

**COUNTRY OF ORIGIN INFORMATION REPORT**

# **SOUTH AFRICA**

---

**MARCH 2006**

**RDS-IND**  
**COUNTRY OF ORIGIN INFORMATION SERVICE**

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# Contents

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	<b>Paragraphs</b>
<b>1. SCOPE OF DOCUMENT .....</b>	<b>1.01</b>
<b>2. GEOGRAPHY .....</b>	<b>2.01</b>
<b>3. ECONOMY .....</b>	<b>3.01</b>
<b>4. HISTORY .....</b>	<b>4.01</b>
<b>5. STATE STRUCTURES .....</b>	<b>5.01</b>
Constitution .....	5.01
Citizenship and Nationality .....	5.02
Political system.....	5.03
The Judiciary .....	5.04
The Truth and Reconciliation Commission .....	5.09
Ratification of International Human Rights Treaties .....	5.12
Legal rights and detention .....	5.13
Death penalty.....	5.16
Internal security .....	5.17
Police .....	5.18
Intelligence service .....	5.20
Prison and prison conditions .....	5.21
Female prisoners .....	5.26
Juvenile prisoners.....	5.27
Military service.....	5.29
Medical services.....	5.32
HIV/AIDS .....	5.37
HIV/AIDS – Government intervention .....	5.41
HIV/AIDS – NGO activity .....	5.43
HIV/AIDS – Availability of treatment .....	5.44
People with disabilities.....	5.48
Education system .....	5.49
<b>6 HUMAN RIGHTS .....</b>	<b>6.01</b>
<b>6.A HUMAN RIGHTS ISSUES .....</b>	<b>6.01</b>
Overview .....	6.01
Torture and extrajudicial killings .....	6.04
Disappearances.....	6.11
Freedom of speech and the media.....	6.12
Journalists.....	6.14
Freedom of religion .....	6.16
Religious groups .....	6.19
Freedom of assembly and association .....	6.20
Political activists.....	6.21
Employment rights.....	6.22
Trade unions and the right to strike .....	6.25
People trafficking.....	6.27
Freedom of movement .....	6.33
<b>6.B HUMAN RIGHTS – SPECIFIC GROUPS .....</b>	<b>6.34</b>
Ethnic groups .....	6.34
Women .....	6.42
Children .....	6.52
Child care arrangements .....	6.58
Homosexuals.....	6.61
Human rights activists .....	6.66
<b>6.C HUMAN RIGHTS – OTHER ISSUES.....</b>	<b>6.69</b>
Internally displaced persons.....	6.69

Witchcraft .....	6.71
Female Genital Mutilation (FGM) .....	6.73

## **ANNEXES**

- Annex A – Chronology of events
- Annex B – Cabinet list – 11 January 2006
- Annex C – Election results – 14 April 2004
- Annex D – Political organisations
- Annex E – List of source material



## 1. Scope of document

- 1.1 This Country of Origin Information Report (COI Report) has been produced by Country of Origin Information Service, Research Development and Statistics (RDS), Home Office, for use by officials involved in the asylum / human rights determination process. The Report provides general background information about the issues most commonly raised in asylum / human rights claims made in the United Kingdom. It includes information available up to 24 January 2006.
- 1.2 The Report is compiled wholly from material produced by a wide range of recognised external information sources and does not contain any Home Office opinion or policy. All information in the Report is attributed, throughout the text, to the original source material, which is made available to those working in the asylum / human rights determination process.
- 1.3 The Report aims to provide a brief summary of the source material identified, focusing on the main issues raised in asylum and human rights applications. It is not intended to be a detailed or comprehensive survey. For a more detailed account, the relevant source documents should be examined directly.
- 1.4 The structure and format of the COI Report reflects the way it is used by Home Office caseworkers and appeals presenting officers, who require quick electronic access to information on specific issues and use the contents page to go directly to the subject required. Key issues are usually covered in some depth within a dedicated section, but may also be referred to briefly in several other sections. Some repetition is therefore inherent in the structure of the Report.
- 1.5 The information included in this COI Report is limited to that which can be identified from source documents. While every effort is made to cover all relevant aspects of a particular topic, it is not always possible to obtain the information concerned. For this reason, it is important to note that information included in the Report should not be taken to imply anything beyond what is actually stated. For example, if it is stated that a particular law has been passed, this should not be taken to imply that it has been effectively implemented unless stated.
- 1.6 As noted above, the Report is a collation of material produced by a number of reliable information sources. In compiling the Report, no attempt has been made to resolve discrepancies between information provided in different source documents. For example, different source documents often contain different versions of names and spellings of individuals, places and political parties etc. COI Reports do not aim to bring consistency of spelling, but to reflect faithfully the spellings used in the original source documents. Similarly, figures given in different source documents sometimes vary and these are simply quoted as per the original text. The term 'sic' has been used in this document only to denote incorrect spellings or typographical errors in quoted text; its use is not intended to imply any comment on the content of the material.
- 1.7 The Report is based substantially upon source documents issued during the previous two years. However, some older source documents may have been included because they contain relevant information not available in more recent

documents. All sources contain information considered relevant at the time this Report was issued.

- 1.8 This COI Report and the accompanying source material are public documents. All COI Reports are published on the RDS section of the Home Office website and the great majority of the source material for the Report is readily available in the public domain. Where the source documents identified in the Report are available in electronic form, the relevant web link has been included, together with the date that the link was accessed. Copies of less accessible source documents, such as those provided by government offices or subscription services, are available from the Home Office upon request.
- 1.9 COI Reports are published every six months on the top 20 asylum producing countries and on those countries for which there is deemed to be a specific operational need. Inevitably, information contained in COI Reports is sometimes overtaken by events that occur between publication dates. Home Office officials are informed of any significant changes in country conditions by means of Country of Origin Information Bulletins, which are also published on the RDS website. They also have constant access to an information request service for specific enquiries.
- 1.10 In producing this COI Report, the Home Office has sought to provide an accurate, balanced summary of the available source material. Any comments regarding this Report or suggestions for additional source material are very welcome and should be submitted to the Home Office as below.

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## ADVISORY PANEL ON COUNTRY INFORMATION

- 1.11 The independent Advisory Panel on Country Information was established under the Nationality, Immigration and Asylum Act 2002 to make recommendations to the Home Secretary about the content of the Home Office's country of origin information material. The Advisory Panel welcomes all feedback on the Home Office's COI Reports and other country of origin information material. Information about the Panel's work can be found on its website at [www.apci.org.uk](http://www.apci.org.uk).
- 1.12 It is not the function of the Advisory Panel to endorse any Home Office material or procedures. In the course of its work, the Advisory Panel directly reviews the content of selected individual Home Office COI Reports, but neither the fact that such a review has been undertaken, nor any comments made, should be taken to imply endorsement of the material. Some of the material examined by the Panel relates to countries designated or proposed for designation for the Non-Suspensive Appeals (NSA) list. In such cases, the Panel's work should not be taken to imply any endorsement of the decision or proposal to designate a particular country for NSA, nor of the NSA process itself.

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**Back to Contents**

## 2. Geography

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2.01 The CIA World Factbook (updated 1 November 2005) notes that the total land area of South Africa is 1,219,912 sq km. It shares borders with the following countries: Botswana 1,840 km, Lesotho 909 km, Mozambique 491 km, Namibia 967 km, Swaziland 430 km and Zimbabwe 225 km. The population was estimated in July 2005 to be 44,344,136. [5]

2.02 Columbia University Press (accessed 6 December 2005) notes that:

“South Africa has three main geographic regions: a great interior plateau; an escarpment of mountain ranges that rims the plateau on the east, south, and west; and a marginal area lying between the escarpment and the sea. Most of the plateau consists of highveld, rolling grassland situated at 4,000 to 6,000 ft (1,220–1,830 m). In addition, in the northeast are the Witwatersrand (a ridge of rock where gold has been mined since 1886), the Bushveld Basin (a zone of savanna situated at 2,000–3,000 ft/610–910 m), and the Limpopo River basin.

“In the north are the southern fringes of the Kalahari desert; and in the west is the semiarid Cape middleveld, which includes part of the Orange River and is situated at 2,500 to 4,000 ft (760–1,220 m). The escarpment reaches its greatest heights (10,000–11,000 ft/3,050–3,350 m) in the Drakensberg Mts. in the east. The marginal area varies in width between 35 and 150 mi (60–240 km) and most of it is bordered by a narrow, low-lying coastal strip. The region also includes considerable stretches of grassland in the east; mountains and the semiarid Great and Little Karroo tablelands in the south; and desert (a southern extension of the Namib desert) in the west. Kruger National Park is in NE South Africa.” [4a]

2.03 Answers.com states that in 1910 Pretoria became the capital of South Africa. “Pretoria is now part of the Tshwane metropolitan municipality, and in 2005 the metropolitan council voted to rename Pretoria Tshwane, an action not yet approved by the central government. [4b]

2.04 The CIA World Factbook (updated 1 November 2005) noted that the ethnicity breakdown was as follows: “black African 79%, white 9.6%, colored 8.9%, Indian/Asian 2.5% (2001 census).” The CIA reported the following proportion of speakers for the following languages: “IsiZulu 23.8%, IsiXhosa 17.6%, Afrikaans 13.3%, Sepedi 9.4%, English 8.2%, Setswana 8.2%, Sesotho 7.9%, Xitsonga 4.4%, other 7.2% (2001 census).” The religious make up of the country was as follows: “Zion Christian 11.1%, Pentecostal/Charismatic 8.2%, Catholic 7.1%, Methodist 6.8%, Dutch Reformed 6.7%, Anglican 3.8%, other Christian 36%, Islam 1.5%, other 2.3%, unspecified 1.4%, none 15.1% (2001 census).” [5]

(See also section [6B Ethnic Groups](#) for detailed information on ethnic groups and languages)

[Back to Contents](#)



### 3. Economy

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- 3.01 Europa Publications, Europa World Online (retrieved 6 December 2005), states that:

“Despite South Africa’s mineral wealth and highly developed manufacturing sector, economic progress was hindered during the 1980s following the imposition of economic sanctions by the international community in protest at apartheid. In late 1993, in response to the Government’s adoption of political reforms, the remaining economic sanctions were ended, relations with international financial institutions were normalized, and an agreement with foreign creditor banks regarding the country’s outstanding debt was reached. Following democratic elections in April 1994, foreign Governments pledged considerable financial assistance to South Africa. The new Government initiated a Reconstruction and Development Programme; however, subsequent progress in social and economic development was impeded by the necessity for fiscal restraint. In mid-1996 the Government announced its long-term strategy for ‘growth, employment and redistribution’ (GEAR), which placed emphasis on continued fiscal discipline, reductions in the budgetary deficit and the removal of exchange controls. By 1999 financial market conditions had improved considerably, resulting in lower inflation, increased real GDP and an increase in investor confidence... In late 2003 the Government announced its intention to increase public expenditure on infrastructure, social services and health care in an attempt to reduce levels of poverty and unemployment. The 2005 budget envisaged GDP growth of 3.9% for that year and allocated an additional R50m. to programmes to combat poverty and increase civil service wages. Despite several positive developments in 2004, including an increase in business and consumer confidence, the lowering of the rate of inflation, the appreciation of the rand against the US dollar and the first recorded reduction in the rate of unemployment since 1994, the South African economy was confronted with a number of difficulties. The distribution of income in the country remained one of the most unequal in the world with poverty still widespread among vast sections of the population, while the HIV/AIDS epidemic continued to have a devastating social and economic impact.” [1] (Economic Affairs)

- 3.02 Europa Publications also noted that:

“In 2003, according to estimates by the World Bank, South Africa’s gross national income (GNI), measured at average 2001–03 prices, was US \$156,511m, equivalent to \$2,780 per head (or \$10,270 per head on an international purchasing-power parity basis). During 1990–2003, it was estimated, the population increased at an average annual rate of 2.0%, while gross domestic product (GDP) per head, in real terms, remained constant. Overall GDP increased, in real terms, at an average annual rate of 2.0% in 1990–2003, according to the World Bank; growth was 1.9% in 2003.” [1] (Economic Affairs)

- 3.03 The CIA World Factbook (updated November 2005) noted that:

“South Africa is a middle-income, emerging market with an abundant supply of natural resources; well-developed financial, legal, communications, energy, and transport sectors; a stock exchange that ranks among the 10 largest in the world; and a modern infrastructure supporting an efficient distribution of goods

to major urban centers throughout the region. However, growth has not been strong enough to lower South Africa's high unemployment rate [25 percent]; and daunting economic problems remain from the apartheid era, especially poverty and lack of economic empowerment among the disadvantaged groups." [5]

**[Back to Contents](#)**

## 4. History

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4.01 The USSD background note on South Africa (November 2005) notes that:

“In February 1990, State President F.W. de Klerk, who had come to power in September 1989, announced the unbanning of the ANC [African National Congress], the PAC [Pan Africanist Congress], and all other anti-apartheid groups. Two weeks later, Nelson Mandela was released from prison.

“In 1991, the Group Areas Act, Land Acts, and the Population Registration Act the last of the so-called ‘pillars of apartheid’ were abolished. A long series of negotiations ensued, resulting in a new constitution promulgated into law in December 1993. The country’s first nonracial elections were held on April 26-28, 1994, resulting in the installation of Nelson Mandela as President on May 10, 1994.

“Following the 1994 elections, South Africa was governed under an interim constitution establishing a Government of National Unity (GNU). This constitution required the Constitutional Assembly (CA) to draft and approve a permanent constitution by May 9, 1996. After review by the Constitutional Court and intensive negotiations within the CA, the Constitutional Court certified a revised draft on December 2, 1996. President Mandela signed the new constitution into law on December 10, and it entered into force on February 3, 1997. The GNU ostensibly remained in effect until the 1999 national elections. The parties originally comprising the GNU the ANC, the NP, and the Inkatha Freedom Party (IFP) shared executive power. On June 30, 1996, the NP withdrew from the GNU to become part of the opposition.

“During Nelson Mandela’s 5-year term as President of South Africa, the government committed itself to reforming the country. The ANC-led government focused on social issues that were neglected during the apartheid era such as unemployment, housing shortages, and crime. Mandela’s administration began to reintroduce South Africa into the global economy by implementing a market-driven economic plan known as Growth, Employment and Redistribution (GEAR). In order to heal the wounds created by apartheid, the government created the Truth and Reconciliation Commission (TRC) under the leadership of Archbishop Desmond Tutu. During the first term of the ANC’s post-apartheid rule, President Mandela concentrated on national reconciliation, seeking to forge a single South African identity and sense of purpose among a diverse and splintered populace, riven by years of conflict. The diminution of political violence after 1994 and its virtual disappearance by 1996 were testament to the abilities of Mandela to achieve this difficult goal.

