

# NAMIBIA 2012 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Namibia is a constitutional, multiparty democracy. The presidential and parliamentary elections held in 2009 resulted in the reelection of President Hifikepunye Pohamba and the retention by the ruling South West Africa People's Organization (SWAPO) of its large parliamentary majority. Despite some reported irregularities, international observers characterized the election as generally free and fair. In November the Supreme Court ruled against nine opposition political parties, which had alleged fraud against SWAPO and the Electoral Commission of Namibia, ending a lengthy legal challenge to the 2009 elections. Security forces reported to civilian authorities.

Three predominant human rights abuses in the country included the slow pace of justice leading to lengthy pretrial detention under poor conditions; violence and discrimination against women and children, including rape, child abuse, and child labor; and discrimination and violence based on sexual orientation and gender identity.

Other human rights problems included harassment and political intimidation of opposition members, and official corruption. Other societal abuses included discrimination against ethnic minorities and indigenous people.

The government took steps to prosecute or punish officials who committed abuses, whether in the security services or elsewhere in the government.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary or Unlawful Deprivation of Life**

There were a few reports that the government or its agents committed, or were responsible for, arbitrary or unlawful killings. Police charged Constable Salem Kani with murder after Frans Beukes died from wounds sustained from a severe kicking in Rehoboth on August 5. Beukes had stabbed Kani when he refused to give him a cigarette; Kani allegedly responded by kicking Beukes into a coma. Police arrested Kani immediately, then released him on bail, and, following Beukes' death, charged him with murder.

In September the High Court found police constable Gert Titsol guilty of culpable homicide in a 2007 case in which a detainee died in custody in Keetmanshoop. Noel Calvin Thompson was incarcerated in the same cell with Charles Vries after Thompson's wife complained about his drunkenness at home. Thompson attacked Vries with a knife he had smuggled into the cell. Defending himself, Vries kicked Thompson, rupturing his liver, leading to Thompson's death within hours after his release. The judge found that Titsol failed to search Thompson, leading to the knife attack, and had failed to check the cell every 30 minutes, as required. Titsol took Thompson to the hospital but ignored a nurse's advice to leave him there and returned him home where he died. The judge sentenced Titsol to two years incarceration to be suspended for three years if Titsol is not convicted of a similar crime. In December Titsol said he would appeal.

On August 21, the Windhoek Regional Court sentenced then police officer Gabriel Tueuifilwa to 17 years in prison for murder, two years for unlicensed possession of a firearm, and one year for unlicensed possession of ammunition. Following an argument in a shebeen (informal bar) in Windhoek in July 2007, Tueuifilwa dragged 19-year-old Erastus Festus outside the bar and shot him in the head.

### **b. Disappearance**

There were no reports of politically motivated disappearances.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution and law prohibit such practices; however, police sometimes used excessive force when apprehending, interrogating, and detaining criminal suspects. The country's main penal code does not define "torture," potentially leading to legal ambiguity over any claims. Human rights bodies and prison officials reported the detention of both pretrial and convicted prisoners in overcrowded conditions. According to various nongovernmental organizations (NGOs), including at least two committed to the protection of sex workers, police officers continued to threaten prostitutes with arrest or to abandon them in remote areas if they did not provide free sex.

In July President Pohamba ordered police to remove forcibly approximately 300 "struggle kids" protestors. The demonstrators--children of liberation struggle-era veterans and victims--had been camping at SWAPO Party headquarters for one month, demanding the government find them employment. Local media reported

police used “unreasonable force,” including on breastfeeding mothers, to carry out the orders. Police allegedly beat demonstrators and grabbed them by their throats. Political leaders subsequently acquiesced to some of the protestors’ demands, and the government employed nearly 100 as soldiers, clerk assistants, watchmen, laborers, and in other low-skill jobs within the Namibian Defense Force, parastatals, and various ministries, especially at the Ministry of Agriculture, Water, and Forestry.

