

# **SOUTH AFRICA 2020 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

South Africa is a multiparty parliamentary democracy in which constitutional power is shared among the executive, judiciary, and parliamentary branches. In May 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 May 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, is responsible for external security but also has domestic security responsibilities. On March 23, the president announced measures to curb the spread of COVID-19 and directed the South African National Defense Force to assist the South African Police Service with enforcement of a nationwide lockdown. Civilian authorities maintained effective control over the security forces. Members of the security forces committed some abuses.

Significant human rights issues included: unlawful or arbitrary killings by security forces; torture and cases of cruel, inhuman, or degrading treatment or punishment; harsh and life-threatening prison conditions; arbitrary arrest or detention; official corruption; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, and intersex persons, and the worst forms of child labor.

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

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **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.

Police use of lethal and excessive force, including torture, resulted in numerous deaths and injuries, according to the Independent Police Investigative Directorate (IPID), Amnesty International, and other nongovernmental organizations (NGOs). 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.).

NGOs criticized the use of excessive force by the South African Police Service (SAPS) and the South African National Defense Force (SANDF) to enforce lockdown measures that began in March. On April 10, police and defense force members beat to death Collins Khosa after allegedly finding alcohol on his property. On May 31, the North Gauteng High Court ordered the suspension of officers involved and ordered the Ministry of Police to issue lockdown use-of-force guidelines to respect human rights in accordance with South African law and international treaty obligations. On August 26, SAPS officers shot and killed unarmed 16-year-old Nathaniel Julies, who had Downs' syndrome. Police allegedly took this action because he did not respond to questioning. Following rioting and clashes with police, three officers were arrested and charged with murder. One officer was released on bail, and the other two remained incarcerated at year's end.

Courts convicted few perpetrators of political violence. Media and NGOs claimed the vast majority of killings resulted from local-level intraparty African National Congress (ANC) disputes, often in the context of competition for resources or as revenge against whistleblowers who uncovered corruption.

In 2018 the Moerane Commission, which then KwaZulu-Natal Province premier Willies Mchunu established to investigate political killings, published a report that identified ANC infighting, readily available hitmen, weak leadership, and ineffective and complicit law enforcement agencies as key contributing factors to the high rate of political killings. There were numerous reported political killings at a local level similar to the following example. In June an ANC councilor for the Umlazi Township, Bhekithemba Phungula, and two other party leaders in KwaZulu-Natal townships were killed.

## **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**

Although the constitution and law prohibit such practices, there were reports of police use of torture and physical abuse during house searches, arrests, interrogations, and detentions, some of which resulted in death. The NGO Sonke Gender Justice reported that almost one-third of sex workers interviewed stated police officers had raped or sexually assaulted them.

In April police reportedly assaulted and arrested a number of individuals for contravening COVID-19 lockdown regulations in Lenasia, south of Johannesburg. According to IPID, all of the arrested persons were “detained with injuries.” Later, during a cell visit, police found that one of the detainees had died. Between March 26 and May 5, IPID received 828 complaints against police, an increase of 200 from the same period in 2019.

Impunity was a significant problem in the security forces. The factors contributing to widespread police brutality were a lack of accountability and training.

As of October 30, the United Nations reported three allegations against South African peacekeepers, a reduction from six allegations in 2019. According to the *Conduct in UN Field Missions* online portal, since 2015 there have been 37 allegations of sexual exploitation and abuse against 43 peacekeepers from South African units deployed to the UN Stabilization Mission in the Democratic Republic of the Congo. Of the 37 allegations, the South African government had not reported taking accountability measures in 12 of the cases, including the three cases reported during the year, three from 2019, three from 2018, and three from 2017. One of these cases involved rape of a child, four involved transactional sex with one or more adults, six involved an exploitative relationship with an adult, and one involved sexual assault of an adult. In six of the open cases, the South African government, the United Nations, or both substantiated the allegations and the United Nations had repatriated the peacekeepers. According to the United Nations, South African authorities continued to investigate the other six open cases.

Since 2018 remedial legislation to address peacekeeper abuses has been pending.

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

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

Physical Conditions: According to civil society groups, gross overcrowding of prisons was a problem. In September 2019 the Department of Correction Services (DCS) deputy commissioner reported to a parliamentary committee the country had approximately 43,000 more inmates than beds in correctional facilities. In December 2019 the release of 15,911 low-risk inmates under a special presidential remission order reduced overcrowding by 28 percent. According to the *Department of Correctional Services Annual Report 2019/2020*, the total inmate population declined by 6 percent from 162,875 inmates in 2019 to 154,449 inmates in May, and the number of children held in correctional facilities declined by more than 80 percent to 0.1 percent of the total inmate population.