“Nelson Mandela stepped down as President of the ANC at the party’s national congress in December 1997, when Thabo Mbeki assumed the mantle of leadership. Mbeki won the presidency of South Africa after national elections in 1999, when the ANC won just shy of a two-thirds majority in Parliament. President Mbeki shifted the focus of government from reconciliation to transformation, particularly on the economic front. With political transformation and the foundation of a strong democratic system in place after two free and fair national elections, the ANC recognized the need to focus on bringing economic power to the black majority in South Africa. In April 2004, the ANC won nearly 70% of the national vote, and Mbeki was reelected for his second 5-year term.

In his 2004 State of the Nation address, Mbeki promised his government would reduce poverty, stimulate economic growth, and fight crime. Mbeki said that the government would play a more prominent role in economic development.”  
[2a] (p3-4)

**[Back to Contents](#)**

## 5. State structures

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### CONSTITUTION

- 5.01 Europa Publications, Europa World Online (retrieved 6 December 2005), states that:

“The Constitution was adopted by the Constitutional Assembly (comprising the National Assembly and the Senate) on 8 May 1996, and entered into force on 4 February 1997.” [1] **(The Constitution)** “The Republic of South Africa is one sovereign democratic state founded on the following values: human dignity, the achievement of equality and advancement of human rights and freedoms; non-racialism and non-sexism; supremacy of the Constitution and the rule of law; universal adult suffrage, a national common voters’ roll, regular elections, and a multi-party system of democratic government, to ensure accountability, responsiveness and openness. There is common South African citizenship, all citizens being equally entitled to the rights, privileges and benefits, and equally subject to the duties and responsibilities of citizenship.” [1] **(Founding provisions)**

[Back to Contents](#)

### CITIZENSHIP AND NATIONALITY

- 5.02 The South African Department of Home Affairs website (accessed 24 January 2006) noted that:

“There are three main forms of South African citizenship, namely citizenship by birth, descent or naturalisation:

#### **Birth (Section 2)**

In terms of the Act, a child born in South Africa and of which one of the parents was a South African citizen or South African permanent residence holder at the time of the child’s birth shall be a South African citizen by birth in the case of births from 6 October 1995 when the Act came into operation. The position before that was governed by the South African Citizenship Act, 1949, which contained a wide range of different requirements over the years. To determine a person’s claim to South African citizenship in respect of births in that era, completion of a BI-529 (Determination of Citizenship Status) is normally required.

A foreign child born in South Africa and who is adopted in terms of the Child Care Act, 1983 by a South African citizen and whose birth has been registered in South Africa is also a South African citizen by birth.

A foreign child born in South Africa and who has no claim to another citizenship (stateless) may also acquire South African citizenship by birth. Conclusive proof that the child has no other citizenship, or claim to any other citizenship is required in such cases.

#### **Descent (Section 3)**

A child born outside South Africa and of which at least one of the parents was a South African citizen at the time of the child’s birth has a claim to South African

citizenship by descent. The child's birth must, however, be registered in South Africa for the child to acquire South African citizenship.

#### **Naturalisation (Section 5)**

Foreigners wishing to acquire South African citizenship may apply for South African citizenship by naturalisation, provided the requirements of section 5 are met." [35]

[Back to Contents](#)

## **POLITICAL SYSTEM**

5.03 The USSD background note on South Africa (November 2005) notes that:

"South Africa is a multiparty parliamentary democracy in which constitutional power is shared between the president and the Parliament. The Parliament consists of two houses, the National Assembly and the National Council of Provinces, which are responsible for drafting the laws of the republic. The National Assembly also has specific control over bills relating to monetary matters. The current 400-member National Assembly was retained under the 1997 constitution, although the constitution allows for a range of between 350 and 400 members. The Assembly is elected by a system of 'list proportional representation.' Each of the parties appearing on the ballot submits a rank-ordered list of candidates. The voters then cast their ballots for a party. Seats in the Assembly are allocated based on the percentage of votes each party receives." [2a] (p4-5)

(See Annex B for details of Head of State and [Cabinet list](#) – See Annex C for [Election results](#) – See Annex D [Political Organisations](#))

[Back to Contents](#)

## **THE JUDICIARY**

5.04 The US Department of State (USSD) report on Human Rights Practices in South Africa 2004, published on 25 February 2005, notes that: "The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice; however, the judiciary was understaffed, underfunded, and overburdened." [2b] (Section 1e)

5.05 The USSD report 2004 continued:

"The Bill of Rights provides for due process, including the right to a fair, public trial within a reasonable time after being charged, and the right to appeal to a higher court. It also gives detainees the right to state funded legal counsel when 'substantial injustice would otherwise result'; however, a general lack of information for accused persons regarding their rights to legal representation and the Government's inability to pay for these services were continuing problems.

"The Government operated 46 justice centers in the country, composed of the Departments of Justice, Correctional Services, Welfare and Health, and SAPS [South African Police Service], to speed up the administration of justice, free up

the court rolls, and alleviate overcrowding in prisons. However, serious backlogs in the numbers of cases that have gone to trial remained.

“There was public concern regarding the capacity of the criminal justice system to deal with the high level of crime, and instances of vigilante justice reflected this concern.” [2b] (Section 1e)

- 5.06 The USSD report 2004 also noted that “According to ISS [Institute for Security Studies], prisoners waited an average of 3 months, but some as long as 2 years, for a trial. At any time during the year, 28,000 persons waited for more than 3 months for a trial. This problem primarily was the result of an understaffed, underfunded, and overburdened judiciary (both magistrates and prosecutors).” [2b] (Section 1e)
- 5.07 Europa Publications, Europa World Online (retrieved 7 December 2005), states that “The common law of the Republic of South Africa is the Roman-Dutch law, the uncodified law of Holland as it was at the time of the secession of the Cape of Good Hope in 1806. The law of England is not recognized as authoritative, although the principles of English law have been introduced in relation to civil and criminal procedure, evidence and mercantile matters.” [1] (Judiciary)
- 5.08 The following is a list of the different judicial bodies that operate in South Africa, taken from Europa Publications and the South African Government website:

#### **Constitutional Court**

“The Constitutional Court, situated in Johannesburg, consists of a Chief Justice, a Deputy Chief Justice and nine other justices. Its task is to ensure that the executive, legislative and judicial organs of government adhere to the provisions of the Constitution. It has the power to reverse legislation that has been adopted by Parliament.” [1] (Judiciary)

#### **Supreme Court of Appeal**

“The Supreme Court of Appeal, situated in Bloemfontein, comprises a President, a Deputy President and a number of judges of appeal, and is the highest court in all but constitutional matters.” [1] (Judiciary)

#### **High Courts**

“There are 10 court divisions: Cape of Good Hope (with its seat in Cape Town); Eastern Cape (Grahamstown); Northern Cape (Kimberley); Orange Free State (Bloemfontein); Natal (Pietermaritzburg); Transvaal (Pretoria); Transkei (Umtata); Ciskei (Bisho); Venda (Sibasa), and Bophuthatswana (Mmabatho). Each of these divisions, with the exception of Venda, is composed of a Judge President and, if the President so determines, one or more Deputy Judges President, and as many judges as the President may determine from time to time.

“There are also three local divisions: the Witwatersrand Local division (Johannesburg), Durban and Coast Local division (Durban), and South-Eastern Cape division (Port Elizabeth). These courts are presided over by judges in the provincial courts concerned... These divisions hear matters that are of such a serious nature that the lower courts would not be competent to make an appropriate judgment or impose a penalty. Except where minimum or maximum sentences are prescribed by law, their penal jurisdiction is unlimited and includes life imprisonment in certain specified cases.

“A High Court may decide any constitutional matter except a matter that only the Constitutional Court may decide; or is assigned by an Act of Parliament to another court of a status similar to a High Court; and any other matter not assigned to another court by an Act of Parliament.” [30] (p2)

### **Regional Courts**

“The Minister of Justice and Constitutional Development may divide the country into magisterial districts and create regional divisions consisting of districts. Regional Courts are then established at one or more places in each regional division to hear matters within their jurisdiction. Unlike the High Court, the penal jurisdiction of the Regional Courts is limited by legislation.” [30] (p4)

### **Magistrates Courts**

“Magisterial districts have been grouped into 13 clusters headed by chief magistrates... In terms of the Magistrates Act, 1993 (Act 90 of 1993), all magistrates in South Africa fall outside the ambit of the Public Service. The aim is to strengthen the independence of the judiciary. Although the Regional Courts have a higher penal jurisdiction than Magistrate’s Courts (District Courts), an accused person cannot appeal to the Regional Court against the decision of a District Court, only to the High Court.

“By March 2003, there were 370 magistrates offices, 51 detached offices, 107 branch courts and 234 periodical courts in South Africa, with 1 772 magistrates.” [30] (p4)

### **Other criminal courts**

“In terms of statutory law, jurisdiction may be conferred upon a chief or headman or his deputy to punish an African person who has committed an offence under common law or indigenous law and custom, with the exception of certain serious offences specified in the relevant legislation. The procedure at such trials is in accordance with indigenous law and custom. The jurisdiction conferred upon a chief and a magistrate does not affect the jurisdiction of other courts competent to try criminal cases.” [30] (p7-8)

[Back to Contents](#)

## **THE TRUTH AND RECONCILIATION COMMISSION**

5.09 Freedom House’s ‘Freedom in the World – South Africa (2005)’ noted that:

“The now-concluded Truth and Reconciliation Commission sought to heal, through a series of open hearings, divisions created by the apartheid regime. From 1996 to 1998, the commission received more than 20,000 submissions from victims and nearly 8,000 applications for amnesty from perpetrators. In 1998, the commission released a report on human rights abuses during the apartheid years that largely focused on atrocities committed by the white-minority government, but which also criticized the ANC. The controversial issue of reparations for victims of apartheid is actively debated between civil society and the government.” [15] (p4)

5.10 BBC News noted on 24 January 2006 that:



“Perpetrators of up to 20 criminal cases during the apartheid era could soon be prosecuted, South African officials say. The head of the National Prosecuting Authority, Vusi Pikoli, said the cases involved gross human rights violations, including torture and killings. He would not identify those targeted in the cases, which date from before the end of white-minority rule in 1994. They focus on those denied amnesty or those who failed to appear before the Truth and Reconciliation Commission. Mr Pikoli told a news conference that the authorities were currently prepared to prosecute in five of the cases, while 15 others required further investigation.” [3d]

5.11 The BBC News report went on to note that:

“The TRC was set up to probe human rights violations under apartheid. It heard the testimony of some 21,000 victims and perpetrators during its eight years of hearings. Some 1,200 perpetrators were granted amnesty and 5,500 other applications were rejected. A number of key figures, including the former South African president, PW Botha, refused to appear before the commission, prompting the families of victims and others to put pressure on the government to pursue the cases. Last month, Archbishop Desmond Tutu said that South Africa should have prosecuted all perpetrators of apartheid-era atrocities who did not seek amnesty.” [3d]

[Back to Contents](#)

## RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES

5.12 The Office of the United Nations High Commissioner for Human Rights published a list of treaties that South Africa had signed up to as of 13 January 2006. The following treaties have been signed by South Africa: the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Covenant on Civil and Political Rights (CCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. [23]

[Back to Contents](#)

## LEGAL RIGHTS AND DETENTION

5.13 The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that: “The Constitution prohibits arbitrary arrest and detention, and the Government generally observed these prohibitions; however, prolonged pretrial detention continued to be a problem.” [2b] (Section 1d)

5.14 The USSD report 2004 noted that:

“The Bill of Rights provides that every detained person has the right to be informed promptly of the reasons for their detention; to be advised promptly of the right to remain silent and the consequences of waiving that right; to be charged within 48 hours of arrest; to be detained in conditions of human dignity;

to consult with legal counsel at every stage of the legal process; to communicate with relatives, medical practitioners, and religious counselors; and to be released (with or without bail) unless the interests of justice require otherwise. Courts and police generally respected these rights; however, there continued to be a problem with prison conditions and bringing detainees to trial expeditiously.” [2b] (Section 1d)

5.15 The USSD report 2004 further noted that:

“According to ISS, prisoners waited an average of 3 months, but some as long as 2 years, for a trial. At any time during the year, 28,000 persons waited for more than 3 months for a trial. This problem primarily was the result of an understaffed, underfunded, and overburdened judiciary (both magistrates and prosecutors).” [2b] (Section 1d)

[Back to Contents](#)

## DEATH PENALTY

5.16 Amnesty International – ‘Abolitionist and Retentionist Countries’ (last updated 4 October 2004) stated that South Africa abolished the death penalty for all crimes in 1997. [6a] (p2)

[Back to Contents](#)

## INTERNAL SECURITY

### OVERVIEW

5.17 The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 notes that:

“The South African Police Service (SAPS), which is overseen by the Department of Safety and Security, has primary responsibility for internal security, and the South African National Defense Force (SANDF), which is overseen by the Department of Defense, is responsible for external security but also has domestic security responsibilities. The SANDF and the SAPS border control and policing unit shared responsibility for border control. The Government continued to train and organize the Directorate of Special Operations, dubbed the Scorpions, to coordinate efforts against organized crime and corruption. The civilian authorities maintained effective control of the security forces. Members of the security forces committed serious human rights abuses.” [2b] (Introduction)

[Back to Contents](#)

## POLICE

5.18 The USSD report 2004 stated that:

“SAPS is the primary instrument of state policing, with a presence throughout the country. The SAPS, under the Ministry of Safety and Security, continued its major restructuring and transformation from a primarily public order security force to a more accountable, community service oriented police force; however,

it remained ill equipped, overworked, and undertrained. According to the 2003 SAPS annual report, there were 106,233 police officers and 28,624 civilians working in SAPS, with a shortage of personnel estimated to be 20,000. The majority of police resources remained focused on former white areas and business districts, and police service was unevenly distributed across the provinces, ranging from 313 residents per police officer in the Free State to 669 residents per police officer in Limpopo Province.

“SAPS continued to create partnerships between local police forces and the communities they served. Municipalities also maintained metropolitan police forces in major cities under local control, such as in Johannesburg, Durban, Pretoria, and Cape Town; however, SAPS continued to have deficiencies in mid level leadership and institutional memory that were detrimental to its overall performance.” [2b] (Section 1d)

5.19 Human Rights Watch (HRW) noted in its World Report 2006 - South Africa that:

“Increasingly, police have been involved in violent confrontations with communities protesting against a lack of services. In May [2005], police used rubber bullets to control residents of an informal settlement of Happy Valley, Kommetjie who were protesting against tardy delivery of housing and basic services. On September 21, in a protest against the local municipalities’ slow response to a typhoid outbreak in Botleng, Delmas, the police used rubber bullets against protestors, injuring at least six people. On July 12, police used teargas and rubber bullets to disperse a peaceful demonstration to protest against the lack of progress in the dispensing of antiretroviral medication for the treatment of HIV/AIDS in Queenstown, Eastern Cape.” [7b] (p1-2)

(See also section 6A [Extrajudicial killings](#) for further information on police)

[Back to Contents](#)

## INTELLIGENCE SERVICE

5.20 The Geneva Centre for the Democratic Control of Armed Forces (DCAF) noted in a report dated September 2003 that the South African National Intelligence Service was disbanded on 1 January 1995; in its place was established, under section 3(1) of the Intelligence Services Act, the National Intelligence Agency (NIA). [32] (p26) The National Intelligence Agency website (accessed 19 January 2006) noted that:

“The National Strategic Intelligence Act of 1994 defines the primary functions of NIA as being to gather, correlate, evaluate and analyse domestic intelligence to:

- identify any threat or potential threat to the security of the Republic or its people;
- supply intelligence regarding any such threat to the National Intelligence Co-ordinating Committee (NICOC);
- gather departmental intelligence at the request of any interested department of state and without delay to transmit such intelligence that constitutes departmental intelligence to the relevant department;

- fulfil the national counter-intelligence responsibility and for this purpose to conduct and co-ordinate counter-intelligence to gather, correlate, evaluate, analyse and interpret information regarding counter-intelligence to identify any threat or potential threat to the security of the Republic or its people;
- inform the President of any such threat;
- supply (where necessary) intelligence relating to any such threat to the South African Police Services (SAPS) for the purposes of investigating any offence or alleged offence.