### **Prison and Detention Center Conditions**

Prisons remained somewhat overcrowded, and some prison buildings were dilapidated; however, the government continued to make significant improvements. According to the ombudsman’s office, which had criticized prison conditions throughout the country in earlier years, general prison conditions rose to “acceptable” levels by 2011. The ombudsman’s office reported standards for sanitation, provision of three meals per day, adequate potable water, space, bedding, toiletries, and washing facilities exist in the prisons. Each prison has a clinic with a registered or enrolled nurse, and inmates with serious health conditions are referred to state hospitals. But conditions are often less adequate in pretrial holding cells, where overcrowding and sanitation remained problems, tuberculosis was prevalent, and there was a lack of nurses for on-site care.

Physical Conditions: Conditions in detention centers and police holding cells--sometimes located inside prisons--remained poor. The prisons were built to hold 4,475 inmates. According to the ombudsman’s office in 2011, the overall prison population was close to, but did not exceed, capacity. However, overcrowding remained a problem in some of the country’s largest prisons, due primarily to the large number of pretrial detainees who were co-located with convicted inmates. For example, the Windhoek Central Prison was designed to hold 912 inmates but, according to prison authorities, at year’s end it held more than 1,000, of which 200 were pretrial detainees. Officials held inmates and pretrial detainees in separate buildings within the same compound. Newspapers reported in September that the Windhoek Police Station’s holding cells were designed to accommodate 100 detainees but housed more than 200 prisoners.

Conditions in police holding cells were sometimes poor, and overcrowding was a problem in Windhoek, Ondangwa, Swakopmund, Oshakati, and Otjiwarongo. The ombudsman’s office reported in 2011 that many inmates were confined to a small space with minimal ventilation and washing facilities.

In 2011 the cabinet authorized the Ministry of Safety and Security to include funding for new remand prisons in its budget. During the year parliament approved the funds, and the Parliamentary Standing Committee on Defense and Security visited regions to identify where the greatest needs for new construction existed. By year's end, however, no new construction had begun.

Prison and holding cell conditions for women were generally better than for men. In previous years officials moved female prisoners in Windhoek to less crowded facilities in outlying areas, although this made family visits more difficult. The government was currently building a new women's prison in Windhoek to alleviate this problem. The Windhoek-based NGO Legal Assistance Center (LAC) reported female prisoners can keep their babies with them for two years and are provided food and clothing for them.

Under the law juvenile offenders may not be housed with adults. Prison authorities reported this law was upheld, but there were reports that juveniles in rural police holding facilities were sometimes held with adults.

Prisoners and detainees had potable water, reasonable access to visitors, and were permitted to participate in religious observances. Victims of prison abuse were able to pursue legal remedies, although lengthy delays were common.

One murder occurred at the Windhoek Central Prison during the year: two inmates allegedly stabbed to death a third in January, using knives fashioned from broom parts. Their murder trial was ongoing at year's end.

Administration: Recordkeeping on prisoners was adequate. The ombudsman's office was available to respond to complaints, investigated credible allegations of inhumane conditions, documented results, and made written recommendations. However, it was not authorized to intervene in individual cases. The government investigated and monitored prison and detention center conditions.

Monitoring: The government required NGOs and the media to apply to the commissioner general of prisons for permission to visit prisons. The government continued to grant both local and international NGOs access to prisons and prisoners. During the year the International Committee of the Red Cross (ICRC) continued visiting the detainees of the Caprivi treason trial, in both Windhoek Central Prison and Oluno Prison and helped arrange for families to visit as well. The UN High Commissioner for Refugees (UNHCR) also visited prisons and

detention centers, in accordance with their standard modalities, and with no problems of access.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest or detention, and the government generally observed these prohibitions.

In April the Supreme Court found the government to be at fault for not taking reasonable steps to secure the release of Annette Georgina Gawana, who was wrongfully detained in Windhoek Central Hospital's Mental Health Center, at intervals between 1999 and 2004. Gawana had been charged with child stealing but was unable to understand the criminal proceedings or to defend herself. The court concluded her inability to understand was due to mental illness and ordered Gawana in 1999 to be taken to the Mental Health Center. She was released twice on leave before a doctor reported in 2003 that she was healthy and could leave the hospital permanently. Administrative confusion delayed her release for almost one year, until 2004.

