



Home Office

Country Policy and Information Note

South Africa: Background information, including actors of protection and internal relocation

Version 1.0

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Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

COI in this note has been researched in accordance with principles set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#) and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), namely taking into account its relevance, reliability, accuracy, objectivity, currency, transparency and traceability.

All information is carefully selected from generally reliable, publicly accessible sources or is information that can be made publicly available. Full publication details of supporting documentation are provided in footnotes. Multiple sourcing is normally used to ensure that the information is accurate, balanced and corroborated, and that a comprehensive and up-to-date picture at the time of publication is provided. Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source is not an endorsement of it or any views expressed.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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Policy guidance

Updated: 5 December 2017

1. Introduction

1.1 Basis of claim

- 1.1.1 Whether in general those at risk of persecution or serious harm from non-state actors are able to seek effective state protection and/or internally relocate within South Africa.

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2. Consideration of issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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2.2 Protection

- 2.2.1 The South African Police Service (SAPS) has primary responsibility for internal security within South Africa and for enforcing the law throughout the country. The government continues to improve and professionalise the SAPS, however it is reportedly understaffed, ill-equipped, poorly trained, and corruption is a problem. Around 2 million criminal cases were recorded or 'detected' by the SAPS between April 2016 and March 2017. While the SAPS responsiveness and effectiveness varies, it is attempting to improve its service and does take action to combat crime. This led to over 340,000 criminal cases being prosecuted in the courts in 2016/17 with 94% of cases resulting in a conviction (see [South African Police Service](#)).
- 2.2.2 The SAPS is under the control of the government and is subject to independent oversight. However, individual police officers have committed human rights abuses including arbitrary arrest, torture and the use of lethal and excessive force. Although there are reports of police impunity, mechanisms are in place to investigate police abuses, and some security service members who have committed human rights violations have been prosecuted (see [Security apparatus](#), [South African Police Service; Abuses by the police](#); and [Police oversight bodies](#)).
- 2.2.3 The law provides for an independent judiciary and the government generally respected this: the courts operate with autonomy. Criminal defendants have a legal presumption of innocence and the constitutional bill of rights provides for due process and equal protection. The judiciary is,

however, understaffed and underfunded, and some civil society groups allege corruption is a problem (see [South African Police Service, Judiciary, Independence](#) and [Judiciary, Fair trial](#)). Despite this, the courts continue to process large numbers of cases. The criminal courts received more than 900,000 new 'dockets' and 'progressed' over 500,000 cases leading to a court judgment or were resolved through alternative dispute resolution mechanisms between April 2016 and March 2017. The large majority of criminal cases resulted in a conviction, although this varied between the courts and for different types of crime (see [South African Police Service, Judiciary, Independence](#) and [Judiciary, Fair trial](#)).

- 2.2.4 South Africa has a functioning criminal justice system which makes attacks by non-state actors punishable and the government has shown a reasonable willingness and ability to enforce the law. In general, a person fearing non-state actors (including rogue state actors) is likely to be able to obtain effective state protection although each case must be determined on its own facts. The onus is on the person to demonstrate that the state is not willing and able to provide effective protection.
- 2.2.5 For further guidance on considering protection and the factors to be taken into account, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#) and [Asylum Instruction on Gender Issues in Asylum Claims](#).

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2.3 Internal relocation

- 2.3.1 South Africa is a large country, with a total geographical area of 1,219,090 sq km, a population of over 54 million and has several cities with populations exceeding 1 million. The constitution and law provides for freedom of movement within South Africa, and the government generally respects this in practice (see [Geography, Demography](#) and [Freedom of movement](#)).
- 2.3.2 In general, where the threat is from non-state agents, internal relocation to another area of South Africa is likely to be reasonable in most cases, but will depend on the nature and origin of the threat, and the individual circumstances and profile of the person.
- 2.3.3 For further guidance on considering internal relocation and the factors to be taken into account, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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3. Policy summary

- 3.1.1 In general, a person will be able to access state protection against persecution or serious harm from non-state actors. The nature of the threat, as well as the individual circumstances and profile of the person, will need to be considered.
- 3.1.2 Internal relocation to another area of South Africa to escape the risk is likely to be reasonable, but will depend on the nature and origin of the threat, as well as the individual circumstances and profile of the person.

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4. History

- 4.1.1 For a brief overview of South Africa's history, see the BBC's [South Africa country profile](#)¹, updated on 8 August 2017. More detail about the country's history can be found on constitution net's [Constitutional history of South Africa](#)².

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5. Economy

- 5.1.1 The World Bank 'Overview' on South Africa, updated on 3 May 2017, noted:

'South Africa has made considerable strides toward improving the wellbeing of its citizens since its transition to democracy in the mid-1990s, but progress is slowing. Based on a poverty line of \$1.90 per day at Purchasing Power Parity (PPP), poverty fell from 33.8% in 1996 to 16.9% by 2008. Factors driving this included social safety nets, real income growth, as well as decelerating inflationary pressure on households, the expansion of credit, and growth in formal housing. Yet progress has slowed in recent years due to structural challenges and weak global growth since the global financial crisis of 2008. Poverty was 16.6% in 2011, but World Bank estimates suggest poverty barely changed in 2016, dropping just marginally to an estimated 15.9%. High unemployment remains a key challenge: South Africa's unemployment rate hit a 12-year high in 2016, at 27.3% in the third quarter. The unemployment rate is even higher among youths, close to 50%.

'Real GDP growth has been slowing down and came in at only 0.3% in 2016. 2017 is expected to see a moderate uptick to 0.6%...Although commodity prices are slowly recovering from their lows, global demand for them still remains fragile. On the domestic side, structural constraints are being compounded by policy uncertainty—one consequence of which included Standard and Poor's downgrading of South African long-term, foreign currency-denominated debt to sub-investment grade ("junk") in April 2017, followed by Fitch's downgrading of the foreign and local currency rating to "junk" a few days later. The Bank estimates that this downgrade may cost South Africa 1% of GDP (or about ZAR 1,000 per South African) and plunge another 160,000 South Africans into poverty.'³

¹ BBC News, 'South Africa country profile', 8 August 2017, <http://www.bbc.co.uk/news/world-africa-14094760>. Accessed: 16 August 2017

² Constitution Net, 'Constitutional history of South Africa', undated, <http://www.constitutionnet.org/country/south-africa>. Accessed: 14 July 2017

³ World Bank, South Africa 'Overview', updated on 3 May 2017, <http://www.worldbank.org/en/country/southafrica/overview>. Accessed: 20 June 2017

6. Geography

6.1.1 South Africa has a total area of 1,219,090 sq km, with a coastline of 2,798 km. It is the 25th largest country in the world.⁴

6.1.2 The Encyclopaedia Britannica online guide to South Africa noted:

‘South Africa has three cities that serve as capitals: Pretoria (executive), Cape Town (legislative), and Bloemfontein (judicial). Johannesburg, the largest urban area in the country and a centre of commerce, lies at the heart of the populous Gauteng province. Durban, a port on the Indian Ocean, is a major industrial centre. East London and Port Elizabeth, both of which lie along the country’s southern coast, are important commercial, industrial, and cultural centres...

‘South Africa is bordered by Namibia to the northwest, by Botswana and Zimbabwe to the north, and by Mozambique and Swaziland to the northeast and east. Lesotho, an independent country, is an enclave in the eastern part of the republic, entirely surrounded by South African territory. South Africa’s coastlines border the Indian Ocean to the southeast and the Atlantic Ocean to the southwest.’⁵

6.1.3 The principal cities and towns in South Africa are:

- Pretoria (administrative capital, Gauteng, pop. 1.76m in 2011)
- Cape Town (legislative capital, Western Cape, 3.43m)
- Bloemfontein (judicial capital, Free State, 464,591)
- Johannesburg (Gauteng, 7.86m)
- Durban (KwaZulu-Natal, 2.79m)
- Soweto (Gauteng, 1.27m)
- Nelson Mandela Bay (Eastern Cape, 1.15m)
- Port Elizabeth (Eastern Cape, 876,436).⁶

6.1.4 South Africa has nine provinces, which are (capital cities in brackets):

- Eastern Cape (Bhisho)
- Free State (Bloemfontein)
- Gauteng (Johannesburg)
- KwaZulu-Natal (Pietermaritzburg)
- Limpopo (Polokwane)

⁴ Central Intelligence Agency (CIA), ‘South Africa’, 14 November 2017, <https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html>. Accessed: 20 November 2017

⁵ Encyclopaedia Britannica, ‘South Africa’, updated on 13 September 2017, <https://www.britannica.com/place/South-Africa>. Accessed: 16 October 2017

⁶ The Commonwealth, ‘South Africa’, undated, <http://thecommonwealth.org/our-member-countries/south-africa>. Accessed: 26 July 2017

- Mpumalanga (Nelspruit)
- Northern Cape (Kimberley)
- North West (Mahikeng)
- Western Cape (Cape Town).⁷

6.1.5 A business tech article, 'These are the biggest townships in South Africa', dated 14 August 2016, noted:

'According to the World bank, as much as half of South Africa's urban population lives in townships and informal settlements, accounting for 38% of working-age citizens, but home to nearly 60% of its unemployed.

'Under apartheid, black South Africans were forced to live in the dormitory-style townships that were built as far away as possible from economic city centers.

'Post-apartheid development policies led to the construction of townships filled with government housing, though the country has widespread informal settlements, particularly on the outskirts of urban areas.

'While townships under apartheid were mainly reserved for for [sic] black South Africans, in a post-apartheid world the term has distinct a legal meaning in South Africa's system of land title, which carries no racial connotations.

'Greater Johannesburg, including all of its surrounding cities and districts, is by large the biggest metropolitan area in the country, boosted significantly by the wide net of smaller cities that make up the mega-city – including Soweto.'⁸

6.1.6 A United Nations High Commissioner for Refugees (UNHCR) map shows the location of the main cities and towns, main rivers, main roads, railways, and main airports - [South Africa](#)⁹.