“In view of these functions, NIA is responsible for the following:

“To fulfil a proactive, anticipatory or early warning role of scanning and assessing the total (economic, social, political and environmental) domestic security situation to identify and report to the policy maker or executive departments any signs or warning signals of threats or potential threats to the constitutional order and the safety of the people.

“To perform a reactive monitoring role of tracking events when a threat/crime has been identified or a crisis has already arisen, without duplication of the role of other executive departments. The purpose of this monitoring role is mainly to enhance investigation and prosecution by providing tactical information and intelligence to enforcement and prosecution institutions and to decide the extent and implications of threats or potential threats to the national security of the Republic and the safety of the people.

“To provide an integrated multi-analytical strategic projective assessment of patterns, trends and of security relevant issues, to provide strategic early warning and to enhance NIA’s support/involvement in policy formulation.” [31]

[Back to Contents](#)

## PRISONS AND PRISON CONDITIONS

5.21 The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that: “Most prisons did not meet international standards, and prison conditions did not always meet the country’s minimum legal requirements. Severe overcrowding in some prisons led to poor health; as many as 75 inmates may occupy a cell designed to hold 40 inmates.” However, the report went on to note that the Government had begun building new prisons during the year. [2b] (Section 1c)

5.22 On the subject of prison conditions, Human Rights Watch - World Report 2006, published on 18 January 2006, noted that:

“The entry into force of sections addressing the treatment of prisoners in the Correctional Services Act 111 of 1998 on July 31, 2004 provides a framework to safeguard the human rights of prisoners. Overcrowding in South Africa’s prisons remains high. As of September 30, 2005, 155,770 prisoners were being held in facilities that should accommodate 113,825. The number of sentenced prisoners decreased from 133,764 in March 31, 2004 to 110,971 in September. The number of pre-trial prisoners dropped from 52,326 as of January 31, to 44,

799 in September 31, 2005. This marginal drop from the previous year is due, in part, to the early release of 31,865 qualifying prisoners between May and August. Despite these steps, overcrowding continues to threaten the health and living conditions of prisoners and impedes rehabilitation efforts. Sexual assaults and gang violence are a further threat to the safety of prisoners. The Inspecting Judge of Prisons – an independent oversight body – has raised concerns at the high prison population, and has recommended the early release of prisoners who are too poor to afford bail in order to reduce the number of inmates. As of March 31, 2005, 13,880 detained prisoners – about a third of the pre-trial population – could not afford bail.

“Following, in part, a constitutional court order requiring the substitution of the death sentence in May 2005, sixty-three inmates were no longer imprisoned under the death sentence. As of September 30, forty-three prisoners were awaiting the substitution of their sentences.” [7b] (p136)

- 5.23 allAfrica.com, reporting an article published by the (South African) Sunday Times on 14 November 2005, noted that levels of overcrowding within the prison system had reached such serious levels that in one recent case the Appeal Court in Bloemfontein sentenced a 14-year-old girl who was found guilty of arranging the murder of her grandmother to only a period of correctional supervision. The article noted that “Overcrowding in prisons had become so serious that if courts were to take this factor into account, it is likely that no one would be sent to jail.” [8a]

The USSD report 2004 noted that:

“The natural death cases in the country’s prisons, primarily due to HIV/AIDS, increased sharply over the past few years and continued to grow.

“Prison employees and other prisoners abused and assaulted prisoners physically and sexually. There were reports that some detainees awaiting trial contracted HIV/AIDS through rape. According to the Institute for Security Studies (ISS), some of the inmates intentionally infected other inmates with HIV/AIDS in a process called ‘slow poison’ to control or punish them. Approximately 42 percent of all prisoners were living with HIV/AIDS. In 2003, the DCS identified health as a priority; however, health services remained inadequate.” [2b] (Section 1c)

The USSD report 2004 also noted that:

“There were reports that prison employees stole food and money from prisoners. According to NGOs, 70 percent or more of prisoners used drugs, provided to them illegally by guards or other persons with access to them. In many of these cases, offending police or correctional officers were suspended or expelled from their services.

“The Jali Commission, which the President appointed in 2002, continued to investigate allegations of corruption and sexual abuse in prisons. The Commission began in 2002 and reported finding widespread irregularities involving prisoners leaving the premises illegally, nepotism, drug trafficking, irregular appointments of personnel, and massive medical aid fraud. In 2003, the Commission also highlighted evidence of extortion, abuse of parole

procedure, abuse of disciplinary enquiries and appeal procedures, and educational qualifications fraud.

“On July 28, the head of Grootvlei Prison, Tatolo Setlai, who allowed prisoners to secretly videotape corrupt activities in the jail in 2002, was acquitted on 20 criminal charges. Of the 22 wardens implicated on footage taken by the prisoners, 19 were dismissed, 1 died of natural causes, and 2 faced disciplinary hearings...

“The Government generally permitted independent monitoring of prison conditions, including visits by human rights organizations; however, organizations were sometimes told that only lawyers were able to visit prisoners and some groups were routinely denied access. The Judicial Inspectorate visited all prisons regularly.” **[2b] (Section 1c)**

## **FEMALE PRISONERS**

- 5.26 The USSD report 2004 noted that “Male and female prisoners were held separately.” **[2b] (Section 1c)** The US Department of State (USSD) report on Human Rights Practices in South Africa 2003 noted that female prison wards were often on the same grounds as male wards, and Amnesty International reported that male prisoners raped women prisoners. **[2e] (Section 1c)**

## **JUVENILE PRISONERS**

- 5.27 Human Rights Watch World Report 2006: South Africa noted that:

“Juveniles continue to be incarcerated while awaiting trial despite international legal requirements that child offenders not be detained except as a last resort. Notably, however, the number of children awaiting trial in detention has dropped significantly from between two to three thousand in March 2004 to 1227 as of September 30, 2005. The total number of children in detention is 2314. International standards stipulate that juveniles should be held in separate quarters from adults; however, this is not always the case in South Africa. Children in detention are reportedly victims of sexual abuse, violence, and gang related activities. The Child Justice Bill, deliberated in the South African Parliament 2005, proposes a restorative justice approach in an attempt to move children out of the criminal justice system. The bill establishes one-stop child justice centers.” **[7b] (p137)**

The USSD report 2004 noted that:

“Juveniles were sometimes held with adults. There were credible reports that youths held with adults were vulnerable to sexual exploitation, including rape. Pretrial detainees were generally held together with convicted prisoners.

“Some immigrant children detained in the Lindela Repatriation Center received the same general treatment as adult detainees and, most were provided with separate sleeping facilities from adults only after October. In contrast to 2003, children were provided with food and clothing. In February, as a result of a court case brought by Lawyers for Human Rights, some children were transferred to Dyamambo Youth Center.” **[2b] (Section 1c)**

**[Back to Contents](#)**



## MILITARY SERVICE

- 5.29 Europa Publications, Europa World Online (retrieved 9 December 2005), states that:

“In August 2004 the South African National Defence Force (SANDF) totalled about 55,750: army 36,000, navy 4,500, air force 9,250 and a medical corps numbering 6,000. The SANDF comprised members of the former South African armed forces, together with personnel from the former military wings of the ANC and the Pan-Africanist Congress, and the former ‘homelands’. Revised estimates of budget expenditure in 2004/05 indicated that R19,411.8m. (5.2% of total expenditure) was allocated to defence.” [1] (Defence)

- 5.30 Child Soldiers Global Report 2004 noted that there is no military conscription in South Africa and the voluntary recruitment age was 18. “From 1994 the conscripted armed force of white males recruited from the age of 16 was replaced with a volunteer force with a minimum recruitment age of 17, which was inconsistent with the 1996 post-apartheid constitution. The Defence Act, No. 42 of 2002, brought the law in line with the constitution by establishing 18 as the minimum age for voluntary recruitment, military training and mobilization, including in times of emergency.” [9]

The South African Department of Defence website (accessed 9 December 2005) stated that there are five main arms of the defence force: Army, Air Force, Navy, Military Health Service and Special Forces. [10]

## MEDICAL SERVICES

SouthAfrica.info (accessed 9 December 2005) noted that:

“South Africa’s health system consists of a large public sector and a smaller but fast-growing private sector. Health care varies from the most basic primary health care, offered free by the state, to highly specialised hi-tech health services available in the private sector for those who can afford it.

“The public sector is under-resourced and over-used, while the mushrooming private sector, run largely on commercial lines, caters to middle- and high-income earners who tend to be members of medical schemes (18% of the population), and to foreigners looking for top-quality surgical procedures at relatively affordable prices. The private sector also attracts most of the country’s health professionals.” [11a]

SouthAfrica.info (accessed 9 December 2005) noted that:

“A district-based health system is being developed to ensure local-level control of public health services, and to standardise and co-ordinate basic health services around the country to ensure that health care is affordable and accessible to everyone.

“There are 42 health regions and 162 health districts in the country. A new administrative structure is being put in place which will see primary health care

clinics fall under the auspices of district authorities while hospitals remain under the control of provincial authorities.

“Since 1994, more than 700 clinics have been built or upgraded, 2 298 clinics upgraded and given new equipment, and 125 new mobile clinics introduced. There are now more than 3 500 clinics in the public sector. Free health care for children under six, and for pregnant or breastfeeding mothers, is also available at these clinics.

“To combat the long-standing shortage of doctors in rural areas, 450 foreign doctors, mainly from Cuba, were employed... Newly graduating South African doctors and pharmacists now complete a year of compulsory community service in understaffed hospitals and clinics.

“The country continues to suffer from a tremendous ‘brain drain’ of South African doctors who are highly sought after in countries like Britain and Canada because of the high standard of training and the cutting-edge medical experience they receive here.” [11b]

SouthAfrica.info (accessed 9 December 2005) also noted that in recent years the South African government has introduced new legislation to:

- increase the availability of drugs by making them more affordable and promoting the use of generic alternatives;
- prevent discrimination against ‘high risk’ individuals in the medical insurance industry;
- legalise abortion, creating safe access in both the public and private sectors;
- limit smoking in public places and promote public awareness of the health risks linked to smoking. [11b]

5.35 SouthAfrica.info (accessed 9 December 2005) went on to note that high levels of poverty (71% in rural areas and 50% overall) and unemployment (around 38%) make it difficult for most people to afford health services, placing immense strain on the public sector. The report went on to note that there has been a real increase in funding for public hospitals; hospitals consumed two-thirds of the health budget, but most of this money has gone towards better salaries. However, HIV and AIDS has contributed significantly to the public health care system becoming more overstretched with state hospitals bearing the brunt as they accommodate people suffering from HIV/AIDS-related illnesses. [11c]

However, commenting upon the state of public hospitals in South Africa, the Democratic Alliance (DA) noted in a statement issued on 30 November 2005 that: “In KwaZulu-Natal and the Northern Cape alone, there are 12 ‘Marie Celeste’ hospitals operating without a single occupied doctor’s post.” The DA’s statement went on to note that of the two provinces there were eight hospitals where every single specialist’s post is vacant; 15 hospitals where not a single pharmacist’s post is occupied; and 25 hospitals where more than 50 per cent of posts for



professional nurses are empty. “Three hospitals have neither doctors nor pharmacists.” The DA highlighted the fact that Hillcrest Hospital in KwaZulu-Natal had no doctors, pharmacists and only 26 per cent of nurses’ posts were occupied. [33a]

[Back to Contents](#)

## HIV/AIDS

- 5.37 The US State Department (USSD) report 2004, noted that: “Although the Government conducted campaigns to reduce or eliminate discrimination against persons with HIV/AIDS, the social stigma associated with HIV/AIDS remained a general problem. There were reports of human rights abuse of HIV infected or affected individuals by their families and communities.” [2b] (Section 5)

AIDS Foundation South Africa (accessed 14 December 2005) noted that:

“Southern Africa remains the region worst-affected by the HIV/AIDS epidemic. A combination of factors seem to be responsible for this, including: poverty and social instability; high levels of sexually transmitted infections; the low status of women; sexual violence; high mobility (particularly migrant labour); and lack of leadership.

“South Africa has the fifth highest prevalence of HIV in the world, with 21.5% of the population estimated to be infected. The UNAIDS Global Report, estimated the number of AIDS related deaths in South Africa in 2003 ranged anywhere between 270 000 and 520 000. Given the numbers of people infected and dying, South Africa is regarded as having the most severe HIV epidemic in the world. This epidemic is still seven years away from peaking in terms of the numbers of projected AIDS related deaths.

