismanagement, investigated thousands of cases, some of which involved high-level officials.

Officially called the Judicial Commission of Inquiry into Allegations of State Capture, the Zondo Commission was established in 2018 to tackle corruption allegations against individuals inside and outside government.

**Corruption:** Official corruption remained a problem.

On June 22, the Zondo Commission issued its final report, which implicated 1,438 persons in the public and private sectors in corruption. The report recommended criminal charges against former President Zuma's son Duduzane Zuma for facilitating bribes from the Gupta family for awarding contracts from state-owned companies to Gupta-linked companies. The commission also charged that former

Director General of the State Security Agency Arthur Fraser mishandled large sums and still had not accounted for 125 million rand (\$7.7 million). The Zondo Commission stated that the ANC under former President Zuma “permitted, supported and enabled corruption and state capture.” The commission also criticized President Ramaphosa for not speaking out firmly against state capture and wrongdoing when he was deputy president. In October 2021, National Police Commissioner Khehla Sitole rejected calls for his suspension on corruption allegations. In February President Ramaphosa terminated Sitole’s contract.

In November 2020, authorities charged ANC Secretary General Ace Magashule with 21 charges of corruption, theft, fraud, and money laundering, and he was released on bail. During the year, Magashule’s trial was postponed to January 2023.

## **Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

Domestic and international human rights groups generally operated without government restriction, investigating, and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views.

**Retribution against Human Rights Defenders:** Whistleblowers at all levels were at risk of retaliation, often carried out by organized crime syndicates on behalf of political or governmental persons or institutions. According to media reports, in June the Gauteng Department of Health suspended pediatric gastroenterologist Tim de Maayer after he penned a public letter regarding the condition of children’s hospitals. His suspension was quickly reversed after a public outcry from civil society.

**Government Human Rights Bodies:** Although created by the government, the constitution establishes several state institutions tasked with supporting constitutional democracy. The task of these institutions is to promote and protect those rights within the Bill of Rights and operate independently. Among these is the South African Human Rights Commission, which is responsible for promoting

the observance of fundamental human rights at all levels of government and throughout the general population. The commission has the authority to conduct investigations, issue subpoenas, and take sworn testimony. Civil society groups considered the commission only moderately effective due to a large backlog of cases and the failure of government agencies to adhere to its recommendations. Between November 2021 and June, the commission held a National Investigative Hearing into the July unrest in KwaZulu-Natal and Gauteng Provinces. No significant arrests were made, and the SAHRC had yet to publish its findings at year's end.

## **Section 6. Discrimination and Societal Abuses**

### **Women**

**Rape and Domestic Violence:** The law criminalizes domestic violence and rape of men or women, including spousal rape, but the government did not effectively enforce the law. The minimum sentence for conviction of rape is 10 years' imprisonment. Under certain circumstances, such as second or third offenses, multiple rapes, gang rapes, or the rape of a child or a person with disabilities, conviction requires a minimum sentence of life imprisonment, unless substantial and compelling circumstances exist to justify a lesser sentence. Perpetrators with previous rape convictions and perpetrators aware of being HIV positive at the time of the rape also face a minimum sentence of life imprisonment, unless substantial and compelling circumstances exist to justify a lesser sentence.

In most cases of rape and domestic violence, attackers were acquaintances or family members of the survivor, which contributed to a reluctance to press charges. NGOs stated that cases were underreported, especially in rural communities, due to stigma, unfair treatment, fear, intimidation, and lack of trust in the criminal justice system. There were numerous reports of rapes by police officers of: sex workers; lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons; incarcerated persons; and others (see also section 1.c.).

According to SAPS crime statistics, in 2019/2020, there were 42,289 rapes reported and 7,2749 sexual assaults. In July a gang of gunmen forced their way into a music video shoot near a mine dump in Krugersdorp, a city west of

Johannesburg. The gang members raped eight young women from the cast and crew while they were offloading equipment and preparing the set. Authorities arrested members of the gang.

The Department of Justice operated 96 dedicated sexual offenses courts throughout the country. Although judges in rape cases generally followed statutory sentencing guidelines, women's advocacy groups criticized judges for using criteria, such as the survivor's behavior or relationship to the rapist, as a basis for imposing lighter sentences.

The government provided funding for, and the National Prosecuting Authority operated, 51 rape management centers, addressing the rights and needs of survivors and vulnerable persons, including legal assistance. A key objective of the centers was prosecution of sexual, domestic violence, and child-abuse offenders. Approximately 75 percent of the cases they took to trial resulted in convictions.