6.1.7 A 'Mail and Guardian' (South Africa) newspaper article, 'Investment still needed in transport infrastructure', dated 17 July 2015, stated:

'South Africa's total road network is about 747 000km, the longest road network in Africa. While overall policy is the responsibility of the department of transport, the building and maintenance of roads falls under the South African National Roads Agency (Sanral), together with the nine provinces and local governments...South Africa has eight commercial ports: Richards Bay and Durban in KZN, East London, Port Elizabeth and the Port of Ngqura in the Eastern Cape, and Mossel Bay, Cape Town and Saldahna in the Western Cape...The country's 10 airports handle more than 98% of the country commercial traffic. The airport assets supporting cargo at Airports

⁷ South African Government, 'South Africa's provinces', undated, <http://www.gov.za/about-sa/south-africas-provinces>. Accessed: 19 July 2017

⁸ Business Tech, 'These are the biggest townships in South Africa', 14 August 2016, <https://businesstech.co.za/news/general/132269/these-are-the-biggest-townships-in-south-africa/>. Accessed: 19 July 2017

⁹ United Nations High Commissioner for Refugees (UNHCR), 'South Africa Atlas Map', June 2005, <http://www.refworld.org/publisher,UNHCR,MAP,ZAF,46387e1d2,0.html>. Accessed: 27 July 2017

Company South Africa (ACSA) are largely aging facilities, with the exception of King Shaka International, where the facilities are contemporary.’¹⁰

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7. Demography

7.1.1 South Africa has a total population estimated to be 54,841,552 (July 2017 estimate), with a population growth rate is 1 per cent (2017 estimate).¹¹ The country’s racial make is: ‘black African 80.2% [with various tribal groups], white 8.4%, colored 8.8%, Indian/Asian 2.5%.’ The term ‘colored’ is used in South Africa to describe ‘persons of mixed race ancestry’.¹²

7.1.2 The United States State Department ‘International Religious Freedom Report for 2016’, published on 15 August 2017, stated:

‘According to a 2010 Pew Research Center report, 81 percent of the population is Christian. Approximately 15 percent of the population adheres to no particular religion or declined to indicate an affiliation; some of these individuals are likely adhere to indigenous beliefs. Muslims constitute 1.7 percent of the population, while Hindus, Jews, Buddhists, and adherents of traditional indigenous beliefs together constitute less than 4 percent of the population. Many indigenous persons adhere to a belief system combining Christian and indigenous religious practices. The Church of Scientology estimates it has approximately 100,000 members.

‘The Pew Research Center estimates 84 percent of the Christian population is Protestant, 11 percent Catholic, and 5 percent other denominations (2010 estimate). African independent churches constitute the largest group of Christian churches, including the Zion Christian Church (approximately 11 percent of the population), the Apostolic Church (approximately 10 percent), and a number of Pentecostal and charismatic groups. Other Christian groups include Methodists, Anglicans, Baptists, Lutherans, Presbyterians, Roman Catholics, Seventh-day Adventists, and members of the Greek Orthodox, Dutch Reformed, and Congregational churches.

‘Persons of Indian or other Asian heritage account for 2.5 percent of the total population. Roughly half of the ethnic Indian population is Hindu, and the majority resides in KwaZulu-Natal Province. The Muslim community includes Cape Malays of Malayan-Indonesian descent, individuals of Indian or Pakistani descent, and approximately 70,000 Somali nationals and

¹⁰ ‘Mail and Guardian’ (South Africa), ‘Investment still needed in transport infrastructure’, 17 July 2015, <https://mg.co.za/article/2015-07-17-investment-still-needed-in-transport-infrastructure>. Accessed: 20 June 2017

¹¹ Central Intelligence Agency (CIA) ‘World Factbook’, South Africa section, ‘People and Society’, 14 November 2017, <https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html>. Accessed: 20 November 2017

¹² Central Intelligence Agency (CIA) ‘World Factbook’, South Africa section, ‘People and Society’, 14 November 2017, <https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html>. Accessed: 20 November 2017

refugees. The SAJBD estimates the Jewish community at 75,000 to 80,000 persons, the majority of whom live in Johannesburg and Cape Town.’¹³

- 7.1.3 The languages spoken in South Africa include: ‘IsiZulu (official) 22.7%, IsiXhosa (official) 16%, Afrikaans (official) 13.5%, English (official) 9.6%, Sepedi (official) 9.1%, Setswana (official) 8%, Sesotho (official) 7.6%, Xitsonga (official) 4.5%, siSwati (official) 2.5%, Tshivenda (official) 2.4%, isiNdebele (official) 2.1%, sign language 0.5%, other 1.6% (2011 est.).’¹⁴

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8. Political system

8.1 Constitution

- 8.1.1 The latest Constitution of the Republic of South Africa was approved by the South African Constitutional Court on 4 December 1996 and took effect on 4 February 1997. The Constitution is the supreme law of the land.¹⁵

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8.2 Organisation and structure

- 8.2.1 The National Government of South Africa website, accessed on 26 July 2017, stated:

‘The national legislature or Parliament consists of two Houses: the National Assembly and National Council of Provinces, whose members are elected by the people of South Africa. Each House has its own distinct functions and powers, as set out in the Constitution.

‘The National Assembly is responsible for choosing the President, passing laws, ensuring that the members of the executive perform their work properly, and providing a forum where the representatives of the people can publicly debate issues. The National Council of Provinces is also involved in the lawmaking process and provides a forum for debate on issues affecting the provinces. Its main focus is ensuring that provincial interests are taken into account in the national sphere of government. In specific cases, local government representatives also participate in debates in the National Council of Provinces.

‘Parliament plays a direct and active role in national affairs. It is the place where the members of Parliament look after your interests. Members of Parliament (MPs) have many responsibilities, including: making laws that will improve our lives; discussing and debating government policy and other political issues; consulting with you, the people, and representing your views in Parliament; helping people in their constituencies; approving the

¹³ United States State Department, ‘International Religious Freedom Report for 2016’, 15 August 2017, section 1, Religious Demography, South Africa, <https://www.state.gov/documents/organization/268940.pdf>. Accessed: 22 August 2017

¹⁴ Central Intelligence Agency (CIA) ‘World Factbook’, South Africa section, ‘People and Society’, 14 November 2017, <https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html>. Accessed: 20 November 2017

¹⁵ South African Government, ‘The Constitution of the Republic of South Africa’, undated, <http://www.gov.za/DOCUMENTS/CONSTITUTION/constitution-republic-south-africa-1996-1>. Accessed: 20 June 2017

budgets of government departments, as presented to Parliament by the Minister of Finance; making sure that the work that government promised to do is being done; and checking that public money is being spent wisely.’¹⁶

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8.3 Elections and political parties

8.3.1 The United States State Department (USSD) ‘Country Report on Human Rights Practices for 2016’, published on 3 March 2017, stated:

‘The constitution and law provide citizens with the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage...

‘On August 3 [2016], the country held municipal elections to elect councils for all district, metropolitan, and local municipalities in each of the nine provinces. The ANC won 53.9 percent of the vote, the leading opposition DA party won 27 percent, and the EFF won 8.2 percent. According to the Electoral Institute for Sustainable Democracy in Africa, voter turnout was 58 percent--the highest local election turnout since the fall of apartheid. The institute said the elections were transparent, fair, credible, and in line with the constitutional and legal framework for elections...

‘In the May 2014 national election, the ruling ANC won 62.2 percent of the vote and 249 of 400 seats in the National Assembly, the dominant lower chamber of parliament. Election observers, including the African Union and the Southern African Development Community, characterized the election as generally free and fair. The government, however, for the first time restricted diplomatic election observers to chiefs of mission only, effectively prohibiting diplomatic missions.’¹⁷

8.3.2 An article, ‘South Africa’s ANC has remained dominant despite shifts in support base,’ dated 1 August 2016, published on ‘The Conversation’ website, stated:

‘The ANC has been the dominant party in all of South Africa’s five general elections. The margin of votes has always been disproportionate, with opposition parties far distant and smaller parties at the fringes.

‘For all intents and purposes, South Africa is a single-party state, although the principle of the supremacy of the Constitution empowers opposition parties to hold the ANC accountable...

‘The electoral campaign of the largest opposition party, the Democratic Alliance (DA), is fashioned around Nelson Mandela’s legacy. The Economic Freedom Front (EFF), a new and much smaller party, presents itself as the true custodian of the “revolution” that the ANC has supposedly betrayed.

¹⁶ National Government of South Africa, ‘Parliament’, undated, <https://nationalgovernment.co.za/units/view/3/Parliament>. Accessed: 26 July 2017

¹⁷ United States State Department (USSD), ‘Country Report on Human Rights Practices for 2016’, South Africa, section 3, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 28 June 2017

‘The ANC’s competitive edge comes from the fact that Mandela and the Freedom Charter are an integral part of its political capital. Coupled with its credentials as a liberation movement, and the extent to which it has dispensed state largesse as a governing party since it came into power in 1994, the ANC’s electoral hegemony has largely been sustained by its political capital. This is where its strength lies.’¹⁸

8.3.3 The Freedom House ‘Freedom in the World 2017’ report, covering events that took place in 2016, noted:

‘The ANC, which is part of a tripartite governing alliance with the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP), has won every election since 1994. Nevertheless, opposition parties are able to compete in elections, and there are frequent upsets, most recently in the 2016 municipal elections... The political process is free from domination by the military, which is professional and largely stays out of politics. The constitution prohibits discrimination and provides full political rights for all adult citizens.’¹⁹

8.3.4 See the CIA ‘World Factbook’ [Political Parties and Leaders](#) for a list of the main political parties in South Africa.

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9. Security apparatus

9.1 South African Police Service

9.1.1 The South African government website, accessed on 26 June 2017, noted the following:

‘Law-enforcement services in South Africa fall under the Department of Police, which is responsible for policy determination, direction and overall execution of the department’s mandate in relation to relevant legislation.

‘The National Police Commissioner answers directly to the Minister of Police. Entities reporting to the Minister of Police are the:

- Civilian Secretariat for Police
- Independent Police Investigative Directorate (IPID)
- [South African Police Service \(SAPS\)](#)
- Private Security Industry Regulatory Authority.

‘South African Police Service (SAPS)

‘The SAPS is South Africa’s principal law enforcement body. The vision of the SAPS is to create a safe and secure environment for all people in South Africa.

¹⁸ ‘The Conversation’, ‘South Africa’s ANC has remained dominant despite shifts in support base,’ 1 August 2016, <http://theconversation.com/south-africas-anc-has-remained-dominant-despite-shifts-in-support-base-63285>. Accessed: 29 June 2017

¹⁹ Freedom House, ‘Freedom in the World 2017’, South Africa, ‘Political Pluralism and Participation’, 12 June 2017, <https://freedomhouse.org/report/freedom-world/2017/south-africa>. Accessed: 29 June 2017

'The National Commissioner heads the SAPS. Deputy national commissioners (under whom the divisions and components of the SAPS fall) and provincial commissioners (under whom the police stations fall) report to the National Commissioner.