“New infections are still increasing with no signs of reaching a natural limit. Approximately 5.6 million South Africans were living with HIV in 2003, according to the Department of Health’s latest National HIV and Syphilis Antenatal Sero-Prevalence Survey, released in September 2004.” [12a] (p2)

- 5.39 AIDS Foundation South Africa (accessed 14 December 2005) noted that:

“Efforts to stem the tide of new infections have only had limited success, as behaviour change and social change are long-term processes, and the factors that predispose people to infection – such as poverty, illiteracy, and gender inequalities – cannot be addressed in the short term... Women face a greater risk of HIV infection. In South Africa the infection rates between women and men are most pronounced in the age group: 15–24 years the infection ratio is 20 women for every 10 men. Young women tend to have partners who are much older than themselves, have other girlfriends and are more likely to be HIV infected.” [12a] (p2)

- 5.40 On 30 June 2005, SouthAfrica.info reported that the Global Fund to Fight Aids, tuberculosis and malaria had during the first six months of 2005 supported 90,000 new people on antiretroviral treatment for AIDS. The report noted that “A total of 220,000 people are now on Aids treatment through programmes supported by the Global Fund... Combined, the President’s Emergency Plan for

Aids Relief and the Global Fund have supported national programmes that have treated a total of 350,000 people for HIV/AIDS to date.” [11d]

## HIV/AIDS – GOVERNMENT INTERVENTION

5.41 AIDS Foundation South Africa (accessed 14 December 2005) noted that:

“The South African Government’s response to the epidemic is grounded in the HIV/AIDS and STD Strategic Plan for the period 2000 – 2005. The purpose of the plan is to provide a broad national framework around four priority areas: prevention; treatment, care and support; research, monitoring and evaluation; human and legal rights. In November 2003, after considerable sustained pressure from advocacy groups, the government adopted the Operational Plan for Comprehensive HIV and AIDS Treatment and Care, which included the provision of antiretroviral (ARV) therapy in the public health sector. The roll-out of the ARV programme is proving a slow process. This is partly because the Department of Health needs to address major capacity and infrastructure constraints but also because it continues to broadcast confusing messages about the role of nutrition and traditional medicine, and the safety and efficacy of registered drugs that have been provided in the private sector (and at taxpayers’ expense to MPs) for many years. By early 2005 only approximately 30 000 patients were receiving ARV therapy through the state programme. The Operational Plan commits the government to providing ARV treatment to 1,650,000 people who need it by March 2008.” [12a] (p2-3)

AIDS Foundation South Africa (accessed 14 December 2005) also noted that:

“It was only in April 2002 that Cabinet agreed that ARVs should be made available to all rape survivors as post-exposure prophylaxis, and that government should consider introducing ARVs into public health. On 19 November 2003, Cabinet announced the rollout of a comprehensive AIDS treatment plan that would offer free ARVs but Health Minister Tshabalala-Msimang continued to advocate a diet of beetroot, olive oil, African potato and garlic for people with HIV and President Mbeki told the Washington Post that he didn’t know anybody who has died of AIDS. Criticised for failing to meet her own targets for the rollout of the treatment plan, Minister Tshabalala-Msimang questioned whether the number of people targeted would actually want ARVs instead of traditional remedies.

“Despite all these setbacks, the rollout is gathering momentum, as health facilities develop the capacity to manage patients on ARVs. The Treasury has dramatically increased the budget allocation to enable the targets for the treatment plan and other HIV/AIDS initiatives to be met.

“The government continues to invest in prevention efforts, as the core of its HIV/AIDS strategy and promotes good nutrition as well as traditional medicine. At the same time, there is a range of social benefits available to people living with HIV/AIDS and impoverished households.” [12a] (5-6)

## HIV/AIDS – NGO ACTIVITY

AIDS Foundation South Africa (accessed 14 December 2005) noted that “A wide range of NGOs have responded to the HIV/AIDS crisis.” NGOs have engaged in awareness raising, research,

training, advocacy, education, welfare and health service provision, materials production, orphan care, counselling and other activities. The report went on to note that:

“NGOs’ relationships with government have varied – on one hand the National Association of People Living With AIDS has received government funding, on the other TAC has been attacked by government for its protests and litigation over the response to the epidemic.

“Huge sums have been channelled to NGOs by donors but it has often been difficult for smaller organisations to access funds and some donors have tended to push for particular responses, such as orphanages or high-profile prevention campaigns, instead of responding to local needs or priorities.

“Services have tended to be fragmented but in recent years, NGOs have come together in coalitions to promote a more coherent response, directories of AIDS service organisations have been developed and information on funding for HIV/AIDS work has been collated.

“Bodies such as the Joint Civil Society Monitoring Forum have brought together NGOs, business, government, donors and health professionals to work together in the fight against the epidemic. There have also been more efforts to identify good practice.” [12a] (p4-5)

#### HIV/AIDS – AVAILABILITY OF TREATMENT

5.44 AIDS Foundation South Africa (accessed 14 December 2005) also noted that:

“Until 2003, treatment care and support, except for those on medical aid or with private sponsorship, meant treatment for ongoing opportunistic infections, palliative care and deathbed care. The prospect of life-prolonging treatment as opposed to treatment to relieve symptoms is still remote for the majority of those infected. There will still be huge numbers of people dying from AIDS due to their inability to access treatment in the next few years. Even when treatment becomes universally available, most care will need to be community based – in homes and clinics – as opposed to hospital and hospice based.” [12a] (p7)

5.45 AIDS Foundation South Africa (accessed 14 December 2005) also noted that:

“The office of the national manager of the ARV programme released the national patient numbers by province and site for the first time in January 2005. The statistics showed that about 29 000 people were on ARV treatment at more than 113 public sector facilities by that time. The figure for KwaZulu-Natal was 8467, Gauteng had nearly 10 000 patients on ARVs, Northern Cape 515 and North West nearly 2800. Mpumalanga had almost 1000 patients on ARVs by the end of December, Free State 945 and Limpopo just 729, the Western Cape nearly 6 200.” [12a] (p8)

5.46 AIDS Foundation South Africa (accessed 14 December 2005) also noted that:

“People with medical aid cover can get access to treatment for HIV/AIDS including anti-retroviral (ARV) therapy, as part of their minimum benefits. People without medical aid can get treatment privately through a doctor or hospital but the cost of anti-retroviral drugs is still very high. Those in need of

treatment who cannot afford to pay for it can register for treatment at a government clinic or hospital. They have to meet certain criteria before receiving treatment – for example, their CD4 count must be 200 or lower. By the beginning of 2005 only about 30 000 people were on ARV treatment in the public sector and another 45 000 were getting treatment privately. There is at least one public health facility in every health district rolling out the treatment programme. The National AIDS Helpline (toll-free on 08 000 123 22) can provide details of the nearest treatment site.” [12b] (p5)

AIDS Foundation South Africa (accessed 14 December 2005) noted that:

“Health care workers have been overwhelmed by the impact of HIV/AIDS on the public health service, with the majority of resources in many facilities going to treat people presenting with opportunistic infections or dying from AIDS-related illnesses. This has resulted in overcrowding of under-resourced hospitals, meaning that patients cannot receive adequate care and health professionals are working in very difficult conditions. Staff morale is often very low, due both to the poor conditions but also to the distress of being unable to treat people effectively, the fact that many health workers are themselves living with HIV/AIDS and that they bear the brunt of complaints about the health system. The working conditions are made worse by lack of specialised training and staff shortages. In KZN, the worst affected province, 37% of health posts in the province were vacant in early 2005 – and some hospitals did not have pharmacists.

“While many health workers have responded to the crisis by leaving the country to work in better-resourced clinics and hospitals overseas, many others have joined the lobby for access to treatment as part of a wider campaign to build the public health service.” [12a] (p4)

**[Back to Contents](#)**

## **PEOPLE WITH DISABILITIES**

The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that:

“The Constitution prohibits discrimination on the basis of disability; however, in practice government and private sector discrimination in employment existed. Society increasingly was open to the protection of the rights of persons with disabilities. The law mandates access to buildings for persons with disabilities; however, such regulations rarely were enforced, and public awareness of them remained minimal. The National Environmental Accessibility Program, an NGO comprising persons with disabilities as well as service providers, had a presence in all nine provinces to lobby for compliance with the regulations and to sue offending property owners when necessary. The law provides persons with disabilities with protection from harassment and, in conjunction with the Employment Equity Act, also provides guidelines on the recruitment and selection of persons with disabilities, reasonable accommodation for persons with disabilities, and guidelines on proper handling of employee medical information; however, enforcement of this law was limited. The law also requires employers with more than 50 workers to create an affirmative action plan with provisions for achieving employment equity for persons with disabilities. It was estimated that persons with disabilities constituted only 0.02

percent of the public service workforce, compared with 5.9 percent of the general population.

“In August, the Legal Resources Center filed a class action suit in the Pretoria High Court representing 50,000 citizens who were disabled by work-related accidents in the previous 11 years. They claimed the Government had reneged on its statutory obligation to provide them with their source of income.”

[2b] (Section 5)

[Back to Contents](#)

## EDUCATIONAL SYSTEM

The US State Department (USSD) report 2004, noted that:

“The law provides greater educational opportunities for disadvantaged children, traditionally black African children, through a uniform system for the organization, governance, and funding of schools. It mandates compulsory education from ages 7 to 15 and ensures that children cannot be refused admission to public schools due to a lack of funds. According to the 2003 Review of Public School Financing, 96 percent of 7 to 15 year olds and 88 percent of 16 to 19 year olds were enrolled in school. While in general, there were comparable attendance numbers for boys and girls, a number of factors, including unplanned pregnancies, domestic responsibilities (particularly in rural areas), and gender stereotypes contributed to high drop out rates and lower secondary school pass rates for girls.

“Approximately 60 percent of nonpersonnel education resources were devoted to the 40 percent most needy schools. Each of the nine provincial departments of education had responsibility for the schools in their provinces, which resulted in the uneven distribution of educational facilities. The disparity affected the poorer provinces of Eastern Cape, Limpopo, and KwaZulu Natal most severely. The availability and quality of primary schooling continued to be a problem, especially in rural areas where schools often were not easily accessible or where children worked (see Section 6.d.). In May, Human Rights Watch (HRW) reported that children attending farm schools, which are public schools on private commercial farms (13 percent of all state-funded schools), were among the poorest in terms of resources and were vulnerable to the farmers on whose land they occupied. Most schools in rural and urban KwaZulu Natal reportedly faced many problems of inadequate learner support materials, long vacant teaching posts, overcrowding, late pupil registration, and vacation time vandalism. To address these problems, the Government continued to build new schools and introduced basic skills development and prevocational training into the curriculum.

“There continued to be reports of widespread rape, sexual abuse, sexual harassment, and assaults of girls at school by teachers, students, and other persons in the school community. The law requires schools to disclose sexual abuse to the authorities; however, administrators often concealed sexual violence or delayed disciplinary action. The level of sexual violence in schools also increased the risk for girls of contracting HIV/AIDS or other sexually transmitted diseases, as well as unwanted pregnancies. Girls were often raped on the school premises, and the victims' age generally ranged from 4 to 14. Alcohol and substance abuse by perpetrators was often a contributing factor.

“Although the law prohibits corporal punishment in schools, there were reports that teachers used physical violence to discipline students. On June 1, the press reported that a student at Phezulu High School died from a brain aneurysm after being beaten by the principal for being late. The principal reportedly was suspended. The South African Council of Educators was also investigating two other reports of abuse of students by teachers. In addition, there continued to be racially motivated violence among students in schools. On April 7, the case against a white mother, her daughter, and her daughter’s boyfriend for assault and defamation following a November 2003 attack on Nosipho Mkhize, a black African girl in Cape Town, was heard in the Blue Downs Equality Court, and the court ordered the mother, Shannon Ferreira, to pay \$1,538 (R10,000) to a charity of Mkhize’s choice. On July 6, the charges of defamation and assault, which were brought in a civil case, were dropped and the parties reached an out of court settlement that included a public apology to Nosipho Mkhize and her family.” [2b]

**[Back to Contents](#)**



## 6. Human rights

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### 6.A HUMAN RIGHTS ISSUES

#### OVERVIEW

6.01 The US State Department (USSD) report 2004, published on 28 February 2005, noted that:

“The Government generally respected the human rights of its citizens; however, there were serious problems in several areas. Deaths due to the use of excessive force by security forces and deaths in police custody were serious problems. Some members of the police beat, raped, tortured, and otherwise abused suspects and detainees. The Government took action to investigate and punish some of those involved. Prisons were severely overcrowded, and some prison employees and other prisoners abused and assaulted prisoners physically and sexually. The judiciary was overburdened, and lengthy delays in trials and prolonged pretrial detention were problems. Xenophobia continued to be a problem. Violence against women and children remained serious problems, and discrimination against women and persons with disabilities also remained problems. Child labor, including forced child labor, was a problem. Child prostitution and trafficking in persons were serious problems. Vigilante violence and mob justice continued throughout the country.” [2b] (Introduction)

Human Rights Watch (HRW) noted in World Report 2005: South Africa:

“South Africa’s third general elections marked that country’s tenth year of its constitutional democracy. The institutional and policy framework have laid the foundation for the promotion and protection of human rights. However, human rights concerns remain; particularly in relation to the rights of detained and accused persons; excessive use of force by police; the rights of foreign nationals; and violence against women... Although many human rights problems can be partly attributed to the legacy of apartheid, the current government could do more to implement policies that address and prevent abuses.” [7a] (p135)

Human Rights Watch (HRW) World Report 2006 reiterated many of the points raised in the previous year’s report, especially highlighting reduced, but continuing police violence. The report also raised concerns about the treatment of refugees and asylum seekers, and educational access on commercial farms. [7b] (p1)

Freedom House’s ‘Freedom in the World – South Africa (2005)’ report noted that: “The breakdown of law and order is a serious problem. An estimated four million illegal firearms circulate in South Africa, and in recent years, the country has ranked first in the world in the per capita number of rapes and armed robberies. Only 1 in 10 violent crimes results in conviction.” [15] (p4)

[Back to Contents](#)

## TORTURE AND EXTRAJUDICIAL KILLINGS

- 6.04 Freedom House's 'Freedom in the World – South Africa (2005)', notes that: "Efforts to end torture and other abuses by the national police force have been implemented, although incidents still occur. Deaths in police custody continue to be a problem." [15] (p4)
- 6.05 Amnesty International's South Africa 2005 report, covering events between January and December 2004, noted that "The number of reported deaths in police custody and arising from police action increased. Credible allegations of torture or ill-treatment were made by criminal suspects, refugees and political activists. Corrupt and discriminatory practices by officials obstructed access by asylum-seekers to determination procedures. Individuals suspected of 'terrorist' offences were detained incommunicado, ill-treated or forcibly repatriated." [6b] (p1) However, HRW report 2006 noted that during 2005 there had been a decrease in the number of deaths in police custody. It reported that reforms in policing, particularly in the conduct of arrests and detention, had had a positive effect. "By April 2005, 652 deaths involving law enforcement had been reported – down from 714 by March 2004. Of these 652 cases, 286 occurred in police custody and included deaths by suicide, natural causes, and injuries sustained prior to detention. The remaining 366 deaths were the result of law enforcement action, including fatalities incurred in the course of arrests, beatings in detention, and shooting of innocent bystanders." [7b] (p1)
- 6.06 The HRW 2006 report also noted that:
- "In June [2005], the ICD [Independent Complaints Directorate] completed its investigation into the death of a seventeen-year-old boy following the firing of rubber bullets on peaceful protestors of eNtabazwe – a township previously designated for Africans – outside Harrismith on August 30, 2004. It recommended that the state should prosecute the police officers who fired at the protestors. These officers are due to stand trial on February 6, 2006. The ICD urged that police officers should not use lethal ammunition such as birdshot and buckshot to manage protestors. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that police shall, as far as possible, use the least dangerous means before resorting to the use of force and firearms. Whenever the lawful use of force and firearms is unavoidable, police must exercise restraint in such use and act in proportion to the seriousness of the offense and the legitimate objective to be achieved, and also minimize damage and injury." [7b] (p1-2)
- 6.07 Amnesty International also reported:
- "The police oversight body, the Independent Complaints Directorate (ICD), reported for the year ending March 2004 that it had received 47 per cent more complaints of 'serious criminal offences' by the police. In the same period it received 714 reports of deaths in police custody or arising from police action, an increase of over 35 per cent on the previous year. Suspects in criminal investigations, refugees, and members of organizations protesting against poor social and economic conditions were among the victims of alleged torture, ill-treatment or the unjustified use of lethal force." [6b] (p2) However, HRW 2006 noted that during 2005 there had been a decrease in the number of deaths in police custody. It noted that: "Reforms in policing particularly in the conduct of arrests and detention had a positive effect. By April 2005, 652 deaths involving



law enforcement had been reported – down from 714 by March 2004. Of these 652 cases, 286 occurred in police custody and included deaths by suicide, natural causes, and injuries sustained prior to detention. The remaining 366 deaths were the result of law enforcement action, including fatalities incurred in the course of arrests, beatings in detention, and shooting of innocent bystanders.” [7b] (p1-2)

