

SOUTH AFRICA 2017/2018

Profound inequalities continued to undermine economic, social and cultural rights, including in access to sexual and reproductive health services. Failures in the criminal justice system obstructed access to justice for victims of hate crimes and gender-based violence. Investigations into police conduct following excessive use of force during protests were ongoing.

Background

Protests against corruption were widespread. Political tension was heightened after President Zuma made substantial changes to members of government in March, including the dismissal of Finance Minister Pravin Gordhan.

Despite increased public spending on health, education and essential services, the national statistical service reported that the country was unable to reduce poverty and inequality.

Excessive use of force

The Independent Police Investigative Directorate reported an increase in abuse of power by the police, including 394 deaths as a result of police action and 302 deaths in police custody in 2016-2017, both figures higher than for the previous year. It also reported 173 cases of torture, 112 of rape by police officers – including 35 cases committed by officers on duty – and 3,827 of assault by police. At the end of the year, it concluded its investigation into the fatal shooting by police officers of journalist Godknows Nare in April in Johannesburg, and handed the case to the Director of Public Prosecution. Godknows Nare was reported to have been shot at by the officers, who thought he had stolen a car, after he exited his car with his arms raised.

On 23 May, 17-year-old Leonaldo Peterson was shot at his home by police officers with a rubber bullet at close range in Gauteng province, during a protest in the neighbourhood. His wounded hand required multiple surgeries.

On 27 May, Samuel Mabunda, a migrant from Mozambique, died as a result of injuries following beatings by the “Red Ants”, a private security company hired by the police to carry out evictions in Ivory Park, Johannesburg. A police investigation into the case was ongoing at the end of the year.

On 12 September, 14-year-old Ona Dubula was shot at by police officers at close range with rubber bullets in his face and ribs at an informal settlement in Hout Bay town, Western Cape province, during protests over fishing licences; the injuries left him with speaking difficulties. A Directorate investigation into the incident was ongoing at the end of the year.

Unlawful killings

The Department of Police said that killings of local councillors persisted, as did murders and attempted murders at Durban’s Glebelands hostel complex – leading to several arrests in relation to the crimes. A Commission of Inquiry into the root causes of political killings in KwaZulu-Natal province commenced its hearings in March and was extended until March 2018.

Gender-RELATED violence

Violence against women and girls, including gender-related killings, remained widespread. Over 39,000 cases of rape were reported to the police between April 2016 and March 2017, although such cases were believed to be grossly under-reported. In September, the Medical Research Council stated that only 8.6% of rape cases opened by the police in 2012 had resulted in convictions, citing a lack of resources and training for police officers, as well as failures to investigate the crimes and gather forensic evidence.

In May, the Department of Justice published the South African Law Reform Commission report on adult prostitution. The Commission recommended that the sale and purchase of sex remain criminalized, contradicting the testimonies and recommendations of sex workers and activists, the South African Commission for Gender Equality, as well as human rights and public health experts. In June, Zwelethu Mthethwa was sentenced to 18 years' imprisonment for the murder of sex worker Nokuphila Kumalo in 2013. The case highlighted the delays faced by sex workers in accessing justice.

Sexual and reproductive rights

Gross inequalities in women's access to sexual and reproductive health services persisted, with less than 7% of the country's 3,880 health facilities offering abortion services. The government failed to address health care professionals' refusal to provide abortion services as well as information on the location of those services, contrary to international human rights standards. Lack of access to information on sexual and reproductive health and rights – including how and where to access legal abortion services – and inequalities in access to those services for marginalized groups of women and girls exacerbated existing barriers to safe abortion.

Right to health

Official statistics stated that almost one in three boys and one in four girls suffered from stunting.

Despite health policies aimed at reducing the spread of HIV, incidence rates remained particularly high among women and girls, with an estimated 2,000 new HIV infections occurring every week among young women and girls aged 15 to 24.

Reporting to Parliament in September, the Health Minister highlighted that the politicization of provincial health departments and poor management had resulted in “a shortage of medical staff, medicines, equipment and other medical necessities” in public health facilities. The chairperson of the Portfolio Committee on Public Service and Administration was reported to have received death threats in March, following her investigation into the poor performance of health facilities in Mpumalanga province. In June, the South African Human Rights Commission (SAHRC) found that the Department of Health in KwaZulu-Natal province had violated cancer patients' rights to life, health and human dignity, due to the lack of oncologists and functional equipment for screening and treating patients.

In October, an arbitration hearing began in relation to the deaths of over 118 patients with mental illnesses who died after the Department of Health in Gauteng province moved over 1,300 patients from the Life Esidimeni health care facility to facilities managed by NGOs, because of resource constraints. However, the SAHRC emphasized that “[all] of the 27 NGOs where the patients were relocated were unlicensed, under-resourced and had no capacity to

take on mentally ill people”. In February, the Health Ombudsman found that the relocation breached the rights of the patients and their families, including their rights to life and to human dignity.

