



SOUTH AFRICA

CAPITAL: Pretoria

POPULATION: 50.7 million

GNI PER CAPITA (PPP): \$9,780

SCORES	2006	2010
ACCOUNTABILITY AND PUBLIC VOICE:	5.03	4.89
CIVIL LIBERTIES:	5.00	5.07
RULE OF LAW:	4.41	4.28
ANTICORRUPTION AND TRANSPARENCY:	4.00	3.90

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Mark Y. Rosenberg

INTRODUCTION

After decades of white minority rule under a system of comprehensive, institutionalized racial separation known as apartheid, South Africa held its first nonracial general elections in 1994. The balloting was judged free and fair by international observers despite significant political violence, and resulted in a landslide victory for the previously banned African National Congress (ANC). ANC leader Nelson Mandela, a longtime political prisoner, was chosen as president. A constitutional assembly produced a new constitution, which Mandela signed into law in December 1996. In 1999, the ANC claimed almost two-thirds of the national vote in general elections; Thabo Mbeki, Mandela's successor as head of the ANC, won the presidency. The ANC won an even greater victory in 2004, capturing nearly 70 percent of the national vote and outright control of seven of the country's nine provinces (while sharing power in the other two).

Factionalism within the ANC—exemplified by a heated leadership battle between Mbeki and his former deputy, Jacob Zuma—has dominated South African politics in recent years. In December 2007, Zuma was elected ANC president at the party's national conference, outpolling Mbeki by a wide margin, and his allies won most other senior posts. The ANC's national executive committee then forced Mbeki to resign as state president in September 2008, and deputy ANC president Kgalema Motlanthe was installed as interim state president. Soon thereafter, former defense minister Mosiuoa "Terror" Lekota and

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Mbhazima Shilowa, the former premier of Gauteng province, resigned from the ANC and began forming a new opposition group. The new party, dominated by Mbeki allies, was formally registered as the Congress of the People (COPE) in December 2008.

In April 2009, South Africans voted in the country's fourth round of national and provincial elections since the advent of democracy. As with the previous polls, the balloting was declared free and fair by domestic and international observers. Despite the dramatic split in the ruling party and the formation of COPE, the ANC won yet another sweeping victory, taking 65.9 percent of the national vote and claiming clear majorities in eight provinces. The Democratic Alliance (DA) beat out COPE to retain its status as the country's largest opposition party, winning 16.7 percent of the national vote and outright control of the Western Cape province. Zuma was easily elected state president by the National Assembly (NA) the following month.

The ANC's enduring preeminence in South African politics has been accompanied by heightened tensions both within the party and with its governing allies, the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU). In addition, government clashes with the judiciary, the media, and opposition parties have all increased. Vociferous debates surround the government's approach to poverty, land reform and housing, basic service delivery, corruption, immigration, the ongoing crisis in Zimbabwe, and HIV/AIDS.

ACCOUNTABILITY AND PUBLIC VOICE	4.89
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.25
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.75
CIVIC ENGAGEMENT AND CIVIC MONITORING	6.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.57

Under the 1996 constitution, national authority is shared by the executive and legislature and checked by an independent judiciary. Executive and legislative powers also exist at the provincial and municipal levels. The constitution provides for universal adult suffrage,¹ a national common voter roll, regular elections contested by multiple parties and determined by a system of proportional representation, and the establishment of an Independent Electoral Commission (IEC) and Electoral Court. In addition, a constitutionally incorporated Bill of Rights guarantees citizens the rights to form and campaign for a political party, stand for public office, and participate in free, fair, and regular elections.

In the run-up to the April 2009 polls, IEC voter registration drives held in November 2008 and February 2009 registered over 23 million voters, and 42 of 117 registered parties submitted candidate lists by the March 2009 deadline.² Also in March, the Constitutional Court upheld an earlier Pretoria High

Court ruling that the Electoral Act's exclusion of citizens residing abroad was unconstitutional. As a result, South Africans living overseas—the large majority of whom are white—were able to vote in the April elections. The ruling was opposed by the ANC.

Due to the emergence of COPE and a concerted ANC effort to woo Zulu voters in rural Kwa-Zulu Natal (KZN) province away from the Zulu nationalist Inkatha Freedom Party (IFP), the specter of political violence hung over the campaign period. While parties were generally able to campaign freely across the country, violence was more of a problem than in 2004. According to the *Mail & Guardian*, there were 40 incidents of electoral violence in 2009, most of them “intimidation or clashes” in KZN and the Eastern Cape.³ Between January and April, five politicians were killed in election-related violence, including four in KZN. Party officials engaged in inflammatory rhetoric during the campaign. For example, ANC Youth League president Julius Malema labeled COPE supporters “cockroaches” and DA leader Helen Zille a “colonialist” and “imperialist,” while Zille called Malema an “*inkwenke*” (Xhosa for “not yet an adult”).⁴ There had been several instances of intra-ANC violence in 2008, including a stabbing at an ANC conference in the Western Cape.

The elections themselves were judged free and fair by credible domestic observers (led by the South African Civil Society Election Coalition) as well as monitors from the Southern African Development Community and the African Union. According to the Electoral Institute of Southern Africa, high turnout and the ability of voters to cast ballots in any station in their province led to ballot shortages throughout the country. The ANC's capture of 65.9 percent of the national vote earned it 264 seats in the 400-seat NA; the DA, with 16.7 percent of the vote, won 67 seats, while COPE (7.4 percent) took 30 seats and the IFP (4.6 percent) garnered only 18. Nine other parties won four or fewer seats in the NA.

While public financing of political parties through the Represented Political Parties' Fund is governed by the IEC, private contributions are totally unregulated. Parties do not have to reveal the size or sources of donations, and both elected officials and civil society groups have criticized this system as a major source of political corruption. The Institute for Democracy in Africa (IDASA) initiated legal proceedings to require all parties represented in the NA to reveal the sources, amounts, and dates of all their private donations since 1994, but the suit was dismissed in 2005; IDASA had argued that such disclosures were mandated under the 2000 Promotion of Access to Information Act.⁵ IDASA and the Institute of Security Studies subsequently established an online Party Funding Monitor database to provide information on party funding.⁶ The ANC in particular has been criticized for awarding state contracts to firms associated with Chancellor House, the party's in-house investment firm,⁷ and for charging fees to business leaders for access to top government officials. In December 2007, a “networking lounge” for businesses was set up outside the ANC national conference in Polokwane.