6.08 afrol News reported on 7 March 2005 that:

“South Africa’s aboriginal people, the San (formerly named ‘Bushmen’) still face widespread discrimination, according to the national Human Rights Commission. An inquiry found proof of ‘police victimisation and harassment’ and of ‘discrimination and sexual abuse’ of San children in local schools... Several serious allegations have been made against the police operating in the area where the Khomani San community resides, and many have been proven true. Local police are accused of killing one San activist. Five key community members have died in murders the police have failed to solve. Police abuse against the San community and racist attitudes were widely reported.” [29a]

6.09 The United Nations Commission on Human Rights published a report on 15 December 2005 on ‘Indigenous Issues’ relating to the remaining Khoi-San communities; the report noted that: “Individual policemen have been implicated in abuses against the San and cases of torture and harassment have been documented. One San community member, Optel Rooi, was fatally shot by a policeman under unexplained circumstances in January 2004 and the Special Rapporteur was informed that the alleged culprit had not yet been successfully prosecuted.” [22a] (p12)

In response to the problem of police violence the Independent Complaints Directorate (accessed 13 January 2005) noted that it was set up by the government in April 1997 to investigate complaints of brutality, criminality and misconduct against members of the South African Police Service (SAPS), and the Municipal Police Service (MPS). “It operates independently from the SAPS [South African Police Service] in the effective and efficient investigation of alleged misconduct and criminality by SAPS members. Its mission is to promote proper police conduct.” [13] (p1)

(See also section 6B on [Ethnic Groups](#) & Section 5 [Internal security \(Police\)](#))

## DISAPPEARANCES

The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 reported that “There were no reports of politically motivated disappearances.” [2b] (Section 1b)

## FREEDOM OF SPEECH AND THE MEDIA

6.12 The Committee for the Protection of Journalists ‘Attacks on the Press Report 2004’ noted that “Press groups and opposition parties complained that state broadcaster SABC, whose board is controlled by government supporters, had abused its public-service mandate by favoring the ruling party in its news

coverage. In January, SABC provided live coverage of an Mbeki speech launching the ANC's election platform. Opposition parties were not given the same opportunity, according to the Johannesburg-based Freedom of Expression Institute. SABC denied bias and said that Mbeki's speech was a matter of public interest." [14] (p1)

Similar criticism was reported by the US State Department report (USSD) 2004 which noted "There were occasional reports that government officials pressured government media outlets to minimize coverage of opposition politicians." [2d] (Introduction) The USSD 2004 also noted that: "The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights in practice and did not restrict academic freedom; however, these rights can be limited by law in some circumstances. Several apartheid era laws that remained in force posed a potential threat to media independence. The independent media was active and expressed a wide variety of views; however, some journalists expressed concern that the Government heavily influenced and wanted to control the media. Print media reached only 20 percent of the population, and most major newspapers experienced a drop in readership during the year. Due to socio-economic and demographic circumstances, the majority of the population received news through radio broadcasts from the government-owned South African Broadcasting Corporation (SABC) and community radio stations." [2d] (Section 2a)

[Back to Contents](#)

## JOURNALISTS

- 6.14 The Committee for the Protection of Journalists 'Attacks on the Press Report 2004' noted that "South Africa's diverse and sophisticated news media are rarely targets of violence, and journalists say they are largely free to move around the country and criticize authorities. But press freedom groups are concerned that new anti-terrorism legislation will impede investigative reporting and compromise the independence of journalists." [14] (p1)

The US State Department (USSD) report 2004 noted that "High ranking government officials on occasion reacted sharply to media criticism of government programs and problems and at times accused journalists, particularly black African journalists and editors, of disloyalty and white journalists and editors of racism. Some journalists believed that the Government's sensitivity to criticism caused self censorship in the media." [2b] (Section 2a)

[Back to Contents](#)

## FREEDOM OF RELIGION

- 6.16 Freedom House noted in its 2005 report that religious freedom was thriving. [15] (p3)

The US State Department, 2005 International Religious Freedom (USSD IRF) report noted that:

“The Constitution provides for freedom of religion, and the Government generally respects this right in practice. The Government at all levels strives to protect this right in full, and does not tolerate its abuse, either by governmental or private actors. The Bill of Rights prohibits the Government from unfairly discriminating directly or indirectly against anyone based on religion, and it states that persons belonging to a religious community may not be denied the right to practice their religion and to form, join, and maintain religious associations with other members of that community. Cases of discrimination against a person on the grounds of religious freedom may be taken to the Constitutional Court. While Christianity is the dominant religion, the law does not recognize a state religion. Leading government officials and ruling party members adhere to a variety of faiths, including various Christian denominations, Islam, and Judaism.” [2c] (p2) The generally amicable relationship among religions in society contributed to religious freedom. [2c] (p1)

- 6.18 The USSD IRF report 2005 also noted that: “There were reports of killings allegedly linked to the continued targeting of purported practitioners of witchcraft, particularly in Limpopo Province. In April 2005, a man from Dan Village in Ritavi, Limpopo, killed his grandmother with an axe after accusing her of bewitching him. In February, a mob of approximately 90 youths set alight 39 houses in 4 villages in Limpopo, accusing the occupants of being witches. Thirteen suspected ringleaders have been charged and are due to appear in court in August.

“In February, six men were convicted in the 1999 murder of a 65-year-old woman, accused by them of being a witch. Unlike during the previous reporting period, there were no reports of killings linked to the practice of Satanism. The Government does not keep records on cases of reported witchcraft and satanic killings. These cases are investigated and prosecuted as homicide by law enforcement officials.” [2c] (p3)

(See also section 6C on [Witchcraft](#))

[Back to Contents](#)

## RELIGIOUS GROUPS

The US State Department 2005 International Religious Freedom (USSD IRF) report noted that:

“According to figures on religious demography from the 2001 census, approximately 80 percent of the population belongs to the Christian faith, and 4 percent to other religions, including Hinduism (1.2 percent), Islam (1.5 percent), Judaism (0.2 percent), and traditional African beliefs (0.3 percent). Approximately 15 percent of the population indicated that it belongs to no particular religion or declined to indicate an affiliation... The Zionist Christian Church is the largest African Independent Church with 11.1 percent of the

population. The African Independent Churches attract persons in rural and urban areas.

“Other Christian churches include the Dutch Reformed family of churches, which consist of approximately 6.7 percent of the population; and the Roman Catholic Church, which consists of approximately 7.1 percent. Protestant denominations include the Methodist (6.8 percent), Anglican (3.8 percent), Lutheran (2.5 percent), Presbyterian (1.9 percent), Baptist (1.5 percent), and Congregational (1.1 percent) churches...

“Approximately 15 percent of the population claims no affiliation with any formal religious organization. It is believed that many of these persons adhere to traditional indigenous religions. A common feature of the traditional indigenous religions is the importance of ancestors, who are regarded as part of the community and as indispensable links with the spirit world and the powers that control everyday affairs. Followers of traditional indigenous religions believe that certain practitioners may manipulate the power of the spirits using herbs, therapeutic techniques, or supernatural powers. Some practitioners are considered masters of ‘black magic’ and engender fear. Many persons combine Christian and traditional indigenous religious practices.” [2c] (p1)

## FREEDOM OF ASSOCIATION AND ASSEMBLY

The US State Department (USSD) report 2004 notes that “The Constitution provides for freedom of assembly and association, and the Government generally respected these rights in practice. On September 1, a protester was shot and killed in Johannesburg; at year’s end, the Government was investigating whether the victim was killed by security forces, a private security firm, or by another demonstrator.” [2b] (Section 2b)

[Back to Contents](#)

## POLITICAL ACTIVISTS

The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 reported that:

“There were reports of deaths resulting from political violence between ANC and Inkatha Freedom Party (IFP) supporters in KwaZulu-Natal in the run-up to the April 14 national and provincial elections. Press reports estimated that there were at least 10 and perhaps as many as 30 politically related deaths between late 2003 and the April election, compared with 325 political fatalities during the 1999 election, of which 190 were in KwaZulu-Natal. The media also quoted KwaZulu-Natal Premier S’bu Ndebele as saying the killing of Kasavelin Stanley Chetty, an Esourte behaviour, was ‘politically motivated’. According to press reports, the killing was preceded by a series of death threats to behaviour g who defected to the ANC.

“Unlike in the previous year, there were no reports of politically motivated killings between the United Democratic Movement and the ANC in Western Cape.” [2b] (Section 1a)

[Back to Contents](#)

## EMPLOYMENT RIGHTS

6.22 The US State Department (USSD) report 2004 notes that “The law provides for freedom of association, and workers exercised this right in practice. All workers with the exception of members of the National Intelligence Agency (NIA) and the Secret Service, were entitled to join a union. Union membership in the private sector continued to decline steadily, as a result of job layoffs and declining formal sector employment.” [2b] (Section 6a)

6.23 The USSD report 2004 noted that:

“There was no legally mandated national minimum wage; however, the Government set minimum wages by occupation, though not all occupations had yet come under review. Annual negotiations between employers or employee associations and unions set wage rates on an industry-by-industry or plant-by-plant basis for unionized workers in the formal economy. Such negotiated wages generally were sufficient to provide a decent standard of living for a worker and family; however, in those sectors in which workers were not organized sufficiently to engage in the collective bargaining process many unskilled or rural workers were unable to provide a decent standard of living for themselves and their families... The law standardizes time and a half pay for overtime, establishes a 45 hour workweek, and authorizes 4 months of maternity leave for women. A ministerial determination exempted businesses employing fewer than 10 persons from certain provisions of the law concerning overtime and leave.” [2b] (Section 6e)

The USSD report 2004 also noted that:

“Occupational health and safety issues were a top priority of trade unions, especially in the mining, construction, and heavy manufacturing industries, and the country’s industrial and mining processes were dangerous and sometimes deadly. The law provides for the right of mine employees to remove themselves from work deemed dangerous to health or safety. In addition, a tripartite mine health and safety council and an inspectorate of mine health and safety were responsible for enforcing the act and monitoring compliance with its provisions. The law specifically makes it an offense for a company to discriminate against an employee who asserted a right granted by the law (for example, to leave a hazardous work site) and required mine owners to file annual reports that provided statistics on health and safety incidents for each mine being worked... There were no laws or regulations, other than in the mining industry, that permitted workers to remove themselves from work situations deemed dangerous to their health or safety without risking loss of employment; however, the law protects employees from retaliation who disclosed dangerous workplace conditions to the appropriate authorities.” [2b] (Section 6e)

## TRADE UNIONS AND THE RIGHT TO STRIKE

The US State Department (USSD) report 2004 noted that:

“Total union membership was approximately 3.9 million persons, which constituted approximately 26 percent of the economically active population, with 485 registered unions.

“Although labor laws protected farm workers, some farm workers’ unions encountered difficulties trying to organize workers because union organizers were considered trespassers on private property. In addition, farm workers or farm residents who attempted to organize were harassed, dismissed, and evicted. The DOL [Department of Labour] and unions enlisted the cooperation of AgriSA, the national farmers’ organization, to educate farmers about workers’ rights and to improve working conditions. The DOL reported that 4.5 percent of the agricultural labor force was unionized.” [2b] (Section 6a)

The USSD report 2004 also noted:

“The law defines and protects the rights of workers to organize and bargain collectively and workers exercised these rights in practice. The law provides for the right to strike, and workers exercised this right in practice. Although members of the SANDF were allowed to join a union, they were prohibited from striking. Strikes by workers in essential services, such as police and hospital workers, are prohibited. If disputes between workers in essential services and their employees cannot be resolved through collective bargaining or conciliation, they are referred to arbitration.” [2b] (Section 6a)

[Back to Contents](#)

## PEOPLE TRAFFICKING

6.27 The US State Department Trafficking in Persons Report 2004, dated 3 June 2005, placed South Africa in ‘Tier 2 Watch List’. This was a drop from last year’s placing at tier 2. Effectively there are four tiers, 1, 2, ‘Tier 2 Watch List’ and 3. The US State Department defined ‘Tier 2 Watch List’ as

“Countries whose governments do not fully comply with the Act’s minimum standards but are making significant efforts to bring themselves into compliance with those standards, and:

1. The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; or
2. There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or
3. The determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.” [2d]

On the subject of South Africa, the USSD Trafficking report noted that:

“South Africa is a source, transit, and destination country for men, women, and children trafficked for the purposes of forced labor and sexual exploitation. An unknown but substantial number of South African women and girls are trafficked internally, and occasionally to other countries, for sexual exploitation. Women from other African countries, particularly Mozambique, are trafficked to South Africa and, at times, onward to Europe for sexual exploitation. There are anecdotal reports of men and boys trafficked from neighboring countries for



forced agricultural work. East Asians, mainly Thai and Chinese women trafficked for sexual exploitation, transit South Africa on their way to South America.

“The Government of South Africa does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. South Africa has been placed on Tier 2 Watch List due to a lack of evidence of increasing efforts to combat severe forms of trafficking in persons over the last year. To further its anti-trafficking efforts, the government should pass a comprehensive law that prohibits all forms of trafficking in persons, launch a specific anti-trafficking public awareness campaign, and prosecute to conviction an increased number of traffickers.” [2d]

The US State Department (USSD) report 2004 noted that:

“The law does not specifically prohibit trafficking in persons, and trafficking in persons was a problem. The Government worked on a comprehensive anti-trafficking bill; however, it was not passed by year’s end. Despite this, the Government used a number of already existing laws to prosecute traffickers for offences, such as prostitution and sexual exploitation of children, related or integral to their trafficking activities. These laws include the Child Care Act, the Sexual Offenses Act, the Domestic Violence Act, and the Prevention of Organized Crime Act.

“The law prohibits the commercial sexual exploitation of children, sexual intercourse with children under 16, and permitting a female under 16 to stay in a brothel for the purpose of prostitution. A 2003 government-established task team continued to develop a plan of action to combat the sexual exploitation of children.” [2b] (Section 5)

IRIN reported on 23 June 2004 that:

“South Africa is the regional centre of an intricate trafficking network that recruits women and children from Mozambique, Angola, Malawi, Thailand, China, Eastern Europe and even as far afield as the East Asian city of Macau, according to the Geneva-based International Organisation for Migration (IOM).