'The SAPS's policing objectives, in accordance with the provisions of Section 205 of the Constitution, are to:

- prevent, combat and investigate crime
- maintain public order
- protect and secure the inhabitants of South Africa and their property
- uphold and enforce the law.'

9.1.2 The government also operates a witness protection programme. The annual report of the national prosecution service for 2016/17 observed that:

'The [Office for Witness Protection] OWP provides temporary protection, protection, support and related services to vulnerable and intimidated witnesses and related persons in judicial proceedings in terms of the Witness Protection Act (1998).

'The Office for Witness Protection is an independent covert office and derives its mandate from the Witness Protection Act 112/1998. All OWP's functions are classified secret so as to ensure the safety of witnesses, their related persons and OWP officials. Witnesses and their related persons must voluntarily agree to be admitted onto the Witness Protection Programme (WPP).'

9.1.3 The same source reported that: 'OWP achieved all its 5 targets in the reporting period. It is particularly notable that OWP for the past 16 years achieved its key performance indicator (KPI), "no witnesses or related persons harmed, threatened or killed whilst on the programme who complies with the rules of the programme".'

The source added: 'In the period under review [2016/17] there were 228 new admissions on to the programme, bringing the total number of witnesses managed to 404. This number exceeded the target of 300 witnesses in the witness protection programme.

'There were 366 related persons in the programme, of which 187 were new admissions during the year. A total of 196 witnesses and related persons were successfully discharged and resettled, guided by OWP's humane after care initiatives.'

²⁰ South African government website, 'Police, defence and intelligence', undated, <http://www.gov.za/about-sa/safety-security-defence>. Accessed: 26 June 2017

²¹ National Prosecuting Authority of South Africa, 'Annual Report - National Director of Public Prosecutions 2016/17' (p62), <https://www.npa.gov.za/sites/default/files/annual-reports/NDPP-Annual%20Report-2016-17.pdf>. Accessed 30 November 2017

²² National Prosecuting Authority of South Africa, 'Annual Report - National Director of Public Prosecutions 2016/17' (p63), <https://www.npa.gov.za/sites/default/files/annual-reports/NDPP-Annual%20Report-2016-17.pdf>. Accessed 30 November 2017

- 9.1.4 The USSD 'Country Report on Human Rights Practices for 2016' stated:
 'SAPS [South African Police Service] has primary responsibility for internal security. The police commissioner has operational authority over police. The president appoints the police commissioner, but the minister of police supervises the commissioner...The SAPS Directorate for Priority Crime Investigation, also known as "the Hawks," coordinates efforts against organized crime, priority crimes, and official corruption. Despite continued efforts to professionalize, SAPS remained understaffed, ill equipped, and poorly trained. Corruption was a problem.'²³
- 9.1.5 The USSD 'Country Report on Human Rights Practices for 2016' noted:
 'Civilian authorities maintained effective control over the security forces.'²⁴
 The USSD report also observed that: 'Officers from SAPS and metropolitan police departments received training in ethics, human rights, corruption, sexual offenses, domestic violence, gender violence, and violence against LGBTI persons. Training, however, was inconsistent. Many officers went years between refresher courses. SAPS also provided officers with access to social workers, psychologists, and chaplains.'²⁵
- 9.1.6 A South African Broadcasting Corporation (SABC) report, 'SAPS working to improve efficiency within police service: Nhleko', dated 24 January 2016, stated:
 'Police Minister Nathi Nhleko says SAPS management is working to ensure that there is more efficiency within the police service to reduce the level of crime in the country..."The deployment of the SAPS and increasing levels of visibility particularly around concentrated points of social activity during the festive season show that we should essentially speed up and proceed to set up experts to assist us with the work of transforming certain operational aspects of the SAPS."
 'The police are expected to intensify the use of task teams to fight organised crime, especially syndicates that are involved in shopping centre robberies and the hijacking of delivery vehicles.'²⁶
- 9.1.7 A South African Government News Agency report, 'Restructuring to improve SAPS performance', dated 1 February 2016, stated:
 'The restructuring that is underway at the South African Police Service (SAPS) is aimed at improving the efficiency and effectiveness within the police, especially in their fight against crime...It will, among others, split recently merged divisions and establish a new national management

²³ USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 1d, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 20 June 2017

²⁴ USSD, 'Country Report on Human Rights Practices for 2016', South Africa, Executive Summary, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 28 June 2017

²⁵ USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 1d, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 20 June 2017

²⁶ South African Broadcasting Corporation (SABC), 'SAPS working to improve efficiency within police service: Nhleko', 24 January 2016, <http://www.sabc.co.za/news/a/9dd27c804b6d96f0a6c5e643e5868fd4/SAPS-working-to-improve-efficiency-within-police-service:-Nhleko->. Accessed: 20 July 2017

division. This division, to be under a Deputy National Commissioner, will include a police inspectorate to deal with problems at provincial and station levels...The crime intelligence and protection services will now be separated into two divisions namely strategy, research, facility management, and a research institute.

‘Speaking to the media on the new structure on Monday, Acting National Commissioner Lieutenant-General Johannes Phahlane said the new structure will ensure that the police have a hold on crime.

‘Phahlane said the new structure will streamline the work of the police so that they can have maximum impact, especially in core operational responsibilities such as policing and crime detection. They will ensure accountability at all levels, as there will be continuous assessment of performance and compliance...The plan will help management to better manage their responsibilities. The restructuring, Phahlane said, was done after a thorough analysis of the SAPS performance.

‘The analysis showed that there were deficiencies and key challenges, especially in fundamental functions of policing such as crime prevention, crime investigation and crime intelligence, which needed urgent and focused action from SAPS.’²⁷

- 9.1.8 The United States State Department ‘Overseas Security Advisory Council (OSAC) ‘South Africa 2017 Crime & Safety Report’, dated 5 May 2017, stated:

‘South African Police Service (SAPS) continues to address poor response time and officer indifference with an effort to improve their sector policing capabilities in many neighborhoods. While SAPS attempts to respond to emergency residential calls and other developing crimes, real improvements are still forthcoming. Property crimes are a lower priority. Police response may take 2-3 days after a break-in to respond or take a report. Perpetrators are seldom successfully prosecuted.

‘The formation and use of community watch groups is increasing slowly. They complement SAPS’ efforts to detect/deter crime and provide improved response to calls of a serious nature. Though there has been an improvement in community policing, police are mistrusted and seen as corrupt.’²⁸

- 9.1.9 A ‘Daily Maverick’ report, ‘Crime Stats Analysis: The SAPS – while seeking solutions – is part of the problem’, dated 25 October 2017, stated: ‘The SAPS recorded 1,738,980 incidents of crimes – including 39,828 reported rapes...6,271 sexual offences [and over 19,000 murders^{29 30}] –

²⁷ South African Government News Agency, ‘Restructuring to improve SAPS performance’, 1 February 2016, <http://www.sanews.gov.za/south-africa/restructuring-improve-saps-performance>. Accessed: 19 July 2017

²⁸ United States State Department, Overseas Security Advisory Council (OSAC) ‘South Africa 2017 Crime & Safety Report’, 5 May 2017, <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=21788>. Accessed: 20 July 2017

²⁹ South Africa Police Service, ‘Crime situation in South Africa 1 April 2016 - 31 March 2017’ (p14), undated, https://www.saps.gov.za/services/final_crime_stats_presentation_24_october_2017.pdf. Accessed 30 November 2017

between 1 April 2016 and 31 March 2017.’³¹ The SAPS ‘detected’ during the course of police work a further 390,021 crimes³². The actual number of crimes is likely to be higher as many crimes, depending on their nature, are not reported to the police often because the victims do not believe the police will act³³.

- 9.1.10 The National Prosecution Service annual report for 2016/17 documented the numbers of criminal cases brought to court and conviction rates for all crimes, including ‘serious crimes’. The report identified 914,042 ‘new dockets’ - crimes brought to the attention of the police and brought before all courts - in 2016/17 while over 500,000 cases were ‘progressed’ in the same period, including 164,000 resolved through the alternative dispute resolution mechanisms (ADRM) (such as through ‘informal mediation’). Over 340,000 cases resulted in a judgement, 321,000 (94%) of which lead to a conviction. However conviction rates vary between courts and different types of crime, for example 71.7% of ‘serious crimes’ but 97% of ‘cybercrime’ resulted in a conviction; while 79.8% of crimes in regional as compared to 95.6 of those in district courts resulted in convictions³⁴.
- 9.1.11 For more information on the performance of the SAPS and rates and types of cases prosecuted in the courts, see the [SAPS Annual Report 2016/17](#) and the [Annual Report - National Director of Public Prosecutions 2016/17](#).

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9.2 Abuses by the police

- 9.2.1 The USSD ‘Country Report on Human Rights Practices for 2016’ stated: ‘There were reports that the government or its agents committed arbitrary or unlawful killings.
- ‘Police use of lethal and excessive force, including torture, resulted in numerous deaths and injuries, according to the [Independent Police Investigative Directorate](#) (IPID), Amnesty International, and other nongovernmental organizations (NGOs)...According to the 2015-16 IPID annual report, 366 persons died in police custody or due to police action during the 12-month period ending March 31. IPID recommended

³⁰ Africa Check, ‘Factsheet: South Africa’s crime statistics for 2016/17’, 24 October 2017, <https://africacheck.org/factsheets/south-africas-crime-statistics-201617/>. Accessed 30 November 2017

³¹ Daily Maverick, ‘Crime Stats Analysis: The SAPS – while seeking solutions – is part of the problem’, 25 October 2017, <https://www.dailymaverick.co.za/article/2017-10-25-crime-stats-analysis-the-saps-while-seeking-solutions-is-part-of-the-problem/#.WiA0-YXXIcQ>. Accessed 30 November 2017

³² South Africa Police Service, ‘Crime situation in South Africa 1 April 2016 - 31 March 2017’ (p14), undated, https://www.saps.gov.za/services/final_crime_stats_presentation_24_october_2017.pdf. Accessed 30 November 2017

³³ South Africa Government, Statistics South Africa, ‘Victims of Crime Survey 2014/15’ Media release, 1 December 2015, <http://www.statssa.gov.za/?p=5937>. Accessed 30 November 2017.