The constitution mandates a robust system of checks and balances between the executive, legislative, and judicial branches of government. Executive power is held by the president, who is elected by the NA; the president's appointed cabinet currently consists of the deputy president, 34 ministers, and 22 deputy ministers. The bicameral Parliament, which consists of the NA and the 90-seat National Council of Provinces (NCOP),⁸ has significant oversight and approval powers vis-à-vis the executive, and legislators can question members of the executive in session. Every executive or legislative act is subject to review by the judiciary, which is headed by the Constitutional Court and the Supreme Court of Appeals.

In practice, the ANC's overwhelming control of the executive and legislative branches at both the national and provincial levels undermines the efficacy of South Africa's institutional checks and accountability mechanisms. Parliamentary committees tasked with overseeing ministries are often led by ANC loyalists and have been accused of approving ministerial reports and budgets without sufficient debate.⁹ Parliament has also been criticized for failing to adequately investigate executive malfeasance, particularly ongoing corruption scandals surrounding the 1999–2000 Strategic Defence Procurement Package, also known simply as the Arms Deal (see Anticorruption and Transparency). Partly in response to such criticism,¹⁰ lawmakers commissioned an independent panel of experts to assess the “independence, efficiency, and effectiveness of Parliament” in 2006.¹¹ In its 2009 report, the panel recommended that members of Parliament (MPs) more actively scrutinize executive reports, ensure that parliamentary queries are fully answered by the executive, and disallow presiding officers from holding high office in political parties, among many other recommendations.¹² The judiciary has demonstrated significant independence in hearing constitutional challenges to legislation and in punishing abuses of power. Nevertheless, political interference, resource shortages, and the lack of an effective oversight body for judicial conduct hamper the courts' oversight powers.¹³

The Public Service Act (PSA) provides for civil service hiring based on “equality and other democratic values and principles enshrined in the Constitution.”¹⁴ However, merit and open competition are often subordinated to political affiliation and nepotism, as well as to considerations of race, gender, and disability that are included in the PSA to redress “imbalances of the past” and ensure a civil service that is “broadly representative of the South African people.”¹⁵ A 2006 survey by the Public Service Commission found that the favoring of friends and family was the biggest problem undermining professionalism in management decisions.¹⁶ The professionalism of the civil service varies widely by province. In 2007 and 2008, the politically tinged firing of the head of the Office of the National Director of Public Prosecutions (NDPP), Vusi Pikoli, raised serious questions about the political independence of senior civil servants.

Thousands of civic groups and nongovernmental organizations operate freely throughout South Africa, including a vibrant and politically active trade

union movement led by COSATU. Most of these civil society organizations (CSOs) deal with education, good governance, land reform, and housing or service delivery. CSOs regularly testify before and submit presentations to legislative committees regarding pending legislation. While close relationships with the ANC and the government have discouraged some CSOs from pursuing public advocacy campaigns aimed at affecting legislation, others have been vociferous in this regard. Registration of CSOs is relatively straightforward, and organizations are not required to disclose their funding sources to the government.

Freedoms of expression and the press are protected in the constitution and generally respected. Nevertheless, several apartheid-era laws that remain in effect—as well as a 2004 antiterrorism law—permit authorities to restrict the publication of information about the police, defense forces, prisons, and mental institutions, and to compel journalists to reveal sources. While journalists are rarely detained by the authorities, they remain subject to pressure from both state and nonstate actors. Government and ANC-affiliated officials have repeatedly accused critical journalists of racism or betraying the state. Journalists' organizations and other groups work to defend press freedom in the country, and a number of private newspapers and magazines—particularly the *Mail & Guardian*, the *Cape Times*, and the *Sunday Times*—are sharply critical of the government. ANC and state officials in turn have become increasingly sensitive to media criticism and reporting on corruption, and have initiated a number of gag orders and lawsuits to prevent damaging reporting. The government has also threatened to withdraw advertising from critical newspapers. At its December 2007 national conference, the ANC called for the establishment of a Media Appeals Tribunal to adjudicate between freedom of speech and an individual's right to privacy and dignity. While there has been no effort to establish the tribunal, the ANC has stated that the issue is still “on the table.”¹⁷

Since 2005, the *Mail & Guardian* has received at least three government gag orders to stop reporting on corruption scandals. The *Sunday Times* faced a lawsuit, police investigations, and ownership pressure after it published articles in 2007 that accused then health minister Manto Tshabalala-Msimang of alcoholism, queue-jumping for a liver transplant, and stealing from a patient while serving as a medical superintendent in Botswana.¹⁸ In December 2008, Zuma launched a US\$712,300 defamation lawsuit over a cartoon in the *Sunday Times*.

For primarily socioeconomic reasons, most South Africans receive the news via radio outlets, a majority of which are controlled by the state-owned South African Broadcasting Corporation (SABC). The SABC also dominates the television market, but two commercial stations are gaining ground. Applications to open community radio stations are slowed by lack of bandwidth and bureaucratic delays. While editorially independent from the government, the SABC has come under increasing fire for displaying a pro-ANC bias and practicing self-censorship. A 2006 internal SABC report found that government critics had been barred from the airwaves, and in 2007, groups including COSATU

and the Freedom of Expression Institute accused the government of conducting political purges at the broadcaster. Rifts within the ANC have recently given rise to SABC leadership battles. After Mbeki was forced to resign in 2008, Parliament passed a version of the Broadcasting Amendment Bill that would have allowed it to fire the SABC's board, which the outgoing president had recently appointed. However, President Motlanthe in February 2009 refused to sign the legislation, and a revised version required a "proper inquiry by Parliament" before such dismissals. An earlier spat between SABC head of news Snuki Zikalala and chief executive Dali Mpofu—including the firing of each by the other—was tied in part to the Zikalala-led board's alleged affiliation with Mbeki. In addition, both the ANC and COPE accused the SABC of biased coverage of the events surrounding the ANC split, while SABC journalists accused members of both parties of intimidation in the run-up to the 2009 elections. South Africans enjoy unhindered access to the internet, and there are no restrictions on setting up internet-based media outlets.