“Trafficking in the region is conducted by four broad groups – organised crime, businesswomen, sex tourists and refugees, said IOM’s Jonathan Martens in his presentation to a conference in Johannesburg, South Africa.

“The conference on ‘The Next Steps to Path Breaking Strategies in the Global Fight Against Sex Trafficking’, sponsored by a global coalition of NGOs called the War Against Trafficking Alliance and the South African National Prosecuting Authority, ends on Thursday.

“About 1,000 Mozambicans are smuggled into South Africa every year, earning traffickers approximately one million rand (about US \$159,223) annually, according to Martens. Trafficking figures for Mozambique, one of the poorest countries in the region, were the only ones available for Southern Africa.” [16a]

- 6.31 News24.com noted on 16 December 2003 that a report published by NGO ‘Molo Songololo’ found that South African children forced into prostitution and or trafficked were often taken and sold by parents, family friends, taxi drivers,

gangs, syndicates and brothel owners. “Girls between the ages of 12 and 16-years-old were the most vulnerable. They are being abducted in broad daylight at shopping centres, taxi ranks and schools.” [17a]

The USSD Trafficking report noted that “South Africa remains without a specific anti-trafficking law or explicit penalties for traffickers, though the South African Law Reform Commission made initial progress in its process of drafting a comprehensive anti-trafficking bill.” However, the report also noted that:

“The government took steps to protect trafficking victims during the year. Police and social workers referred approximately 60 trafficking victims to private shelters for victims of abuse. In 2004, the government provided funding to shelters for victims of abuse, including approximately \$450,000 for government-run Thuthuzela shelters and over \$1.3 million for other centers. As part of this funding, it provided shelters a flat rate of \$52 per victim each week to offset the costs of housing, medical care, and behaviour g. In addition, the government contributed an estimated \$25,000 to IOM’s Southern African Counter Trafficking Assistance Program in 2004.” [2d]

[Back to Contents](#)

## FREEDOM OF MOVEMENT

- 6.33 The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that the Constitution provides for freedom of movement and the Government generally respected these rights in practice. In addition, “The constitution does not prohibit forced exile; however, there were no reports of forced exile during the year... On March 9, the Constitutional Court ruled on whether certain provisions of the Immigration Act that allowed immigration officers to declare persons at ports of entry illegal foreigners and have them detained. The Court recognized that persons believed to be illegal foreigners have the right to due process and administrative justice. Despite numerous procedural safeguards, efforts to combat a growing illegal immigration problem occasionally resulted in the Government wrongfully deporting aliens who were in the country legally.” [2b] (Section 2d)

[Back to Contents](#)

## 6.B HUMAN RIGHTS – SPECIFIC GROUPS

### ETHNIC GROUPS

- 6.34 As noted by the US State Department in their background note for South Africa, last updated in November 2005, 79 percent of the population is black; 9.6 per cent are white; 8.9 per cent are defined as colored (mixed race) and 2.5 per cent are Asian (Indian origin). [2a] (p1) The US Library of Congress (accessed 12 January 2006) records that there are five main indigenous ethnic groups throughout South Africa these are the Nguni; Sotho; Tsonga; Venda and Khoisan. The Khoisan which includes the San (or Bushmen) peoples, are the earliest known inhabitants of southern Africa. [18a]



- 6.35 The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that:

“The law prohibits discrimination and requires employers with 50 or more employees to ensure that previously disadvantaged groups, defined for legal purposes as Blacks including ‘Africans’, ‘Colored’, and ‘Asians’, are represented adequately at all levels of the workforce; however, they remained underrepresented in the workforce, particularly at the professional and managerial levels. The Government continued efforts to reorganize and redesign the educational, housing, and health care systems to benefit all racial and ethnic groups in society more equally.” [2b] (Section 2d)

However, the United Nations Commission on Human Rights published a report on 15 December 2005 on ‘Indigenous Issues’ relating to the remaining Khoi-San communities. The report noted that indigenous communities fared far less well than other ethnic groups. The report stated that:

“In South Africa there are six large groups who identify themselves as indigenous. These ethnic groups include the three main San peoples (!Xun, Khwe and Khomani, the various Nama communities, the major Griqua associations and so-called revivalist Khisan... Although indigenous peoples are still not officially recognized as such and official statistics do not reflect their presence in South Africa, the 1996 Constitution included a reference to Khoe and San people. In November 2004, the Government Cabinet adopted a memorandum that would lead to an official policy on recognizing ‘vulnerable indigenous communities’... Indigenous people in South Africa have in principle equal access to all social services provided by the Government, including education, health delivery systems and infrastructure. However, they tend to be more marginalized than other sectors to the extent that they are concentrated at the lower end of the socio-economic scale. All indigenous groups face different challenges within the national society as a result of distinct historical processes and current circumstances.” [22a] (Summary)

## NGUNI

The US Library of Congress (accessed 12 January 2006) South Africa: Ethnic Groups and Language, noted that:

“The Nguni peoples are classified into three large subgroups, the Northern Nguni, the Southern Nguni, and the Ndebele. The Zulu and the Swazi are among the Northern Nguni. The Xhosa are the largest Southern Nguni society, but the neighboring Thembu and Mpondo are also well known Southern Nguni societies, often described as subgroups of the Xhosa. Each of these groups is a heterogeneous grouping of smaller (also heterogeneous) ethnic groups.” [18b] (p1) The Nguni groups total around 16.5 million. [18b] (p1-6) Wikipedia (accessed 12 January 2006) noted that Nguni commonly refers both to a group of clans and nations living in south-eastern South Africa. [19b]

## SOTHO

- 6.38 The US Library of Congress noted “At least 7 million Sotho (also BaSotho) people who speak seSotho and related languages live in South Africa. Another 3 million Sotho and closely related people live in neighboring countries. The

diverse Sotho population includes the Northern Sotho (Pedi), the Southern Sotho, and the Tswana (BaTswana), each of which is itself a heterogeneous grouping.” [18c] (p1) Siyabona Africa (accessed 13 January 2005) noted that “The East Sotho people lived in the Lowveld area of the Northern Province but lost their distinguishing characteristics and, in time, became assimilated into the present-day North Sotho Group. The South Sotho or Basotho people settled in the area that was to become known first as Basutoland and later as Lesotho.” [20]

## TSONGA

- 6.39 The US Library of Congress noted “The Tsonga are a diverse population, generally including the Shangaan, Thonga, Tonga (unrelated to another nearby Tonga population to the north), and several smaller ethnic groups. Together they number about 1.5 million in South Africa in the mid-1990s, and at least 4.5 million in southern Mozambique and Zimbabwe.” [18d] (p1) Wikipedia (accessed 12 January 2006) noted that Tsonga is spoken by about 1,646,000 people in South Africa’s Limpopo province. [19a]

## VENDA

- 6.40 The US Library of Congress noted “The Venda (also VaVenda) population of about 600,000 people coalesced into an identifiable social unit in the area of the northern Transvaal and in Zimbabwe over several centuries. The Venda language, tshiVenda or luVenda, emerged as a distinct tongue in the sixteenth century, according to scholars. In the twentieth century, the tshiVenda vocabulary is similar to seSotho, but the grammar shares similarities with Shona dialects, which are spoken in Zimbabwe.” [18d] (p1) Wikipedia (accessed 12 January 2006) noted that Venda is spoken by about 666,000 people in the northern part of South Africa’s Transvaal province. [19b]

## KHOI-SAN

The US Library of Congress noted “Khoisan languages, characterized by ‘click’ sounds not found elsewhere in Africa, have almost disappeared from South Africa in the 1990s. All remaining Khoisan speakers are believed to be San, living in the Kalahari Desert region in the Northern Cape and North-West Province. The government has no accurate count of their numbers, although it is generally believed that larger numbers of San live in Botswana and Namibia.” [18e] (p1) The United Nations Commission on Human Rights (published 15 December 2005) also noted that:

“According to the documentation provided to the Special Rapporteur during his visit, the various indigenous groups, known collectively as Khoi-San, are estimated to include approximately 1,000 Khomani San, 1,100 Khwe San, 4,500 !Xun San and 10,000 Nama people, who are mostly resident in the sparsely populated Northern Cape Province. There are a further 300,000 Griquas, mostly located in the Northern and Western Cape Provinces, but with significant communities in the Eastern Cape, Free State and KwaZulu-Natal. There is furthermore an unspecified number of ‘revivalists’ Khoisan people associated with the Cape Cultural Heritage Development Council (CCHDC). Most of the indigenous peoples in the western part of the country were forced to

adopt Afrikaans as their primary language. The use of Khoe-San languages was strongly discouraged under apartheid.” [22a] (p7)

(See also section 6A on [Torture & Extrajudicial Killings](#))

[Back to Contents](#)

## WOMEN

6.42 Freedom House noted in Freedom in the World – South Africa (2005) that:

“Equal rights for women are guaranteed by the constitution and promoted by the constitutionally mandated Commission on Gender Equality. Laws such as the Maintenance Act and the Domestic Violence Act are designed to protect women in financially inequitable and abusive relationships. These laws, however, do not provide the infrastructure necessary for implementation. Discriminatory practices in customary law remain prevalent, as does sexual violence against women and minors. Forty percent of rape survivors are girls under 18. The Criminal Law (Sexual Offences) Amendment Bill, introduced to parliament in 2003, seeks to widen protection for sex-crimes victims, but human rights groups say that it does not go far enough.” [15] (p4-5)

The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that:

“There was a high rate of domestic violence, including physical, sexual, emotional, and verbal abuse, as well as harassment and stalking of former partners. The law defines victims of domestic violence, facilitates the serving of protection orders on abusers, requires the police to take victims to a place of safety, and allows police to seize firearms at the scene and arrest abusers without a warrant. The law extends legal protection from domestic abuse to persons who are not in legal or common law marriages. Violating a protection order is punishable by a prison sentence of up to 5 years, or 20 years if additional criminal charges are brought.

“Societal attitudes and a lack of infrastructure, resources, and training for law enforcement officials hampered the implementation of domestic violence legislation, and it was difficult for women’s cases to be prosecuted effectively. It was believed that the number of women who filed complaints represented only a fraction of those who suffered abuse, and doctors, police officers, and judges often treated abused women poorly. According to estimates from NGOs, one in four women were in abusive relationships.” [2b] (Section 5)

6.44 Human Rights Watch noted in its World Report 2005 South Africa, that “Violence against women and children is widely recognized as a serious concern in South Africa: 52,733 rapes and attempted rapes were reported to the South African police between April 2003 and March 2004 a slight increase from the previous.” [7a] (p2) The USSD report 2004 noted that Amnesty International believed that only 1 in every 35 rapes in the country was reported to the authorities. The USSD report 2004 also stated:

“The 2002-03 SAPS [South African Police Service] report noted that 90 percent of rape victims were known to their rapists, 45 percent of all rapists were HIV positive, and approximately 14 percent of all victims were younger than 12

years old. Only 5 percent of all rape cases ended with a conviction, with 40 to 60 percent of cases being withdrawn; however, SAPS reported an increase in the number of sexual offense convictions to 471. Although judges in rape cases generally followed statutory sentencing guidelines, women's advocacy groups occasionally criticized judges for using questionable criteria, such as the victim's behaviour or relationship to the rapist, as a basis for imposing lighter sentences." [2b] (Section 5)

6.45 The Human Rights Watch 2005 report noted that:

"The South African government has taken important legislative steps to try to combat violence against women, including introducing a new Sexual Offences Bill to remove anomalies from the existing law, which was discussed in Parliament during 2004. Police continue to receive training in handling rape cases. Specialized courts are being established, yet conviction rates remain low. In a country where one quarter of adults are HIV-positive, rape can mean a death sentence. In April 2002, the government pledged to provide rape survivors with post-exposure prophylaxis (PEP) – antiretroviral drugs that can reduce the chances of contracting the virus from an HIV-positive attacker. Government inaction and misinformation by high-level officials as well as administrative delays in dispensing the antiretroviral drugs continues to impede access to this lifesaving program." [7a] (p2)

6.46 The USSD report 2004 also noted that:

"The Government financed 25 shelters for abused women; however, there was a need for more shelters, particularly in the rural areas. The SAPS [South African Police Service] was in the process of converting all Child Protection Units (CPU) to Family Violence, Child Protection, and Sexual Offences (FCS) Units; at year's end, there were 22 CPUs and 40 FCSs. FCS investigating officers and other police officers were trained annually in gender sensitivity. The Government conducted domestic violence awareness campaigns, such as the annual 16 Days of Activism." [2b] (Section 5)

Amnesty International (AI) noted in its 2005 South Africa report (covering events between January and December 2004) that:

"Child and adult rape survivors interviewed by AI in August, all of whom were HIV positive, had access to emergency medical care. However, they had considerable difficulties in obtaining further medical treatment or psychological care because of the social stigma, unemployment, and their lack of secure housing and access to affordable transport. In one case the survivor and her mother were threatened with violence by the perpetrators, who had been released on bail.

"Reforms to improve access to justice for survivors continued during the year. The police Family Violence, Child Protection and Sexual Offences Unit, responsible for investigating these cases, was enlarged. Additional 'victim-friendly facilities' were established at hospitals and at police stations, with the support of NGOs and business organizations. By December [2004], 52 specialized sexual offences courts had been established." [6b] (p2)

6.48 The USSD report 2004 noted that with regard to the specialised sexual offences courts all had designated waiting rooms for victims and counselling facilities.

The government also installed more than 2,000 intermediary facilities at courts, and trained judicial officers. “The SOCA [Sexual Offences and Community Affairs] established five rape care centers, known as Thuthuzela centers, which specialized in rape care management and streamlined a network of existing investigative, prosecutorial, and medical and psychological services in the hospital where it was located.” [2b] (Section 5)

6.49 The Amnesty International 2005 report noted that:

“The conviction rate in rape cases in these courts [specialised sexual offences courts] was 20 per cent higher than cases brought to trial in ordinary courts. Complainants’ access to justice was still limited by staff shortages, distances from the courts, poor police work and lack of social welfare support. Only about seven per cent of all the rape cases reported to the police resulted in convictions. The NPA launched a comprehensive training programme for police and criminal justice officials to improve their implementation of the 1998 Domestic Violence Act. In December, South Africa ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.” [6b] (p2)

6.50 The USSD report 2004 noted that “Virginity testing occurred in KwaZulu-Natal, especially related to the Reed Dance ceremony in which only ‘maidens’ could participate. Polygyny continued to be practiced by several ethnic groups. Exacting a bride price (‘lobola’) also was a traditional practice of some ethnic groups.” [2b] (Section 5)

The USSD report 2004 also noted that:

“The law prohibits sexual harassment; however, sexual harassment remained a widespread problem. On March 18, in the Cape High Court a woman won the first case of its kind when she successfully sued her employers for failing to protect her against sexual harassment.

