

SOUTH AFRICA

REPUBLIC OF SOUTH AFRICA

Head of state and government: Thabo Mbeki

Death penalty: abolitionist for all crimes

International Criminal Court: ratified

Deaths in custody in suspicious circumstances, torture and excessive use of force by the police continued to be reported. A resurgence in political violence led to deaths and injuries. Levels of reported rape of women and girls remained high; few of those responsible were brought to justice. There was continuing criticism of the government's policy on the provision of treatment for those living with HIV/AIDS. The Constitutional Court ruled that legislation governing the use of lethal force violated the right to life. Regulations preventing asylum-seekers from working or studying were declared unlawful and unconstitutional.

Background

There was increasing political tension between the ruling African National Congress (ANC) and its alliance partners in the labour movement and Communist Party, and between the ANC and other political parties. In June the ANC appeared set to win control of KwaZulu Natal Province when it gained five members from other parties in the legislature through the operation of the new law allowing parliamentarians to change political affiliation. However, in October the Constitutional Court ruled the law unconstitutional and in November ruled against an ANC application to have the five members protected against dismissal from the legislature. Also in November, the KwaZulu Natal premier and national chairperson of the Inkatha Freedom Party (IFP), Lionel Mtshali, dismissed two ANC cabinet ministers from the provincial coalition government.

The increasing political tensions between the ANC and the IFP in KwaZulu Natal led to fears of a resurgence of political violence. There were a number of incidents of political killings during the year, including the murder of an ANC local government councillor, Bongani Gabela, in Pomeroy on 16 March.

White right-wing organizations were linked to a series of bomb explosions in Gauteng Province in November which caused at least one death. During the year the police arrested a number of suspects in connection with the discovery of arms caches and other evidence of a right-wing plot to overthrow the government.

Violations of the rights of women and children

The government's policy on the HIV/AIDS pandemic and the provision of effective treatment for those living with the disease came under intense criticism from civil society organizations, medical research and other professional bodies, political figures and some members of the ANC itself. On 17 April the government publicly agreed to provide anti-

retroviral treatment to HIV-positive pregnant women and their newborn babies and to survivors of rape at risk of HIV infection from sexual assault.

In July the Constitutional Court ruled that "the government [must] devise and implement within its available resources a comprehensive and co-ordinated programme to realise progressively the rights of pregnant women and their newborn children to have access to health services to combat mother-to-child transmission of HIV". It ordered the authorities to remove "without delay" the restrictions that prevented an anti-retroviral drug from being made available at public hospitals and clinics and to facilitate its use for the purpose of reducing transmission of HIV to newborn babies.

Parliamentary hearings, police and research evidence continued to reveal high levels of reported rape and attempted rape of women and girls. In November, a preliminary study by government departments revealed that the perpetrators had been convicted in less than eight per cent of the 52,975 rape cases reported in 2000. In some provinces, including the Free State, Limpopo, the Western Cape and KwaZulu Natal, there were improvements in the provision of health care, counselling and support services to survivors and in the prosecution of rape cases through specialized courts. In June the national Department of Health developed guidelines for the care and treatment of survivors of sexual assault which included measures to prevent the transmission of HIV and other sexually transmitted infections.

In Mpumalanga, the provincial Minister of Health continued to harass non-governmental organization (NGO) activists and medical professionals involved in the care and treatment of survivors of rape and the provision of anti-retroviral drugs to them to prevent HIV infection.

In February the Medical Superintendent of Rob Ferreira Hospital, Dr Thys von Mollendorff, was dismissed from his post because he had allowed an NGO, the Greater Nelspruit Rape Intervention Project (GRIP), to use hospital facilities. He lost his appeal in a hearing at which neither he nor his lawyer were present. At the end of the year GRIP, which paid for the anti-retroviral drugs prescribed for rape survivors, was still facing legal action to secure its eviction from provincial health facilities.

Torture and deaths in custody

There were continuing reports of incidents of torture and suspicious deaths in custody. The Independent Complaints Directorate (ICD) reported that there had been 37 complaints of torture and 255 complaints of assault with intent to do grievous bodily harm during the year ending 31 March 2002, a significant increase compared with the previous year. In the same period they investigated 214 incidents of deaths in custody and 371 deaths resulting from "police action", primarily shootings by police when conducting arrests or intervening to stop a crime. In a third of fully investigated cases, the ICD concluded that there was sufficient evidence to recommend prosecution of the police officers involved.

There were a number of incidents of apparently deliberate killings by police of arrested suspects.

☞ In May, a member of a Community Policing Forum, Siphiwe Phakathi, was shot at close range at Ekuvukeni police station KwaZulu Natal, where he had gone to submit a complaint. He died from gunshot injuries to the neck and chest.

☞ At the end of the year, four members of the Serious and Violent Crimes Unit in Richard's Bay, KwaZulu Natal, were facing charges of murder and obstruction of justice in connection with the "disappearance" of Vusi Ngwenya. He had been taken from his home in handcuffs by police on 15 January. His family were informed less than 24 hours later that he had escaped. His body was found in a shallow grave at the end of December.