³⁴ National Prosecuting Authority of South Africa, ‘Annual Report - National Director of Public Prosecutions 2016/17’ (p23-25; 32-33), <https://www.npa.gov.za/sites/default/files/annual-reports/NDPP-Annual%20Report-2016-17.pdf>. Accessed 30 November 2017

prosecution in 23 of the 366 cases...A death resulting from police action was defined as a death that occurred while a police officer attempted to arrest, prevent an escape, or defend himself/herself or another. It also covered collisions involving one or more SAPS or municipal police vehicles as well as mass actions where police officers were present. IPID did not track deaths resulting from torture, which it classified as murders. Watchdog groups noted deaths in custody often resulted from physical abuse combined with a lack of medical treatment or neglect.’³⁵

9.2.2 The USSD ‘Country Report on Human Rights Practices for 2016’ also stated:

‘The constitution and law prohibit such practices, but police officers reportedly tortured, beat, raped, and otherwise abused suspects. Amnesty International corroborated cases of torture, including the use of electric shock and suffocation. Police also assaulted detainees with batons, fists, and booted feet. To force confessions, police sometimes moved a nonviolent suspect under interrogation into the cell of violent criminals. Police allegedly ignored activities in the cell as the violent criminals intimidated, beat, or raped the suspect, after which police continued the interrogation. Police torture and physical abuse allegedly occurred during house searches, arrests, interrogations, and detentions and sometimes resulted in death.’³⁶

9.2.3 The South African Human Rights Commission ‘Civil and Political Rights Report 2016/17’, published in March 2017, stated:

‘According to IPID, deaths in custody are as a result of suicide (hanging), natural causes, injuries sustained prior to custody and injuries sustained in custody by an SAPS official. Most deaths as a result of police action occurred during police operations, where suspects were shot with a firearm during the course of arrest, or during the course of a crime. From 2014/2015 to 2015/2016, IPID reported a national 11 per cent decrease in the number of deaths in police custody, and an 8 per cent decrease in the number of deaths as a result of police action. Of the total of 582 deaths reported to IPID during 2015/2016, most occurred at the crime scene, in hospital or clinics or in police cells...

‘The investigation of deaths and allegations of torture or cruel, inhuman or degrading punishment in correctional centres is conducted by the Judicial Inspectorate of Correctional Services (JICS), an independent office under the control of the Inspecting Judge (the incumbent is Justice Johann van der Westhuizen). The Correctional Services Act 111 of 1998 stipulates that the Department of Correctional Services (DCS) must report all deaths, instances of segregation, use of mechanical restraint and the use of force to the Inspecting Judge, who may carry out or instruct the National Commissioner of Police to conduct an enquiry into any death.’³⁷

³⁵ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 1a, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 20 June 2017

³⁶ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 1c, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 20 June 2017

³⁷ South African Human Rights Commission, ‘Civil and Political Rights Report 2016/17’, March 2017,

9.3 Police oversight bodies

9.3.1 The South African government website, accessed on 26 June 2017, noted the following:

‘The IPID [Independent Police Investigative Directorate] ensures independent oversight of the SAPS and the municipal police services. It conducts independent and impartial investigations of identified criminal offences allegedly committed by members of the SAPS and the municipal police services; and make appropriate recommendations.

‘Working with other departments in the justice, crime prevention and security cluster, the IPID aims to ensure that all people in South Africa live safely in a corruption free society, with an independent and fair criminal justice system.’³⁸

9.3.2 The USSD ‘Country Report on Human Rights Practices for 2016’ stated:

‘The government investigated and prosecuted security force members who committed abuses, although there were numerous reports of police impunity, including of high-ranking members...IPID, an independent and external body, investigates all complaints and makes recommendations to the SAPS inspectorate division that handles disciplinary matters and to the NPA on which cases to prosecute. IPID examines all SAPS killings and evaluates whether they occurred in the line of duty or were otherwise justifiable. IPID also investigates cases of police abuse, although it was unable to fulfill its mandate due to funding shortages, inadequate cooperation by police, and lack of investigative capacity. When it did complete investigations, the NPA often declined to prosecute cases involving criminal actions by police and rarely obtained convictions. In cases in which IPID recommended disciplinary action, SAPS often failed to follow IPID disciplinary recommendations.

‘The law provides IPID with additional enforcement powers and requires SAPS and metropolitan police departments to report any suspected legal violations by their own officers to IPID. The law criminalizes the failure to report wrongdoing, and in 2015-16, IPID recorded 41 cases in which SAPS or metropolitan police departments failed to report wrongdoing to IPID. During the year IPID took the additional step of investigating cases that resulted in civil lawsuits, even if police or the public had not reported those cases to IPID. Civil society groups reported they used IPID investigations as evidence in civil lawsuits. As a result SAPS often settled out-of-court civil lawsuits it previously would have challenged.’³⁹

2.1.2 Deaths by police officers or in correctional facilities, pages 43-44, <http://www.sahrc.org.za/home/21/files/Civil%20and%20Political%20Rights%20Report%20Final%20Version.pdf>. Accessed: 30 June 2017

³⁸ South African government website, ‘Police, defence and intelligence’, undated, <http://www.gov.za/about-sa/safety-security-defence>. Accessed: 26 June 2017

³⁹ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 1d, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 20 June 2017

- 9.3.3 The USSD 'Country Report on Human Rights Practices for 2016' also stated: 'During the year IPID received 5,519 complaints ranging from killings to assault, recommended prosecution in 983 cases, and arrested 189 police officers. Of the cases recommended for prosecution, the NPA prosecuted 84, resulting in one guilty verdict, dropped 118, and left 751 pending at year's end. IPID referred 877 disciplinary cases to the South African Police Service (SAPS); 144 cases referred resulted in disciplinary action.'⁴⁰
- 9.3.4 The South African Human Rights Commission 'Civil and Political Rights Report 2016/17', published in March 2017, stated: 'After its finalisation of each investigation, IPID makes recommendations to the National Prosecuting Authority (NPA) based on the evidence, and the NPA then decides whether or not to institute criminal proceedings against the suspected officers. IPID also makes recommendations to the SAPS or municipal police services relating to disciplinary steps to be taken.'⁴¹

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9.4 Armed forces

9.4.1 The USSD 'Country Report on Human Rights Practices for 2016' stated: 'The South African National Defense Force, under the civilian-led Department of Defense, is responsible for external security but also has domestic security responsibilities, such as patrolling the borders.'⁴²

9.4.2 A Business Tech (South Africa) article, 'South Africa's military strength vs the world', dated 24 June 2015, stated:

'A new index has ranked countries by the size of their armies and armed forces, with the USA, Russia and China predictably dominating in terms of raw military power.

'This is according to Global Firepower (GFP), an independent group which aims to provide an unbiased measure of global military strength using publicly available information.

'The GFP list ranks 126 countries according to effective military strength, and makes use of over 50 factors to determine each nation's Power Index score...South Africa was ranked as having the 32nd most powerful military force on the index...

'South Africa's military budget was R40.2 billion in 2013/14, and R42.8 billion was budgeted for the 2014/15 financial year.

'According to the GFP data, the country has an active frontline personnel totalling 88,565 people, with 17,100 in reserve.

⁴⁰ USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 1a, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 20 June 2017

⁴¹ South African Human Rights Commission, 'Civil and Political Rights Report 2016/17', March 2017, 2.1.2 Deaths by police officers or in correctional facilities, pages 43-44, <http://www.sahrc.org.za/home/21/files/Civil%20and%20Political%20Rights%20Report%20Final%20Version.pdf>. Accessed: 30 June 2017

⁴² USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 1d, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 21 June 2017

'This is out of approximately 14 million individuals who are fit for service...

'Looking at military strength by vehicles, South Africa has the following stats:

'Total land units: 2,650

'This is largely made up by 2,265 armored fighting vehicles (AFVs). Also included are 196 tanks, and 50 multiple-launch rocket systems.

'Total aircraft: 209

'This is including 17 interceptors and 12 attack helicopters.

'Total naval strength: 30

'This includes 4 frigates, 3 submarines and 9 defense craft.'

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9.5 Border controls and security

9.5.1 The USSD 'Country Report on Human Rights Practices for 2016' stated:

'Border Control Operational Coordinating Committees--composed of representatives of SAPS, DHA, the defense force, the South African Revenue Service, the Department of Health, the Department of Agriculture and Fisheries, the Department of Transportation, the Department of Trade and Industry, the State Security Agency, and the Department of Environmental Affairs--are charged with overall migration and border enforcement. A committee representative is present at all land, air, and sea ports of entry to facilitate an interagency approach to border enforcement and migration management. All departments have a representative at major border crossings, while regional representatives covered lesser border crossings.'

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10. Judiciary

10.1 Structure

10.1.1 The South African government website noted the following about the judiciary:

'The Constitution of the Republic of South Africa, 1996 is the supreme law of the country and binds all legislative, executive and judicial organs of state at all levels of government.

'The judicial authority in South Africa is vested in the courts, which are independent and subject only to the Constitution and the law. No person or organ of state may interfere with the functioning of the courts, and an order or decision of a court binds all organs of state and people to whom it applies.

⁴³ Business Tech (South Africa), 'South Africa's military strength vs the world', 24 June 2015, <https://businesstech.co.za/news/general/91324/south-africas-military-strength-vs-the-world/>. Accessed: 21 June 2017

⁴⁴ USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 1d, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 21 June 2017

'The Constitution provides for the following [courts](#):

- 'Constitutional Court
- 'Supreme Court of Appeal (SCA)
- 'high courts, including any High Court of Appeal that may be established by an Act of Parliament to hear appeals from high courts
- 'magistrates' courts
- 'any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either high courts or magistrates' courts.

'Other courts include: income tax courts, the Labour Court and the Labour Appeal Court, the Land Claims Court, the Competition Appeal Court, the Electoral Court, divorce courts, small claims courts, military courts and equality courts.

'Decisions of the Constitutional Court, the Supreme Court of Appeal and the high courts are an important source of law. These courts uphold and enforce the Constitution, which has an extensive Bill of Rights binding all state organs and all people.