“Discrimination against women remained a serious problem despite equal rights under family law and property law with regard to inheritance, divorce, and custody of children, and equal legal rights under the judicial system. In practice women experienced economic discrimination in areas such as wages, extension of credit, and access to land. For example, township housing transfer schemes favored existing titleholders who tended to be men. Rural areas were often administered through traditional structures that do not typically grant land tenure to women, which was a precondition for access to housing subsidies. On July 30, the Constitutional Court heard three cases fighting to repeal the law that prohibits black African women from inheriting property unless specified in a will. The SAHRC brought one of these cases as a class action suit for women and children in similar circumstances.” [2b] (Section 5)

(See also section 6C on [Female genital Mutilation \(FGM\)](#))

[Back to Contents](#)

## CHILDREN

6.52 The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that:

“The Government was generally committed to children’s welfare. The law provides greater educational opportunities for disadvantaged children traditionally black African children, through a uniform system for the organization, governance, and funding of schools. It mandates compulsory education from ages 7 to 15 and ensures that children cannot be refused admission to public schools due to a lack of funds... The availability and quality of primary schooling continued to be a problem, especially in rural areas where schools often were not easily accessible or where children worked. In May, Human Rights Watch (HRW) reported that children attending farm schools, which are public schools on private commercial farms (13 percent of all state-funded schools), were among the poorest in terms of resources and were vulnerable to the farmers on whose land they occupied.” [2b] (Section 5)

6.53 The USSD report 2004 noted that:

“There continued to be reports of widespread rape, sexual abuse, sexual harassment, and assaults of girls at school by teachers, students, and other persons in the school community. The law requires schools to disclose sexual abuse to the authorities; however, administrators often concealed sexual violence or delayed disciplinary action. The level of sexual violence in schools also increased the risk for girls of contracting HIV/AIDS or other sexually transmitted diseases, as well as unwanted pregnancies. Girls were often raped on the school premises, and the victims’ age generally ranged from 4 to 14. Alcohol and substance abuse by perpetrators was often a contributing factor. Although the law prohibits corporal punishment in schools, there were reports that teachers used physical violence to discipline students. On June 1, the press reported that a student at Phezulu High School died from a brain aneurysm after being beaten by the principal for being late. The principal reportedly was suspended. The South African Council of Educators was also investigating two other reports of abuse of students by teachers.” [2b] (Section 5)

6.54 With regard to social welfare, the USSD report 2004 reported that: “The Government continued to increase its social welfare programs to children affected by poverty and the loss of parents. The number of children who received child support, care dependency, and foster care grants grew from 349,000 in 2000 to approximately 3.9 million by the end of 2003. The Government progressively extended child support grants to cover children up to the age of 14. In practice it sometimes was difficult for persons, including children, in rural areas to obtain access to health care facilities and other social welfare programs.” [2b] (Section 5)

6.55 Human Rights Watch noted in its World Report 2005: South Africa, that an estimated 40 per cent of all rapes and attempted rapes (during 2003/4 there were 52,733 reported rapes) were perpetrated against children. [7a] (p2) However, BBC News reported on 6 December 2005 that in Cape Town’s Bishop Lavis township alone there were 22,486 child rapes in the previous year. [3a] The USSD report 2004 noted that “Violence against children, including domestic violence and sexual abuse, remained widespread. While there was increased attention to the problem, a lack of coordinated and comprehensive strategies to deal with violent crimes continued to impede the delivery of needed services to young victims.” [2b] (Section 5)



- 6.56 The United Nations Commission on Human Rights published a report entitled 'Rights of the Child' (covering South Africa), dated 9 January 2003, that noted that almost one-third of South African children had been subjected to sexual abuse before the age of 18. It also noted that 20 per cent of females and 13 per cent of males were abused yearly. [22b] (p9) The UN report went on to state that:

"According to information provided by Childline, an NGO which has offices in six of the nine provinces and provides a 24-hour toll-free telephone helpline giving counselling to young callers, children in South Africa are exposed to every type of sexual abuse imaginable, from rape, anal rape, indecent assault and exposure to adult and child pornography. Crimes are perpetrated by both individuals and by groups – incidences of gang rape are reportedly increasing. Sometimes children are severely beaten or even killed during these assaults, in order to maintain the child's silence." [22b] (p10)

The UN report also noted that:

"Both boys and girls are victims. Where very young children and babies are concerned, one paediatrician with whom the Special Rapporteur met reported that the ratio of boys to girls was approximately 50:50. Childline KwaZulu Natal (KZN) reported that the age of victims was decreasing. In 1991, the average age of a child victim of rape was between 10 and 12, now it is 7. The Durban CPU reported that the youngest victim they had dealt with was just three weeks old, and reported a recent case in which a child aged 3 had been raped and was left tied to a tree amongst bushes. Within the older age groups, most of the reported cases of rape and sexual assault involve female victims, although most sources agreed that the extent to which male children are suffering is largely unknown. As well as the reasons outlined below for the failure to report these cases, rape of boys is not yet legally recognized, and the patriarchal nature of South African society in which a boy will not admit to being raped, coupled with the stigma attached to homosexual activity, ensures that he will rarely speak out about any sexual abuse." [22b] (p10)

[Back to Contents](#)

## CHILD CARE ARRANGEMENTS

- 6.58 The report published by the United Nations Commission on Human Rights entitled 'Rights of the Child' noted on 9 January 2003 that there were a number of children's shelters throughout South Africa. The report stated that:

"The Special Rapporteur visited a number of children's shelters and centres during his visit, in Johannesburg, Atlantis in Western Cape, and in Durban, which housed either children who had run away from abuse, former street children, or children in conflict with the law. The shelters and centres were run by the Government, by NGOs and by religious organisations and the Special Rapporteur was extremely impressed by the dedication of the staff in each of them. The Government-run centres, notably the Walter Sisulu centre in Gauteng, were very well resourced and the children were kept occupied throughout the day." [22b] (p18)

- 6.59 However, Children's Rights International (accessed 17 January 2006) noted that in spite of Government and NGO accommodation provision, the effect of HIV/AIDS will mean that by 2015, 1.97 million children (estimate) will have lost



both parents. The report noted that the loss of both parents to AIDS was increasing the number of orphans who subsequently had to fend for themselves in what are termed 'child headed households'. [25] (p1)

The Southern African Regional Poverty Network (SARPN) reported in October 2005 that, in South Africa, the provision of formal care placements and cash grants to needy children (whether AIDS-affected or not) has made some progress. "However, these benefits were developed before the era of HIV/AIDS, and are reaching only a small fraction of children who need them. Government grants intended for foster children require a court order and a cumbersome bureaucratic process, with the result that few bother to apply and only two percent of orphans in one region were receiving them. A means-tested 'child support' grant reached more children but represented less than a third of the value of the foster child grant." [26] (p1)

[Back to Contents](#)

## HOMOSEXUALS

6.61 The International Lesbian and Gay Association (ILGA), accessed on the 17 January 2006, noted that:

"On 8<sup>th</sup> May 1996 South Africa became the first country in the world to enshrine lesbian and gay rights in its Constitution: Clause 9. (3) reads: 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.' A similar provision had previously been included in the Interim Constitution adopted in December 1993. The ANC had formally recognised lesbian and gay rights as part of its policy at its policy conference in May 1992." [23a] (p1)

6.62 In a further article on 1 December 2005 ILGA noted that the South African Constitutional Court had ruled that same sex partners are entitled to the same rights of marriage as those accorded to heterosexual couples. The court urged the South African parliament to recify the relevant statutory legislation with immediate effect, stating that "Should parliament not correct the defects within a 12 months period, the Court orders the reading in of the word 'spouse' to the Marriage Act." [23b]

However, despite the advanced constitutional position, the US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that there continued to be reports that state agents abused homosexuals. [2b] (Section 1c) It further noted that:

"There was some official and societal violence and discrimination against homosexuals. The press reported that police assaulted a homosexual man in Khayelitsha, Western Cape on June 14, and that Khayelitsha police laughed at a gay man who reported an assault. A lesbian claimed that two policemen beat and raped her on September 9 and 10 because they wanted to show her what happens to a woman 'who tries to be a man'. The officers claimed that she was

drunk and resisted arrest. An investigation into the incident was ongoing at year's end.

“Although the Government conducted campaigns to reduce or eliminate discrimination against persons with HIV/AIDS, the social stigma associated with HIV/AIDS remained a general problem. There were reports of human rights abuse of HIV infected or affected individuals by their families and communities.”  
[2b] (Section 5c)

On the 13 January 2006 BBC News reported that:

“Gay activists in South Africa have vowed to ‘flood’ the country’s blood services with blood donated by gay men. This follows an announcement by the South African National Blood Services [SANBS] that it would not accept donations from men who have sex with men. The Gay and Lesbian Alliance says its members would lie when asked the question: ‘Have you had male-to-male sex in the past five years?’ The Alliance claims members have already donated 120 units of blood. It aims to flood the blood services with 70,000 units. Alliance spokesman Juan Uys describes the question as ‘humiliating, offensive and an insult to gay men’. He says all blood should be treated equally. He says the SANBS has already admitted that it uses state-of the art equipment that ensures rigorous screening of donated blood, and therefore they should accept the blood from men who sleep with other men and subject it to the tests. Mr Uys said the question of risk of HIV infection was no reason to discriminate against gay men. He says if people were discriminated against based on risk, then South African women between the ages of 18 and 24 should not be allowed to donate, as research shows that they are the group with the highest HIV infection rate in the country.”

The BBC also reported that SANBS was also hit by controversy last year following reports that it had been forced to change its screening procedures when it was revealed that they destroyed blood donated by black people, because they were at a high risk of HIV infection. [3b]

However, the Triangle Project, the largest LGBT (Lesbian, Gay, Bisexual and Transgender) organisation in South Africa [24a] questioned in an article published on 16 January 2006 the propriety of the GLA (mentioned in the above article). The Triangle Project noted that:

“The GLA has a long history of issuing frequent ‘press releases’ that range from controversial to bizarre. The so-called organisation does not have an address or a land-line phone number and all previous efforts to meet with the GLA have failed. There is no evidence to suggest that the GLA consists of more than one attention-hungry individual with a fax machine and a cell phone. Reputable gay organisations in South Africa have frequently distanced themselves from the GLA and, with time, the news media have learnt to disregard the GLA’s statements.

“However, several elements of the news media chose to print to GLA’s latest bizarre statements as fact without authenticating the story. This sensational journalism has culminated in substantial harm in that it has undermined the public’s faith in the safety of the national blood supply and has discredited the gay community as being militant and highly irresponsible, to the point of

attempting to wilfully undermine public health. In truth, it is the news media that has been highly irresponsible by quoting fiction as fact.” [24b]

[Back to Contents](#)

## HUMAN RIGHTS ACTIVISTS

- 6.66 The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that “A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to their views. Many organizations participated in governmental bodies that gathered public input and tried to fashion policies related to human rights.” [2b] (Section 6)
- 6.67 The Zimbabwe Situation, reporting a news story broadcast by SW Radio Africa on 24 November 2005, noted that the South African and Zimbabwean governments had signed a ‘defence and security’ deal increasing co-operation by sharing security information and co-operating in enforcing immigration laws. The report noted that a Zimbabwean official boasted that they would now be able to obtain information regarding the operation of NGOs in South Africa; however, a spokesperson for the South African government denied such an arrangement. [34]
- 6.68 On 17 October 2005, the Democratic Alliance (DA) issued a statement in which it questioned the motives behind President Thabo Mbeki’s attack on the NGO organisation – Treatment Action Campaign (TAC). The DA claimed that President Mbeki had attacked internationally funded NGOs raising questions about the influence of foreign funding on the organisations. The DA went on to state that “The government refuses to acknowledge the legitimacy of civil society groups that are not wholly controlled by the ruling party.” [33b]

[Back to Contents](#)

## 6.C HUMAN RIGHTS – OTHER ISSUES

### INTERNALLY DISPLACED PERSONS

Amnesty International’s South Africa 2005 report, covering events between January and December 2004, noted that:

“Asylum-seekers were at risk of arbitrary arrest or deportation because of officials’ corrupt practices at refugee reception centres and borders, which obstructed, delayed or denied their access to determination procedures. Human rights lawyers and organizations expressed concern, particularly at the discriminatory treatment of Zimbabwean asylum-seekers. The South African Human Rights Commission and the Parliamentary Portfolio Committee on Foreign Affairs held public hearings in November on xenophobia and allegations of human rights abuses against migrants and asylum-seekers. In September the Pretoria High Court ruled that the detention of unaccompanied foreign children was unlawful.

“Joint operations by Home Affairs officials and members of intelligence and police services against individuals suspected of links with international ‘terrorist’ organizations resulted in the incommunicado detention, ill-treatment or forcible repatriation of immigrants or asylum-seekers.

“Mohammed Hendi, a Jordanian national who had applied for permanent residence, was detained by police and intelligence officers when they raided his home on 2 April. He was held for 22 days at police stations in the Pretoria area, shackled, denied access to a lawyer, and subjected to racial abuse during interrogation. On 14 April the police and immigration authorities attempted to deport him and arbitrarily deny his residence application. Lawyers secured his release on 23 April through a habeas corpus action in the High Court. Jamil Odys, detained at the same time, was deported to Jordan on 14 April despite having lodged an asylum application. In May the national Commissioner of Police told Parliament that the security services had in April arrested and deported a number of ‘terrorism’ suspects, but he refused to give more details.” [6b] (p3)

Human Rights Watch (HRW) noted in World Report 2006 South Africa: that:

“Since the inception of the 1998 Refugees Act, which formally protects the rights of asylum seekers and refugees in line with international law, South Africa has witnessed a steady increase in the number of asylum seekers. In 2003 the asylum seeker and refugee population was 110, 643. By the end of 2004, this number had increased to 142,907. 32, 600 new asylum applications were lodged with the Department of Home Affairs in 2004. The implementation of the Refugees Act remains problematic. Delays in the refugee status determination process, inconsistency in application of a court decision allowing for the right to work and study for asylum seekers;, corrupt practices and inadequate procedures for unaccompanied minors seeking asylum render protections for asylum seekers inadequate. The number of applications for asylum pending at the end of 2004 was 115,220, while only 27,683 applications had been granted refugee status. These administrative difficulties can present a risk of unlawful arrest and possible deportation for asylum seekers. South Africa deported a total of 167,137 foreign nationals in 2004. Between January and September 30, South Africa deported 156, 893. The majority of the deportees are from Southern Africa.” [7b] (p137)

[Back to Contents](#)

## WITCHCRAFT

The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that:

“In Limpopo Province, where traditional beliefs regarding witchcraft remained strong, there were occasional reports of attacks on persons accused of witchcraft by their rural communities. Traditional leaders cooperated with Ministry of Safety and Security programs and reported threats against persons suspected of witchcraft to the police. The press reported that on November 9 two men killed four elderly women accused of witchcraft in Nontshinga Village in the Eastern Cape. One of the suspects wanted in connection with the murders was shot and killed by police after attacking a police officer and the second suspect remained under arrest at year’s end. Some of the suspects

accused of the February 2003 killing of a man suspected of involvement in witchcraft in KwaZulu Natal remained in custody at year's end and the trial was scheduled to begin in February 2005.

