

# **SOUTH AFRICA**

## **ANNUAL REPORT 2007**

Torture of detainees by police and misuse of lethal force continued to be reported. A Commission of Inquiry found that corruption and maladministration were institutionalized in South Africa's prisons and that sexual violence was rife. Asylum-seekers continued to have difficulty accessing asylum determination procedures and hundreds of suspected illegal immigrants were detained beyond the legal time limit. The remaining 62 death sentences were replaced with alternative sentences. Although the number of people receiving anti-retroviral treatment for HIV/AIDS increased, fewer than half of those needing it had access. The number of reported rapes remained high, and legal reforms affecting access to justice for survivors were further delayed.

### **Background**

Political tensions within the ruling African National Congress (ANC) and between the ANC and its Alliance partners were marked at the time of court proceedings relating to corruption and rape charges against former Deputy President Jacob Zuma. His supporters accused the National Directorate of Public Prosecutions (NDPP) of having a political agenda against Jacob Zuma.

In local government elections in March, the ANC won a majority in most municipal councils, although the government's record on delivery of socio-economic transformation continued to be challenged.

Political violence in KwaZulu Natal led to the deaths of a number of ANC and Inkatha Freedom Party candidates.

Business, church and other delegations appealed to President Mbeki to take effective measures against high levels of violent crime. The government placed the investigative arm of the NDPP, known as the Scorpions, under the political control of the Minister of Safety and Security.

The Deputy President and Deputy Minister of Health began a dialogue with civil society organizations on achieving a more effective response to the HIV/AIDS pandemic.

### **Human rights violations by police**

Torture and misuse of lethal force against crime suspects continued to be reported, in a context of high levels of violent crime and police fatalities. Corroborated cases involved members of the South African Police Service (SAPS), particularly from the Serious and Violent Crime Units (SVCU), torturing suspects with suffocation and electric shock devices, as well as kicking and beating suspects. Several detainees died as a result. Interrogation sessions sometimes took place in informal locations. Torture equipment was found on the premises of the Vanderbijlpark SVCU after a court-ordered search.

- Musa Jan Sibiya died at Lydenburg police station in February after allegedly being assaulted by police. A state district surgeon reported he died from natural causes, but an independent postmortem found he had died from a ruptured bowel caused by a traumatic perforation.

- Msizwe Mkhuthukane died in February at East London police station after being similarly assaulted. He was denied urgent medical care in custody. On 1 November five police officers appeared in court on murder charges.

- A security guard, R, and his wife lodged a civil claim for damages against the police authorities after they were subjected to electric shock torture at Randburg police station on 1 May. R was also kicked, slapped and punched while handcuffed and tied at the ankles, and subjected to suffocation torture with plastic sheeting. He was transferred to Roodepoort police station and denied medical care until he was released uncharged with his wife on 4 May. The state denied any liability in response to the legal suit.

Protests continued against poor socio-economic conditions and forced evictions. Police appeared to have used excessive force in some cases, including, in June, against community members from

Maandagshoek, Limpopo, protesting against Anglo-Platinum use of their land for mining and, in September, against members of the Durban-based Shack-Dwellers Association (Abahlali baseMjondolo).

In July the Harrismith Regional Court acquitted three police officers of all charges arising from the death of 17-year-old Teboho Mkhonza and injuries to scores of others when police broke up a non-violent demonstration in August 2004. The court accepted defence evidence that the boy had died as a result of negligence by hospital staff. The police had opened fire without warning using illegal live ammunition. In October, 13 Harrismith community activists were acquitted of charges of public violence arising from the same demonstration.

On 26 July the Director of Public Prosecutions withdrew charges against 51 members of the Landless People's Movement who had been on trial since 2004 on charges under the Electoral Act.

### **Abuse of prisoners**

The 3,500-page report of the Jali Commission of Inquiry, appointed by President Mbeki in 2001 to investigate corruption and violence in prisons, was made public in November. Among its findings were that corruption and maladministration were institutionalized and that C-Max Super-Maximum security prison made routine use of solitary confinement and torture. It found that sexual violence was rife, with young, gay and transsexual prisoners most vulnerable, and that warders were implicated in many sexual assaults and in selling sexual favours by incarcerated youths to adult prisoners.