During enforcement of COVID-19 lockdown regulations, a rise in arrests increased crowding in prisons and pretrial detention centers. Prisoners at the Johannesburg Correctional Center complained to media and civil society organizations of inadequate social distancing, a lack of masks and other protective measures, and inadequate testing for COVID-19. Cells built to hold 36 inmates with one toilet held 70 inmates. On May 8, the president ordered the release of 19,000 inmates to reduce prison overcrowding during the pandemic.

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

Media and NGOs continued to report instances in which prisoners were seriously abused. According to the *Independent Police Investigative Directorate Report 2019/2020*, deaths in police custody (237 cases) increased by 11 percent from 2018/2019. There were 120 reported inmate rapes by police officers, 216 reports of torture, and reports of assault.

There were reports of shortages of prison doctors, inadequate investigation and documentation of prisoner deaths, inadequate monitoring of the prison population, and high prisoner suicide rates. The DCS required doctors to complete and sign reports of inmate deaths to lessen the incidence of deaths caused by neglect being reported as due to natural causes.

In February 2019 the Judicial Inspectorate for Correctional Services launched an investigation into a violent incident at St. Albans Prison Correctional Center (Eastern Cape Province) that left an inmate dead and a prison guard injured. The investigation continued at year's end.

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.

NGOs reported some mentally ill inmates 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. According to the Commission for Gender Equality, some mentally ill female prisoners were straitjacketed and kept in solitary confinement.

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.

#### **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 arrest 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 nevertheless 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. Human rights activists condemned the arrests and complained some of the individuals were undocumented because the DHA failed to reopen a refugee center in Cape Town, despite a court order. In October 2019 hundreds of refugees and asylum seekers encamped outside the offices of the UN High Commissioner for Refugees (UNHCR) in Cape Town and Pretoria, claiming they were not safe in South Africa, demanding resettlement to third countries. In October 2019 SAPS removed protesters from UNHCR's Cape Town office and in November 2019 from the UNHCR Pretoria office. Approximately 180 male protesters were arrested, charged, and convicted of trespassing on the UNHCR compound, most of whom received suspended sentences and were released. As of November approximately 60 protesters remained in prison, having rejected the option of release.

Pretrial Detention: Lengthy pretrial detention was common. According to the *Department of Correctional Services 2019-2020 Annual Report* the pretrial population averaged 47,233 detainees, 33 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. Criminal defendants enjoy the right to a presumption of innocence; to be informed promptly of the charges; to a fair, timely, and public trial; to be present at their trial; to communicate with an attorney of their choice or have one provided at public expense if unable to pay; to have adequate time and facilities to prepare a defense; to free assistance of an interpreter; to confront prosecution or plaintiff witnesses and present their own witnesses and evidence; and not to be compelled to testify or confess guilt. 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 16, but courts may give defendants permission to do so. Additionally, the law provides for the High Court to review magistrate court sentences exceeding six months.

### **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 violations 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. There were no reports the government failed to respect these prohibitions. Civil society organizations raised concerns government management of the COVID-19 pandemic employed telephonic contact tracing that violated privacy rights. In April the government issued amended disaster management regulations. While the regulations recognized the right to privacy, the government urged citizens to make concessions until pandemic emergency measures were no longer necessary.

### **Section 2. Respect for Civil Liberties, Including:**

#### **a. Freedom of Expression, Including for the Press**

The constitution and law provide for freedom of expression, including for members of the press, 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 the press. Nevertheless, several apartheid-era laws and the Law on Antiterrorism permit authorities to restrict reporting on security forces, prisons, and mental institutions.

Freedom of Speech: Authorities limited free expression and public debate regarding hate speech. The decade-old case of journalist John Qwelane convicted of antigay hate speech for a 2008 editorial, "Call me names, but gay is not okay," continued, as the Constitutional Court reviewed lower courts' decisions on the case and examining the constitutionality of the Equality Act's litmus test for defining hate speech.



