

# Human Rights Watch

## Discrimination, Detention, and Deportation: Immigration & Refugees

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### Annual reports

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#### Human Rights Watch World Report 1998

##### SOUTH AFRICA

##### Human Rights Developments

The African National Congress (ANC) continued to dominate South Africa's government of national unity (GNU) as it reached the middle of its first term of office. Members of the Inkatha Freedom Party (IFP) were included in the cabinet, but the National Party, which had resigned from the GNU in 1996, remained in opposition. In August, the resignation by former president F.W. de Klerk as leader of the National Party reflected the disarray of the former party of apartheid, as the political landscape continued to adjust to the new realities of universal suffrage. A number of new milestones in South Africa's transformation were passed, most importantly the coming into force, on February 4, following certification by the Constitutional Court, of the constitution drafted during the period since the elections of April 1994. The constitution, which replaced an "interim" constitution adopted in December 1993 and in force since April 1994, included a bill of rights guaranteeing to all in South Africa the range of civil, political, economic, social and cultural rights.

The Truth and Reconciliation Commission (TRC) continued its hearings and investigations during the year. The commission was set up in December 1995 with a mandate to establish a record of gross violations of human rights from 1960 to 1994 and to grant amnesty to perpetrators of crimes committed with a political motive who fulfilled certain conditions, including full disclosure of their acts. It was due to finish its public hearings in December 1997, except for those related to amnesty applications, and to submit a report in July 1998. By the end of August 1997, almost 7,000 individuals had applied to the commission for amnesty (the great majority of them prisoners convicted of crimes with little apparent political motive), of which 1,700 had been dealt with and about seventy-five applications granted. Those indemnified against prosecution or civil liability included former ANC members as well as former security police. The main political parties faced cross-examination on their submissions to the TRC, leading the National Party to "withdraw its cooperation" from the commission following hearings in May at which former president de Klerk received sharp criticism for his failure to acknowledge National Party abuses. The National Party also launched a court challenge to the commission calling for the dismissal of its vice-chair and an order that it carry out its work without bias, though this case was later settled on the basis of an apology. The Inkatha Freedom Party maintained its opposition to TRC proceedings, alleging a "witch-hunt" against its members. A number of individual Inkatha and security force members also refused to cooperate with the commission, which launched court action to compel their appearance. No senior members of the National Party or Inkatha Freedom Party applied for amnesty, despite increasing evidence of their involvement in systematic efforts to promote political violence and assassinate members of the liberation movements. The commission held special hearings during the year related to the role of health professionals, the media, business, and the legal system in human rights violations. Other commissions of inquiry investigated other aspects of the past, including the activities of the former homeland governments and the "Shell House massacre," a 1994 march past ANC headquarters in Johannesburg at which a number of Inkatha supporters were shot dead by ANC security guards.

As investigations continued into the violations of the past, efforts to reform the institutions responsible continued. In April 1997, an Independent Complaints Directorate (ICD) assumed responsibility for the investigation (or supervision of internal investigations) of all complaints against the police. Legislation to amend section 49 of the Criminal Procedure Act, allowing police to shoot fleeing suspects, was approved by cabinet. A three-year moratorium on recruiting new police officers was lifted in May, and 1,200 posts were advertised (for which there were over 600,000 applications); these officers were to undergo training under a new curriculum including a substantial human rights content. Nevertheless, allegations of police involvement in torture, extrajudicial executions, and organized crime continued throughout 1997. In July, the ICD announced that it had recorded 191 cases of deaths in custody or as a result of police action during the first three months of its existence (fifty-six of these were custodial deaths), suggesting a total of close to 800 deaths in one year. Even though the legislation establishing the ICD obliged police to report all such deaths, the ICD suspected that not all cases were being reported to it; yet the numbers significantly increased from those reported in previous years (226 deaths were reported in 1995).

In December 1996, the Department of Justice announced an ambitious legislative program for 1997. Laws introduced to parliament or passed during the year included an act to remove corporal punishment and the death penalty from the statute book; an act to provide for the establishment of a national prosecuting authority and a national director of public prosecutions; and an act to establish an office for witness protection within the Department of Justice. The provision of legal aid to indigent individuals accused of criminal offenses increased greatly, as defendants began to exercise their constitutional right to demand legal representation at state expense "if substantial injustice would otherwise result." In April, a Johannesburg High Court ruled that a convict who had not been informed of his right to a

lawyer should be released, after serving fifteen months of a ten-year sentence.

Such reform efforts were blighted by continuing high rates of violent crime, especially organized political violence. KwaZulu-Natal remained the worst-affected province, although the declining trend of violence since 1994 continued. The situation in the long-troubled Midlands area of the province was particularly worrisome, with an upsurge in violence following the expulsion from the ANC of Richmond leader Sifiso Nkabinde in April, amid (longstanding) allegations that he had been a police informer and was involved in hit squad activities. Although a police special investigation unit arrested Nkabinde and seventeen others in September and charged them with a number of murders, violence continued. Violence flared up intermittently elsewhere in KwaZulu-Natal, and the thousands of people displaced by over a decade of conflict in the province remained largely unable to return home. Groups monitoring the violence alleged continuing police complicity in organized political violence, as well as the involvement of individuals trained in paramilitary skills as part of the Inkatha Freedom Party under the previous government. ANC and IFP discussions of a local peace plan continued, without conclusion, including controversial proposals for amnesty to be granted to "warlords" on a more generous basis than under the legislation establishing the Truth and Reconciliation Commission.

