

South Africa

Country:South Africa**Year:**

2016

Freedom Status:

Free

Political Rights:

2

Civil Liberties:

2

Aggregate Score:

79

Freedom Rating:

2.0

Overview:

South Africa experienced a year of significant popular unrest and discontent with the ruling African National Congress (ANC) in 2015. Several service-delivery protests turned violent, and the largest student demonstrations since the end of apartheid swept the country. A wave of xenophobic violence reached an apex in April and reappeared sporadically later in the year, and authorities initiated a campaign against illegal activities that drew criticism for disproportionately affecting immigrants.

Antagonism between opposition parties and the ANC intensified during the year, with opposition members being removed from Parliament on several occasions—most dramatically during President Jacob Zuma’s annual address to the legislature. Opposition parties and independent media continued to claim that alleged corruption by Zuma and other senior ANC figures—including accusations that the president personally benefited from state-funded renovations to his private home—has not been properly investigated.

The government disregarded an order by the International Criminal Court (ICC) for the arrest of Omar al-Bashir, the president of Sudan, leading to heated exchanges between the judiciary and executive branches.

Political Rights and Civil Liberties:**Political Rights: 33 / 40 [Key]****A. Electoral Process: 12 / 12**

Elections for the 400-seat National Assembly, the lower house of the bicameral Parliament, are determined by party-list proportional representation. The 90 members of the upper chamber, the National Council of Provinces, are selected by provincial legislatures. The National Assembly elects the president to serve concurrently with its five-year term, and can vote to replace him or her at any time. Presidents can serve a maximum of two terms.

National elections in 2014 were declared free and fair by domestic and international observers. The ANC won, though with a smaller majority than in previous elections—a trend that has persisted for three consecutive elections. The ANC took 62.2 percent of the national vote, 249 of 400 seats in the National Assembly, and clear majorities in eight of nine provinces. The Democratic Alliance (DA) remained the largest opposition party, winning 89 seats with 22.2 percent of the vote, up from 16.7 percent in the previous election, and maintained control over the Western Cape. The newly formed leftist Economic Freedom Fighters (EFF) won 25 seats, the Inkhatha Freedom Party (IFP) took 10 seats, and nine smaller parties shared the remainder. The National Assembly elected Zuma for a second term as president.

The Independent Electoral Commission (IEC) is largely considered independent. However, the IEC's integrity has recently come under greater scrutiny. In September 2014, IEC chairperson Pansy Tlakula resigned from her position, following a June 2014 ruling by the Electoral Court that found her guilty of misconduct for her involvement in an unlawful lease agreement. In October 2015, after the position had stood vacant for more than a year, President Zuma appointed Vuma Mashinini as IEC chairperson ahead of local elections in 2016. Members of opposition parties raised concerns about the new chairperson's ties to the president—Mashinini had formerly served as Zuma's special projects adviser.

B. Political Pluralism and Participation: 13 / 16

The ANC, which is part of a tripartite governing alliance with the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP), has won every election since 1994. Nevertheless, opposition parties are able to compete in elections, and there are frequent upsets; in 2015, the ANC lost to various opposition parties in several by-elections. The DA is the leading opposition party, followed by the EFF and the IFP.

Factionalism within the ANC and within COSATU, as well as tensions between the alliance partners, has risen in recent years. The ANC has been criticized by several former leaders, such as former South African president and senior ANC member Kgalema Motlanthe, who in 2014 accused the ANC of disrespecting the country's constitution and stated that internal democracy within the party is severely impaired. In response, Zuma made public threats against ANC critics.

Since the last national elections, parliamentary sessions have taken on a more adversarial tone. In February 2015, the annual State of the Nation address descended into chaos after EFF members disrupted Zuma's speech. Following scuffles in which tables were overturned and the jaw of one female parliamentarian was fractured, EFF members were asked to vacate Parliament. Citing security reasons, the government temporarily jammed phone signals in the parliamentary chamber, which prevented journalists, security personnel, and legislators from using their mobile phones during the disturbances. Critics have questioned the legality of this and other aspects of the security response.