Domestic violence was pervasive and included physical, sexual, emotional, and verbal abuse, as well as harassment and stalking. For example, on February 9, a police officer in uniform shot and killed his girlfriend while she was at work as a nurse at Tembisa Hospital in Ekurhuleni. He was charged with murder and was awaiting trial. The government prosecuted domestic violence cases under laws governing rape, indecent assault, damage to property, and violating a protection order. The law requires police to protect survivors from domestic violence, but police commanders did not always hold officers accountable. Conviction of violating a protection order is punishable by up to five years' imprisonment and up to 20 years' imprisonment if convicted of additional criminal charges. Penalties for conviction of domestic violence include fines and sentences of between two- and five-years' imprisonment.

The government financed shelters for abused women, but NGOs reported a shortage of such facilities, particularly in rural areas, and that women were sometimes turned away from shelters. A November 2021 report by Human Rights Watch criticized the government for not providing adequate or timely funding for existing shelters.

**Female Genital Mutilation/Cutting (FGM/C):** The law prohibits FGM/C of

girls and women, but girls in isolated zones in ethnic Venda communities in Limpopo Province were subjected to the practice. The government continued initiatives to eradicate the practice, including national research and sensitization workshops in areas where FGM/C was prevalent.

**Sexual Harassment:** Although prohibited by law, sexual harassment remained a widespread problem. Sexual harassment is a criminal offense for which conviction includes fines and sentences of up to five years' imprisonment. The government, however, did not enforce the law effectively as there were no known cases of imprisonment of perpetrators of sexual harassment.

Enforcement against workplace harassment is initially left to employers to address as part of internal disciplinary procedures. The Department of Employment and Labour (Department of Labour) issued guidelines to employers on how to handle workplace complaints that allow for remuneration of a victim's lost compensation plus interest, additional damages, legal fees, and dismissal of the perpetrator in some circumstances. The government urged employers to institutionalize the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, which was published on March 18. The code reflects recent developments in case law and statutes. It provides guidelines on the prevention and elimination of all forms of harassment, including procedures to address harassment.

**Reproductive Rights:** There were no reports of forced abortion on the part of government authorities; however, during the year there were reports of forced sterilizations submitted to the Commission for Gender Equality and civil society organizations. In February the commission received a complaint from the Women's Legal Centre on behalf of Her Rights Initiative and the International Community of Women Living with HIV on forced sterilizations. According to the NGO Her Rights Initiative, the majority of those forced into sterilization were HIV positive.

The full range of contraception methods, including emergency contraception, were available at all primary health-care clinics for free. Emergency health care was available for the treatment of complications arising from unsafe abortion.

The government provided access to comprehensive sexual and reproductive health services for survivors of sexual violence. The country has laws and policies to respond to gender-based violence and femicide, although authorities did not fully implement these policies and enforce relevant law. The law provides for survivors of gender-based violence to receive shelter and comprehensive care, including treatment of injuries, a forensic examination, pregnancy and HIV testing, provision of postexposure prophylaxis, and counseling rehabilitation services.

According to the *Saving Mothers Report 2017/2019*, there has been a progressive and sustained reduction in institutional maternal mortality in the past three triennia (2010 to 2019), from 320 per 100,000 live births to 120 per 100,000 live births. The report further identified that a significant systemic driver contributing to mortality was the length of time it took for emergency service personnel to arrive at a facility where a skilled birth attendant could deal with an emergency. In June 2021, the National Department of Health officially launched the Maternal, Perinatal and Neonatal Health Policy, working towards the Sustainable Development Goal of reducing maternal mortality to below 70 per 100,000 live births and neonatal mortality to 12 deaths per 1,000 live births. The country has a policy to reduce institutional maternal mortality, neonatal mortality, and stillbirths by 50 percent by 2030. The policy provides a framework to improve the delivery of quality, comprehensive, and integrated maternal and neonatal health services. Maternal HIV testing and access to antiretroviral therapy has significantly reduced deaths from nonpregnancy related infections and new HIV infections in children, with a reported reduction in infant polymerase chain reaction positivity at 10 weeks of age from 4.3 percent in 2015/16 to 0.68 percent in 2019/20. According to a June article in the *Journal of Acquired Immune Deficiency Syndromes*, antiretroviral therapy and condom promotion contributed significantly to the decline in the HIV incidence in the country.

Menstruation and access to menstruation hygiene affected girls' attendance at school. One NGO estimated 30 percent of girls did not attend school while they menstruated, due to lack of access to sanitary products. During the year observers noted substantial increases in teenage pregnancies, which also affected girls' attendance at school.