Impunity for abuses was fostered by management failure to institute hearings and follow up on criminal charges. Police investigations were also manipulated by prison staff. An example was the failure to discipline prison warders implicated in a mass assault on prisoners in Ncome prison in January 2003. Despite independent medical corroboration of allegations that prisoners had been beaten, the Department of Correctional Services (DCS) allowed the official investigation to lapse. The Jali Commission recommended charges against named DCS members in relation to this and some other incidents.

On 23 April the Port Elizabeth High Court ordered that prisoners at St Alban's Prison could consult their lawyers in private to prepare a civil claim for assault against the DCS. They had been denied access to lawyers after prison staff allegedly embarked on a mass assault of prisoners in retaliation for the killing of a colleague.

Inhumane prison conditions persisted due to severe overcrowding, with two thirds of prisons holding more than 100 per cent of their capacity.

### **Refugees and asylum-seekers**

The Department of Home Affairs (DHA) initiated new procedures at the Pretoria and Johannesburg Refugee Reception Offices in an effort to improve the management of over 1,000 new applications from asylum-seekers weekly. However, in December the Pretoria High Court ruled, in a case involving seven Zimbabweans, that the procedures were unconstitutional and unlawful, including the practice of issuing only 'appointment slips' to applicants, which left them without legal protection against arbitrary arrest, detention and deportation. The 'pre-screening' policy had resulted in unlawful rejections of applications. The Court directed the DHA to receive and process applications for asylum in a fair and non-discriminatory manner. The Cape Town High Court made a similar ruling in June.

Hundreds of suspected illegal immigrants detained at Lindela Repatriation Centre (Lindela) were unlawfully held beyond the period allowed under the Immigration Act (30 days or 120 days with a court warrant). In August the Johannesburg High Court ordered the DHA to release 57 Congolese nationals who were facing imminent deportation. The group included at least one recognized refugee, 18 who held asylum-seeker permits and nine with DHA 'appointment slips'. Forty-four of them had been held for between 35 days and 16 months. Also in August, at least 10 people with asylum-seeker permits were deported to Burundi.

Private security guards at Lindela appeared to have used excessive force in response to detainees' protests in July and November.

### **Unlawful transfer**

Police and DHA officials handed over Khalid Mehmood Rashid, a national of Pakistan, to Pakistan government agents in November 2005. He was flown out of South Africa on a flight with no number. Twelve months later, he had still not been produced in the Pakistan High Court in response to a habeas corpus petition. By the end of the year the Pretoria High Court had not given a ruling on whether the manner of Khalid Mehmood Rashid's removal from South Africa was unlawful and contrary to the country's international human rights obligations.

### **Death penalty**

The justice authorities completed the process of replacing the remaining 62 death sentences with alternative sentences by July. The Constitutional Court ruled on 30 November that the orders made under its 1995 judgement which found the death penalty to be unconstitutional had now been complied with fully by the government.

### **People living with HIV/AIDS**

UNAIDS reported in December that the HIV epidemic in South Africa continued to grow, with prevalence of HIV among women attending public antenatal clinics 35 per cent higher in 2005 than in 1999. Some 5.4 million people, including a quarter of a million children under 15, were living with HIV. In November the Department of Health reported that 273 accredited facilities were providing anti-retroviral treatment (ART) to 213,828 people, although some 300,000 others still needed access to it. Children's access to paediatric ART was also still limited. On 1 December the Deputy President announced the draft strategic plan for 2007 to 2011.

An application by 15 Durban Westville HIV-positive prisoners and the Treatment Action Campaign for prisoners to have access to ART was granted by the Durban High Court in June. The state appealed against this ruling and failed to implement an urgent interim order. In August the High Court found the state in contempt of court and ordered the original ruling to be implemented, along with other measures to give prisoners access to ART. By the end of November, four more prisons had been accredited to provide ART.

### **Violence against women and children**

Police statistics for the year April 2005 to March 2006 recorded 54,926 reported rapes, a decrease of 0.3 per cent, with 42.7 per cent of them against children under the age of 18.