CIVIL LIBERTIES

5.07

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.50
GENDER EQUITY	4.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.75
FREEDOM OF CONSCIENCE AND BELIEF	7.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	5.75

The constitution provides South Africans with a comprehensive set of civil liberties, which are generally enjoyed in practice. These include equality, human dignity, life, freedom from torture and inhuman and cruel treatment, freedom from slavery and servitude, freedom from child abuse, and a series of procedural rights for arrested, detained, and accused persons.

The South Africa Police Service (SAPS) is under the civilian control of the Department of Safety and Security. Despite constitutional prohibitions, there have been reports of torture and the use of excessive force by SAPS members during arrest, interrogation, and detention. South Africans can report alleged rights violations by the SAPS to the Independent Complaints Directorate (ICD). Between April 2007 and March 2008, the ICD received 5,026 complaints of abuses, including deaths in police custody (792, of which 490 were by police action), criminal offenses (1,742), and misconduct (2,474).¹⁹ Citing resource constraints, the ICD fully investigated 66 percent of death cases (though only 59 percent of deaths by police action), 56 percent of criminal cases, and 32 percent of misconduct cases. While the ICD maintains that an increase in reported violations indicates public trust in the institution, researchers claim that many case files are incomplete or closed without clear outcomes.²⁰ Police remain badly underpaid, and although SAPS corruption is a significant problem, it is rarely

reported. Following the closure of the ICD's Anti-Corruption Unit in 2002, formal complaints of police corruption averaged just 125 per year through 2006.²¹

South Africa has one of the highest violent crime rates in the world. According to the SAPS, the homicide rate in 2008 was 38.6 per 100,000 people, a 3.7 percent decrease from 2007.²² Such crime, along with concerns about police capabilities, has fueled regular incidents of vigilantism and a burgeoning private security industry. In April 2008, a deputy security minister made headlines when he told police to institute a "shoot to kill" policy, though it was never formally implemented. Civic groups and opposition parties have accused the government of doctoring crime data and failing to release up-to-date statistics to the public.

Prison conditions in South Africa often do not meet domestic or international standards. According to the Department of Correctional Services, the country's 243 prisons suffer from overcrowding that reaches 143 percent of capacity (164,957 prisoners held in space meant to accommodate 114,800). There have been reports of prisoners being physically and sexually abused by both fellow inmates and prison employees. In 2006, a government commission of inquiry found corruption, maladministration, and sexual violence to be rife in the penal system. Over 40 percent of inmates are infected with HIV, and health services, while improving, are inadequate. Excessive pretrial detention and negligent conditions for pretrial detainees were cited by a UN Working Group in 2005 as major shortcomings of the South African penal system. While most prisoners wait an average of three months before trial, some must wait up to two years. At the end of 2008, 50,284 prisoners (over 30 percent) had yet to be sentenced.

The constitution prohibits both state and private discrimination on the basis of "gender, sex, pregnancy [or] marital status,"²³ and imbues the state with a positive duty to prevent discrimination via national legislation—a duty that has been confirmed by the Constitutional Court. While the constitution allows the option and practice of customary law, it—along with the Recognition of Customary Marriages Act of 1998—does not allow such law to supersede women's constitutional rights. Nevertheless, women suffer *de facto* discrimination with regard to marriage, divorce, inheritance, and property rights.²⁴ For example, rural women are often prevented from acquiring land under the 2004 Communal Land Rights Act, which transferred effective control of communal lands to traditional councils. Women are also subject to sexual harassment and wage discrimination in the workplace, and are not well represented in top management positions. However, prior to the April 2009 elections, women held 132 seats in the 400-seat NA,²⁵ and headed 12 of 28 ministries and four provincial governments; in 2008, Baleka Mbete replaced Phumzile Mlambo-Ngcuka as deputy president.

Domestic violence and rape, both criminal offenses, are serious problems; South Africa has one of the world's highest rates of sexual abuse. The country's high rate of HIV infection, as well as a popular belief that HIV/AIDS can be

cured by sexual intercourse with a female virgin, makes incidents of rape particularly worrisome. Despite the government's operation of women's shelters and sexual offense courts, reporting and investigation of these crimes are hampered by societal attitudes and a lack of resources. In December 2007, the government passed a long-awaited Sexual Offenses Bill, which expanded the definition of rape to include male victims and codified the offenses of rape and sexual violence. However, a 2009 study by the Medical Research Council found that one in four South African men admitted to having raped at least one woman.²⁶

No law specifically prohibits trafficking in persons, and South Africa serves as a destination, source, and transit point for trafficked women.²⁷ However, the government has prosecuted traffickers—mostly in sexual offense courts—under a number of existing laws and cooperated with nongovernmental organizations that work on the issue.

As with gender discrimination, the constitution prohibits discrimination based on “race . . . ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”²⁸ State entities such as the South African Human Rights Commission (SAHRC) and the Office of the Public Prosecutor (OPP) are empowered to investigate and, with respect to the OPP, prosecute violations of antidiscrimination laws. Citing the legacy of the apartheid system, Parliament has passed extensive legislation mandating affirmative action for previously disadvantaged groups (defined as “Africans,” “Coloureds,” and “Asians”) in employment and education. However, racial imbalances in the workforce persist. According to the 2007 Department of Labor Employment Equity Report, Africans and Coloureds accounted for 28.8 percent of top management, 32.4 percent of senior management, and 41.3 percent of middle management positions despite representing 87.9 percent of the country's economically active population.²⁹ The government has also focused (with mixed results) on reforming inequities in housing, health care, and land ownership. There were a number of racist attacks on black South Africans in 2008, including a racially motivated shooting spree in North West province that killed four people and wounded nine. The nomadic Khoikhoi and Khomani San peoples, indigenous to South Africa, suffer from social discrimination and poor access to courts and the legal system.