#### **Role of the Police and Security Apparatus**

The Namibian Police (NamPol), which has approximately 12,000 employees, is under the Ministry of Safety and Security. The Namibian Defense Force (NDF), which has 15,000 to 20,000 active-duty members, is subordinate to the Ministry of Defense. NamPol was responsible for internal security, with the NDF providing supplemental assistance in some cases of natural disasters and antipoaching efforts. The NDF played no other role in internal security.

NamPol is highly centralized with regional commands responsible to the Inspector General of Police. Approximately half of NamPol's overall complement is assigned to the Special Field Force (SFF), a paramilitary unit composed primarily of combatants from the former People's Liberation Army of Namibia. SFF members were assigned to guard duty, checkpoints, and the maintenance of public order. Police corruption and impunity caused some problems (see section 4). NamPol lacked the resources, training, and personnel to deter or investigate street crime effectively.

Police continued to receive human rights training from various sources. The United Nations introduced a pilot training program on cases involving women and children. LAC was also involved in designing human rights training for the police,

especially in working with child victim and witnesses, focusing on interviewing skills. Police extended their basic recruit training by two months to accommodate the introduction of such additional human rights-related training. NamPol further invited guest speakers to lecture on human rights at the police college, and more than 20 officers completed a three-month certificate course on human rights at the University of Namibia in 2011.

In November the NDF arrested poachers in an antipoaching initiative in the Caprivi region.

### **Arrest Procedures and Treatment While in Detention**

Arrest warrants are not required in all cases, such as when a suspect is apprehended while committing a crime. Persons arrested must be informed of the reason for their arrest and brought before a magistrate within 48 hours of their detention, but the government did not always follow these provisions in practice. Police generally promptly informed detainees of the charges against them. The constitution stipulates that the accused are entitled to defense by legal counsel of their choice. In practice this right has been respected.

For indigent defendants the state-funded Legal Aid Directorate provides free legal assistance in criminal cases and, as resources are available, in civil matters, particularly divorces. The Legal Aid Directorate continued to face severe resource constraints that hampered its ability to provide services effectively in all cases. In August Legal Aid's director reported the directorate was responsible for almost 80 percent of the criminal cases in the courts. The justice minister reported in April that between April 2011 and March 30, the ministry received 7,051 applications for Legal Aid assistance, of which 4,666 (66 percent) were approved and 15 percent were pending additional information from the applicant. However, many prisoners could not afford counsel, and indigent persons were not always provided counsel, primarily due to an insufficient number of public defenders.

There is a functioning bail system. Officials generally allowed detainees prompt access to family members. Under a state of emergency, the constitution permits detention without trial, although the names of detainees must be published in the government's gazette within 14 days, and an advisory board appointed by the president must review their cases. In recent years President Pohamba has declared temporary states of emergency in northern regions because of flooding, most recently in 2011.

Pretrial Detention: Lengthy pretrial detention remained a significant problem. In 2010 approximately 8 percent of the general prison population was awaiting trial. At Windhoek's main prison, prison officials estimated that figure to be closer to 20 percent during the year. The lack of qualified magistrates and other court officials, high cost to the government of providing legal aid, slow or incomplete police investigations, and continued postponement of cases resulted in a serious backlog of criminal cases and delays of years between arrest and trial. During the year the High Court and Prosecutor-General's Office continued to implement proposals made in 2010 to improve the pace of administering justice, including granting increased case management powers to judges.

In January 2011 the High Court's judge president expressed concern about excessive delays in the delivery of cases in which the judge reserves his final decision to review the evidence. However, the courts have made progress in addressing delayed justice. At the beginning of the year, there were 118 cases of reserved judgment in the High Court, dating to 2002 and eroding trust in the justice system. By the end of the year, the number of overdue judgments in the High Court had fallen to 79.

In August High Court judges proposed changes aimed at giving judges greater control over the pace of litigation and an increase in judges' support staff. One of the proposals included compulsory mediation efforts to resolve disputes before they come to court. The lack of a plea bargaining system to expedite case conclusion and poor case management systems generally slowed the pace of trials, which can take years to complete.

Detention of Rejected Asylum Seekers or Stateless Persons: Thirteen Somalis remained in detention following a government decision in late 2011 to reject the asylum claims of at least five of them. Despite objections from UNHCR and local NGO NamRights, the government deported the five to Somalia in February (see section 2.d., Refoulement).