In June, Parliament resumed discussion on the draft Sexual Offences Bill, which had been held up in the Department of Justice since 2004. Organizations assisting survivors of sexual violence and child sexual abuse remained concerned that the Bill did not adequately protect complainants, especially children, at the investigation and trial stages. The Bill, however, contained an expanded statutory offence of rape applicable to all forms of 'sexual penetration' without consent and defined forms of coercion which would indicate lack of consent. The state would be obliged to provide post-exposure prophylaxis to victims exposed to the risk of HIV and to develop a national policy framework to improve implementation of the Bill. It had not been passed by the end of the year.

Investigators, prosecutors and the courts remained restricted by the common-law definition of rape in their response to sexual violence cases. In July the Pretoria High Court upheld a conviction of rape in a magistrate's court against an accused charged with anally penetrating a nine-year-old child, on the grounds that the common-law definition of rape, which is limited to penile penetration of the vagina without consent, was inconsistent with the requirements of constitutional law. However, the High Court ruling was under appeal at the end of the year.

There were fears that the disestablishment of specialist detective units, including the unit responsible for investigating family violence and child sexual abuse, would undermine the effectiveness of police investigations. Community-based organizations produced evidence indicating that police had lost rape investigation dockets through inefficiency or corruption.

The high number of deaths of boys attending traditional circumcision schools - more than 100 in the preceding 10 years - prompted national public hearings by the South African Human Rights Commission (SAHRC) and two other statutory bodies. The hearings, conducted in October, were held in four provinces. The SAHRC also conducted hearings, in September, on school-based violence.

### **Impunity**

There was concern about the legality of prosecution guidelines approved by the Cabinet in 2005 and presented to Parliament in January 2006. The guidelines would give the NDPP the administrative discretion to allow immunity from prosecution for crimes "emanating from the conflicts of the past" for people who failed to apply for or were refused amnesty by the Truth and Reconciliation Commission's Amnesty Committee. While the applicant would have to disclose all the circumstances of the alleged offence, and the NDPP would have to obtain the views of any victims before arriving at a decision, there was no obligation to take into account the victims' views or provision for judicial assessment of the truthfulness of the evidence. The guidelines did not explicitly exclude from consideration for immunity crimes such as torture, crimes against humanity and war crimes.

As of 30 September, the government had paid reparations of R30,000 (approximately US\$4,200) to 15,520 individuals identified by the Truth and Reconciliation Commission as eligible because of human rights abuses before May 1994.

### **Freedom of expression**

In October a Commission of Inquiry into allegations of politically motivated interference in the output of the public broadcaster, the SABC, found that certain individuals were being excluded from interviews in news programmes for improper reasons. The Commissioners found that the head of news and current affairs, Dr Snuki Zikalala, had instructed staff not to use certain individuals on grounds which included their opinions on controversial issues, and that he had threatened to discipline some staff if they failed to follow these instructions. The SABC Board, who had appointed Dr Zikalala, did not make the report public. It made a failed attempt to get a High Court order compelling the Mail & Guardian newspaper to remove a leaked copy from its website.

## **ANNUAL REPORT 2006**

**There were incidents of police use of excessive force against demonstrators and ill-treatment of arrested suspects. The conduct of presiding magistrates and police investigators undermined the right to fair trial in several cases involving social movement protesters. Department of Home Affairs practices denied the majority of asylum-seekers access to refugee status determination procedures. Conditions in prison fell below international standards, largely as a result of acute overcrowding. Although an increased number of people clinically needing antiretroviral therapy for HIV/AIDS received treatment, the majority still had no access to treatment at public facilities. There was an increase in reported rapes and concern at delays in legal reforms affecting access to justice for survivors.**

### **Background**

Deputy President Jacob Zuma resigned under pressure in June, following the conviction on corruption charges of Schabir Shaik, his financial adviser. In November Jacob Zuma was indicted on corruption charges. These developments brought into the open differences within the ruling African National Congress (ANC) and between the ANC and its Alliance partners. With local government elections pending, ANC-dominated councils were increasingly targets of public protests for corrupt practices and their failure to deliver improvements in living standards. There was concern that municipal authorities misused their powers under the 1993 Gatherings Act in an attempt to suppress demonstrations by groups critical of their performance.