South Africa has one of the world's most liberal legal environments for homosexuals. The 2006 Civil Unions Act legalized same-sex marriage, and a 2002 Constitutional Court ruling held that homosexual couples should be allowed to adopt children. Nevertheless, a report issued by the Human Sciences Research Council in 2006 documented a recent increase in hate crimes against homosexuals. While discrimination against disabled people is prohibited by the constitution and monitored by the Office on the Status of Disabled People, the SAHRC reports that “there is urgent need to redress violation of disability rights,” especially for children.³⁰

Increased illegal immigration, particularly from Zimbabwe and Mozambique, has led to a rise in xenophobic attacks by police and vigilantes. In May 2008, a

wave of attacks across the country led to the deaths of 62 suspected foreigners and the displacement of some 80,000 others.³¹ In cooperation with the UN High Commission on Refugees and local CSOs, the provincial governments in Gauteng, Western Cape, and KZN set up 94 camps to provide temporary shelter for roughly 15,000 displaced people.³² While some foreigners were repatriated and others opted for reintegration into local communities, about 2,000 were forced to leave after the provincial governments shut down the camps that fall. Immigration and police forces have been accused of abusing illegal immigrants and detaining them longer than allowed under the Immigration Act, particularly at the Musina refugee center. According to Lawyers for Human Rights, “Hundreds of men, women and children are deported from the facility on a daily basis, in some cases, regardless of whether they have valid asylum claims, or in many circumstances are even documented.”³³

Freedom of religion is constitutionally guaranteed and actively protected by the government in practice. There is no official religion, though the majority of South Africans are Christians. The state is not involved in the appointment of religious leaders or the internal workings of religious organizations; in fact, the government does not require religious groups to be licensed or registered. While the government allows public schools to include general “religious education” in age-appropriate curriculums, it is not required. Preaching the tenets of a specific faith (“religious instruction”) is not permitted in public schools.³⁴

Freedoms of association and peaceful assembly are secured by the Bill of Rights, and South Africa features a vibrant civil society. Protests and demonstrations are common and generally peaceful. However, a number of the thousands of protests mounted each year over poor service delivery have turned violent, and the police have used force to disperse them.³⁵ South Africans are free to form, join, and participate in independent trade unions. Labor rights under the 1995 Labor Relations Act are respected, and more than 250 trade unions exist. COSATU, which claims over two million members, is part of a tripartite governing alliance with the ANC and the SACP. Strike activity is common. In May 2007, COSATU led a four-week strike by some 500,000 public-sector workers to demand higher pay. The strike—the largest in the democratic period—led to the closure of many hospitals and schools, as well as several violent confrontations involving strikers, security forces, and replacement workers.³⁶ In late June, the action was called off after the government agreed to a 7.5 percent pay increase.

RULE OF LAW

4.28

INDEPENDENT JUDICIARY	4.60
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	4.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.50
PROTECTION OF PROPERTY RIGHTS	4.00

The independence of the South African judiciary is guaranteed by the constitution. While the courts have operated with substantial autonomy in the post-apartheid era, they have been exposed to increased political interference in recent years. The chief justice and deputy chief justice of the Constitutional Court (CC) are appointed by the president after consultation with the Judicial Service Commission (JSC),³⁷ and with the leaders of parties represented in the National Assembly. The president appoints judges to the CC and other courts—including the Supreme Court of Appeals—on the advice of the JSC. Constitutionally, the “racial and gender composition of South Africa” must be considered in the selection of judges. Judges may only be removed from office through impeachment by the NA.³⁸

The prosecution of Jacob Zuma on corruption charges—originally brought in 2005—for his role in the Arms Deal (see Anticorruption and Transparency) has exposed the judiciary and prosecutors to numerous attempts at political interference. A succession of court rulings threw out and then allowed the reinstatement of the charges two times between 2006 and 2009, and in the second rejection of the charges, the judge said he believed Zuma’s prosecution to have been at least partly motivated by political interference from the executive, then led by Mbeki. In a related incident, the CC in 2008 formally accused a Cape High Court judge of attempting to influence it in Zuma’s favor. Ultimately, two weeks before the April 2009 elections, prosecutors dropped the case against Zuma on the grounds that the reinstatement of the charges in 2007 had been politically motivated.

In December 2005, the government introduced a package of bills intended to reform apartheid-era structures and extend more executive control over judicial administration, but the plan was withdrawn for further consultation in the face of widespread opposition from legal professionals and CSOs, who saw it as a threat to judicial independence. At its December 2007 national conference, the ANC endorsed making the CC the highest court for both constitutional and nonconstitutional matters, demoting the Supreme Court of Appeals to an intermediate appellate body.³⁹ Prominent legal scholars criticized the plan, claiming that it would draw out cases and overload the CC.⁴⁰

The government generally complies with judicial decisions, and instances of noncompliance are attributable mostly to lack of capacity and efficiency rather than to willful disregard.⁴¹

Criminal defendants are presumed innocent until proven guilty, and the constitution provides procedural rights including the right to a fair, public trial conducted before “an ordinary court...without unreasonable delay,” the right of appeal to a higher court, and the right to independent legal counsel. Those unable to afford such counsel have the right to an assigned, state-funded legal practitioner “if substantial injustice would otherwise result.”⁴² In practice, staff and resource shortages undermine the rights to a timely trial and legal counsel, particularly for poor South Africans. These shortages have also produced a significant backlog of cases.

The National Prosecuting Authority (NPA) is ensured *de jure* independence by the constitution and the National Prosecuting Authority Act of 1998. The presidentially-appointed National Director of Public Prosecutions (NDPP) is the head of the NPA, reports to Parliament, and is accountable to the justice minister.

Since 2005, the independence of the NPA and NDPP has been compromised. In October 2008, the NPA's Directorate of Special Operations—a unit known as the Scorpions that focused on investigating organized crime and corruption—was dissolved by Parliament and absorbed into the SAPS. The ANC had passed a resolution to that effect at its 2007 national conference, after the Scorpions' methods while investigating Zuma and other high-profile figures were condemned by Zuma's allies in the ANC, COSATU, and the SACP. The unit's dissolution was opposed by a wide array of civic organizations and opposition parties.