'The courts are also required to declare any law or conduct that is inconsistent with the Constitution to be invalid, and develop common law that is consistent with the values of the Constitution, and the spirit and purpose of the Bill of Rights.'⁴⁵

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10.2 Independence

10.2.1 The USSD 'Country Report on Human Rights Practices for 2016', stated:

'The constitution and law provide for an independent judiciary, and the government generally respected judicial independence. Nevertheless, the judiciary was understaffed and underfunded...Civil society alleged judicial corruption was a problem, although there were no proven cases of corruption during the year. According to the presidentially mandated Criminal Justice System Working Group composed of ministers and deputy ministers, two-thirds of the estimated two million criminal cases reported annually never resulted in a verdict.'⁴⁶

10.2.2 The Freedom House 'Freedom in the World 2017' report, covering events that took place in 2016, noted that:

'The constitution guarantees judicial independence, and courts operate with substantial autonomy. The Judicial Services Commission appoints Constitutional Court judges based on both merit and efforts to racially diversify the judiciary. A number of recent court judgments held the executive and legislative branches to account in such a manner as to

⁴⁵ South African government, 'Judicial system', undated, <http://www.gov.za/about-government/judicial-system>. Accessed: 21 June 2017

⁴⁶ USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 1e, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 20 June 2017

suggest that the judiciary commands significant independence. Most notably, in the Nkandla matter, the Constitutional Court found that Zuma had failed to uphold the constitution and that a resolution of Parliament saying he did not have to comply with Madonsela's 2014 report was "inconsistent with" the constitution and "invalid."⁴⁷

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10.3 Fair trial

10.3.1 The USSD 'Country Report on Human Rights Practices for 2016' noted:

'Criminal defendants enjoy a legal presumption of innocence. The constitutional bill of rights provides for due process and equal protection. The law requires police to inform detainees promptly and in detail of the charges against them, but this did not always occur, nor did police always accurately complete the charge sheets... Limited access to qualified interpreters sometimes delayed trials. Judges and magistrates hear criminal cases and determine guilt or innocence. The law requires that a panel of lay assessors and a magistrate hear cases involving murder, rape, robbery, indecent assault, and assault leading to serious bodily harm...

'Detainees and defendants have the right to legal counsel provided and funded by the state when "substantial injustice would otherwise result," but this right was limited due to a general lack of information regarding rights to legal representation and the government's inability to adequately budget for such services. Defendants have the right to be present in court and may question witnesses in court and present their own witnesses and evidence. Every accused person has a right to a fair public trial, including the right to have adequate time and facilities to prepare a defense within a reasonable time after being charged. Defendants have access to government evidence before going to court and may not be compelled to make any confession or admission that prosecutors could use as evidence against them. There is no automatic right to appeal unless the accused is younger than age 16, but courts may give defendants permission to do so.'⁴⁸

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10.4 Death penalty

10.4.1 The Amnesty International (AI) report, 'Death Sentences and Executions 2016', published in 2017, stated that South Africa is a country that has abolished the death penalty for any crime.⁴⁹

10.4.2 A 'News24' report, 'Does the death penalty deter crime?' dated 15 May 2014, stated that: 'Solomon Ngobeni was the last person to be officially executed in South Africa on the 14 of November 1989; President De Klerk declared a moratorium in February 1990. The death penalty was abolished

⁴⁷ Freedom House, 'Freedom in the World 2017', South Africa section, 12 June 2017, <https://freedomhouse.org/report/freedom-world/2017/south-africa>. Accessed: 28 June 2017

⁴⁸ USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 1e, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 21 June 2017

⁴⁹ Amnesty International (AI) report, 'Death Sentences and Executions 2016', 2017, <https://www.amnesty.org/en/what-we-do/death-penalty/>. Accessed: 21 June 2017

in South Africa on the 6 June 1995 as it was in conflict with the new South African constitution.’⁵⁰

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11. Corruption

11.1.1 The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘The law provides criminal penalties for conviction of official corruption, and the government continued efforts to curb corruption, but officials sometimes engaged in corrupt practices with impunity. The World Bank’s most recent Worldwide Governance Indicators reflected that corruption remained a problem...During the year the Office of the Public Protector, a constitutionally mandated body designed to investigate government abuse and mismanagement, investigated thousands of cases, some of which involved high-level officials. The public and NGOs considered the Office of the Public Protector independent and effective, despite limited funding. According to the NPA’s 2014-15 Annual Report, 23 persons were convicted of corruption in cases where the total value of assets seized exceeded five million rand (\$357,000), and 130 government officials were convicted of corruption.

‘The government secured one high-profile public-sector corruption conviction during the year. On October 14, a court convicted Northern Cape ANC chairperson (and former provincial premier) John Block of corruption, racketeering, and money laundering. The state accused Block--along with Trifecta Holdings chief executive Christo Scholtz and Northern Cape Minister of Social Development Alvin Botes--in a multimillion-rand fraud, corruption, and money-laundering scheme. Scholtz paid kickbacks to Block and Botes between 2006 and 2010 in return for their influencing provincial departments to rent office space at inflated rates in Trifecta’s favor. The ANC forced Block, whose sentencing was scheduled for January 2016, to resign his post as provincial chairperson.’⁵¹

11.1.2 South Africa was given a score of 45 in the Transparency International (TI) Corruption Perceptions Index 2016. The TI website explains that: ‘Over two-thirds of the 176 countries and territories in this year’s [2016] index fall below the midpoint of our scale of 0 (highly corrupt) to 100 (very clean). The global average score is a paltry 43, indicating endemic corruption in a country’s public sector.’⁵²

11.1.3 The GAN business anti-corruption website, updated in December 2015, noted the following:

⁵⁰ News24, ‘Does the death penalty deter crime?’ 15 May 2014, <http://www.news24.com/MyNews24/Does-the-death-penalty-deter-crime-20140515>. Accessed: 21 June 2017

⁵¹ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 4, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 30 June 2017

⁵² Transparency International, ‘Corruption Perceptions Index 2016’, 25 January 2017, https://www.transparency.org/news/feature/corruption_perceptions_index_2016. Accessed: 26 July 2017

‘South Africa suffers from widespread corruption, despite it performing better than regional averages across a number of key measurements. The country has simpler procedures, smoother interactions with tax officials and easier enforcement of commercial contracts than comparable regional countries. It has a robust anti-corruption framework, but laws are inadequately enforced. Public procurement is particularly prone to corruption, and bribery thrives at the central government level. The Prevention and Combating of Corruption Act (PCCA) criminalises corruption in public and private sectors, including attempted corruption, extortion, active and passive bribery, bribing a foreign public official, fraud and money laundering, and it obliges public officials to report corrupt activities. As it is a criminal offence to provide any form of "gratification" to an official if it is not lawfully due, companies are advised to refrain from giving gifts or exchanging facilitation payments...

‘South Africa has a well-developed legal framework for curbing corruption, but the country's lack of enforcement jeopardises this effort (TI 2014). The Prevention and Combating of Corruption Act (PCCA) criminalises corruption in public and private sectors and codifies specific offences, making it easier for courts to use the Act. It specifically criminalises attempted corruption, extortion, active and passive bribery, bribing a foreign official, abuse of office and money laundering, and it obliges public officials to report corrupt activities. However, it suffers from poor implementation, and it does not protect whistleblowers against recrimination or defamation claims. As it is a criminal offence to provide any form of "gratification" to an official if it is not lawfully due, companies are advised to refrain from giving gifts and exchanging facilitation payments... The Public Finance Management Act addresses unauthorised government expenditures. The Promotion of Access to Information Act provides for access to public information, but it has not been fully implemented. The Code of Conduct for Assembly and Permanent Council Members requires public officials to disclose gifts and interests, but observers say sanctions are weak and there are reports of public officials who fail to declare their interests.’⁵³

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12. Civil society groups

12.1 Human rights groups

12.1.1 The USSD ‘Country Report on Human Rights Practices for 2016’ noted: ‘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 somewhat cooperative and responsive to their views.’⁵⁴

12.1.2 The International Centre for Not-For-Profit Law, ‘Civic Freedom Monitor: South Africa’, updated on 24 February 2017, noted:

⁵³ GAN business anti-corruption, ‘South Africa Corruption Report’, updated on December 2015, <http://www.business-anti-corruption.com/country-profiles/south-africa>. Accessed: 30 June 2017

⁵⁴ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 5, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 21 June 2017

'The legal framework does not present significant obstacles for civil society organizations (CSOs) operating in South Africa. Indeed, South Africa's legislation is generally enabling and supportive of CSO activity. In 1997 the Nonprofit Organisations Act (NPO Act) was promulgated. The NPO Act repealed the Fundraising Act of 1978 which was used by the apartheid government to suppress the fundraising activities of some organisations.

'The NPO Act describes the State's responsibility to nonprofit organisations as follows: "Within the limits prescribed by law, every organ of state must determine and coordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of NPOs to perform their functions." Despite this noble commitment, the challenge comes with the effective implementation of laws. The institutions responsible for the implementation of the relevant legislation are generally under-resourced.'⁵⁵

- 12.1.3 The Freedom House 'Freedom in the World 2017' report, covering events that took place in 2016, noted that:

'The constitution guarantees freedoms of association and peaceful assembly. Freedom of assembly is generally respected, and South Africa has a vibrant protest culture... South Africa hosts a vibrant civil society. Nongovernmental organizations (NGOs) can register and operate freely, and lawmakers regularly accept input from NGOs on pending legislation. However, in April David Mahlobo, the minister of state security, accused some NGOs of working with foreign powers against South African interests.'⁵⁶

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12.2 Government human rights bodies

- 12.2.1 The USSD 'Country Report on Human Rights Practices for 2016' noted:

'Although created by the government, the SAHRC [South African Human Rights Commission] operated independently and was responsible for promoting the observance of fundamental human rights at all levels of government and throughout the general population. The SAHRC also has the authority to conduct investigations, issue subpoenas, and take testimony under oath. The government reacted positively to SAHRC reports and was responsive to its views. Despite a large backlog of cases and lack of funding, the SAHRC was considered moderately effective.'⁵⁷

- 12.2.2 The South African Human Rights Commission website, accessed on 26 July 2017, stated:

'The South African Human Rights Commission is the national institution established to support constitutional democracy. It is committed to promote

⁵⁵ International Centre for Not-For-Profit Law, 'Civic Freedom Monitor: South Africa', updated on 24 February 2017, <http://www.icnl.org/research/monitor/southafrica.html>. Accessed: 26 July 2017

⁵⁶ Freedom House, 'Freedom in the World 2017', South Africa, 'Associational and Organizational Rights', 12 June 2017, <https://freedomhouse.org/report/freedom-world/2017/south-africa>. Accessed: 28 June 2017

⁵⁷ USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 5, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 21 June 2017

respect for, observance of and protection of human rights for everyone without fear or favour... The mandate of the Commission as contained in Section 184 of the Constitution of the Republic of South Africa, Act 108 of 1996 is as follows:

1. The South African Human Rights Commission must –
 - a) promote respect for human rights and a culture of human rights;
 - b) promote the protection, development and attainment of human rights; and
 - c) monitor and assess the observance of human rights in the Republic.’⁵⁸

See also [South African Human Rights Commission](#).