In the run-up to local elections scheduled for 2016, there have been a few isolated instances of political violence. In August 2015, the EFF reported that the ANC-affiliated South African Student Congress attacked one of its public meetings. In October, the DA claimed that it had come under attack while preparing for the launch of a mayoral campaign in Pretoria. Both the EFF and DA alleged that police failed to adequately respond to requests for help.

C. Functioning of Government: 8 / 12

Corruption hampers the functioning of government. Despite comprehensive anticorruption laws and several agencies tasked with combating corruption, enforcement remains inadequate. Public servants regularly fail to declare their business interests as required by law, and the ANC has been criticized for charging business leaders fees for access to top government officials. The tender process for public contracts is often politically driven and opaque. In September 2015, the Japanese firm Hitachi agreed to pay a settlement of \$19 million to the U.S. Securities and Exchange Commission (SEC) in a case involving accusations that the company sold a 25 percent stake in a South African subsidiary to Chancellor House, an in-house investment firm for the ANC, in exchange for government contracts. Hitachi was under investigation by the World Bank at year's end. Also in September, crowds numbering in the thousands and with support from civil society, unions, religious groups, and the political opposition gathered in Cape Town, Pretoria, and Durban to protest corruption. South Africa was ranked 61 out of 168 countries and territories surveyed in Transparency International's 2015 Corruption Perceptions Index.

President Zuma continued to face scrutiny in 2015 for alleged corruption relating to improvements to his home in Nkandla, KwaZulu-Natal. A 2014 report compiled by Public Protector Thuli Madonsela, who oversees investigations of government misconduct, found that Zuma derived undue personal benefit from the 246 million rand (\$23 million) renovations, which were ostensibly initiated for security reasons. She recommended that Zuma repay a portion of the funds. In May 2015, Police Minister Nathi Nhleko released a separate report concluding that Zuma should not be required to repay any of the costs. In August, over opposition from other parties, the ANC majority in the National Assembly endorsed the findings of the second report.

In December, Zuma unexpectedly fired Finance Minister Nhlanhla Nene and replaced him with a low-profile legislator. The ouster caused a national uproar, and the South African rand plummeted to a record low against the U.S. dollar. Under immense pressure to address the fallout, Zuma replaced the new appointee with Pravin Gordhan, who held the position from 2009 to 2014.

Civil Liberties: 46 / 60 (-2)

D. Freedom of Expression and Belief: 15 / 16

Freedoms of expression and the press are protected in the constitution and generally respected in practice. South Africa features a vibrant and often adversarial media landscape, including independent civic groups that help counter government efforts to encroach on freedom of expression. Nonetheless, concerns about press freedom have grown in recent years amid increasing government pressure on both state-run and independent outlets.

A number of recent incidents have compromised the credibility of the state-owned South African Broadcasting Corporation (SABC). The June 2015 appointment of Mbulaheni Obert as the new SABC board chairperson raised concerns about the broadcaster's independence, with critics questioning Obert's close ties to Minister of Communications Faith Muthambi and to the controversial chief operating officer of SABC, Hlaudi Motsoeneng. Motsoeneng's own position has been contested by accusations of abuse of power and allegations that he misrepresented his qualifications to gain the position. He remained in office at year's end after an SABC disciplinary hearing cleared him of all charges.

Private newspapers and magazines are often critical of powerful figures and institutions and remain a crucial check on the government. In October, Zuma backed a controversial proposal for the creation of a media appeals tribunal to regulate journalistic work; he made assurances that such a body would not violate the constitution. Internet access is legally unrestricted and growing rapidly, though many South Africans cannot afford connectivity.

Zuma has not yet signed into law a revised version of the controversial Protection of State Information Bill, which would allow state agencies to restrict the publication of a wide range of information through a “national interest” classification. In October, Zuma announced that the bill remained under consideration, and that a forthcoming revised version would be within constitutional bounds. The government has increasingly made use of the apartheid-era National Key Points Act to restrict access to and reporting on locations deemed to be important to national security, including the Nkandla residence. In January, the police minister complied with a court order to release a list of 204 sites protected under the law.

Freedom of religion and academic freedom are constitutionally guaranteed and actively protected by the government. South Africans may freely engage in private discussions of a political nature without fear of harassment.