### **Human rights violations by police**

Police responded to the wave of public protests in most cases without resorting to the use of excessive force. However, there were incidents in which they misused rubber bullets – the weapon of “last resort” under South African Police Service (SAPS) regulations – in their response to demonstrations in the Cape Town and Durban areas, in Delmas, Queenstown and Johannesburg. There was also misuse of pepper spray, in particular by members of the Municipal Police Services in Cape Town where they used it to break up peaceful protests against local government authorities, and against criminal suspects under arrest.

- On 12 July unarmed members of the Treatment Action Campaign (TAC), who were involved in a protest over the slow roll-out of antiretroviral treatment, were baton-charged, tear-gassed and shot at with rubber bullets by police. The majority of the protesters were HIV-positive women. The police did not warn protesters before they forcibly dispersed them from the Frontier Hospital in the Eastern Cape. Fifty-four people were seriously injured. The National Commissioner of Police ordered a departmental investigation and the retraining of the police unit involved. The TAC lodged a complaint with the Independent Complaints Directorate (ICD) which was still investigating the incident at the end of the year.
- On 26 May, three Free State police officers were charged in the Harrismith regional court with murder and 16 counts of assault with intent to cause grievous bodily harm in connection with the fatal shooting of 17-year-old Teboho Mkhonza and the wounding of scores of other demonstrators on 30 August 2004.

### **Unfair trials**

- Fifty-one supporters of the Landless People’s Movement (LPM) remained on trial in the Lenasia Magistrate’s Court on a charge of breaching the Electoral Act by taking part in a demonstration on election day in April 2004. In June the magistrate rejected a defence application for her recusal (withdrawal from the case) on the grounds of bias after she made comments in open court that she had to report to the Minister of Justice about the trial. All representatives attending trial proceedings in August observed that the magistrate behaved in a hostile manner towards the accused. On 29 November the magistrate rejected a defence application for the dismissal of the charges. The magistrate did not give reasons for the ruling. The proceedings were postponed until March 2006.

In November in the Protea Magistrate’s Court, the presiding magistrate dismissed charges against a police officer in connection with the alleged torture of two LPM activists in April 2004. The magistrate, in acquitting the accused, reportedly attacked the complainants’ organization as “disrespectful” of the government and also accused the complainants of being motivated by a desire to “undermine state authority”

- In February, 13 officials and supporters of the Greater Harrismith Concerned Residents' Association from Intabazwe were charged with public violence and sedition in connection with a demonstration in August 2004. Five defendants were subjected to bail conditions which restricted their public political activities. On 10 February police allegedly arrested and assaulted Malefu Molaba, a local resident, while questioning her about the whereabouts of one of the accused, Neo Motaung. She lodged a complaint at Harrismith police station. In June, another accused, Sam Radebe, was allegedly assaulted and threatened by the police Investigating Officer. He laid a charge against the police officer at the Harrismith police station. In August the state withdrew the sedition charge and the court postponed the trial on the remaining charge until January 2006.

### **Prisoners' rights**

On 15 December the Jali Commission of Inquiry handed its report to the President after a four-year inquiry into corruption and violence in prisons; the report had not been made public by the end of the year.

The UN Working Group on Arbitrary Detention visited the country in September and expressed alarm at the "rate of overcrowding in detention facilities". The overcrowding, in some cases by over 300 per cent of capacity, and the resulting poor prison conditions led the Judicial Inspectorate of Prisons to recommend that minimum sentence legislation be allowed to lapse. The UN delegates noted, in respect of prisoners awaiting trial or sentence, a "lack of adequate facilities so blatant that they fall short of international guarantees". The Civil Society Prison Reform Initiative urged Parliament in November to support the development of rehabilitation programmes and non-custodial alternatives to imprisonment.

In November a non-governmental organization, the AIDS Law Project, began legal proceedings against the Head of Westville Correctional Centre, Durban, on behalf of 20 prisoners who were urgently in need of antiretroviral treatment but were effectively denied access to it because of the alleged failure by the Department of Health to equip prison hospitals for this task. The problem had not been resolved by the end of the year.