In February the National Department of Basic Education (DBE) officially launched

the National Policy on the Prevention and Management of Learner Pregnancy as part of the Comprehensive Sexuality Education programs in schools. The policy aimed to support an environment to enable female learners to stay in school and prevent discrimination and the stigmatization of pregnant learners. It was expected that the policy would further play a crucial role in preventing learner pregnancy through access to comprehensive pregnancy prevention information and School Reproductive Health Services.

The DBE policy was formulated following a 2013 Constitutional Court ruling that found that expelling two pregnant learners from two schools was a violation of learners' right to equality, right to basic education, human dignity, privacy, bodily and psychological integrity. Pregnant students were previously suspended from schooling until the following school year regardless of their school grade, age, or when the baby was born. In response, following extensive consultations, the DBE policy provided guidance on reducing unintended and unwanted pregnancies, managing the pre- and postnatal effects for affected learners, limiting associated stigma and discrimination, and retaining and re-enrolling affected learners in school.

Specifically, a pregnant learner must be allowed to remain in school during her pregnancy and to return as soon after giving birth as is appropriate for both the learner and her child. The learner's school management is required to make reasonable accommodation of the learner; meaning allowance, as necessary, of short- to medium-term absences from school and an undertaking to retain the learner's place in the school.

**Discrimination:** Discrimination against women remained a serious problem despite legal equality in family, labor, property, inheritance, nationality, divorce, and child custody matters. Women experienced economic discrimination in wages, extension of credit, and ownership of land.

Traditional patrilineal authorities, such as a chief or a council of elders, administered many rural areas. Some traditional authorities refused to grant land tenure to women, a precondition for access to housing subsidies. Women could challenge traditional land tenure discrimination in courts, but access to legal counsel was costly.

By law any difference in the terms or conditions of employment among employees of the same employer performing the same, substantially similar, or equal value work constitutes discrimination. The law expressly prohibits unequal pay for work of equal value and discriminatory practices, including separate pension funds for different groups in a company (see section 7.d.).

## **Systemic Racial or Ethnic Violence or Discrimination**

There were numerous reports of racial discrimination, despite the prohibition under the constitution of unfair discrimination against anyone on one or more grounds, including on the ground of race. The South African Human Rights Commission stated in June that gross inequality was fueling racism and racial polarization. The Department of Human Settlements acknowledged inequality along racial lines had affected and continued to affect the country's segregated spatial development as well as poor communities' access to reliable infrastructure. Approximately 300 Equality Courts mandated by the Promotion of Equality and Prevention of Unfair Discrimination Act resolved only 600 matters a year. Authorities enforced antidiscrimination provisions in some cases. In November a woman from Gauteng Province was arrested and charged with *crimen injuria*, an act that injures the dignity of another person, after her racist rants were widely viewed on-line. She was due to appear in court in March 2023.

Some advocacy groups asserted white farmers were racially targeted for burglaries, home invasions, and killings, while many observers attributed the incidents to the country's high and growing crime rate. According to the Institute for Security Studies, "farm attacks and farm murders have increased in recent years in line with the general upward trend in the country's serious and violent crimes."

Local community or political leaders who sought to gain prominence in their communities allegedly instigated some attacks on African migrants and ethnic minorities (see section 6, Other Social Violence and Discrimination).

## **Indigenous Peoples**

The NGO Working Group of Indigenous Minorities in Southern Africa estimated there were 7,500 indigenous San and Khoi in the country, some of whom worked

as farmers or farm laborers. By law the San and Khoi have the same political and economic rights as other citizens, although the government did not always effectively protect those rights or deliver basic services to Indigenous communities. Indigenous groups complained of exclusion from land restitution, housing, and affirmative action programs. They also demanded formal recognition as “first peoples” in the constitution. The lack of recognition as first peoples excluded them from inclusion in government-recognized structures for traditional leaders. Their participation in government and the economy was limited due to fewer opportunities, lack of land and other resources, minimal access to education, and relative isolation. In 2014 the government recognized the Khoi and San people as the rightful originators of rooibos tea. Five years later, the government reached a benefit-sharing agreement with the National Khoi and San Council and the South African San Council to share profits from the rooibos tea industry.

## **Children**

**Birth Registration:** The law provides for citizenship by birth (if at least one parent is a permanent resident or citizen), descent, and naturalization. Registration of births was inconsistent, especially in remote rural areas and by parents who were unregistered foreign nationals (see section 2.g., Stateless Persons). Children without birth registration had no access to government services such as education or health care, and their parents had no access to financial grants for their children. Organizations such as Lawyers for Human Rights continued to draw attention to the problem of statelessness among children born in the country to both citizens and foreign nationals.