In 2007, Justice Minister Brigitte Mabandla suspended Vusi Pikoli as NPDD. While the suspension was attributed to “an irretrievable breakdown” in Pikoli's relationship with Mabandla, it later emerged that the move was at least partly related to Pikoli's approval of an arrest warrant for police commissioner Jackie Selebi, a powerful politician who was eventually charged with corruption and defeating the ends of justice through his association with an organized crime boss.⁴³ A commission of inquiry cleared Pikoli of wrongdoing in November 2008, but President Motlanthe formally dismissed him in December on the grounds that he was “not sensitive enough to matters of national security.”⁴⁴ Pikoli has appealed to the Pretoria High Court to reverse the decision. Selebi was set to stand trial in 2009.

According to the constitution, the president is the commander in chief of the country's military, the South African National Defence Force (SANDF). It is managed by a civilian defense minister, and overseen by Parliament's Joint Standing Committee on Defence and the Portfolio Committee on Defence.⁴⁵ A defense secretariat within the Department of Defence is headed by a civilian secretary and includes the chief of the SANDF, the force's top uniformed officer. Tasked mostly with maintaining external security, the SANDF also has some domestic obligations. Military personnel generally respect human rights, and soldiers undergo human rights training programs. However, there have been reports of abuses. Military personnel have been accused of abusing and demanding bribes from migrants on South Africa's northern border. During the wave of xenophobic attacks in May 2008, the SANDF helped transport police to affected areas and were deployed in Gauteng to assist police with “cordons and searches.”⁴⁶

There are ongoing tensions in South Africa between maintaining the rule of law, promoting economic growth, and remedying the country's gross inequities in land ownership—the most enduring legacy of colonial and apartheid rule. The state generally protects citizens from arbitrary deprivation of their property. Section 25 of the constitution states that “no one may be deprived of

property except in terms of law of general application,” meaning property can be expropriated for a public purpose or in the public interest, subject to negotiated or court-mandated compensation based on market principles. Notably, the “public interest” includes “the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources; and property is not limited to land.” The constitution also provides that South Africans affected by past racially discriminatory laws are entitled to restitution, redress (including redistribution), or secured land-tenure rights.⁴⁷

Despite being supported by a series of legislative acts and much political rhetoric, South Africa’s land reform program has proceeded slowly. In 2009, the Department of Land Affairs reported that only 18 percent of land was owned by black South Africans (including communal land and excluding state-owned land), an increase of only 4.7 percent since 1994; whites own about 46 percent.⁴⁸ As a result, thousands of black farm workers suffer from insecure tenure rights, and illegal squatting on white-owned farms and attacks on the owners are major problems. The government has vowed to transfer 30 percent of land to black owners by 2014, and has agreed to reconsider its “willing buyer, willing seller” policy in favor of a more expedient approach. In 2007, the government for the first time expropriated a farm, compensating the owners with US\$4.9 million. In June 2008, the government presented legislation allowing state agencies to more rapidly expropriate farmland and other capital, but the bill was shelved in August due to major civic and opposition pressure. In March 2009, Land Affairs Minister Lulu Xingwana warned recipients of redistributed land that the government would reclaim farmland that was not being used productively.⁴⁹

A majority of the country’s business assets remain in the hands of white owners. Beginning with the Mbeki administration, the government has implemented a Black Economic Empowerment (BEE) program with the aim of securing “significant increases in the numbers of black people that manage, own and control the country’s economy, as well as significant decreases in income inequalities.”⁵⁰ The state’s official definition of “black” includes African, Coloured, Indian, and—as of June 2008—Chinese South Africans. The BEE program requires private-sector firms to meet a range of affirmative-action requirements concerning ownership, management control, employment equity, skills development, preferential procurement, enterprise development, and socioeconomic development.⁵¹ Those that fail to meet these requirements cannot gain access to licenses, government tenders, and sales of state-owned enterprises.⁵² Between 1998 and 2008, BEE-related transactions moved assets worth about US\$25 billion.⁵³ The program has been strongly criticized for concentrating the newly black-owned resources in the hands of a few, politically connected recipients.

Separately, a state-sponsored effort to revamp downtown Johannesburg has evicted hundreds and potentially thousands of squatters from inner-city buildings. In January 2009, police evicted about 1,500 people living in the Central Methodist Church in Johannesburg, detaining scores. The raid was aimed at

seizing illegal drugs, guns, and immigrants, though human rights groups condemned the police for using excessive force, violating detainees' due process rights, and lacking proper warrants to conduct the operation.

ANTICORRUPTION AND TRANSPARENCY	3.90
ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.50
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	4.00
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	3.75
GOVERNMENTAL TRANSPARENCY	4.33

There are several agencies with a legal mandate to combat graft by public officials, but enforcement of anticorruption laws is a major problem. Petty corruption is a regular part of South Africans' interactions with state authorities, and the awarding of state contracts is heavily politicized. South Africa was ranked 54 out of 180 countries surveyed in Transparency International's 2008 Corruption Perceptions Index.

Chapter 9 of the constitution established three institutions that deal with corruption: the Office of the Auditor-General of South Africa (AGSA), the Public Protector (PP), and the IEC (see Accountability and Public Voice). The AGSA is responsible for reporting to the NA on the finances of any agency receiving public funds. These reports are accessible to the public free of charge. While the AGSA's independence is constitutionally guaranteed, its autonomy was called into question by former auditor-general Shauket Fakie's conduct vis-à-vis the Arms Deal (see below). Incomplete reporting by public agencies, particularly at the provincial and municipal levels, hampers the institution's efforts, as does the lack of resources, adequate staff, and a positive obligation on the part of other state bodies to act on AGSA resolutions.⁵⁴

The PP is the national ombudsman, empowered to investigate maladministration, abuse of power, improper conduct, and acts of omission that result in prejudice to another person. Citizens may report a matter directly to the PP.⁵⁵ In addition, a public protector is appointed in every province. Although the office is ostensibly independent, current PP Leonard Mushwana, a former ANC MP, has been accused of inhibiting investigations of senior ANC members and the party itself. Because the PP's office does not often initiate its own investigations and cannot impose penalties, its effectiveness is limited.⁵⁶ As with the AGSA, the public can access the PP's reports promptly and free of charge.