On 25 May the Constitutional Court confirmed the validity of the 1997 Criminal Law Amendment Act provisions which enabled the replacement of all death sentences. Forty of the original 465 prisoners who were under sentence of death at the time of the abolition of the death penalty in 1995 were still awaiting replacement sentences at the time of a further Constitutional Court hearing in October.

### **Violations of refugee rights**

The UN High Commissioner for Refugees, the courts, the South African Human Rights Commission and non-governmental organizations criticized the Department of Home Affairs (DHA) for failing to address organizational issues and arbitrary practices which prevented the majority of asylum-seekers from obtaining access to refugee status determination procedures and documentation in a timely manner. The closure in April of the Johannesburg area Refugee Reception Office (RRO) exacerbated the crisis. The effective denial of access to documentation left asylum-seekers at risk of arbitrary arrest, detention in police stations and in the Lindela Holding Facility, and deportation. It also meant that they were denied the right to work legally and to obtain health care or access to education. In August, the Minister of Home Affairs confirmed the government's determination to tackle these problems.

In October the report of the Ministerial Committee of Inquiry into deaths at the Lindela Holding Facility recommended urgent steps to address failures in the health care system and overcrowding at the facility. Lindela, which was run by a private company on behalf of the DHA, handled over 4,000 people per month awaiting deportation. Its clinic was found to have insufficient skilled staff and medicines and no emergency care procedures. On 28 October the Minister of Home Affairs stated that a new health care facility would be established.

- On 1 March asylum-seekers, frustrated with repeatedly queuing outside the Cape Town RRO, pushed their way into the office and refused to leave the premises. They were kicked and hit with batons by officials, according to witnesses and the testimony of the asylum-seekers. The Minister of Home Affairs concluded, on the basis of an inquiry into the incident, that "no excessive force was used" and that one of the officials had been threatened with a knife by an asylum-seeker. The Minister instructed that changes should be made in the system for managing applications.
- On 10 May, the Johannesburg High Court ordered the DHA to facilitate access to asylum determination procedures for 14 Ethiopians wrongly arrested and detained at Lindela. In

October lawyers secured the release from Lindela of a recognized refugee who was due to be deported to Rwanda.

- In a case brought by the Somali Refugee Forum, the Pretoria High Court on 11 November ordered the Minister and the DHA urgently to implement specific measures, including the reopening of the Johannesburg RRO, to ensure asylum-seekers had access without delay to asylum procedures. The government was ordered to file a report before 28 February 2006 on the extent of its compliance with the court order.

### **Access to health care for those living with HIV/AIDS**

In July the Department of Health's HIV and Syphilis Antenatal Sero-prevalence Survey stated that between 5.7 and 6.2 million South Africans had been infected with HIV by 2004. It noted an increase in prevalence among women attending antenatal clinics, the highest rates being at 38.5 per cent of women aged between 25 and 29. A report of the South African Human Sciences Research Council in November concluded from its household survey that women were disproportionately infected, particularly women aged between 15 and 24, who had an HIV incidence rate eight times higher than men of the same age.

By the end of the year there were 229 "accredited" public health facilities providing treatment. However, the World Health Organization expressed concern at the slow progress in the roll-out of the antiretroviral treatment programme and at official statements that alternative therapies alone could prolong the lives of those living with HIV/AIDS. In September the Department of Health reported that 86,000 people had access to antiretroviral treatment in public sector facilities, although this was still less than 20 per cent of those estimated to need this treatment. About 10 per cent of children needing treatment were receiving it. Obstacles to access to treatment included severe shortages of skilled medical staff. The Joint Civil Society Monitoring Forum reported in November that additional obstacles included "under-spending" of HIV/AIDS budgets by provincial departments of health, a scarcity of appropriate drugs and treatment programmes for HIV-positive children, and a lack of national political leadership.

### **Violence against women**

Police statistics for the year April 2004 to March 2005 recorded 55,114 reported rapes, an increase of 4.5 per cent over the previous year. Nationally, 40.8 per cent of the reported rapes were committed against minors and children.