Organized violence also persisted in other parts of South Africa, including the Qumbu and Tsolo areas of the Eastern Cape (where over a hundred people were killed during the year), and in Bushbuckridge, where a dispute continued as to whether the community should be part of the Northern Province or Mpumalanga. A political resolution to the Bushbuckridge crisis appeared to have been reached with a July agreement for joint administration, although protests continued. Troops were deployed in the Eastern Cape to carry out peacekeeping duties, amid allegations that the perpetrators of violence enjoyed immunity or even support from the police. In August, a special court began to hear cases related to the Eastern Cape violence, though human rights organizations feared its lack of an independent investigative capacity would seriously reduce its effectiveness.

In November 1996, the Regulation of Gatherings Act, drafted by a panel of local and international experts in 1993, was implemented, providing for management of public demonstrations by the police and local authorities and placing an obligation on organizers of a march to notify the authorities within seven days of the planned event. The carrying of "dangerous weapons" at public gatherings was banned throughout the country in October 1996. Despite these measures, public demonstrations continued to lead on occasion to violence and sometimes deaths. In February, demonstrations in townships south of Johannesburg by the South West Joint Civics Organisation (SOWEJOCA) led to three deaths, blamed by a commission of enquiry on SOWEJOCA, though police were also criticized for lack of proper crowd control. In March 1997, a march by the IFP to commemorate the "Shell House Massacre," itself resulted in three people dying of gunshot wounds in incidents connected to the demonstration. The activities of an apparent vigilante group calling itself People Against Gangsterism and Drugs (PAGAD), formed in 1996 in the impoverished Cape Flats townships, led in some areas to violent conflict with drug gangs which police appeared powerless to check.

Prisons remained seriously overcrowded and plagued by gang violence between prisoners. Assaults on prisoners by prison staff also remained common. In February, prisoners at Helderstroom prison in the Western Cape were beaten by a correctional services "rapid reaction unit" called in to quell disturbances in the prison. In May, hundreds of prisoners were allegedly beaten by the same unit at Pollsmoor prison in Cape Town, following a search for illegal weapons. Police investigations led to charges being brought against a number of staff. In March, the commissioner for correctional services stated that the use of disused mineshafts was being considered for some prisoners, whom he described as animals. This suggestion was endorsed by the minister for correctional services, but was apparently dropped after an outcry from human rights organizations. In April, the minister for correctional services announced plans for the building of seven new prisons, two of them "super-maximum security" facilities. More positively, the first secure care facilities for children who had committed serious crimes were opened during 1997 with the aim of ensuring that children would not in the future be held with adults in prisons and that children would have access to educational and rehabilitative programs. Many children nonetheless remained in adult prisons.

During 1997, a number of initiatives were taken to improve the government's response to issues of violence against women, with a range of measures unveiled on August 9, Women's Day in South Africa. The Department of Welfare announced plans to distribute "crisis kits" for rape victims at police stations, including disposable underwear, toiletries, and the telephone numbers of counselors. The Department of Justice, which ran a campaign against violence against women from November 1996 to March 1997, developed new guidelines for all government departments involved in the handling of sexual violence against women and children. The police service began to establish special units across the country to handle cases of family violence, child abuse and sexual offenses. For most women, however, the response of the police and justice system remained inadequate if not abusive in its own right. On February 1, abortion during the first trimester became generally legal in South Africa for the first time. The Gender Commission established by the constitution was appointed and began to function during 1997, although it had yet to make its mark with substantial achievements. Following the 1996 publication of a discussion paper on the law relating to obtaining restraining orders in cases of domestic violence, the South African Law Commission published draft legislation which incorporated many of the recommendations of women's organizations, although some concerns remained.

Public concern at a perceived "flood" of undocumented immigration to South Africa, and accompanying xenophobia, led to a number of violent attacks on foreigners engaged, for example, in informal street trading. The police response to such attacks was often inadequate. Furthermore, allegations of police brutality against foreigners (as against South Africans) continued, and at least one asylum applicant died immediately after being released from police custody, apparently as a result of assault by policemen. A government-appointed committee held hearings and published a draft Green Paper on migration policy which advocated a more rights-based approach than was currently in force.

During the course of the year South Africa-and in particular President Nelson Mandela-became increasingly involved in mediation efforts to resolve some of the conflicts on the African continent. Most high profile and possibly least well-conceived were South Africa's hosting of talks between the representatives of President Mobutu Sese Seko of Zaire and Laurent Kabila, leader of the rebel forces that ultimately took over the government. Other mediation efforts focused on Angola, Sudan and Lesotho. South Africa was quick to recognize Kabila's new government and announced the donation of R.1.5 million (U.S.\$350,000) worth of police equipment to his government. Mandela appeared to discount reports of the involvement of Kabila's forces in massacres of civilians in eastern Zaire. South Africa supported the decision of the U.N. Commission on Human Rights to appoint a special rapporteur on Nigeria, while at the same time apparently attempting to rebuild friendly relations with the Nigerian government. In June, the chair of South Africa's national

Human Rights Commission, Barney Pityana, was elected to membership of the African Commission on Human and Peoples' Rights by the Organization of African Unity summit in Harare.