**Education:** Public education is compulsory and universal until age 15 or grade nine. Public education is fee based and not fully subsidized by the government. Nevertheless, the law provides that schools may not refuse admission to children due to a lack of funds; therefore, disadvantaged children, who were mainly Black, were eligible for financial assistance. Even when children qualified for fee exemptions, low-income parents had difficulty paying for uniforms and supplies. In violation of the law, noncitizen children were sometimes denied access to education based on their inability to produce identification documents, such as birth certificates and immunization documents (see also section 6, Women, Reproductive Rights).

**Child Abuse:** The law criminalizes child abuse. Violence against children, including domestic violence and sexual abuse, remained widespread. Civil society and academics documented evidence that experiencing child maltreatment and witnessing partner abuse in the home as a child increased the risk of becoming both a perpetrator and victim of sexual and intimate partner violence as an adult, contributing to intergenerational abuse and violence. There were government efforts to combat child abuse. The Western Cape High Court sentenced a foster mother to 30 years' imprisonment for the murder of a baby, age nine months, in her care.

There were reports of abuse of students by teachers and other school staff, including reports of assault and rape. The law requires schools to disclose sexual abuse to authorities, but administrators sometimes concealed sexual violence or delayed taking disciplinary action.

**Child, Early, and Forced Marriage:** By law parental or judicial consent to marry is required for individuals younger than 18. Nevertheless, *ukuthwala*, the practice of abducting girls as young as 14 and forcing them into marriage, occurred in remote villages in Western Cape, Eastern Cape, and KwaZulu-Natal Provinces. The law prohibits nonconsensual *ukuthwala* and classifies it as a human trafficking offense. The National Prosecuting Authority prosecuted multiple cases of forced marriage.

**Sexual Exploitation of Children:** The law prohibits commercial sexual exploitation, sale, and offering or procurement of children for commercial sex and child pornography. The government enforced the law. The Film and Publications Board maintained a website and a toll-free hotline for the public to report incidents of child pornography. Online sexual exploitation of children continued in the country, potentially made worse by the COVID-19 pandemic and lockdown. Government authorities from the Department of Social Development and SAPS conducted educational outreach programs on the dangers of online recruitment and grooming. Media, government, and civil society reported that children were made more vulnerable to trafficking, particularly girls to sexual exploitation and trafficking, because of the pandemic's economic impacts. The minimum age for consensual sex is 16.

## **Antisemitism**

According to a 2020 study published by the Isaac and Jessie Kaplan Centre for Jewish Studies at the University of Cape Town and the United Kingdom-based Institute for Jewish Policy Research, the country's Jewish population stood at 52,300, with the majority living in Cape Town and Johannesburg. The South African Jewish Board of Deputies recorded 68 antisemitic incidents; the bulk of the incidents occurred in May during the conflict between Israel and Hamas. There were reports of verbal abuse and hate speech, especially in social media and radio talk shows, and attacks on Jewish persons or property.

## **Trafficking in Persons**

See the Department of State's Trafficking in Persons Report at <https://www.state.gov/trafficking-in-persons-report/>.

## **Organ Harvesting**

Ritual (*muthi*) killings to obtain body parts believed by some to enhance traditional medicine persisted. Police estimated organ harvesting for traditional medicine resulted in more than 50 killings per year. In May a Mpumalanga child, age six years, was mutilated by individuals who allegedly thought that doing so would boost their business. Five suspects were arrested, and the case was ongoing. In June three bodies of mutilated children were discovered in KwaZulu-Natal. Authorities had not made any arrests at year's end.

## **Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation, Gender Identity or Expression, or Sex Characteristics**

**Criminalization:** No laws criminalize consensual same-sex sexual conduct between adults or so-called cross dressing.

**Violence against LGBTQI+ Persons:** Despite government policies prohibiting discrimination, there were reports of official mistreatment or discrimination based on sexual orientation or gender identity. A 2018 University of Cape Town report underscored violence and discrimination, particularly against lesbians and

transgender individuals. The report documented cases of “secondary victimization” of lesbians, including cases in which police harassed, ridiculed, and assaulted victims of gender-based violence who reported abuse. LGBTQI+ individuals were particularly vulnerable to violent crime due to anti-LGBTQI+ attitudes within the community and among police. Anti-LGBTQI+ attitudes of junior members of SAPS affected how they handled complaints by LGBTQI+ individuals. According to *Mamba Online*, a gay news and lifestyle website, as of October, nine LGBTQI+ persons had been killed. One NGO in Durban claimed most hate crime victims did not report their cases to police due to secondary victimization; several activists accused religious leaders of not condemning hate crimes and killings against the LGBTQI+ community.