In the period 2004/2005 the National Prosecuting Authority continued to develop dedicated sexual offences courts. The conviction rate in rape cases heard in these courts was at least 62 per cent, about 20 per cent higher than in the ordinary courts, which heard the bulk of cases.

Organizations involved in assisting survivors of sexual violence expressed concern at the continuing delays in the finalization of the Sexual Offences Bill, introduced in parliament in 2003 but referred back to the Department of Justice in early 2004.

- On 6 December, former Deputy President Jacob Zuma was charged in the Johannesburg Magistrate's Court with the rape of a 31-year-old woman. He was released on bail and the trial postponed until February 2006.
- On 8 December, Ncedile Ntumbukana was convicted of the rape and murder of Lorna Mlofana, a member of the TAC executive committee in Khayelitsha, Cape Town, in December 2003. She was beaten to death after telling him that she was HIV positive.
- At the end of the year a Free State police officer was still on trial for the repeated rape of a woman detainee in custody at Smithfield police station; the woman became pregnant as a result.

Two rulings by the Constitutional Court strengthened the protection of women's rights.

- On 13 June the Court ruled that a woman, referred to as N.K., who had been raped by three police officers while on duty, could sue the Minister of Safety and Security for damages. The Court held that in "committing the crime, the policemen not only did not protect the applicant, they infringed her rights to dignity and security of the person. In so doing, their employer's [the Minister's] obligation (and theirs) to prevent crime was not met".
- On 7 November the Court upheld the constitutionality of Section 8 in the Domestic Violence Act which allows a court issuing a protection order to authorize a warrant of arrest in the absence and without the knowledge of the respondent.

### **Impunity**

In September the Constitutional Court confirmed the State's right to re-indict Dr Wouter Basson, the former head of the military's covert chemical and biological warfare programme in the 1980s. The charges related to conspiracies to murder "enemies" of the then government outside the borders of the country. The charges had been quashed in 1999 by the trial judge.

In November the Butterworth Circuit Court sentenced two former members of the Security Police, Pumelele Gumengu and Aron Tyani, to 20 years' imprisonment each for the murder of an ANC supporter, Sthembele Zokwe, in January 1988. They were also convicted of the attempted murder of Sthembele Zokwe in 1987. On 27 March 2000 the Amnesty Committee of the Truth and Reconciliation Commission had rejected their applications for amnesty on the grounds that they had failed to make full disclosure, as required under the legislation, in relation to both incidents.

### **Discrimination and sexual identity**

On 1 December the Constitutional Court ruled that the definition of marriage under the common law was inconsistent with the Constitution and invalid to the extent that it does not permit same-sex couples to enjoy the same rights accorded to heterosexual couples. Section 30 (1) of the 1961 Marriage Act was invalid also to the extent that it omits the gender-neutral term "or spouse". The effect of the ruling was suspended for 12 months to allow Parliament to correct the defects.



## **ANNUAL REPORT 2005**

**The government began its "rollout" treatment programme for people with HIV and AIDS, but thousands still remained without access to anti-retroviral (ARV) drugs. Despite reforms to improve access to justice and health care for rape survivors, complainants still faced obstacles. The number of reported deaths in police custody and arising from police action increased. Credible allegations of torture or ill-treatment were made by criminal suspects, refugees and political activists. Corrupt and discriminatory practices by officials obstructed access by asylum-seekers to determination procedures. Individuals suspected of "terrorist" offences were detained incommunicado, ill-treated or forcibly repatriated.**

### **Political developments**

In April the ruling African National Congress party won nearly 70 per cent of the seats in national parliamentary elections, as well as majorities in all nine provinces.

The trial of Deputy President Jacob Zuma's financial adviser, Schabir Shaik, began in October. He faced charges of corruption and fraud committed on behalf of Jacob Zuma and relating to an alleged bribe solicited from a French arms company. In May the Public Protector (ombudsman) concluded that the Deputy President's constitutional rights had been violated by the head of the National Prosecuting Authority (NPA) and the then Minister of Justice. They had announced in 2003 that, although there was a prima-facie case against the Deputy President, he would not face charges. The NPA head, who resigned in July, accused the Public Protector of joining an "orchestrated campaign" to discredit the NPA and jeopardize the trial.