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13. Media and the internet

13.1 Freedom of the media

- 13.1.1 The USSD ‘Country Report on Human Rights Practices for 2016’ noted that:

‘The constitution and law provide for freedom of speech and press, and the government generally respected these rights. Nevertheless, several apartheid-era laws and the Law on Antiterrorism permit authorities to restrict reporting on the security forces, prisons, and mental institutions... Independent media were active and expressed a wide variety of views without restriction, although state-sponsored media were the most prevalent. Journalists were generally able to criticize the government openly and without fear of reprisal, but the government sometimes tried to control or monitor the media by forcing the deletion of photos or audio recordings, despite the illegality of such requests. Police or other security officials sometimes assaulted media members who refused to delete photos of police misconduct.’⁵⁹

- 13.1.2 The BBC News ‘South Africa profile - Media’, dated 1 August 2017, stated:

‘South Africa is a major media player. There is an established state-owned and private broadcasting scene, and a thriving satellite and cable TV industry.

‘South African company MultiChoice markets its pay TV services in dozens of African countries.

‘The state broadcaster, the South African Broadcasting Corporation (SABC), runs TV and radio networks operating in multiple languages. But since 2016, it has endured financial difficulties, accusations of political censorship, and a scandal surrounding a former executive.

⁵⁸ South African Human Rights Commission, ‘Overview’, undated, <https://www.sahrc.org.za/index.php/about-us/about-the-sahrc>. Accessed: 26 July 2017

⁵⁹ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 2a, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 27 June 2017

'Reporters Without Borders says coverage of certain subjects involving the ruling ANC and government finances is off limits, or provokes a hostile reaction from the authorities.'⁶⁰

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13.2 Internet freedom

13.2.1 The USSD 'Country Report on Human Rights Practices for 2016' noted:

'The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. The law authorizes state monitoring of telecommunication systems, however, including the internet and e-mail, for national security reasons. The law requires all service providers to register on secure databases the identities, physical addresses, and telephone numbers of customers. Approximately 52 percent of the population used the internet during the year.'⁶¹

See also [Freedom on the Net 2016](#).

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14. Women

14.1 Legal rights

14.1.1 The USSD 'Country Report on Human Rights Practices for 2016' noted:

'Discrimination against women remained a serious problem despite legal equality in family, labor, property, inheritance, nationality, divorce, and child custody matters. Women experienced economic discrimination in wages... extension of credit, and ownership of land.

'Traditional patrilineal authorities, such as a chief or a council of elders, administered many rural areas. Some traditional authorities refused to grant land tenure to women, a precondition for access to housing subsidies. Women may challenge traditional land tenure decisions in national courts, but access to legal counsel was costly.'⁶²

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14.2 Marriage, family life and inheritance

14.2.1 The Social Institutions and Gender Index, undated, accessed on 28 June 2017, noted:

'The rights of South African women within the family depend on the type of marriage contract into which they entered: civil marriage, customary marriage, and religious marriage (Christian, Jewish or Muslim). The government of South Africa has taken steps to equalize women's rights

⁶⁰ BBC News, 'South Africa profile - Media', 1 August 2017, <http://www.bbc.co.uk/news/world-africa-14094861>. Accessed: 16 October 2017

⁶¹ USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 2a, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 26 July 2017

⁶² USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 6, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 27 June 2017

within all types of marriage, particularly customary marriage, which the state now recognizes under the 1998 Recognition of Customary Marriages Act... Parental authority is shared by the parents, both within the marriage and after divorce, unless a competent court specifies otherwise. In addition, under the 2005 Children's Act, both spouses in a customary marriage also have equal parental rights and responsibilities, including in regard to the economic maintenance of their children. The 1993 Guardianship Act stipulates that divorced parents have joint custody of their children. However, it is sometimes the case that women are not granted custody because they lack sufficient resources to provide for their children. In 2005 the Guardianship Act was repealed by the Children's Act, regulating the balance of power between joint guardians. The first principle is that each guardian may independently and without the consent of any other guardian exercise any right or perform any duty arising from guardianship. The court is supposed to put the 'best interests of the child' first. As religious marriages are not lawfully recognized, the mother is afforded sole custody and guardianship. The husband must apply to the High Court if he wants access rights or if he wishes to have custody of the children.

'There have been a number of developments with respect to women's inheritance rights in South Africa. The Intestate Succession Act 1987 provides that for civil marriages, widows and daughters have equal inheritance rights to widowers and sons respectively. Depending on the type of marriage, widows and daughters either inherit half the property or keep their own property. Previously, this law did not apply to customary marriages. However, the government has recently made progress in extending intestate rights and proprietary rights to women who are party to religious and customary marriages. Following a Constitutional Court decision, in 2009, the government introduced the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009, so that the rights of women to inherit property under customary law are now governed by the Intestate Succession Act, which also accounts for the recognition of polygamous marriages.'⁶³

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14.3 Employment rights

14.3.1 The USSD 'Country Report on Human Rights Practices for 2016' noted:

'The Employment Equity Amendment Act aims to promote equality in the workplace. According to the act, any difference in the terms or conditions of employment among employees of the same employer performing the same, substantially similar, or equal value work constitutes discrimination. The act expressly prohibits unequal pay for work of equal value and discriminatory practices, including unequal pay and separate pension funds for different groups in a company... In June 2015 the government adopted a Code of Good Practice to provide employers and employees with practical guidance on the equal pay principle of the act.

⁶³ Social Institutions and Gender Index, 'South Africa Country Profile', undated, <http://www.genderindex.org/country/south-africa>. Accessed: 28 June 2017

‘Women, particularly black women, typically had lower incomes and less job security than did men. Many women were engaged in poorly paid domestic labor and microenterprises that did not provide job security or benefits. The Department of Trade and Industry provided incentive grants to promote the development of small and medium-size businesses and microenterprises for women, young persons, and persons with disabilities...The minister of women in the Presidency, the Commission for Gender Equality, the Commission for Employment Equity, and a number of other government bodies monitored and promoted women’s rights, as did numerous NGOs and labor unions.’⁶⁴

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14.4 Access to land, credit and resources

14.4.1 The Social Institutions and Gender Index, undated, accessed on 28 June 2017, noted:

‘Concerning secure access to land and non-land assets, South African women are entitled to the same legal ownership rights as men and the law guarantees them equality in the purchase, sale and management of property. According to the Recognition of Customary Marriages Act of 1998, men and women have equal legal status in regard to ownership of property (including land), with joint common ownership assumed in monogamous customary marriages unless a contract has been drawn up specifying an alternative arrangement.

‘Although security of land tenure is a right in the Constitution, it remains elusive for most women in South Africa. While some laws to protect land tenure security have been put in place, these do not cover people living in the former Bantustans or homelands...Women’s land rights, already structurally vulnerable, have been made even more precarious in the context of the continued uncertainty around communal land tenure legislation. In the absence of a national communal land tenure law, access to land depends heavily on local power relations. Laws like the Traditional Leadership and Governance Framework Act (2003) and Traditional Courts Bill (which has been proposed but not passed) marginalise women’s voices, shifting the balance of power more towards male household heads and traditional leaders. The legislation around traditional leadership affects single women, particularly those without male family members, who have little status in the eyes of some traditional leaders and structures.

‘Recent research shows that rural women are redefining land rights in the context of living customary law. According to official customary law, men were the only people entitled to inherit and manage land. Using evidence from surveys, parliamentary submissions and interviews at community workshops, it has been shown that single women in the Eastern Cape, KwaZulu-Natal and the North West are increasingly being allocated residential sites after 1994.

⁶⁴ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 6, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 27 June 2017

‘Women comprise a majority of small business owners in South Africa, but make up a minority of workers in the formal sector. This limits women’s total access to productive resources that could be used as collateral. Thus, they lag behind men in the ability to obtain credit and bank loans. Access to credit and bank services remains a major obstacle for improving the economic situation of poor South Africans in general and women in particular...Some financial institutions specifically target women. It is reported that the Department of Trade and Industry provides incentive grants to promote the development of small and medium-size businesses and microenterprises for women and young people.’⁶⁵

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14.5 State protection

14.5.1 The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘Rape, including spousal rape, is illegal but remained a serious and pervasive problem. The minimum sentence for rape is 10 years in prison for the first offense. Under certain circumstances, such as second or third offenses, multiple rapes, gang rapes, or the rape of a minor or a person with disabilities, conviction results in a minimum sentence of life imprisonment (25 years), unless substantial and compelling circumstances exist to justify a lesser sentence. Perpetrators with previous rape convictions and perpetrators aware of being HIV positive at the time of the rape also face a minimum sentence of life imprisonment, unless substantial and compelling circumstances exist to justify a lesser sentence...

‘According to the 2015-16 NPA [National Prosecuting Authority] annual report, the conviction rate for sexual offense crimes was 70 percent. Prosecutors chose not to prosecute many cases due to insufficient evidence. Poor police training, insufficient forensic lab capacity, a lack of trauma counseling for victim witnesses, and overburdened courts contributed to the low conviction rate. The NPA did not track the length of time required for cases to reach trial, but, according to media reports, it could take between six months and three years for a rape case to reach trial, depending on the complexity of the case and the plea of the accused.

‘The Department of Justice operated 50 dedicated sexual-offense courts throughout the country. Sexual-offense courts included facilities such as private waiting rooms, court preparation rooms, and closed-circuit television rooms for victims, all in an attempt to provide additional privacy and prevent secondary victimization. Although judges in rape cases generally followed statutory sentencing guidelines, women’s advocacy groups criticized judges for using criteria such as the victim’s behavior or relationship to the rapist as a basis for imposing lighter sentences.

‘The NPA operated 53 rape centers, or TCCs...All TCCs were located at hospitals, either within the hospital or in a mobile unit on hospital grounds. Of rape cases brought to TCCs, 47 percent went to trial and were

⁶⁵ Social Institutions and Gender Index, ‘South Africa Country Profile’, undated, <http://www.genderindex.org/country/south-africa>. Accessed: 28 June 2017

terminated--by either conviction or acquittal--within nine months from the date a victim reported the case.’⁶⁶

14.5.2 The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘Domestic violence was pervasive and included physical, sexual, emotional, and verbal abuse, as well as harassment and stalking. The government prosecuted domestic violence cases under laws governing rape, indecent assault, damage to property, and violating a protection order. The law facilitates protection orders against abusive individuals, requires police to take victims to a place of safety, and allows police to seize firearms at the scene and to arrest abusers without a warrant. The law requires police to protect victims from domestic violence, but police commanders did not always hold officers accountable. Conviction of violating a protection order is punishable by a prison sentence of up to five years, or up to 20 years if additional criminal charges apply. Penalties for domestic violence include fines and sentences of between two and five years’ imprisonment...