Freedom of Press and Media, Including Online Media: Independent media were active and expressed a wide variety of views; however, conviction of publishing “fake news” regarding COVID-19 was punishable by fine, up to six months’ imprisonment, or both. The country’s press ombudsman stated that the COVID-19 measure had a chilling effect on journalists. In June the South African National Editors Forum (SANEF) stated that the pandemic led to the closure of two magazine publications and 80 other print publications, the elimination of 700 journalism jobs, and the loss of income of 70 percent of freelance journalists.

Violence and Harassment: There were instances of journalists being subjected to violence, harassment, or intimidation by authorities due to their reporting. For example, in August, ANC member of parliament Boy Mamabolo was recorded verbally insulting and threatening to shoot an investigative print journalist regarding allegations that Mamabolo had made derogatory remarks concerning the government’s decision to ban the sale of alcohol as a COVID-19 pandemic mitigation measure. In March Johannesburg police shot at a News 24 reporter when he started to report on police firing rubber bullets to disperse a group of individuals violating lockdown regulations. SANEF reportedly filed a formal complaint regarding the incident.

Censorship or Content Restrictions: Government and political officials often criticized media for lack of professionalism and reacted sharply to media criticism. Some journalists believed the government’s sensitivity to criticism resulted in increased media self-censorship.

### **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.

### **Academic Freedom and Cultural Events**

There were no reports of government restrictions on academic freedom or cultural events.

## **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 welcomed the decision as an advance for civil liberties; however, they 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 NGO Right2Protest reported the city of Johannesburg classified protests as “special events” like marathons and thus charged protest organizers fees to cover police security expenses. The NGO contended this practice violated the law on public gatherings. In July police fired rubber bullets at demonstrators in the rural town of Bathurst in Eastern Cape Province protesting authorities’ failure to provide access to clean water during the pandemic.

## **c. Freedom of Religion**

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

## **d. Freedom of Movement**

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. In March the president declared a national disaster to restrict the spread of COVID-19. Freedom of movement was severely curtailed, including movement across international and provincial borders. Beginning on March 26, authorities instituted a 35-day strict lockdown that allowed persons to leave their residences only to obtain food and essential services.

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

Not applicable.

### **f. Protection of Refugees**

The government cooperated with UNHCR and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, stateless persons, and other persons of concern.

Abuse of Migrants, Refugees, and Stateless Persons: Refugee advocacy organizations stated police and immigration officials physically abused refugees and asylum seekers. Xenophobic violence was a continuing problem across the country, especially in Gauteng Province. In August and September 2019, a spate of looting and violence in Johannesburg and Pretoria targeted foreign nationals, principally Nigerians and refugees from Somalia, Ethiopia, and the Democratic Republic of the Congo. Those targeted often owned or managed small, informal grocery stores in economically marginalized areas that lacked government services.

On social media immigrants were often blamed for increased crime and the loss of jobs and housing. Between January and November, there were at least 48 incidents of xenophobic violence. NGOs reported migrants were illegally evicted despite a national moratorium on evictions due to the COVID-19 pandemic. Violence against foreign truck drivers continued, including a flare-up in November of gasoline-bomb attacks on foreign truckers. Somali refugees continued to be among the most targeted groups, especially in the Eastern Cape, Western Cape, and Gauteng Provinces. At least 29 Somalis were killed during the year. NGOs reported perpetrators of violence included ordinary citizens and law enforcement officers. According to the African Center for Migration and Society, perpetrators of crimes against foreign nationals were rarely prosecuted.

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. According to local migrants' rights organizations, the DHA rejected most refugee applications. Those rejected then sought asylum. According to civil society groups, the system lacked procedural safeguards for seeking protection and review for unaccompanied minors, trafficked victims, and victims of domestic violence. Government services strained to keep up with the caseload, and NGOs criticized the government's implementation of the system as inadequate.

Refugee advocacy groups criticized the government's processes for determining asylum and refugee status, citing low approval rates, large case 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.

The DHA operated only three processing centers for asylum applications and refused to transfer cases among facilities. The DHA thus required asylum seekers to return to the office at which they were originally registered to renew asylum documents, which NGOs argued posed an undue hardship on those seeking asylum. NGOs reported asylum seekers sometimes waited in line for several days to access the reception centers.

Employment: 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 stated health-care facilities and law enforcement personnel discriminated against them. Some refugees reported they could not access schooling for their children. They reported schools often 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. Following a June court order in response to a lawsuit filed by the refugee-advocacy NGO Scalabrini Center of Cape Town, the government provided COVID-19 support payments to refugees and migrants. Refugees already had the legal right to such social support.