E. Associational and Organizational Rights: 12 / 12

The constitution guarantees freedoms of association and peaceful assembly. Freedom of assembly is generally respected, and South Africa has a vibrant protest culture; demonstrators must notify police ahead of time but are rarely prohibited from gathering. According to the police minister, authorities were present at 14,740 protests in the 2014–15 fiscal year, of which 2,289 turned violent. In recent years, police have forcefully dispersed a growing number of protests over the delivery of public services after participants became violent. On several occasions in 2015, protesters set fire to school libraries, government buildings, and vehicles. Police have faced accusations of provoking some of the violence.

In October, student protests erupted through the country over plans to increase university tuition fees. While the gatherings were mostly peaceful, police clashed with participants in Cape Town, where students stormed Parliament grounds, and near government buildings in Pretoria, where a police vehicle was torched. After a week of unrest, the government conceded to demands not to increase fees, but the protests continued for several weeks over other issues. In November, police arrested 163 students and staff from the University of Johannesburg during a protest; they were held overnight before being released.

South Africa hosts a vibrant civil society. Nongovernmental organizations (NGOs) can register and operate freely, and lawmakers regularly accept input from NGOs on pending legislation. Recently, however, some civil society organizations have complained of harassment and increased surveillance.

South African workers are generally free to form, join, and participate in independent trade unions, and the country’s labor laws offer unionized workers a litany of protections; contract workers and those in the informal sector enjoy fewer safeguards. Strike activity is very common, and unionized workers often secure above-inflation wage increases. COSATU dominates the labor landscape but faces growing challenges from factionalism as well as independent unions. Growing union rivalries, especially in mining, have led to a rise in the use of violent tactics to win and retain members and to attack opponents; violent and illegal strikes have also increased in recent years.

The Farlam Commission, a government-sponsored inquiry into the 2012 police killing of 34 striking mineworkers at Marikana, released its long-awaited report in June 2015. The commission placed

the bulk of responsibility for the incident on the police, the mining company, and a miners' union, while largely exonerating senior government officials. The families of the dead miners and their legal representatives criticized the report for being politicized. In October, National Police Commissioner Riah Phiyega was suspended, pending a separate investigation into her actions regarding to the massacre.

F. Rule of Law: 9 / 16 (-1)

The constitution guarantees judicial independence, and courts operate with substantial autonomy. The Judicial Services Commission appoints Constitutional Court judges based on both merit and efforts to racially diversify the judiciary.

In 2015, a number of judgments held the executive branch to account in such a manner as to suggest that the judiciary commands significant independence. However, in June, the government disregarded a High Court order barring Sudanese president Bashir from leaving South Africa, issued to give the judiciary time to evaluate a request by a regional NGO that South Africa comply with an ICC order for Bashir's arrest. As a party to the Rome Statute of the ICC, South Africa is required to execute the arrest warrant. After the incident, the government threatened to withdraw from the ICC.

Prosecutorial independence has been undermined in recent years. The National Prosecuting Authority (NPA) has experienced a string of politically motivated appointments and ousters, and the office appeared to be embroiled in infighting between Zuma allies and critics. In May, Zuma abruptly canceled an inquiry into whether NPA director Mxolisi Nxasana, who had leveled charges against alleged Zuma allies in the NPA, was fit to hold office. Shortly thereafter, Nxasana resigned and received a large payout from the government. Zuma appointed Shaun Abrahams to the position in June. The following month, Abrahams abruptly dropped fraud and perjury charges that the NPA had filed against the deputy director of public prosecutions.

Shortages of judicial staff and financial resources undermine defendants' procedural rights, including the rights to a timely trial and state-funded legal counsel. According to a Judicial Inspectorate for Correctional Services (JICS) report, there were 43,298 pretrial detainees in the 2014–15 fiscal year, representing 27 percent of the total prison population. Pretrial detainees wait an average of three months before trial, and some are held beyond the legal maximum of two years.

Customary law plays a significant role in areas that under apartheid had been designated as land reserves for the country's black population. Traditional councils in these areas have authority over some aspects of local administration and can enforce customary law as long as it does not contravene the constitution. While this policy reduces the burden on state courts, customary law is replete with discriminatory provisions affecting women and certain minorities.