**Discrimination:** The constitution prohibits discrimination based on sexual orientation. The law prohibits discrimination against LGBTQI+ persons in housing, employment, nationality laws, and access to government services such as health care. The government was making some efforts to enforce this law. The Department of Basic Education issued new draft guidelines for the Socio-Educational Inclusion of Diverse Sexual Orientation, Gender Identity, Expression and Sex Characteristics in schools, which are intended to create a more inclusive and affirming environment for LGBTQI+ students. The guidelines recommend that schools provide gender-neutral toilets and changing rooms.

**Availability of Legal Gender Recognition:** The law allows transgender individuals to change their legal gender markers; however, the strict requirements of the law impose barriers on legal gender recognition that left many transgender persons without accurate identity documents. The law requires that medical or surgical gender reassignment procedures have taken place. Because the law requires a medical diagnosis along with some sort of medical intervention, many transgender persons could not obtain legal gender recognition.

**Involuntary or Coercive Medical or Psychological Practices Specifically Targeting LGBTQI+ Individuals:** Some traditional leaders, religious institutions, and parents continued to conduct so-called conversion therapy. A March article in the *Mail & Guardian* stated that a lesbian woman in Johannesburg underwent so-called conversion therapy at the hands of her pastor. Homophobic rape, often referred to as “corrective” rape, was a common practice in the country.

### **Restrictions of Freedom of Expression, Association, or Peaceful Assembly:**

There were no reports of restrictions on those speaking out on LGBTQI+ topics. LGBTQI+ organizations were able to register and convene events.

### **Persons with Disabilities**

Persons with disabilities could access education, health services, public buildings, and transportation on an equal basis with others. The government provided government information and communication in accessible formats. The law mandates access to buildings for persons with disabilities, but such regulations were rarely enforced, and public awareness of them remained minimal.

The law prohibits discrimination based on physical, sensory, intellectual, and mental disability in employment or access to health care, the judicial system, and education. The law, however, prohibits persons identified by the courts as having a mental disability from voting. Department of Transportation policies on providing services to persons with disabilities were consistent with the constitution's prohibition on discrimination. The Department of Labour ran vocational centers at which persons with disabilities learned income-generating skills. Nevertheless, government and private-sector employment discrimination existed. The law prohibits harassment of persons with disabilities and, in conjunction with the Employment Equity Act, provides guidelines on the recruitment and selection of persons with disabilities, reasonable accommodation for persons with disabilities, and guidelines on proper handling of employees' medical information. Enforcement of this law was limited.

The *2020-2021 Annual Report of the Department of Basic Education* (DBE) stated there were numerous barriers to education for students with disabilities, primarily a policy of channeling students into specialized schools at the expense of inclusive education. The department's report noted progress toward a more inclusive basic education and cited expansion of "special schools" and increased enrollment of students with disabilities in both special and public schools. Separate schools frequently charged additional fees (making them financially inaccessible), were located long distances from students' homes, and lacked the capacity to accommodate demand. Human Rights Watch reported in 2021 that children with disabilities were often denied tuition waivers or tuition reductions provided to

other children. Children often were held in dormitories with few adults, many of whom had little or no training in caring for children with disabilities. When parents attempted to force mainstream schools to accept their children with disabilities – an option provided for by law – schools sometimes rejected the students outright because of their disabilities or claimed there was no room for them. Many blind and deaf children in mainstream schools received only basic care rather than education. Youth with disabilities in school faced problems of access (for example assistive equipment and technology; availability of learning materials in braille) and discriminatory attitudes that prevent their full and effective participation.

Since July 2021, the Pretoria High Court continued to subpoena Gauteng health officials to testify regarding the 2016 “Life Esidimeni Scandal.” In 2016 the government of Gauteng transferred 1,500 psychiatric patients to 100 facilities, and 140 of the patients died from starvation, dehydration, and severely inadequate care.

## **Other Societal Violence or Discrimination**

There were reports persons accused of witchcraft were attacked, driven from their villages, and in some cases killed, particularly in Limpopo, Mpumalanga, KwaZulu-Natal, and Eastern Cape Provinces. Victims were often elderly women. Traditional leaders generally cooperated with authorities and reported threats against persons suspected of witchcraft.

Persons with albinism faced discrimination and were sometimes attacked in connection with ritual practices.

The government sometimes responded quickly and decisively to xenophobic incidents, sending police and soldiers into affected communities to quell violence and restore order, but responses were sporadic and often slow and inadequate. Civil society organizations criticized the government for failing to address the causes of violence, for not facilitating opportunities for conflict resolution in affected communities, for failing to protect the property or livelihoods of foreign nationals, and for failing to deter such attacks by vigorous investigation and prosecution of perpetrators.