Durable Solutions: The government granted some refugees permanent residency and a pathway to citizenship, and, in collaboration with the International Organization for Migration, assisted others in returning voluntarily to their countries of origin. The law extends citizenship to children born to foreign national parents who arrived in South Africa on or after January 1, 1995.

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.

### **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 May 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 Economic Freedom Fighters (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.

The ANC won control of eight of the nine provincial legislatures.

Political Parties and Political Participation: Opposition parties accused the South African Broadcasting Corporation (SABC), the state-owned public broadcaster, of favoring the ruling party in its news coverage and advertising policies. Prior to the municipal elections, smaller political parties criticized the SABC for not covering their events. SABC regulations, however, dictate coverage should be proportional

to the percentage of votes won in the previous election, and independent observers did not find the SABC violated this regulation.

Opposition parties claimed the ANC used state resources for political purposes in the provinces under its control. Prior to the elections, the DA accused ANC secretary general Ace Magashule of vote buying. ANC membership conferred advantages. Through a cadre deployment system, the ruling party controls and appoints party members to thousands of civil service positions in government ministries and in provincial and municipal governments.

There were reports government officials publicly threatened to boycott private businesses that criticized government policy.

Postponed from March due to the COVID-19 pandemic, in November a total of 96 municipal ward by-elections were conducted. More than 600,000 voters participated nationwide. Although largely peaceful, in Soweto there was one report of residents blocking a polling station with boulders and burning tires to protest their community's lack of electricity for six months.

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. Cultural factors, however, limited women's political participation.

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

The law provides for criminal penalties for conviction of official corruption, and the government continued efforts to implement the law effectively; however, officials sometimes engaged in corrupt practices with impunity.

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.

Corruption: Official corruption remained a problem. The ANC sought to remove party members implicated in corruption scandals due to concern the scandals undermined public confidence in the ANC-led government.

On November 10, ANC secretary general Magashule was arrested on 21 charges of corruption, theft, fraud, and money laundering, and he was released on bail. Magashule had yet to be tried by year's end. He rejected calls by the ANC Integrity Commission to step down. The ANC National Executive Committee was considering whether to suspend him from the party at year's end.

Financial Disclosure: Public officials, including members of national and provincial legislatures, all cabinet members, deputy ministers, provincial premiers, and members of provincial executive councils, are subject to financial disclosure laws and regulations, but some failed to comply, and the majority filed their reports late. The declaration regime clearly identifies the assets, liabilities, and interests that public officials must declare. Government officials are required to declare publicly their financial interests when they enter office, and there are administrative and criminal sanctions for noncompliance, but no office is mandated to monitor and verify disclosures and the compliance is not enforced.

### **Section 5. Governmental Attitude Regarding 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.

Government Human Rights Bodies: Although created by the government, the South African Human Rights Commission operated independently and was 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.

### **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

#### **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 minor 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 victim that, together with societal attitudes, 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. According to Police Minister Bheki Cele, during the first week of the COVID-19 lockdown, police received more than 87,000 rape and other gender-based violence (GBV) complaints.

There were numerous reported sexual assaults similar to the following example. In June a woman eight months pregnant was found dead hanging from a tree in Johannesburg. She and her fetus had multiple stab wounds. Muzikayise Malephane, age 31, was arrested and charged with premeditated murder. He had yet to be tried by year's end.

SAPS reported an increase in the number of reported raped cases from 41,583 in 2018/19 to 42,289 in 2019/20. According to the *National Prosecuting Authority 2019-2020 Annual Report*, the authority achieved its highest number of successfully prosecuted sexual offense cases during the time period. It prosecuted 5,451 sexual offense cases and had 4,098 convictions, a 75 percent conviction rate.

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 victim's behavior or relationship to the rapist, as a basis for imposing lighter sentences.

The National Prosecuting Authority operated 51 rape management centers, or Thuthuzela Care Centers (TCCs), addressing the rights and needs of victims and vulnerable persons, including legal assistance. TCCs assisted 35,469 victims of sexual offenses and related crimes during the year. A key TCC objective is



prosecution of sexual, domestic violence, child abuse offenders. Approximately 75 percent of the cases it took to trial resulted in conviction.