A report by the UN Development Programme (UNDP) in May noted the persistence of massive unemployment; a slight decline in the percentage of the population living in poverty but an increase to over 10 per cent of the population living in extreme poverty (on less than one US dollar per day); and a worsening rate of income inequality. An increasing number of black South Africans had no access to one or more basic services. The report suggested these trends resulted in part from government policies. Church-based, trade union and other civil society organizations made similar criticisms.

### **Limited access to health care**

The government's "rollout" programme to provide care and treatment to people living with HIV and AIDS led to 28,743 people gaining access to anti-retroviral (ARV) drug treatment through 108 state-accredited facilities by December. This official total was just over a half of the government's revised target of 53,000 by March 2005. About 500,000 of the estimated 5.3 million people with the virus require ARV treatment. Women and girls under 30 years of age had the highest infection rates, according to the UNDP report and UNAIDS.

In several hospitals visited by AI in August, only a small proportion of patients needing ARV treatment were receiving it because of a severe shortage of medical staff and delays in the supplies of the drugs and equipment. The stigma associated with HIV and AIDS, widespread poverty, poor education, and limited, unreliable public transport were additional socio-economic factors hampering access to treatment. The Treatment Action Campaign (TAC), in its July report on implementation of the rollout, noted similar problems in most provinces.

In December the Pretoria High Court awarded costs against the Minister of Health in a case brought by the TAC in June to compel the Minister to make public the implementation timetable for the rollout. The Court found that the Minister had acted unconstitutionally in failing to respond properly to the application.

There was improvement in the access to HIV-prevention treatment for rape survivors who tested negative shortly after the rape. However, the availability of ARV drugs for women and girls who became HIV positive as a result of rape was severely limited.

### **Violence against women**

Police statistics for the year 2003/2004 recorded 52,759 reported rapes, with the highest provincial ratio being recorded in the Northern Cape at nearly 190 incidents per 100,000 people. President Mbeki publicly minimized the concerns of service-providing and advocacy organizations about the high levels of rape and the link with the epidemic of HIV infection among younger women. In October the

President's response was criticized in a parliamentary motion.

Child and adult rape survivors interviewed by AI in August, all of whom were HIV positive, had access to emergency medical care. However, they had considerable difficulties in obtaining further medical treatment or psychological care because of the social stigma, unemployment, and their lack of secure housing and access to affordable transport. In one case the survivor and her mother were threatened with violence by the perpetrators, who had been released on bail.

Reforms to improve access to justice for survivors continued during the year. The police Family Violence, Child Protection and Sexual Offences Unit, responsible for investigating these cases, was enlarged. Additional "victim-friendly facilities" were established at hospitals and at police stations, with the support of NGOs and business organizations. By December, 52 specialized sexual offences courts had been established. The conviction rate in rape cases in these courts was 20 per cent higher than cases brought to trial in ordinary courts. Complainants' access to justice was still limited by staff shortages, distances from the courts, poor police work and lack of social welfare support. Only about seven per cent of all the rape cases reported to the police resulted in convictions. The NPA launched a comprehensive training programme for police and criminal justice officials to improve their implementation of the 1998 Domestic Violence Act.

In December, South Africa ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

### **Police violations**

The police oversight body, the Independent Complaints Directorate (ICD), reported for the year ending March 2004 that it had received 47 per cent more complaints of "serious criminal offences" by the police. In the same period it received 714 reports of deaths in police custody or arising from police action, an increase of over 35 per cent on the previous year.

Suspects in criminal investigations, refugees, and members of organizations protesting against poor social and economic conditions were among the victims of alleged torture, ill-treatment or the unjustified use of lethal force.