“Muti killings – killing, especially of children, to obtain body parts for traditional healing – continued during the year. On July 30, attackers hacked off a young boy's hand, ear, and genitals. The boy died 10 days later. SAPS estimated that there were an average of 150 to 300 such killings each year.” [2b] (Section 1a)

- 6.72 The USSD report 2004 went on to also note that “There were reports that persons accused of witchcraft were attacked and driven from their villages in rural communities. Some survivors of attacks and their families were living in ‘witch villages,’ which had no running water or electricity, for safety in Limpopo Province. Although some persons returned to their homes, many persons remained in the villages and requested government assistance for schools and basic infrastructure, some of which was provided.” [2b] (Section 1f)

[Back to Contents](#)

## FEMALE GENITAL MUTILATION (FGM)

The US Department of State (USSD) report on Human Rights Practices in South Africa 2004 noted that “The law specifically prohibits female genital mutilation (FGM) as unfair discrimination, and the Commission for Gender Equality, the Study of Violence and Reconciliation, and People Opposed to Women Abuse all reported that there were no cases of FGM during the year.” [2b] (Section 5)

[Back to Contents](#)

## **Annex A: Chronology of events**

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**4<sup>th</sup>**

**century** Bantu speaking groups settle, joining the indigenous San and Khoikhoi people.

**1480s** Portuguese navigator Bartholomeu Dias is the first European to travel round the southern tip of Africa.

**1497** Portuguese explorer Vasco da Gama lands on Natal coast.

**1652** Jan van Riebeeck, representing the Dutch East India Company, founds the Cape Colony at Table Bay.

**1795** British forces seize Cape Colony from the Netherlands. Territory is returned to the Dutch in 1803; ceded to the British in 1806.

**1816-**

**1826** Shaka Zulu founds and expands the Zulu empire, creates a formidable fighting force.

**1835-**

**1840** Boers leave Cape Colony in the 'Great Trek' and found the Orange Free State and the Transvaal.

**1852** British grant limited self-government to the Transvaal.

**2005** Natal separates from the Cape Colony.

**Late**

**1850s** Boers proclaim the Transvaal a republic.

**1867** Diamonds discovered at Kimberley.

**1877** The British help the Transvaal Boers to defeat the Zulus. Britain annexes the Transvaal.

**1879** British defeat the Zulus in Natal.

**1880-**

**1881** Boers rebel against the British, sparking the first Anglo-Boer War. Conflict ends with a negotiated peace. Transvaal is restored as a republic.

**Mid**

**1880s** Gold is discovered in the Transvaal, triggering the gold rush.

**1899** British troops gather on the Transvaal border and ignore an ultimatum to disperse. The second Anglo-Boer War begins.

**1902** Treaty of Vereeniging ends the second Anglo-Boer War. The Transvaal and Orange Free State are made self-governing colonies of the British Empire.

- 1910** Formation of Union of South Africa by former British colonies of the Cape and Natal, and the Boer republics of Transvaal and Orange Free State.
- 1912** Native National Congress founded, later renamed the African National Congress (ANC).
- 1913** Land Act introduced to prevent blacks, except those living in Cape Province, from buying land outside reserves.
- 1914** National Party founded.
- 1918** Secret Broederbond (brotherhood) established to advance the Afrikaner cause.
- 1919** South West Africa (Namibia) comes under South African administration.

### **Apartheid set in law**

- 1948** Policy of apartheid (separateness) adopted when National Party (NP) takes power.
- 1950** Population classified by race. Group Areas Act passed to segregate blacks and whites. Communist Party banned. ANC responds with campaign of civil disobedience, led by Nelson Mandela.
- 1960** Seventy black demonstrators killed at Sharpeville. ANC banned.
- 1961** South Africa declared a republic, leaves the Commonwealth. Mandela heads ANC's new military wing, which launches sabotage campaign.
- 1960s** International pressure against government begins; South Africa excluded from Olympic Games.
- 1964** ANC leader Nelson Mandela sentenced to life imprisonment.
- 1966** **September** – Prime Minister Hendrik Verwoerd assassinated.
- 1970s** More than three million people forcibly resettled in black 'homelands'.
- 1976** More than 600 killed in clashes between black protesters and security forces during uprising which starts in Soweto.
- 1984-1989** Township revolt, state of emergency.
- 1989** FW de Klerk replaces PW Botha as president, meets Mandela. Public facilities desegregated. Many ANC activists freed.
- 1990** ANC unbanned, Mandela released after 27 years in prison. Namibia becomes independent.
- 1991** Start of multi-party talks. De Klerk repeals remaining apartheid laws, international sanctions lifted. Major fighting between ANC and Zulu Inkatha movement.



- 1993** Agreement on interim constitution.
- 1994** **April** – ANC wins first non-racial elections. Mandela becomes president, Government of National Unity formed, Commonwealth membership restored, remaining sanctions lifted. South Africa takes seat in UN General Assembly after 20-year absence.

### Seeking truth

- 1996** Truth and Reconciliation Commission chaired by Archbishop Desmond Tutu begins hearings on human rights crimes committed by former government and liberation movements during apartheid era.
- 1996** Parliament adopts new constitution. National Party withdraws from coalition, saying it is being ignored.
- 1998** Truth and Reconciliation Commission releases its report, branding apartheid a crime against humanity and finding the ANC accountable for human rights abuses.
- 1999** ANC wins general elections, Thabo Mbeki takes over as president.
- 2000** **December** – Local elections. ANC takes most of the 237 local councils (59%) but the Democratic Alliance – created five months previously from a merger of the Democratic Party, the New National Party and the Federal Alliance – captures nearly a quarter of the votes. The Inkatha Freedom Party wins nine per cent.
- 2001** **April** – A group of 39 multi-national pharmaceutical companies suspend their legal battle to stop South Africa importing generic AIDS drugs. The decision to drop the landmark court case is hailed as a major victory for the world's poorest countries in their efforts to import cheaper drugs to combat an epidemic that affects more than 25 million Africans alone.
- 2001** **May** – An official panel considers allegations of corruption surrounding South Africa's biggest arms transaction in seven years. The 1999 deal involves British, French, German, Italian, Swedish and South African firms. In November the panel clears the government of unlawful conduct.
- 2001** **September** – Durban hosts UN race conference.
- 2001** **December** – High Court rules that pregnant women must be given AIDS drugs to help prevent transmission of the virus to their babies.
- 2002** **April** – Court acquits Dr Wouter Basson - dubbed 'Dr Death' - who ran apartheid-era germ warfare programme. Basson had faced charges of murder and conspiracy. ANC condemns verdict.
- 2002** **July** - Constitutional court orders government to provide key anti-AIDS drug at all public hospitals. Government had argued drug was too costly.

- 2002 October** - Bomb explosions in Soweto and a blast near Pretoria are thought to be the work of right-wing extremists. Separately, police charge 17 right-wingers with plotting against the state.
- 2003 May** - Walter Sisulu, a key figure in the anti-apartheid struggle, dies aged 91. Thousands gather to pay their last respects.
- 2003 November** - Government approves major programme to treat and tackle HIV/AIDS. It envisages network of drug-distribution centres and preventative programmes. Cabinet had previously refused to provide anti-AIDS medicine via public health system.
- 2004 April** - Ruling ANC wins landslide election victory, gaining nearly 70 per cent of votes. Thabo Mbeki begins a second term as president. Inkatha Freedom Party leader Mangosuthu Buthelezi is dropped from the cabinet.
- 2005 March** - Investigators exhume the first bodies in a Truth and Reconciliation Commission investigation into the fates of hundreds of people who disappeared in the apartheid era.
- 2005 May** - Geographical names committee recommends that the culture minister should approve a name change for the capital from Pretoria to Tshwane.
- 2005 June** - President Mbeki sacks his deputy, Jacob Zuma, in the aftermath of a corruption case.
- 2005 August** - Around 100,000 gold miners strike over pay, bringing the industry to a standstill. [3c]

[Back to Contents](#)

## **Annex B: Cabinet list – 11 January 2006**

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President

**Thabo Mvuyelwa MBEKI**

Deputy President

**Phumzile Gloria MLAMBO-NGCUKA**

Minister of Agriculture & Land Affairs

**Angela Thoko DIDIZA**

Minister of Arts & Culture

**Pallo JORDAN**

Minister of Communications

**Ivy MATSEPE-CASABURRI**

Minister of Correctional Services

**Ngconde BALFOUR**

Minister of Defence

**Mosiuo LEKOTA**

Minister of Education

**Naledi PANDOR**

Minister of Environment & Tourism

**Marthinus VAN SCHALKWYK**

Minister of Finance

**Trevor MANUEL**

Minister of Foreign Affairs

**Nkosazana DLAMINI-ZUMA**

Minister of Health

**Manto TSHABALALA-MSIMANG**

Minister of Home Affairs

**Nosiviwe MAPISA-NQAKULA**

Minister of Housing

**Lindiwe SISULU**

Minister of Intelligence

**Ronnie KASRILS**

Minister of Justice & Constitutional Affairs

**Bridgitte MABANDLA**

Minister of Labor

**Membathisi MDLADLANA**

Minister of Mineral & Energy Affairs  
**Phumzile MLAMBO-NGCUKA**

Minister of Provincial & Local Government  
**Sydney MUFAMADI**

Minister of Public Enterprises  
**Alec ERWIN**

Minister of Public Service & Administration  
**Geraldine FRASER-MOLEKETI**

Minister of Public Works  
**Stella SIGCAU**

Minister of Safety & Security  
**Charles NQAKULA**

Minister of Science & Technology  
**Mosibudi MANGENA**

Minister of Social Development  
**Zola SKWEYIYA**

Minister of Sport & Recreation  
**Makenkesi STOFIE**

Minister of Trade & Industry  
**Mandisi MPAHLWA**

Minister of Transport  
**Jeff RADEBE**

Minister of Water & Forestry  
**Buyi SONJICA**

Minister of the Presidency  
**Essop PAHAD**  
[27]

[Back to Contents](#)

## Annex C: Election results – 14 April 2004

### EXECUTIVE:

**President:** Thabo Mvuyelwa Mbeki (1999/2004) ANC

**Deputy-President:** Phumzile Gloria Mlambo-Ngcuka ANC [27]

The president is elected for a five-year term by the parliament. The government is formed by the ANC.

### PARLIAMENT:

Parliament has two chambers. The National Assembly has 400 members, elected for a five-year term by the proportional representation. The National Council of Provinces has 90 members, elected for a five-year term by the provincial parliaments.

<b>National Assembly: 14 April 2004 (76.7%)</b>	<b>Party</b>	<b>Percentage</b>	<b>Seats</b>
African National Congress	ANC	69.7%	<b>279</b>
Democratic Alliance	DA	12.4%	<b>50</b>
Iqembu Lenatha Yenkululeko/Inkatha Freedom Party	IFP	7.0%	<b>28</b>
United Democratic Movement	UDM	2.3%	<b>9</b>
Independent Democrats	ID	1.7%	<b>7</b>
Nuwe Nasionale Party	NNP	1.7%	<b>7</b>
African Christian Democratic Party	ACDP	1.6%	<b>6</b>
Vryheidsfront Plus	VF+	0.9%	<b>4</b>
United Christian-Democratic Party	UCDP	0.8%	<b>3</b>
Pan African Congress of Azania	PAC	0.7%	<b>3</b>
Minority Front	MF	0.4%	<b>2</b>
Azanian People's Organisation	AZAPO	0.3%	<b>2</b>

[28]

[Back to Contents](#)

## **Annex D: Political organisations**

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Europa Publications – Africa South of the Sahara 2005 (South Africa) noted that “A total of 21 parties contested the elections to the National Assembly in April 2004, while 37 parties presented candidates in the concurrent provincial elections.”

### **African Christian Democratic Party (ACDP)**

#### **African National Congress of South Africa (ANC)**

Founded in 1912; in alliance with the South African Communist Party (SACP) and the Congress of South Africa Trade Unions (COSATU); governing party since April 1994.

#### **Afrikaner Eenheidsbeweging (AEB) (Unity Movement)**

Right-wing party.

#### **Afrikaner Weerstandsbeweging (AWB) (Afrikaner Resistance Movement)**

Extreme right-wing paramilitary group. Leader: Eugene Terre Blanche.

#### **Azanian People’s Organization (AZAPO)**

Founded in 1978 to seek the establishment of a unitary, democratic, socialist republic; excludes white members.

#### **Blanke Bevrydingsbeweging (BBB) (White Protection Movement)**

Founded in 1987 – extreme right-wing activist group.

#### **Boerestaat Party (Boer State Party)**

Founded in 1988; seeks the reinstatement of the Boer Republics in a consolidated Boerestatt.

#### **Cape Democrats**

Founded in 1988; liberal, white support.

#### **Democratic Alliance (DA)**

Founded in 2000 by opposition parties, including the Democratic Party, the Federal Alliance and the New National party (NNP), to contest that year’s municipal elections; NNP withdrew in late 2001.

#### **Democratic Reform Party (DRP)**

Founded in 1988; coloured support.

#### **Democratic Workers’ Party (DWP)**

Founded in 1984 by breakaway faction of the People’s Congress party; mainly coloured support.

#### **Freedom Front Plus (Vryheidsfront Plus) (FF Plus/VF Plus)**

Founded in 1994 as Freedom Front; name changed after incorporating the Conservative Party and Afrikaner Eedheidsbeweging in September 2003; a right-wing electoral alliance.

#### **Freedom Party**

Coloured support.

**Herstigte Nasionale Party (HNP) (Reconstituted National Party)**

Founded in 1969 by former members of the National party; advocates 'Christian Nationalism'.

**Independent Democrats (ID)****Inkatha Freedom Party (IFP)**

Founded as Inkata Movement, a liberation movement with mainly Zulu support; reorganised in 1990 as a multi-racial political party; represented in Government.

**Justice and Freedom Alliance (Jafa)****Minority Front**

Founded in 1993; Indian support; formed political alliance with ANC in June 1999.

**New Freedom Party of Southern Africa****New National Party (NNP)**

Founded in 1912 as national party; ruling party 1948-94; opened membership to all racial groups in 1990; represented in interim Government of National unity following 1994 elections, withdrew in June 1996 to form the official opposition; adopted present name in 1999; joined the DA in 2000; withdrew from the DA in late 2001, forming a coalition with the ANC.

**New Solidarity****Die Oranjewerkers**

Seeks to establish several small, self-governing white states.

**Pan-Africanist Congress of Azania (PAC)****Progressive Independent Party (PIP)****South African Communist Party (SACP)**

Founded in 1921; reorganised 1953; supports ANC.

**Transvaal Indian Congress****United Christian Democratic Party (UCDP)****United Democratic Movement**

Founded in 1997; multiracial support; demands effective measures for enforcement of law and order.

**United Democratic Reform Party**

Founded in 1987 by merger; mainly coloured and Indian support.

**Workers' Organization for Socialist Action (WOSA)**

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[Back to Contents](#)



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**Back to Contents**