The country experienced more than 1,500 incidents of vigilantism and mob

violence, including xenophobic and anticrime vigilantism, often targeting Zimbabwean migrants. These attacks led to more than 200 fatalities and hundreds of injuries between January and September. Police were sometimes involved in the violence; however, more frequently, police were accused of condoning violence, particularly xenophobic, vigilantism, or political violence. Shenilla Mohammed, executive director of Amnesty International South Africa, stated in April, “This ongoing violence also highlights the inaction of police and a lack of political will within government to address the problem. In each case, the deaths of locals and migrants were entirely preventable.” The antimigrant group Operation Dudula, which was created during the riots in July 2021, was able to organize and mobilize quickly and escalated the pace of its demonstrations and attacks, particularly in Soweto and Johannesburg.

There were several political killings during by-elections. In February gunmen shot and killed Thembinkosi Lombo, an ANC ward councilor in the Mvoti Municipality in KwaZulu-Natal. According to media reports, the National Task Team established to investigate political violence and killings in KwaZulu-Natal arrested a suspect in connection with Lombo’s death. In March assailants killed Mpho Mofokeng, a ward councilor in the City of Johannesburg. No arrests were made for Mofokeng’s killing. In KwaZulu-Natal in May assailants killed S’fiso Ngcobo, the leader of the eKhenana land occupation, a shack dwellers movement. Two activists, one from eKhenana and another from a related organization, were killed in March.

Courts convicted few perpetrators of political violence. Media and NGOs claimed most killings were a result of power, patronage, and systemic corruption. Many killings were related to local-level intraparty ANC disputes, often in the context of competition for resources. In February, Minister of Police Bheki Cele told the press that the primary motives for such killings were intrapolitical and taxi matter conflicts.

HIV and HIV-related social stigma and discrimination in employment, housing, and access to education and health care remained a problem, especially in rural communities. Many individuals did not seek access to health services due to the fear of the stigma and discrimination. A community outreach study was conducted in 2021 among a commuter population in Johannesburg to identify the factors

related to HIV stigma in the city. The study found that 51 percent of respondents reported a high level of stigma and discrimination.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law allows all workers, except for members of the National Intelligence Agency and the Secret Service, to form and join independent unions of their choice without previous authorization or excessive requirements. The law allows unions to conduct their activities without interference and provides for the right to strike, but it prohibits workers in essential services from striking, and employers are prohibited from locking out essential service providers. The government characterizes essential services as “a service, the interruption of which endangers the life, personal safety, or health of the whole or part of the population; the Parliamentary service; and South African Police Services.”

The law allows workers to strike due to matters of mutual interest, such as wages, benefits, organizational rights disputes, socioeconomic interests of workers, and similar measures. Workers may not strike because of disputes where other legal recourse exists, such as through arbitration. Labor rights NGOs operated freely.

The law protects collective bargaining and prohibits employers from discriminating against employees or applicants based on past, present, or potential union membership or participation in lawful union activities. The law provides for automatic reinstatement of workers dismissed unfairly for conducting union activities. The law provides a code of good practices for dismissals that includes procedures for determining the “substantive fairness” and “procedural fairness” of dismissal. The law includes all groups of workers, including illegal and legally resident foreign workers.

The government respected freedom of association and the right to collective bargaining. Labor courts and labor appeals courts effectively enforced the right to freedom of association and the right to collective bargaining, and penalties were commensurate with penalties for comparable violations of the law.

Worker organizations were independent of the government and political parties,

although the Congress of South African Trade Unions (COSATU), the country's largest labor federation, is a member of a tripartite alliance with the governing ANC Party and the South African Communist Party. Due to the unique and often contentious relationship COSATU has with the ANC, COSATU union affiliates openly discussed whether COSATU should break its alliance with the ANC regarding concerns that the ANC has done little to advance workers' rights and wages. During the year cash-flow problems, mounting debt, and unpaid salaries caused tensions between the ANC and their workers, exposing the depth of the financial woes the party was experiencing. ANC staff officials embarked on strikes and protests beginning in July protesting against late payment of wages and the party's alleged failure to pay employee benefits. COSATU sharply criticized the ANC for their failure to pay wages, and COSATU threw its weight behind the protesting workers.

The minister of labor has the authority to extend agreements by majority employers (one or more registered employers' organizations that represent 50 percent plus one of workers in a sector) and labor representatives in sector-specific bargaining councils to the entire sector, even if companies or employees in the sector were not represented at negotiations. Companies not party to bargaining disputed this provision in court. Employers often filed for and received Department of Labour exemptions from collective bargaining agreements.