Despite constitutional prohibitions, there are many reports of police torture and excessive force during arrest, interrogation, and detention. In August 2015, a court convicted eight police officers murder for killing a Mozambican taxi driver in 2013 by dragging him behind a police vehicle; they were sentenced in November to 15 years in prison. Also in November, several police officers were arrested after the emergence of surveillance footage that showed them killing a suspected robber by shooting him in the head as he lay on the ground. According to the JICS report, there were 3,152 inmate complaints of assault by prison officials from April 2014 to March 2015. In October, a parliamentary committee adopted several recommendations aimed at demilitarizing the police.

South Africa has one of the highest rates of violent crime in the world. After an earlier decline, murder, attempted murder, and armed robbery increased for the third consecutive fiscal year in

2014–15. Vigilantism remains a problem.

The constitution prohibits discrimination based on a range of categories, including race, sexual orientation, and culture. State bodies such as the South African Human Rights Commission and the Office of the Public Protector are empowered to investigate and prosecute discrimination cases. Affirmative-action legislation has benefited previously disadvantaged racial groups in public and private employment as well as in education. Racial imbalances in the workforce persist, however, and a majority of the country's business assets are owned by white individuals. The indigenous, nomadic Khoikhoi and Khomani San peoples suffer from social and legal discrimination.

Xenophobic violence against immigrants from other African countries has broken out sporadically in recent years. In a wave of attacks that spread from Durban to Johannesburg in April, foreign-owned shops were torched, thousands of people were displaced, and at least seven people were killed. Further xenophobic violence was reported in October and November, including some deadly attacks. In response to the violence, the government initiated a police operation aimed at ridding the country of "illegal weapons, drug dens and prostitution rings." The operation has been criticized by human rights groups for targeting foreign nationals, and for violating people's civil liberties, including through searches conducted without warrants and deportations without due process.

South Africa has one of the world's most liberal legal environments for LGBT (lesbian, gay, bisexual, and transgender) people. Discrimination on the basis of sexual orientation is prohibited in the constitution, same-sex couples have the same adoption rights as heterosexual married couples, and same-sex marriage is legal. However, there are frequent reports of physical attacks against LGBT people, including instances of so-called corrective rape, in which lesbians are raped by men who claim that the action can change the victim's sexual orientation.

G. Personal Autonomy and Individual Rights: 10 / 16 (-1)

While there are no official restrictions on housing, employment, or freedom of movement for most South Africans, travel and some other personal freedoms are inhibited by the country's high crime rate. For many foreigners, the threat of xenophobic violence impedes freedom of movement as well. The legacy of apartheid continues to segregate the population and restrict nonwhite opportunity for employment and education.

The state generally protects citizens from arbitrary deprivation of property. However, the vast majority of farmland remains in the hands of white South Africans, who make up 9 percent of the population. Illegal squatting on white-owned farms is common, as are attacks on white farm owners. In February 2015, Zuma proposed a new land reform plan that would prohibit foreigners from becoming landowners in South Africa and restrict the size of farms that locals could own. The plan had not been implemented at year's end.

The constitution guarantees equal rights for women, which are actively promoted by the Commission on Gender Equality. Nevertheless, women suffer de facto discrimination with regard to marriage, divorce, inheritance, and property rights, particularly in rural areas. Sexual harassment is common, and reports of forced marriages persist. Women are also subject to wage discrimination in the workplace and are not well represented in top management positions. Women are better represented in government, holding 42 percent of the seats in the National Assembly. Two of the nine provinces are led by female premiers. Despite a robust legal framework criminalizing domestic violence and domestic rape, both are grave problems. Only a small percentage of rapes are reported.

South Africans, predominantly from rural regions, as well as foreign migrants are vulnerable to sex trafficking and forced labor. Organized criminal syndicates are responsible for the bulk of trafficking,

and brothels have been known to operate with the tacit support of government officials.

Scoring Key: X / Y (Z)

X = Score Received

Y = Best Possible Score

Z = Change from Previous Year

Full Methodology

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