South Africa made strenuous efforts to market its weapons overseas during 1997, striking significant deals with Malaysia and the Gulf States. South Africa nevertheless continued its policy of allowing a greater degree of transparency and democratic control over arms sales than many other countries. The government insisted, however, that it would not reveal the names of purchaser countries if they did not want their identities known; and it tried, unsuccessfully, to keep knowledge of a major deal with Saudi Arabia from the public. Controversially, sales of military equipment to Rwanda, suspended in November 1996 due to concerns at conflict in the region, resumed in July following reported assurances that such materiel would not be used outside the country; continued gross human rights violations in Rwanda did not apparently affect the decision. Allegations were also made during the year that South African-made weapons were being used by both sides in the civil war in Sudan. Although the government denied that any official sales had been made, it was alleged that arms supplied to Uganda were being transferred to Sudanese rebel forces without protest from South Africa. More positively, South Africa took a lead within Africa and internationally in calling for the banning of anti-personnel mines and in May began destroying its own stockpile during a meeting of African heads of state in South Africa to discuss the issue. South Africa refused to sell weapons to Turkey, due to concerns about its human rights record. Legislation was introduced to parliament regulating the provision of military assistance by South African individuals or companies in other countries, aimed at the activities of such groups as the security outfit Executive Outcomes.

### **The Right to Monitor**

There were no restrictions on the right to monitor human rights in South Africa during 1997. In July, state arms manufacturer Denel (Pty) Ltd., brought criminal charges under apartheid-era legislation against the *Sunday Independent* and other newspapers for disclosing details of a large arms deal to an unnamed country and sought injunctions to prevent the *Sunday Independent* and the weekly *Mail and Guardian* from publishing the name of the country (later revealed to be Saudi Arabia). Temporary injunctions were later lifted by the High Court, and Denel announced it was withdrawing criminal charges. Independent statutory bodies mandated to monitor government activity—including the Human Rights Commission, charged with promoting respect for human rights and investigating violations, and the Public Protector, with a brief to investigate misconduct in public administration—published a number of reports. The cabinet approved an Open Democracy Bill, designed among other things to increase public access to government information.

### **The Role of the**

### **International Community**

Multilateral and bilateral relations with South Africa focused largely on promotion of trade and macroeconomic policy; however, significant assistance was also committed to development and human rights projects and U.N. structures began to monitor South Africa's new commitments under international treaties.

#### **United Nations**

At the invitation of the South African government, following its ratification in 1996 of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women, the U.N. special rapporteur on violence against women, its causes, and consequences, Radhika Coomaraswamy, visited South Africa in October 1996. In February 1997, a report on South Africa was published resulting from this mission. The special rapporteur concluded that "without a complete overhauling of the criminal justice apparatus, the retraining of its members and the creation of a more representative service, violence in general, and violence against women in particular, will never be contained." The report noted that government measures to address questions of violence against women had been in place for a short time and that therefore their effectiveness could not yet be measured.

#### **European Union**

The "European Programme for Reconstruction and Development in South Africa," through which European Union (E.U.) aid to South Africa was channelled, placed priority on human rights, health, education, rural and urban development, strengthening local communities and protecting the environment. In February 1997, the European Union pledged R.40 million (U.S.\$8.5 million) to nongovernmental projects in South Africa, including R.9 million (U.S.\$2 million) to the Institute for Democracy in South Africa (IDASA) to promote peace and democratization efforts in KwaZulu-Natal. In April 1997, members of the South African government and the European Commission met in Pretoria to hold their first annual consultations on the European Programme, including preparation of a Multi-Annual Indicative Programme which would provide resources of ECU 375 million (U.S.\$420 million) to South Africa. The aid was to fund social services, democratization, and private sector aid.

A number of European countries also gave aid on a bilateral basis, including Swedish assistance to the Truth and Reconciliation Commission to enable it to complete its work on time and continued U.K. assistance in efforts to reform the police service.

#### **United States and Canada**

A bilateral U.S.-South Africa commission headed by Vice-President Al Gore and Deputy President Thabo Mbeki met during the year to promote trade and investment between the U.S. and South Africa. While the U.S. government announced that it would progressively reduce its aid grant to South Africa as the focus of bilateral relations shifted increasingly to trade, U.S. Agency for International Development continued to support both governmental and nongovernmental bodies involved in improving access to justice, based on a pledge of U.S.\$600 million committed in 1994 to be spent over three years. In October, the U.S. government pledged a further R.220 million (U.S.\$50 million) to be spent on education, justice, and health care. The Canadian government also continued support for programs aimed at reforming the criminal justice system.

#### **Relevant Human Rights Watch reports:**

*Violence Against Women and the Medico-Legal System*, 8/97

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