‘The government financed shelters and rape-support centers for abused women, but more were needed, particularly in rural areas. The government conducted rape and domestic violence awareness campaigns.’⁶⁷

14.5.3 For more information on state and societal treatment of women see:

- ‘The Guardian’, ‘[How rape became South Africa's enduring nightmare](#)’, 29 September 2015
- Amnesty International, ‘Annual Report 2016/17’, [South Africa](#) section, 2017
- Immigration and Refugee Board of Canada, response to an information request, ‘[South Africa: Domestic violence, including legislation, state protection and support services available to victims; ability of women to relocate to Cape Town \(2014-May 2015\)](#)’, ZAF105159.E, 25 May 2015
- Un Human Rights Council, [Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa* \(Advanced unedited edition\)](#), 14 June 2016, and comments by the [State](#), February 2017
- Reports submitted to UN Human Rights Council as part of South Africa’s [Universal Periodic Review](#), May 2017.

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15. Citizenship and nationality

15.1.1 The IBN Immigration and Business Solutions (South Africa) website noted the following:

⁶⁶ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 6, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 13 November 2017

⁶⁷ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 6, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 13 November 2017

'South African citizenship can, subject to the provisions of the South African Citizenship Amendment Act 17 of 2010, which came into force 1st January 2013, be acquired by birth, descent and naturalisation...

'Citizenship by birth is a legal right for anyone who can prove the facts of birth and parentage.

'It can be obtained by a person, if he or she is born in or outside South Africa with at least one parent who is a South African citizen at the time of that person's birth.

'A person also qualifies to be a South African citizen by birth, if he/she was born and living in the Republic till he/ she becomes a major, the birth is registered in the Republic in accordance with the Births and Deaths Registration Act, 1992 (BDR Act) and at the date of birth both parents are South African permanent resident holders.

'Any person born in South Africa obtains South African citizenship by birth, if the person does not have citizenship or nationality of any other country (or no right to such citizenship or nationality) and his/her birth is registered with the BDR Act.

'A Person who is adopted by a South African citizen in terms of the Children's Act, 2005, and whose birth is registered with the BDR Act obtains citizenship by descent.

'Citizenship by naturalisation is not a legal right; but it can be applied for, if a person complies with the provisions of section 5 of the South African Citizenship Amendment Act 17 of 2010.

'Majors can apply for a certificate of The Minister of Home Affairs may grant this certificate as a South African citizen to any foreigner who satisfies him that he or she

- has a valid permanent residence,
- is ordinarily resident in South Africa and has been so resident for a permanent period of not less than 5 years immediately prior to the application for naturalisation,
- is a citizen of a country that allows dual citizenship; In that case where dual citizenship is not allowed by the country of origin, the citizenship of that country must be renounced and proof of such renunciation must be furnished.
- is able to communicate satisfactorily in any one of the official languages of South Africa,
- has adequate knowledge of the privileges and responsibilities of a South African citizen,
- and is of good character,
- intends to continue to reside in South Africa or falls within the further categories specified in section 5(1)(e)

'As a spouse or surviving spouse of a South African citizen applications for citizenship by naturalisation can be made, if the spouse is a permanent

resident holder, and according to the Home Affairs website ordinarily resides in South Africa for two years of permanent residence and two years of marriage to the South African spouse immediately prior to the application but after acquiring permanent residence status.

‘Children qualify to apply for citizenship by naturalisation upon becoming a major, if they are born in South Africa and their parents are not South African citizens or have not been admitted into the Republic for permanent residence, they lived in South Africa from birth to the date of becoming a major and their birth is registered with the BDR Act.

‘The responsible parent can apply for a certificate of naturalisation on behalf of a minor at any time, provided the minor permanently and lawfully resides in South Africa.’⁶⁸

See also [South African Citizenship Amendment Act 2010](#).

- 15.1.2 The South African High Commission in Australia website, accessed on 30 June 2017, noted the following about dual nationality:

‘The South African Citizenship Act provides for retention of South African citizenship prior to the acquisition of a foreign citizenship. A condition of attaining dual citizenship for all South African citizens aged 18 years or older is that they must apply and be granted permission to retain their South African citizenship prior to the acquisition of a foreign citizenship.

‘If a South African citizen does not obtain this prior permission they will automatically lose their South African citizenship on voluntary acquisition of a foreign citizenship.

‘South African citizens under the age of 18 years are exempt and do not require to apply for dual citizenship, as long as they acquire the foreign citizenship before their 18th birthday. They automatically retain their South African citizenship for life unless, once they have reached the age of 18 years and they then wish to acquire a further foreign citizenship, they will then have to apply for prior permission to retain their South African citizenship. Failing to do so, they will automatically lose their South African citizenship...Once a person has been granted dual citizenship, the holder must always enter and depart South Africa on their valid South African passport.

‘In essence legislation provides that a South African dual citizen can use his or her foreign passport/citizenship/nationality freely outside South Africa. However, in South Africa, he/she may not use his or her foreign citizenship to gain an advantage or to avoid a responsibility or duty, which he or she as a South African citizen would otherwise have or have not been entitled or subjected to.

‘NB. It should be mentioned that South African citizens by birth, who automatically lost their South African citizenship, never lose their right to Permanent Residence in South Africa. Should they permanently return to

⁶⁸ IBN Immigration and Business Solutions (South Africa), ‘How to obtain South African Citizenship?’, 13 May 2015, <https://ibn.co.za/obtain-south-african-citizenship/>. Accessed: 21 June 2017

South Africa, they will be able to apply for the resumption of their South African citizenship from within the Country.’⁶⁹

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16. Children

16.1 Education

16.1.1 The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘Public education is compulsory until age 15 or grade nine. Public education was fee based and not fully subsidized by the government. The law provides that schools may not refuse admission to children due to a lack of funds, and disadvantaged children, who were mainly black, were eligible for assistance...According to the 2012 national census, girls faced more difficulties accessing services than boys; children with disabilities were at an even greater disadvantage.’⁷⁰

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16.2 Violence and sexual abuse

16.2.1 The USSD ‘Country Report on Human Rights Practices for 2016’ noted: ‘Child Abuse: Violence against children, including domestic violence and sexual abuse, remained widespread. According to the 2016 Optimus Study, 10 percent of children ages 15 to 17 had experienced sexual abuse. According to the 2015-16 SAPS report, 40,689 children were victims of crime, and 1,344 persons were arrested for child abuse.’⁷¹

16.2.2 The USSD ‘Country Report on Human Rights Practices for 2016’ also noted:

‘Penalties for the sexual exploitation of a child include fines and imprisonment of up to 20 years. The law defines statutory rape as sexual intercourse between anyone under age 18 and an adult more than two years older. The statutory sentence for rape of a child is life in prison, although the law grants judicial discretion to issue sentences that are more lenient.

‘In 2015 the president signed into law changes to decriminalize consensual sexual conduct between children ages 12 to 16. This fulfilled a 2013 Constitutional Court order that gave the government 18 months to remove the portion of the Sexual Offenses and Related Matters Act that criminalized such conduct.

‘The law prohibits child pornography and provides for penalties including fines and imprisonment of up to 10 years. The Film and Publications Board

⁶⁹ South African High Commission, Canberra, Australia, ‘Dual South African Citizenship’, undated, https://www.sahc.org.au/citizenship/Dual_Citizenship.htm. Accessed on 30 June 2017

⁷⁰ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 6, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 27 June 2017

⁷¹ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 6, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 27 June 2017

maintained a website and a toll-free hotline for the public to report incidents of child pornography.’⁷²

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16.3 Early marriage

16.3.1 The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘Parental or judicial consent to marry is required for individuals younger than 18. Nevertheless, the traditional practice of “ukuthwala,” the arranged marriage of girls as young as age 12 to men, occurred in remote villages in Western Cape, Eastern Cape, and KwaZulu-Natal Provinces. In 2015 the president promulgated the Prevention and Combating of Trafficking in Persons Bill that prohibits nonconsensual ukuthwala and classifies it as a trafficking offense. According to the 2016 State of the World’s Children Report of the UN Children’s Fund, 6 percent of girls in the country were married before age 18.’⁷³

16.3.2 The Social Institutions and Gender Index, undated, accessed on 28 June 2017, noted: ‘The legal minimum age for marriage for all forms of marriage in South Africa is 18 years for both sexes, and marriage requires the consent of both spouses, including for customary marriage. Anyone under the age of 18 cannot marry without the consent of the parents or a judge. The special consent of the Minister of Home Affairs is also required for the marriage of a girl under the age of 15.’⁷⁴

16.3.3 For further information on the situation of children, see:

- Reports submitted to the [UN Convention on the Rights of the Child Committee](#) by South Africa, stakeholders and UN agencies for the review in 2015/2016
- Reports submitted to UN Human Rights Council as part of [South Africa’s Universal Periodic Review](#), May 2017.

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17. Documentation

17.1 Registration of births

17.1.1 The South African Department of Home Affairs website noted the following:

‘All children born in South Africa must be registered within 30 days of their birth (in terms of the Births and Deaths Registration Act, 1992.)

‘A parent, parents, guardian or any other person legally responsible for the child must complete Form BI-24 (with black ink only) and it must be submitted to the nearest office of the Department of Home Affairs if you are

⁷² USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 6, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 27 June 2017

⁷³ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 6, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 27 June 2017

⁷⁴ Social Institutions and Gender Index, ‘South Africa Country Profile’, undated, <http://www.genderindex.org/country/south-africa>. Accessed: 28 June 2017

in South Africa, or the nearest South African embassy, mission or consulate if you are overseas.

‘Once the child’s birth has been registered, an unabridged birth certificate is issued free of charge, usually a day or so after the registration application has been submitted...Children born within wedlock can be registered under the surname of the father and mother jointly, where both parents have given constant [sic] (subject to the signatures on the margin)...Once the child’s birth has been registered, an unabridged birth certificate is issued free of charge, usually a day or so after the registration application has been submitted...Children born out of wedlock are registered under the surname of the mother. They may also be registered under the surname of their biological father provided that the father acknowledges paternity and both the father and the mother consent to the registration of the child under the father’s surname in the presence of a Home Affairs official...Once the child’s birth has been registered, an abridged birth certificate is issued free of charge, usually a day or so after the registration application has been submitted.’⁷⁵

17.1.2 The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘Some human rights NGOs claimed government inefficiency inhibited birth registration. Authorities blamed late birth registration for irregularities in the population register. In the 2014-15 reporting period, parents registered only 62 percent of births in the prescribed 30-day window, according to the DHA. Children without birth registration had no access to free government services such as education or health care, and their parents had no access to financial grants for their children.’⁷⁶

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17.2 Registration of marriages

17.2.1 The South African Department of Home Affairs website noted the following:

‘Civil marriages are governed by the Marriage Act and regulations issued in terms of the Act. South Africa also recognizes customary marriages through the Recognition of Customary Marriages Act, which became effective in November 2000. Civil unions are recognised in terms of the Civil Union Act (2006)...Only marriage officers authorised in terms of Act No. 25 of 1961 to perform marriages may do so. Presently civil marriages are solemnised at offices of the Department of Home Affairs and at churches (by authorised marriage officers).