Beyond the Chapter 9 institutions, several other agencies and legislative instruments contribute to South Africa's anticorruption efforts with varying degrees of success. Within the executive and legislative branches, the separation of public office from personal interests is superficially achieved by the Executive Members Ethics Act, the Code of Conduct for Assembly and Permanent Council Members, and the deliberations of the Joint Committee on Ethics and

Members' Interests. However, while these mechanisms mandate that the relevant officials disclose private financial assets and interests, the extent of disclosures is inconsistent among the national, provincial, and local governments, and none have legitimate oversight or enforcement mechanisms. Moreover, none of the systems have adequate postemployment restrictions, exacerbating the phenomenon of a "revolving door" between government and business.⁵⁷ Notably, while both executive and legislative officials' financial disclosures are legally available to the public, those of executive officials, particularly the president, are reported to be substantially more difficult to obtain. In 2006, then auditor-general Fakie reported that more than 14 cabinet ministers and deputies, along with 50,000 other public servants, had failed to publicly declare their business interests as required by law. There are no penalties for such failures in practice.

In addition to the Arms Deal affair, executive and legislative officers have been involved in a number of corruption scandals in recent years. An investigation into the abuse of travel vouchers by (mostly ANC) lawmakers, launched by the NPA and the Scorpions in 2004, continued to produce controversy in 2009. The probe resulted in charges against over 100 MPs, a fifth of whom pleaded guilty to fraud in 2005 and 2006. After over 60 MPs refused to pay creditors of the travel agency involved in the fraud, the NA itself purchased the debt in March 2009, effectively absolving the members involved—including high-ranking executive officials⁵⁸—of paying either the state or the creditors for their abuses.

The Public Service Commission (PSC) oversees the Department of Public Service and Administration (DPSA) and is responsible for monitoring and evaluating the public sector, including cases of public corruption. The Public Service Regulations (2001) require senior public officials and members of the PSC to submit disclosure forms, but adherence to the regulations is weak and has worsened over time.⁵⁹ Moreover, sanctions for failing to submit the requisite forms are virtually nonexistent. Civil servants convicted of corruption are not banned from future government work, and the civil service has no restrictions on post-public service employment. Corruption, particularly the exchange of small bribes, is a significant problem in the civil service. The Department of Home Affairs is widely considered the most corrupt government ministry, with bribes regularly used to gain preferential access to official documentation and to avoid deportation.

The Protected Disclosures Act legally protects whistleblowers from various forms of retribution, but it does not protect their identity, and in practice they are rarely shielded from negative repercussions. Moreover, internal mechanisms for acting on reports of corruption are unclear, ineffective, and inconsistent across provinces and municipalities. The PSC and the DPSA Anti-Corruption Unit administer a national hotline for civil servants to report instances of corruption within their ranks. The PSC reported that 4,182 allegations were made via the hotline between September 2004 and November 2007. Of the 2,296 that were deemed related to corruption, only 142 cases were resolved.⁶⁰

Chapter 10 of the constitution states that “transparency [in public administration] must be fostered by providing the public with timely, accessible and accurate information.” In addition, Section 32 of the Bill of Rights grants “everyone” the right of access to “any information held by the state” (with exceptions for issues like national security), and mandates that national legislation be enacted to this effect. The 2000 Promotion of Access to Information Act and the 2002 Amendment Act duly guarantee citizens’ access to government information, but enforcement suffers from a tedious application process, delays or inaction in response to requests, and a lack of explanation for most request denials. According to the Open Democracy Advice Center, an appeal to a denied information request can take up to six months, not including court time, and can involve prohibitive costs.⁶¹

The executive dominates the budget-making process. While the legislature must approve the budget, effective legislative oversight is greatly hampered by Parliament’s lack of both formal amendment powers and preapproval of executive contracts. The Standing Committee on Public Accounts (SCOPA), Parliament’s primary public funds oversight body, lacks independence and clear enforcement mechanisms. However, the Finance and Budget Joint Committees are more assertive vis-à-vis the executive.⁶² The 1999 Public Finance Management Act (PFMA) and the 2003 Municipal Finance Management Act provide for a substantial degree of transparency in the use of national, provincial, and local government funds. Both mandate regular expenditure reports from departments and public enterprises to treasuries, and require the annual submission of audited financial statements to Parliament. They also place a positive obligation on all departments to submit an anticorruption strategy to the national Treasury. In addition, the AGSA is obliged to monitor government spending and adherence to relevant regulations. Critics of the PFMA’s efficacy point to the questionable independence and inadequate capacity of the AGSA, as well as “the absence of a legal requirement for the publication of contingent liabilities and extra-budgetary activities.”⁶³ Accurate and timely information on regular budgets and expenditures is easily available to the public.

The government controls eight state-owned enterprises (SOEs) and monopolizes transportation (through Transnet) and electricity provision (through Eskom). While Eskom is subject to an official energy-sector regulator, other SOEs report to the Department of Public Enterprises, which is overseen by Parliament’s Portfolio Committee on Finance.⁶⁴ Oversight agencies are well funded, but they have been criticized as unprofessional and do not regularly initiate investigations of or impose penalties on officials suspected of corruption.⁶⁵ By law, procurement processes require competitive bidding and limit sole sourcing, and they are generally transparent. A number of laws require officials to disclose potential conflicts of interest, and the 2003 Supply Chain Management Framework devolved procurement responsibilities to accounting officers in government departments and away from the centralized State

Tenders Board. A major legal exception to competitive bidding is the 2003 Black Economic Empowerment Bill (see Rule of Law). In 2006, the *Mail & Guardian* reported that interests associated with the Chancellor House, the ANC's in-house investment firm, were among the most common beneficiaries of BEE tenders. In February 2008, the Chancellor House withdrew from two multibillion-rand deals with Eskom following both internal and outside condemnation of the implied relationship between the ruling party and a major state-owned industry.