- Charles Mabiya died on 25 September at Zonkizizwe police station near Johannesburg, one day after his arrest with two others, Sibusiso Lukhele and Bheki Khoza, on suspicion of armed robbery. The three men were beaten at the time of their arrest, and Charles Mabiya was allegedly denied medical care. Postmortem evidence indicated he had multiple injuries, including head injuries. In October one detective was arrested by the ICD and charged with murder and assault with intent to cause grievous bodily harm.
- In December three Serious and Violent Crime Unit members were charged in the Johannesburg Regional Court with theft, defeating the ends of justice and assault with intent to cause grievous bodily harm. The three, who were released on bail, were alleged to have tortured crime suspects and others to obtain information on stolen property which they then seized unlawfully. The police officer leading the investigation received threats.
- On 22 August, Joseph Kongolo, granted refugee status after fleeing the Democratic Republic of the Congo, was unlawfully detained and assaulted by police in Johannesburg. He was head-butted, slapped in the face and had his genitals grabbed by two police officers who were searching the building where he lived for suspected illegal immigrants. He was released from Jeppe police station the following day after the senior public prosecutor declined to press charges.
- On 16 February two high school students, Dennis Mathibithi and Nhlanhla Masuku, were shot dead by a member of the Ekurhuleni Metro Police in Katlehong near Johannesburg. The police said they were responding to violent protests over court-ordered evictions. The students were unarmed and postmortem examinations confirmed that they had been shot in the back. Ballistics tests showed a link with one officer's weapon. He was arrested on 18 February and charged with murder, attempted murder and attempting to defeat the ends of justice. An internal inquiry by the Ekurhuleni Metro Police apparently cleared him of any unlawful actions.
- Four members of the Landless People's Movement (LPM) were tortured or ill-treated after they were arrested following a protest rally on 14 April and detained overnight at Protea South police station in Soweto. Samantha Hargreaves and Ann Eveleth were interrogated in the middle of the night about their political activities and subjected to suffocation torture by police Crime Intelligence officers. Moses Mahlangu was threatened with violence during interrogation. Maureen Mnisi, the Gauteng provincial chairperson of the LPM, was repeatedly slapped and kicked by officers during a cell search. Following their release the four LPM activists lodged complaints with the police and the ICD. No results from any internal police investigation were

communicated to them. The ICD's investigation was hampered by lack of cooperation from the provincial police authorities, and no arrests were made by the end of the year.

- On 30 August, 17-year-old student Teboho Mkhonza died shortly after local police fired into a crowd of protesters near Harrismith, Free State province. The demonstrators, who were unarmed, were protesting at the municipal council's failure to provide basic services to the impoverished community. According to film, witness and forensic evidence, the police opened fire with birdshot, prohibited for use in controlling crowds. The police gave no warning and fired as people fled. Following investigation, in December the ICD recommended prosecution of three officers for murder and attempted murder and disciplinary action against the officers for a breach of standing orders on the use of force and firearms.

### **Violations of refugee rights**

Asylum-seekers were at risk of arbitrary arrest or deportation because of officials' corrupt practices at refugee reception centres and borders, which obstructed, delayed or denied their access to determination procedures. Human rights lawyers and organizations expressed concern, particularly at the discriminatory treatment of Zimbabwean asylum-seekers. The South African Human Rights Commission and the Parliamentary Portfolio Committee on Foreign Affairs held public hearings in November on xenophobia and allegations of human rights abuses against migrants and asylum-seekers. In September the Pretoria High Court ruled that the detention of unaccompanied foreign children was unlawful.

Joint operations by Home Affairs officials and members of intelligence and police services against individuals suspected of links with international "terrorist" organizations resulted in the incommunicado detention, ill-treatment or forcible repatriation of immigrants or asylum-seekers.

- Mohammed Hendi, a Jordanian national who had applied for permanent residence, was detained by police and intelligence officers when they raided his home on 2 April. He was held for 22 days at police stations in the Pretoria area, shackled, denied access to a lawyer, and subjected to racial abuse during interrogation. On 14 April the police and immigration authorities attempted to deport him and arbitrarily deny his residence application. Lawyers secured his release on 23 April through a habeas corpus action in the High Court. Jamil Odys, detained at the same time, was deported to Jordan on 14 April despite having lodged an asylum application. In May the national Commissioner of Police told Parliament that the security services had in April arrested and deported a number of "terrorism" suspects, but he refused to give more details.