‘A marriage must be conducted in the presence of at least two witnesses in:

- a church or another building used for religious services
- in a public office or private house, with open doors

⁷⁵ South African Department of Home Affairs, ‘Birth certificates’, undated, <http://www.home-affairs.gov.za/index.php/civic-services/birth-certificates>. Accessed: 22 June 2017

⁷⁶ USSD, ‘Country Report on Human Rights Practices for 2016’, South Africa, section 6, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 22 June 2017

- in the case of serious illness or injuries, the marriage may take place in a hospital or any concerned facility.

‘Marriage certificates

‘Two witnesses and the marriage officer must sign the marriage register after the solemnisation of a marriage. Then the marriage officer must issue the parties with a handwritten marriage certificate (BI-27) free of charge.

‘The marriage officer must then submit the marriage register to the nearest office of the Department of Home Affairs, where the marriage details will be recorded in the National Population Register (NPR)...

‘Customary Marriages

‘In South Africa, the definition of a customary marriage is one that is “negotiated, celebrated or concluded according to any of the systems of indigenous African customary law which exist in South Africa”. This does not include marriages concluded in accordance with Hindu, Muslim or other religious rites...

‘For a customary marriage to be recognised as a valid marriage, it has to have been entered into before 15 November 2000.

‘However, if entered into after 15 November 2000 it must comply with the following requirements:

- The marriage must be negotiated, entered into or celebrated in accordance with customary law
- The prospective spouses must be above the age of 18 years
- Both prospective spouses must consent to the marriage

‘The parents of a prospective spouse who is a minor must consent to the marriage. If he/she has no parents, then his or her legal guardian must consent. If the parents or legal guardian cannot consent, a Commissioner of Child Welfare can be approached for consent. Where consent is refused by either of the parents, the legal guardian or the Commissioner of Child Welfare, only a judge of the High Court may consider granting consent. If either of the prospective spouses is already a spouse in a civil marriage, a customary marriage cannot be entered into during the subsistence of the civil marriage. A similar provision is also applied to customary marriages entered into from 1 December 1988.

‘Although there is no restriction on the number of customary marriages that a man may enter into, no further customary marriage may be entered into unless an order of court regulating the future matrimonial property system of his marriages has been obtained.

‘Registering customary marriages

‘Customary marriages must be registered within three months of taking place. This can be done at any office of the Department of Home Affairs or through a designated traditional leader in areas where there are no Home Affairs offices.

'The following people should present themselves at either a Home Affairs office or a traditional leader in order to register a customary marriage:

- the two spouses (with copies of their valid identity books and a lobola agreement, if available)
- at least one witness from the bride's family
- at least one witness from the groom's family
- and/or the representative of each of the families

'In the event that the spouses were minors (or one was a minor) at the time of the customary marriage, the parents should also be present when the request to register the marriage is made.

'Customary marriages are registered by completing BI-1699 and paying the required fees. An acknowledgement of receipt BI-1700 will then be issued by the Department...

'If a male person is already in a customary marriage and wishes to enter into another customary marriage he has to, at his own cost, get a court order from a competent court which will regulate his future matrimonial property system.

'It is also possible for a male person who is already in a customary marriage to enter into a civil marriage. They should follow the normal procedure for civil marriages.'⁷⁷

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17.3 Registration of deaths

17.3.1 The South African Department of Home Affairs website noted the following:

'The Births and Deaths Registration Act requires that a person's death be reported to any one of the following people:

- Specific officers at the Department of Home Affairs
- South African Police Service members, especially in areas where the Department of Home Affairs has no offices
- South African mission, embassy or consulate, if the death occurred abroad
- Funeral undertakers who are appointed and recognised by the law.

'Form BI-1663 (Notification of death/still-birth) must be completed when reporting a death. The following people have to complete different sections of this form:

'The person reporting the death

- A medical practitioner (where a medical practitioner is not available to complete this form, in rural areas for example, a traditional leader may complete the form)

⁷⁷ South African Department of Home Affairs, 'Preparing to get married', undated, <http://www.dha.gov.za/index.php/marriage-certificates>. Accessed: 22 June 2017

- A Home Affairs official (where an official from the Department of Home Affairs is not available then a member of the SA Police Services may be approached to complete the form)

‘A Death Report (Form BI-1680) will be issued after a death has been registered...The Department of Home Affairs will issue a Death Certificate on receipt of the notification of death (Form BI-1663) and the Death Report (Form BI-1680).’⁷⁸

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17.4 Identity documents

17.4.1 The South African Department of Home Affairs website noted the following: ‘Identity documents are issued to South African citizens or permanent residence permit holders who are 16 years or older. People (including spouses and children) who are working for the South African government or one of its statutory bodies outside of South Africa also qualify to receive South African ID books.’⁷⁹

17.4.2 The South African Department of Home Affairs website also noted that ID books (identity documents) are needed as a ‘legal form of identity when dealing with public and private institutions’; for access to ‘housing, education and healthcare services’; when applying for a ‘driver’s license or a job; when entering into business agreements and even when registering for the Unemployment Insurance Fund.’⁸⁰

17.4.3 A ‘Herald Live’ (South Africa) report, ‘Why the end of the green ID book is on the cards by 2022’, dated 11 May 2017, stated:

‘The Department of Home Affairs wants to replace all 38 million green booklets with smart ID cards by 2022.

‘Since the project was rolled out in 2013, some 6 million smart IDs have been issued, but the department plans to do half that amount this year alone...The move comes as the department tries to modernise its systems, aiming to eliminate the security limitations of regular ID books, which can easily be tampered with and manipulated for fraudulent purposes.

‘Home affairs spokesman Thabo Mokgola said the new ID cards would be highly secured and produced in an end-to-end process, which is “wholly automated and supported by a live capture system”...The additional security features incorporated in the smart ID card eliminate the possibility of forgery or tampering (as experienced with green book identity documents), ensuring that fraud and identity theft are eliminated. The resulting integrity of the smart ID card therefore also increases the security and credibility of the national population register as a whole,” he said.

⁷⁸ South African Department of Home Affairs, ‘Death Certificates’, undated, <http://www.dha.gov.za/index.php/death-certificates1>. Accessed: 22 June 2017

⁷⁹ South African Department of Home Affairs, ‘Identity documents’, undated, <http://www.dha.gov.za/index.php/identity-documents2>. Accessed: 22 June 2017

⁸⁰ South African Department of Home Affairs, ‘Identity documents’, undated, <http://www.dha.gov.za/index.php/identity-documents2>. Accessed: 22 June 2017

‘There will be no restrictions or qualifying criteria for application of the card, other than being born in South Africa, and applications can also be made at certain branches of the four major banks.’⁸¹

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17.5 Passports

17.5.1 The South African Department of Home Affairs website noted the following:

‘A passport is a document issued by a national government for international travel and it certifies the identity and nationality of the holder.

‘Applicants should note that in terms of section 26(B) of the South African Citizenship Act, 1995, it is a punishable offence for a South African citizen of 18 years and older to leave or enter South Africa on a foreign passport.

‘South African passports and travel documents are issued in terms of the South African Passports and Travel Documents Act, 1994, and the related Regulations.

‘Permanent South African passports and travel documents (machine-readable documents) are printed only in Pretoria, South Africa, from where they are dispatched to the offices of application. Applications made within South African borders can be submitted to any office of the Department of Home Affairs; applications made outside of the country can be submitted to your nearest South Africa embassy or mission.’⁸²

17.5.2 A South African Government News Agency report, ‘South Africans get new high security passport from today’, dated 8 April 2009, noted:

‘South Africans who apply for or renew their passports will from today receive a new passport with more security features.

‘The new passport is tamper-proof and difficult to reproduce illegally... the new passport had fine line security background designs depicting the Big Five printed on the pages and principal and secondary photos as well as an interlock stitching, which would be difficult for anyone to tamper with... One of the major differences between the old and new passport is the pure polycarbonate data page that replaces the current security paper data page with its overlay film... He noted that the facility where the passports will be printed is highly secured... The recently introduced online fingerprint verification system would also be used to confirm the identity of the applicant and minimise risks identity fraud.’⁸³

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⁸¹ ‘Herald Live’, ‘Why the end of the green ID book is on the cards by 2022’, 11 May 2017, http://www.itweb.co.za/index.php?option=com_content&view=article&id=70399. Accessed: 27 July 2017

⁸² South African Department of Home Affairs, ‘Passports & Travel Documents’, undated, <http://www.dha.gov.za/index.php/travel-documents2>. Accessed: 22 June 2017

⁸³ South African Government News Agency, ‘South Africans get new high security passport from today’, 8 April 2009, <http://www.sanews.gov.za/south-africa/south-africans-get-new-high-security-passport-today>. Accessed: 26 June 2017

18. Freedom of movement

- 18.1.1 The USSD 'Country Report on Human Rights Practices for 2016' noted: 'The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, but the government did not always respect these rights.'⁸⁴ The Social Institutions and Gender Index (SIGI), accessed on 26 June 2017, noted: 'Since Apartheid was abolished, all citizens of South Africa have been granted equal rights in regard to freedom of movement, including choice of residence.'⁸⁵

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⁸⁴ USSD, 'Country Report on Human Rights Practices for 2016', South Africa, section 2d, 3 March 2017, <https://www.state.gov/documents/organization/265514.pdf>. Accessed: 26 June 2017

⁸⁵ Social Institutions and Gender Index (SIGI), 'South Africa Country Profile', undated, <http://www.genderindex.org/country/south-africa>. Accessed: 26 June 2017

Version control and contacts

Contacts

If you have any questions about the guidance and your line manager, senior caseworker or technical specialist cannot help you or you think that the guidance has factual errors then email the [Country Policy and Information Team](#).

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the [Guidance, Rules and Forms Team](#).

Clearance

Below is information on when this version of the guidance was cleared:

- version **1.0**
- valid from **5 December 2017**

Changes from last version of this guidance

First version.

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