Controversies surrounding government contracting have dominated headlines in recent years. Most notable is the US\$4.8 billion Strategic Defence Procurement Package (Arms Deal) of 1999 and the resultant raft of corruption charges against current president Jacob Zuma. Investigations by the Scorpions led to the 2005 conviction of businessman Schabir Shaik, Zuma's financial adviser, on charges of paying Zuma a series of bribes totaling about US\$170,000 to secure the success of contract bids by French arms manufacturer Thint. After Zuma himself was charged in 2005, Mbeki sacked him as deputy president. In a separate Arms Deal case, former ANC chief whip Tony Yengeni was convicted of corruption and lost his parliamentary seat, but won parole in January 2007 after serving only five months of a four-year prison sentence. In February 2009, Shaik was also granted parole—officially on medical grounds—only two years into a 15-year sentence, and two days after Zuma announced that he would consider pardoning Shaik if elected president.

Largely in response to the Arms Deal scandal, Mbeki in 2004 signed the Prevention and Combating of Corrupt Activities Act. It established more workable definitions of illegal corruption and extortion, reinstated the common law criminality of bribery, extended the presumption of *prima facie* evidence to facilitate prosecution, and expanded the scope of the law to include all public officials and private citizens. The act also established a Register of Tender Defaulters that excludes persons and companies convicted of corruption from government business for set periods of time, a change that has been largely effective.

The South African media have reported aggressively on the Arms Deal and other scandals, and allegations of corruption in general are given wide airing, particularly in print media. In response, government officials have regularly accused the media of irresponsible reporting and racism. In August 2008, the *Sunday Times* reported that Mbeki himself was paid about US\$3.8 million by German arms manufacturer Ferrostaal, most of which was given to the ANC. Both Mbeki and the party denied the allegation.

The South African Revenue Service (SARS) is a well-funded, highly professional body with an excellent record of fairly enforcing the tax laws. The government gives foreign assistance to neighboring Zimbabwe and contributes dues to the SADC and the AU. These funds are distributed in accordance with South African law.

RECOMMENDATIONS

- As endorsed by the 2007 ANC national conference in Polokwane, legislation mandating transparency in private contributions to political parties should be pursued. Parties should be required to disclose the source and amount of political contributions.
- Steps should be taken to protect the independence of the SABC, including the depoliticization of the selection of SABC board members and the appointment of a nonpartisan head of news with experience in the private media sector.
- In order to manage the continuing flow of Zimbabweans into South Africa and better protect their rights, the government should no longer treat Zimbabweans as “temporary economic migrants.” Instead, they should be granted a special temporary status under the 2002 Immigration Act that legalizes their presence in South Africa and prevents deportations until the political situation in Zimbabwe stabilizes. The SAPS should set up a task force to monitor the ongoing reintegration of migrants in communities from which they fled during the 2008 wave of attacks.
- Staff and resources of the disbanded Scorpions should continue to function as a coherent, independent unit within the SAPS, tasked with investigating corruption and organized crime. The chief of this unit should be selected from outside the pool of ANC cadres to ensure independence.
- The BEE good practice “scorecards” promulgated in 2007 must be amended to include a score for potential conflicts of interest with awarding authorities and a score for past performance on government tenders.
- Restrictions on post-public service employment in the private sector must be introduced and enforced, either as amendments to the Executive Members Ethics Act, the Code of Conduct for Assembly and Permanent Council Members, and the Public Service Regulations Act, or as new items of legislation.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

- ¹ This applies to all citizens aged 18 or over, including prisoners. The Electoral Act was amended in 2004 to allow government officials, students, and citizens traveling abroad to vote in South African elections.
- ² Eleven parties ran candidate lists at the national level and in all nine provinces.
- ³ “Threats and Killings: Just Another SA Election,” *Mail & Guardian*, April 1, 2009.
- ⁴ Electoral Institute of Southern Africa (EISA), *EISA Election Update No. 3* (Johannesburg: EISA, 2009).
- ⁵ Institute for Democracy in Africa (IDASA), *Democracy and Party Political Funding: Pursuing the Public’s Right to Know* (Cape Town: IDASA, May 2005).

- ⁶ The database is located at <http://www.whofundswwho.org/>.
- ⁷ "The ANC's New Funding Front," *Mail & Guardian*, November 10, 2006.
- ⁸ The NCOP consists of 10 members from each province: 6 "permanent delegates" appointed by the provincial legislature to five-year terms, and 4 "special delegates" appointed by the legislature in consultation with the premier on a temporary basis.
- ⁹ H. van Vuuren, *National Integrity Systems Country Study Report: South Africa 2005* (Transparency International, March 2005), 36.
- ¹⁰ The panel was also triggered by South Africa's participation in the African Peer Review Mechanism (APRM) process.
- ¹¹ Parliament of the Republic of South Africa, *Report of the Independent Panel Assessment of Parliament* (Cape Town: Parliament of the Republic of South Africa, January 2009), 13.
- ¹² Parliament's "presiding officers" are the speaker and deputy speaker of the NA and the chairperson of the NCOP.
- ¹³ A body of this sort was included in a group of four judicial bills introduced by the government in 2007. The bills were withdrawn due to concerns about their impact on judicial independence.
- ¹⁴ Public Service Act, No. 103 of 1994, Chapter IV (11).
- ¹⁵ *Ibid.*
- ¹⁶ South African Public Service Commission (PSC), *Report on Measuring the Efficacy of the Code of Conduct for Public Servants* (Cape Town: PSC, 2006).
- ¹⁷ "ANC's View on Media Tribunal Shifting," *Mail & Guardian*, March 24, 2009.
- ¹⁸ The paper was forced to return copies of medical records and pay legal fees, but was allowed to keep reporting on the story.
- ¹⁹ Independent Complaints Directorate (ICD), *Annual Report of the Independent Complaints Directorate 2007/2008* (Pretoria: ICD, 2008).
- ²⁰ Johan Burger and Cyril Adonis, "A Watchdog without Teeth? The Independent Complaints Directorate," *South African Crime Quarterly* 24 (June 2008): 31.
- ²¹ A. Faul, *Corruption and the South African Police Service: A Review and Its Implications* (Pretoria: Institute for Security Studies, 2007).
- ²² South African Police Service (SAPS), *Crime Statistics* (Pretoria: SAPS, March 2008).
- ²³ *Constitution of the Republic of South Africa 1996*, Chapter II (9).
- ²⁴ Women's Rights Project, *An Overview of Women's Rights in African Customary Law* (Johannesburg: Legal Resources Centre, 2004).
- ²⁵ This ranks South Africa at 17th in the world by percentage of women in parliament (as of March 31, 2009). See Inter-Parliamentary Union, "Women in National Parliaments: World Classification."
- ²⁶ "Quarter of Men in South Africa Admit Rape," *Mail & Guardian*, June 18, 2009.
- ²⁷ South African Law Reform Commission, *Thirty-Sixth Annual Report* (Johannesburg: South Africa Law Reform Commission, 2008).
- ²⁸ *Constitution of the Republic of South Africa 1996*, Chapter II (9).
- ²⁹ South African Department of Labour, *Employment Equity Report 2007* (Pretoria: South African Department of Labour, 2007).
- ³⁰ South African Human Rights Commission (SAHRC), *Human Rights Development Report 2008* (Pretoria: SAHRC, 2008).
- ³¹ "Xenophobia: A Special Report" (assorted articles), *Mail & Guardian*.
- ³² *Ibid.*
- ³³ Lawyers for Human Rights (LHR), *Monitoring Immigration Detentions in South Africa* (Johannesburg: LHR, 2008).