International justice

On 6 July, the ICC Pre-Trial Chamber found that South Africa should have executed the arrest warrant against Sudanese President Omar Al-Bashir when he visited the country in June 2015. South Africa’s Supreme Court of Appeal ruled in March 2016 that the government’s failure to arrest President Al-Bashir was unlawful.¹

Following the conclusion of South Africa’s domestic legal processes, the Pre-Trial Chamber convened a hearing in April 2017.

A draft bill to repeal the Rome Statute Domestication Act was introduced to Parliament in early December, signalling the government’s intention to pursue its decision to leave the ICC.

Freedom of expression

On 7 July, the South Gauteng High Court granted the South African National Editors’ Forum (SANEF) and 11 journalists an interdict against Black First Land First (BLF), a political party, and Andile Mngxitama, its leader, after journalists covering allegations of corruption involving President Zuma and the Indian-born Gupta family reported threats and harassment. On 17 July, Micah Reddy, a journalist at the amaBhungane Centre for Investigative Journalism, said that he was harassed by a group of BLF supporters and members, following his participation in a panel discussion with Andile Mngxitama at the South African Broadcasting Corporation.

On 27 July, amaBhungane organized a public event in Johannesburg to discuss the “GuptaLeaks” emails, which exposed alleged corruption by the political elite. The meeting was disrupted by BLF members and a group of about 20 people believed to be from the MK Inkululeko Foundation, a veterans’ association. On 11 August, the South Gauteng High Court found that BLF and Andile Mngxitama were in contempt of the 7 July court order, following an application by journalists Sam Sole, Ferial Haffajee and the SANEF. The Court also ordered that the interdict be extended to cover all journalists. On 29 September, BLF and Andile Mngxitama launched an appeal, which SANEF and the journalists opposed.

Rights of lesbian, gay, bisexual, transgender and intersex people

LGBTI people continued to face harassment, discrimination and violence.

On 4 April, the burned body of Matiisetso Alleta Smous, a lesbian woman, was discovered in Kroonstad, Free State province. An eyewitness said she was raped, stabbed in the chest, and then burned to death. Three suspects were arrested on 5 April and released later that month due to insufficient evidence against them. An investigation into the murder was ongoing at the end of the year.

On 15 May, the body of Lerato Moloi, a lesbian woman, was found in a field in Soweto, Gauteng province. The postmortem examination showed that she had been raped and stabbed

in the neck. Two suspects were arrested in May. The National Prosecuting Authority referred the case to the Johannesburg High Court.

On 11 August, the Potchefstroom High Court sentenced David Shomolekae to life imprisonment for strangling Lesley Makousa, a 16-year-old gay student, to death in August 2016. David Shomolekae was found guilty of murder, robbery and housebreaking.

The Prevention and Combating of Hate Crimes and Hate Speech Bill, which included homophobic hate crimes, that was introduced in October 2016 had yet to be approved by members of the government before going to the National Assembly.

On 6 September, the Western Cape High Court ruled that the refusal by the Department of Home Affairs to allow transgender people who had transitioned after they got married to change the gender markers on their official documents infringed couples' rights to equality and human dignity. The Department of Home Affairs previously required transgender couples to get divorced before their gender markers could be changed on their official documents.

Refugees' and migrants' rights

Human rights violations and discrimination against refugees, asylum-seekers and migrants continued.

On 29 June, the Constitutional Court declared section 34(1)(b) and (d) of the Immigration Act 13 of 2002 – including the provision to hold an “illegal foreigner” in custody for up to 120 days without a court hearing – inconsistent with sections 12(1) and 35(2)(d) of the Constitution and therefore invalid. The declaration was however suspended for two years to enable Parliament to pass corrective legislation.

In July, the Department of Home Affairs published a white paper on international migration intended to update migration policy. The white paper proposed the creation of detention facilities at South Africa's borders, which would house asylum-seekers while their applications were processed, and also limit their rights to work and movement while awaiting a decision on their application. It also proposed the establishment of a Border Management Authority – a centralized border control body – which would include police and customs. The related Border Management Authority Bill was passed by the National Assembly on 8 June and was before the National Council of Provinces for consideration.

In July, the SAHRC strongly condemned comments made by the Deputy Police Minister as “irresponsible” and “xenophobic”, after he said that most foreign nationals in Johannesburg were engaged in various crimes.

On 29 September, the Supreme Court of Appeal declared the 2012 decision by the Department of Home Affairs to close the Cape Town Refugee Reception Office unlawful and ordered it to reopen the Office by March 2018.

On 30 November, the Refugee Amendment Bill was passed by the National Assembly. It amended the Refugees Act 130 of 1998 and restricts refugees' right to seek and enjoy asylum from persecution. In December, President Zuma assented to the Refugee Amendment Act (11 of 2017).