Domestic violence was pervasive and included physical, sexual, emotional, and verbal abuse, as well as harassment and stalking. 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 victims 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. In March 2019 the president signed a declaration regarding GBV against women and femicide (the killing of a girl or woman, in particular by a man) that provided for the establishment of the GBV Council and the *National Strategic Plan for Gender-Based Violence and Femicide 2020-2030*. In May the government began implementation of the plan. Its focus is on GBV faced by women across age, sexual orientation, sexual and gender identities, and on specific groups such as elderly women, women who live with a disability, migrant women, and transgender women.

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.

Enforcement against workplace harassment is initially left to employers to address as part of internal disciplinary procedures. The Department of Labor 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. NGOs and unions urged the government to ratify the International Labor Organization

convention on the prevention of violence and harassment in the workplace. Despite presidential support, parliament had yet to ratify the convention by year's end.

NGOs reported sexual harassment of women in the major political parties. For example, in October a female DA party member filed a complaint with police against former Tshwane mayor Solly Msimanga. Msimanga subsequently sued for defamation. Only two of the seven major parties have policies against sexual harassment.

Coercion in Population Control: There were no reports of forced abortion on the part of government authorities; however, there were reports of forced sterilizations submitted to the Commission for Gender Equality and civil society organizations during the year. In February the Commission for Gender Equality documented 48 forced sterilization procedures conducted at 15 state hospitals between 2002 and 2015. According to the commission, the procedures were largely conducted on women who gave birth via cesarean section and were HIV positive.

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.).

## **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. 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.

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 law, noncitizen children were sometimes denied access to education based on their inability to produce identification documents, such as birth certificates and immunization documents.

Child Abuse: The law criminalizes child abuse. The penalties for conviction of child abuse include fines and up to 20 years' imprisonment. Violence against children, including domestic violence and sexual abuse, remained widespread.

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 trafficking offense.

Sexual Exploitation of Children: The law prohibits commercial sexual exploitation, sale, and offering or procurement of children for prostitution and child pornography. Conviction includes fines and 10 years' imprisonment. The Film and Publications Board maintained a website and a toll-free hotline for the public to report incidents of child pornography. In October 2019 Johannes Oelofse of Alberton in Gauteng Province was sentenced to life imprisonment for conviction of repeatedly raping his daughter who had a mental disability.

International Child Abductions: The country is a party to the 1980 Hague Convention on Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at

<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases>.

### **Anti-Semitism**

The South African Jewish Board of Deputies (SAJBD) estimated the Jewish community at 60,000 persons. The SAJBD recorded 69 anti-Semitic incidents between January and December, a steep increase from 37 in 2019. There were reports of verbal abuse and hate speech--especially in social media--and attacks on Jewish persons or property.

In October a district court issued the country's first criminal conviction of anti-Semitism. The court sentenced defendant Matome Letsoalo to three years' imprisonment. In 2008 Letsoalo posted anti-Semitic messages on Twitter that included images of Holocaust victims. In November the Randburg Magistrate Court issued a cessation order against Jan Lamprecht for posting online virulent anti-Semitism statements and personal information on SAJBD's national vice chairperson.

Twin brothers, Brandon Lee Thulsie and Tony Lee Thulsie, arrested in 2016 for allegedly planning to set off explosives at Jewish establishments, continued to await trial in detention at year's end. They were charged with contravening the Protection of Constitutional Democracy against Terror and Related Activities Act and with having ties to a foreign terrorist organization. On October 1, the Johannesburg High Court of Johannesburg denied bail to the brothers. They remained incarcerated at year's end.

### **Trafficking in Persons**

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

### **Persons with Disabilities**

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 Labor ran

vocational centers at which persons with disabilities learned income-generating skills. Nevertheless, government and private-sector employment discrimination existed. 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 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 *2017-2018 Annual Report of the Department of Basic Education* 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 2019/20 report reported 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 that children with disabilities were often denied tuition waivers or tuition reductions provided to other children. Children often were housed 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.

According to the *Optimus Study on Child Abuse, Violence and Neglect in South Africa*, children with disabilities were 78 percent more likely than children without disabilities to have experienced sexual abuse in the home. Persons with disabilities were sometimes subject to abuse and attacks, and prisoners with mental disabilities often received no psychiatric care. According to the NGO International Disability Alliance, on August 26, Nathaniel Julius, an unarmed boy age 16 who had Down syndrome, was shot and killed by SAPS officers. Police allegedly shot the boy when he did not respond to questioning. The officers were charged with murder (see section 1.a.).