- ³⁴ Bureau of Democracy, Human Rights, and Labor, "South Africa," in *International Religious Freedom Report 2008* (Washington, D.C.: U.S. Department of State, September 2008).
- ³⁵ Susan Booysen, "With the Ballot and the Brick: The Politics of Attaining Service Delivery," *Progress in Development Studies* 7, no. 1 (January 2007): 21–32.
- ³⁶ "Army Deployed in South Africa Strike," British Broadcasting Corporation (BBC), June 8, 2007.
- ³⁷ The Judicial Service Commission Act of 1994 established the JSC to advise the government on matters concerning the judiciary and the administration of justice.
- ³⁸ *Constitution of the Republic of South Africa 1996*, Chapter XIII (177).
- ³⁹ "Proposal to Merge Courts Undermines Judiciary," *Cape Times*, July 14, 2008.
- ⁴⁰ See, for example, "A Serious Slap in the Face," *Mail & Guardian*, February 17, 2008.
- ⁴¹ Global Integrity, "South Africa," in *2008 Global Integrity Report* (Washington, D.C.: Global Integrity, 2009).
- ⁴² *Constitution of the Republic of South Africa 1996*, Chapter II (35).
- ⁴³ "The Desperate Bid to Shield Selebi," *Mail & Guardian*, October 5, 2007.
- ⁴⁴ "Motlanthe Decides against Reinstating Pikoli," *Mail & Guardian*, December 8, 2008.
- ⁴⁵ James Ngculu, "Parliament and Defence Oversight: The South African Perspective," *African Security Review* 10, no. 1 (2001).
- ⁴⁶ Henri Boshoff, "Army May Halt Xenophobic Violence in South Africa," *ISS Today*, May 21, 2008.
- ⁴⁷ *Constitution of the Republic of South Africa 1996*, Chapter II (25).
- ⁴⁸ The Centre for Development and Enterprise, however, claims that an additional 2.1 percent of land has been transferred from white to black owners via private transactions, which are not included in the DLA numbers. See Centre for Development and Enterprise (CDE), *Land Reform in South Africa: Getting Back on Track* (Johannesburg: CDE, May 2008).
- ⁴⁹ "Idle SA Farmers Face Losing Land," BBC, March 4, 2009.
- ⁵⁰ Department of Trade and Industry, *South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment* (Pretoria: Department of Trade and Industry, 2003), 12.
- ⁵¹ Department of Trade and Industry, "B-BBEE Codes of Good Practice."
- ⁵² Broad-Based Black Economic Empowerment Act, No. 53 of 2003.
- ⁵³ "Black Economic Empowerment: Key Economic Driver," SouthAfrica.info.
- ⁵⁴ Global Integrity, "South Africa."
- ⁵⁵ Public Protector Act, No. 23 of 1994.
- ⁵⁶ EISA, "South Africa: Office of the Public Prosecutor," August 2009.
- ⁵⁷ van Vuuren, 33. It should be noted that provincial arrangements for some post-employment restrictions are in place in Gauteng and the Western Cape.
- ⁵⁸ According to *Business Day*, then home affairs minister Nosiviwe Mapisa-Nqakula owed 43,708 rand, Land Affairs and Agriculture Minister Lulu Xingwana owed 54,867 rand, sports committee chairman Butana Khompela owed 48,720 rand, and Free State premier Beatrice Marshoff owed 64,000 rand. Wyndham Hartley, "Travelgate Creditors Postpone Meeting," *Business Day*, May 23, 2008.
- ⁵⁹ Republic of South Africa, *Public Service Regulations*, 2001.
- ⁶⁰ Professional Standards Committee (PSC), *Measuring the Effectiveness of the Anti-Corruption Hotline* (Cape Town: PSC, 2007).
- ⁶¹ Open Democracy Advice Center, *Whistle Blowing, the Protected Disclosures Act, Accessing Information and the Promotion of Access to Information Act: Views of South Africans* (Cape Town: Open Democracy Advice Center, 2007).

⁶² Ibid.

⁶³ IDASA, “How Transparent Is the Budget Process in South Africa?” Budget Briefs, no. 109 (October 2002): 2.

⁶⁴ National Energy Regulator of South Africa (NERSA), “About NERSA: Profile”; Department of Public Enterprises, “About DPE: Overview.”

⁶⁵ Global Integrity, “South Africa.”