If not resolved through collective bargaining, independent mediation, or conciliation, disputes between workers in essential services and their employers were referred to arbitration or the labor courts.

Workers frequently exercised their right to strike. Trade unions generally followed the legal process of declaring a dispute (notifying employers) before initiating a strike. The 2020/21 strike season was heavily affected by the COVID-19 pandemic and saw unions and business working together to salvage both jobs and industries.

## **b. Prohibition of Forced or Compulsory Labor**

The law prohibits and criminalizes forced labor. Inspectors typically levied fines and required payment of back wages in lieu of meeting evidentiary standards of

criminal prosecution.

The government did not always effectively enforce the law. Boys, particularly migrant boys, were forced to work in street vending, food services, begging, criminal activities, and agriculture (see section 7.c.). Women from Asia and neighboring African countries were recruited for legitimate work, but some were subjected to domestic servitude or forced labor in the service sector. There were also reports by NGOs of forced labor in the agricultural, mining, and fishing sectors.

Also see the *Department of State's Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

### **c. Prohibition of Child Labor and Minimum Age for Employment**

See the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings/>.

### **d. Discrimination with Respect to Employment and Occupation**

The Employment Equity Act protects all workers against unfair discrimination based on race, age, gender, religion, marital status, pregnancy, family responsibility, ethnic or social origin, color, sexual orientation, disability, conscience, belief, political opinion, culture, language, HIV status, birth, or any other arbitrary ground. The legal standard used to judge discrimination in all cases is whether the terms and conditions of employment among employees of the same employer performing the same or substantially similar work, or work of equal value, differ directly or indirectly based on any of the grounds listed above. Employees have the burden of proving such discrimination. Penalties were commensurate with those for comparable crimes. Penalties were rarely applied against violators. The government has a regulated code of conduct to assist employers, workers, and unions to develop and implement comprehensive, gender-sensitive, and HIV- and AIDS-compliant workplace policies and programs. The code was updated during the year to acknowledge that discrimination may include harassment in the form of physical abuse, psychological abuse, emotional abuse, and sexual abuse.

The government did not consistently enforce the law. Discrimination in employment and occupation occurred with respect to race, gender, disability, sexual orientation, HIV status, and country of origin (see section 6).

Discrimination cases were frequently taken to court or the Commission for Conciliation, Arbitration, and Mediation.

In its 2021-22 annual report, the Commission for Employment Equity cited data on discrimination by ethnicity, gender, age, and disability in all sectors of the economy. The report found that White and Indian men were overrepresented in management and skilled labor positions, while women and Black employees were underrepresented in management and skilled labor positions. The United Association of South Africa, a union, reported in March that the median gender pay gap is between 23 and 35 percent. White and Indian population groups continued to dominate top and senior management positions. The implementation of the Black Economic Empowerment Act, which aims to promote economic transformation and enhance participation of Blacks in the economy, continued. The public sector better reflected the country's ethnic and gender demographics. Bias against foreign nationals was common in society and the workplace. The law excludes workers working less than 24 hours a month from contributing to the Unemployment Insurance Fund, making them ineligible for unemployment benefits. Workers who resign, abscond, or are suspended from work cannot claim unemployment benefits.

## **e. Acceptable Conditions of Work**

**Wage and Hour Laws:** In 2019 the country's first national minimum wage came into effect, replacing a patchwork of sectoral minimum wages set by the Department of Labour. The minimum wage was above the official poverty line. The labor minister announced an increase to 21.69 rand (\$1.35) per hour for the year that went into effect in March 2021. The law protects migrant workers, and they are entitled to all benefits and equal pay. The minimum wage law also established a commission to make annual recommendations to parliament for increases in the minimum wage.

The law establishes a 45-hour workweek, standardizes time-and-a-half pay for

overtime, and authorizes four months of maternity leave for women. No employer may require or permit an employee to work overtime except by agreement, and employees may not work more than 10 overtime hours a week. The law stipulates rest periods of 12 consecutive hours daily and 36 hours weekly and must include Sunday. The law allows adjustments to rest periods by mutual agreement. A ministerial determination exempted businesses employing fewer than 10 persons from certain provisions of the law concerning overtime and leave. Farmers and other employers could apply for variances from the law by showing good cause. The law applies to all workers, including workers in informal sectors, foreign nationals, and migrant workers, but the government did not prioritize labor protections for workers in the informal economy.