## Members of National/Racial/Ethnic Minority Groups

There were numerous reports of racially motivated abuses similar to the following examples. In June 2019 the Council on Medical Schemes launched an investigation into alleged discrimination against black and Indian medical professionals in the private health-care sector who stated that medical insurance companies denied payment of their medical-services claims on racial grounds. The SABC reported allegations that the FNB bank (First National Bank) charged black homebuyers up to 40 percent more for mortgages than it charged whites.

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 South Africa's serious and violent crimes." According to the *SAPS Annual Crime Statistics 2019/2020 Report* there were 36 homicides per 100,000 persons and a total of 21,325 reported homicides in 2019/2020.

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 2.d., Abuse of Migrants, Refugees, and Stateless Persons). 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.

## Indigenous People

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. Their 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 August 2019 the president signed into law the Protection, Promotion, Development and Management of Indigenous Knowledge Bill that established the National Indigenous Knowledge Systems Office, which is responsible for managing indigenous communities' rights.

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

The constitution prohibits discrimination based on sexual orientation. The law prohibits discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons in housing, employment, nationality laws, and access to government services such as health care. In March 2019 the High Court of Gauteng ruled that the Dutch Methodist Church's ban on solemnizing same-sex marriages was unconstitutional.

Despite government policies prohibiting discrimination, there were reports of official mistreatment or discrimination based on sexual orientation or gender identity. For example, there were reports of security force members raping LGBTI individuals during arrest. 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 sexual and GBV who reported abuse. LGBTI individuals were particularly vulnerable to violent crime due to anti-LGBTI attitudes within the community and among police. Anti-LGBTI attitudes of junior members of SAPS affected how they handled complaints by LGBTI individuals.

### **HIV and AIDS Social Stigma**

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. In June 2019 Deputy President David Mabuza stated, "We are not doing well in preventing new (HIV) infections. It is estimated that there are approximately 250,000 new infections annually, and our target is to get below

100,000 new infections by December 2020. This gap is big, and it must be closed.”

### **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.

In August 2019 a court convicted a teacher in Mpumalanga Province of murdering and dismembering a teenage student with albinism. The suspect was convicted and sentenced to imprisonment of two life terms. Three alleged accomplices were charged and pled not guilty. They had yet to be tried by year’s end.

Ritual (*muthi*) killings to obtain body parts believed by some to enhance traditional medicine persisted. Police estimated organ harvesting for traditional medicine resulted in 50 killings per year.

NGOs reported intimidation and violent attacks on rural land rights activists. On October 27, environmental activist Fikile Ntshangase was killed in her home. As a prominent member of the Mfolozi Community Environmental Justice Organization, she had been involved in legal proceedings protesting expansion in KwaZulu-Natal Province of one of the country’s largest open coal mines. No arrests were made. Another member of her community critical of the coal mine survived a drive-by shooting of his home. The South African Human Rights Commission called on the government to create a safe environment for activists to exercise their rights, including acting on threats against activists.

Discrimination against members of religious groups occurred. In June 2019 a female SANDF member Major Fatima Isaacs was ordered to remove her religious headscarf from beneath her military beret. She refused the order. In January SANDF dropped charges against Isaacs of willful defiance and disobeying a lawful command. A spokesperson for Major Isaacs stated that a complaint regarding discrimination across a wide range of SANDF policies would be filed with the Equality Court.



## **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; parliamentary service; and 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. Some COSATU union affiliates lobbied COSATU to break its alliance with the ANC, arguing the alliance had done little to advance workers’ rights and wages. In 2017 COSATU’s

breakaway unions, unhappy with the ANC alliance, launched an independent labor federation, the South African Federation of Trade Unions.

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 Labor 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 National Education, Health and Allied Workers' Union, a COSATU affiliate, organized a strike that pressed government to honor a wage agreement signed in 2018. Additionally, after years of division, the country's largest trade federations united to organize a series of peaceful marches nationwide to reinvigorate labor union organizing, which had languished due to constraints imposed by COVID-19; to call attention to rising levels of corruption; and to reframe the nationwide discourse on workers' rights. The event took place against a backdrop of rising tensions between the ANC and labor unions concerning the latter's criticism of the ruling party's handling of the economy and failure to advance policies that support the working poor. The 2019/20 striking season was heavily affected by the COVID-19 pandemic and saw unions and business working together to salvage both jobs and industries by freezing negotiations until 2021.