☞ In April the magistrate's court in Ixopo, KwaZulu Natal, convicted one soldier of murder and two other soldiers of assault with intent to do grievous bodily harm in connection with the torture of Basil Jaca during a military raid on his home in July 2000. During the assault they repeatedly pushed a rifle barrel into his anus. He died from his injuries the following day.

The Mpumalanga Deputy Commissioner of Police visited KaNyamazane police station in December following numerous complaints of human rights violations and failures to assist crime victims, including rape survivors. Earlier in the year, two KaNyamazane police officers were charged and put on trial as accomplices in the torture of a 13-year-old boy suspected of theft. The boy had been whipped, dunked in a river and his genitals and other parts of his body were burned with molten plastic and cigarettes by four other people who were also brought to trial. The trials were continuing at the end of the year.

Police use of force

On 21 May the Constitutional Court ruled that section 49(2) of the 1977 Criminal Procedure Act, which permitted the unrestricted use of "deadly" force by police or any other person against a fleeing suspect, violated the right to life. The Court held that potentially lethal force could only be used if there were reasonable grounds for believing that the suspect posed an immediate threat of serious bodily harm or had committed a crime involving the infliction or threatened infliction of serious bodily harm.

During the World Summit on Sustainable Development in August, police briefly detained more than 70 activists from the Landless People's Movement and the National Land Committee. On release the detainees were charged under an apartheid era law with participating in an illegal demonstration and public violence; the charges were later withdrawn. One of the detainees, Girly Zitha, was denied medical attention and suffered a miscarriage while in custody. Civil society organizations submitted a complaint to the South African Human Rights Commission criticizing police for resorting to the use of force without justification and causing injuries to peaceful demonstrators.

Prison conditions

A commission of inquiry into corruption in the prison service chaired by Judge Thabani Jali heard evidence of extensive abuses at Grootvlei prison in the Free State. The abuses included the rape of juvenile prisoners by warders or by other

prisoners in collusion with warders, the intimidation of "whistle blowers" and physical violence against complainants. Disciplinary hearings against 21 Grootvlei prison warders began in November and were continuing at the end of the year.

In November the South African Human Rights Commission reported that some 230 prisoners remained under sentence of death owing to bureaucratic problems and delays in judicial proceedings following the abolition of the death penalty in 1995. The Commission condemned this situation as a violation of the prisoners' rights to dignity, to just administrative action, and not to be subjected to cruel, inhuman or degrading treatment.

Refugee rights

In March a High Court judge ruled that the Department of Home Affairs could not deport a Congolese refugee after he had applied for asylum when in transit at Johannesburg International Airport. Jacques Katambayi had been refused asylum in Australia and was in the process of being deported by the Australian authorities through South Africa. The judge prohibited the Australian and South African authorities from deporting Jacques Katambayi from South Africa and directed the Department of Home Affairs to allow him to apply for asylum in South Africa.

The South African government refused to deport a Chilean asylum-seeker, Jaime Yovanovic Prieto, on the grounds that the charge was political and he would face an unfair trial. His extradition had been sought by the Chilean government to stand trial in a military court for a murder allegedly committed in 1983.

In November the Cape Town High Court ruled, in a case brought by a Zimbabwean asylum-seeker, that regulations which prohibited asylum-seekers from working or studying in South Africa were unlawful and unconstitutional.

Impunity for past human rights violations

The IFP obtained a court order in August to prevent the Truth and Reconciliation Commission (TRC) from publishing its final volumes pending a High Court ruling on the IFP's earlier application for an order compelling the TRC to amend its 1998 report which named senior IFP officials as responsible for human rights violations. The court hearing on this application was scheduled for January 2003.

In June the Khulumani Support Group (Western Cape) sought a High Court order compelling the government to make public its policy on reparations for those whom the TRC had identified in 1998 as victims of gross human rights violations. The case had not concluded by the end of the year.

On 11 April the Pretoria High Court acquitted Dr Wouter Basson, head of the military's covert biological and chemical warfare program in the apartheid era, of the remaining 46 murder and other charges against him. Among other findings, the Court ruled that the state had not proved beyond reasonable doubt that Dr Basson had been part of a conspiracy to supply lethal drugs to military agents to murder enemies of the government. The state sought leave to appeal against the judge's decisions earlier in the trial not to hear charges against the accused relating to murders committed outside South

Africa and not to withdraw from the case when the prosecution challenged his alleged bias.

AI country reports/ visits

Reports

- Protecting the human rights of women and girls: Report of a medico-legal workshop on the care, treatment and forensic medical examination of rape survivors in Southern and East Africa (AI index: AFR 53/001/2002)
- Southern Africa: Women and girls still facing discrimination and violence (AI index: AFR 03/012/2002)
- Policing to protect human rights: A survey of police practice in countries of the Southern African Development Community (AI Index: AFR 03/004/2002)

Visits

AI delegates visited South Africa in April and August.