**Occupational Safety and Health:** The government set appropriate occupational safety and health (OSH) standards through the Department of Mineral Resources and Energy for the mining industry and through the Department of Labour for all other industries.

There are harsh penalties for violations of OSH laws in the mining sector. Employers are subject to heavy fines or imprisonment if convicted of responsibility for serious injury, illness, or the death of employees due to unsafe mine conditions. The law allows mine inspectors to enter any mine at any time to interview employees and audit records. The law provides for the right of mine employees to remove themselves from work deemed dangerous to health or safety. The law prohibits discrimination against a mining employee who asserts a right granted by law and requires mine owners to file annual reports providing OSH statistics for each mine, including safety incidents. Conviction of violating the mining health and safety law is punishable by two years' imprisonment, and the law empowers the courts to determine a fine or other penalty for perjury. Outside the mining industry, no law or regulation permits workers to remove themselves from work situations deemed dangerous to their health or safety without risking loss of employment, although the law provides that employers may not retaliate against employees who disclose dangerous workplace conditions. Employees were also able to report unsafe conditions to the Department of Labour that used employee complaints as a basis for prioritizing labor inspections. Penalties were commensurate with those for comparable offenses.

**Wage, Hour, and OSH Enforcement:** The Department of Labour is responsible for enforcing wage, hour, and safety laws outside the mining sector. The Department of Mineral Resources and Energy is responsible for enforcing OSH law in the mining sector through a tripartite Mine Health and Safety Council and an Inspectorate of Mine Health and Safety. Penalties for violations of wages and workhour laws outside the mining sector were commensurate with those for comparable offenses. Penalties were rarely applied against violators.

The Department of Labour employed an insufficient number of labor inspectors to enforce compliance. Labor inspectors conducted routine and unannounced inspections at various workplaces that employed vulnerable workers. Labor inspectors investigated workplaces in both the formal and informal sectors. Labor inspectors and unions reported having difficulty visiting workers on private farms.

The government did not effectively enforce the law in all sectors. OSH regulations were frequently violated in the mining sector, and compensation for injuries was erratic and slow. Penalties were commensurate with those for comparable offenses, however, not sufficient to deter violations. Unions in the agriculture sector noted their repeated attempts to have the Department of Labour fine farm owners who failed to shield workers from hazardous chemicals sprayed on crops. Although labor conditions improved on large commercial farms, COSATU and leading agricultural NGOs reported labor conditions on small farms remained harsh. Underpayment of wages and poor living conditions for workers, most of whom were Black noncitizens, were common. Many owners of small farms did not measure working hours accurately, 12-hour workdays were common during harvest time, and few farmers provided overtime benefits. Amendments to the Basic Conditions of Employment Act attempted to address some labor abuses at farms. For example, changes prohibited farms from selling goods from farm-operated stores to farm employees on credit at inflated prices. During the COVID-19 pandemic, many employers cut salaries, without following the law restricting an employer's ability to change an employee's pay; this was especially evident with domestic workers. Most domestic workers were subject to staying with their employers or risked losing both their income and employment.

Farm workers also reported health and sanitation concerns.

Mining accidents were common. Mine safety has steadily improved from prior decades, however. For example, 553 miners lost their lives in 1995 compared with only 60 deaths in 2020 and 51 deaths in 2019. Thirty-eight work-related fatalities were recorded in the mining industry, a significant drop from the 74 recorded in 2021. Mining operations, particularly deep-level mining, were scaled down significantly during the COVID-19 pandemic. In 2019 the Constitutional Court ruled employees assigned to workplaces via a labor broker (“temporary employment service”) are employees of the client and entitled to wages and benefits equal to those of regular employees of the client.

**Informal Sector:** Economic researchers reported that approximately 30 percent of total employment was informal, with higher rates in rural areas. The informal sector included traders such as street vendors and market sellers, domestic workers, waste pickers, and agricultural workers. Some labor laws, including workers compensation and minimum wage, applied to informal and part time workers. The *Government Gazette* confirmed that domestic workers are covered for injury or death under workers’ compensation laws and minimum wage laws. This action followed a landmark ruling by the Constitutional Court upholding the 2019 High Court of Gauteng decision expanding statutory workers’ compensation coverage to domestic workers. The government provides social assistance including disability, healthcare, child benefits, old-age pension benefits, and unemployment that could benefit a portion of lower income workers in the informal economy who meet low-income thresholds. Almost all informal workers have difficulty making the required minimum contributions for pensions or are excluded because their self-employment income is slightly above the poverty income thresholds. Some categories of informal sector workers were excluded from the Unemployment Insurance Fund because they could not meet the requirement of employer contributions.