Workers at a food factory were reportedly suspended for liking social media posts by trade union leadership. Anecdotal evidence suggested farmers routinely hampered the activities of unions on farms. Casual workers reported difficulty exercising their rights due to fear that their contracts would not be renewed.

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

The law prohibits forced labor. The penalties were not commensurate with those for comparable crimes. 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**

The law prohibits employment of children younger than 15. The law allows children younger than 15 to work in the performing arts if their employers receive permission from the Department of Labor and agree to follow specific guidelines. The law also prohibits children between ages 15 and 18 from work that threatens their wellbeing, education, physical or mental health, or spiritual, moral, or social development. Children may not work more than eight hours a day or before 6 a.m. or after 6 p.m. A child not enrolled in school may not work more than 40 hours in any week, and a child attending school may not work more than 20 hours in any week.

The law prohibits children from performing hazardous duties, including lifting heavy weights, meat or seafood processing, underground mining, deep sea fishing, commercial diving, electrical work, working with hazardous chemicals or explosives, in manufacturing, rock and stone crushing, and work in gambling and alcohol-serving establishments. Employers may not require a child to work in a confined space or to perform piecework and task work. Penalties for violating child labor laws were commensurate with those for comparable crimes.

The government enforced child labor law in the formal sector of the economy that strong and well-organized unions monitored, but enforcement in the informal and agricultural sectors was inconsistent. The Department of Labor deployed specialized child labor experts in integrated teams of child labor intersectoral support groups to each province and labor center.

According to the department, the government made progress in eradicating the worst forms of child labor by raising awareness, instituting strict legal measures,

and increasing penalties for suspected labor violators. Nevertheless, it added that more efforts to address issues of child labor in migrant communities were needed.

Children were found working as domestic laborers, street workers, and scavenging garbage for food items and recyclable items. Boys, particularly migrant boys, were forced to work in street vending, food services, begging, criminal activities, and agriculture. Although the government did not compile comprehensive data on child labor, NGOs and labor inspectors considered its occurrence rare in the formal sectors of the economy but believe that there might instances in the informal economy of child labor that are underreported due to lack of dedicated resources.

See also 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 on the grounds of 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. The government has a regulated code of conduct to assist employers, workers, and unions to develop and implement comprehensive, gender-sensitive, and HIV/AIDS-compliant workplace policies and programs.

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 2018-19 annual report, the Commission for Employment Equity cited data on discrimination by ethnicity, gender, age, and disability in all sectors of the economy. 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.

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

On January 1, the country's first national minimum wage came into effect, replacing a patchwork of sectoral minimum wages set by the Department of Labor. The minimum wage was above the official poverty line. 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 be 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.

The government set appropriate occupational health and safety (OSH) standards through the Department of Mineral Resources and Energy for the mining industry and through the Department of Labor 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. The Department of Mineral Resources and Energy was responsible for enforcing OSH law.

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 Labor that used employee complaints as a basis for prioritizing labor inspections. Penalties were commensurate with those for comparable offenses. The Department of Labor is responsible for enforcing safety laws outside the mining sector.

The Department of Labor is responsible for enforcing wage standards outside the mining sector, and a tripartite Mine Health and Safety Council and an Inspectorate of Mine Health and Safety enforced such standards in the mining sector. Penalties for violations of wages and workhour laws outside the mining sector were commensurate with those for comparable offenses.

The Department of Labor 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 Labor 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 either subject to staying with their employers or risk losing both their income and employment.

Farm workers also reported health and sanitation concerns. In a 2017 report, the NGO Women on Farms Project stated that 63 percent of the female farm workers surveyed did not have access to bathroom facilities and were forced to seek a bush or a secluded spot. The report also included the responses of female farm workers and their children who reported suffering from health problems such as skin rashes, cholinesterase depression, poisoning, harmful effects on the nervous system, and asthma due to the pesticides to which they were exposed.

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 51 deaths in 2019 and 81 deaths in 2018. Mining operations were scaled down significantly during the year due to the COVID-19 pandemic, particularly deep-level mining. According to the Department of Mineral Resources and Energy, between January and September, there were 37 reported fatalities and 1,053 injuries among workers in the mining industry.

In July 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.

In August 2019 the High Court of Gauteng expanded statutory workers' compensation coverage to domestic workers for injuries suffered in the course of their employment.