#### **e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary, and the courts continued to act independently, at times making judgments and rulings critical of the government. Inefficiency and a lack of resources hampered the judicial system.

Military courts try members of the military only and do not provide the same rights as civil criminal courts. Customary courts heard most civil and petty criminal

cases in rural areas. The law delineates which offenses may be dealt with under the customary system.

Most rural citizens first encountered the legal system through the customary courts, which deal with infractions of local customs among members of the same ethnic group. The law delineates the role, duties, and powers of traditional leaders and provides that customary law is invalid if it is inconsistent with the constitution.

In some instances cases which had been resolved in customary courts were tried a second time in government courts.

### **Trial Procedures**

The constitution and law provide for the right to a fair trial, but this right was limited by long delays in hearing cases in the regular courts and the uneven application of constitutional protections in the customary system. Defendants are presumed innocent. The law provides for defendants to be informed promptly and in a language in which they can understand the details of the charges, and to a public trial; however, there are no jury trials. Defendants have the right to be present at trial, to consult with an attorney in a timely manner, and, with their attorney, to have access to government-held evidence. Indigent defendants are entitled to a lawyer provided by the state in criminal and divorce cases; however, this sometimes did not occur due to an insufficient number of public defenders.

LAC reported that although the Supreme Court found that the state must provide legal assistance where gross injustice would occur otherwise, many cases of rape, murder, and other serious crimes continued without the accused having adequate legal representation, since the Legal Aid Directorate could not assist them. Defendants can confront witnesses, present witnesses and evidence on their behalf, and have the right of appeal. The law extends these rights to all citizens. The courts provided defendants adequate time to prepare their defense. Defendants had the right not to testify against themselves.

More than a decade after Caprivi separatists attacked government facilities in the contested region in 1999, 109 surviving Caprivians accused of treason had yet to have their cases resolved. The enormity of the state's case, resource constraints, and legal wrangling continued to delay the Caprivi trial, which consisted of five trials or hearings.

The main trial originally comprised 131 detainees alleged to have participated in the 1999 attacks against government forces and buildings in Katima Mulilo, the capital of Caprivi Region. The defendants were charged with a total of 278 counts related to treasonous activities. Twenty-two of the accused have died in prison, including three during the year who died from natural causes. On February 7, the state rested its case against the remaining defendants. In September the defense submitted an application for full acquittal of all the charges, due to lack of evidence. The judge postponed proceedings until February 11, 2013, when he intended to rule on the defense application.

On August 10, the High Court for the first time released one of the defendants in the Caprivi high treason case. After 13 years in prison, the judge found 68-year-old Rodwell Kasika Mukendwa not guilty, after the prosecution conceded it had not been able to prove any of the charges against him.

The trial of two ethnic Mafwe witnesses resumed in 2011 with no notable developments. The individuals were part of the main Caprivi treason trial and appeared in court in 2006 on charges of perjury and obstruction of justice for denying statements they had made to original investigators in the Caprivi case. In January the High Court denied the state's application to call a witness who, the state argued, would have explained the circumstances under which some of the accused had been arrested in Zambia.

Ten secessionists were convicted of treason in 2007 and sentenced to more than 30 years in prison. However, the judge ruled in 2009 that they could appeal to the Supreme Court against the length of the sentences they received. The Supreme Court heard the appeals in 2011 but postponed the case until March to give the defense time to prepare additional arguments. The case was ongoing at year's end.

The "trial within a trial" is a hearing that began in 2009 to determine the admissibility of allegedly self-incriminating statements made by 26 of the defendants before various magistrates. In 2010 the Supreme Court turned down a request by the state to appeal part of a judgment in which presiding High Court Judge Elton Hoff ruled that alleged confessions made by those men being prosecuted in the treason trial cannot be used as evidence against them.

In January 2011 Judge Hoff ruled evidence linking four suspects to the 1999 secessionist attempt was inadmissible. Defense attorneys had argued the men were assaulted by police and not informed of their right to legal assistance at the time of

their arrests. The Supreme Court justices called for the speedy resolution of the trial, now in its ninth year.

The state closed its case in November in the trial of Albius Moto Liseli, whose 2009 arrest made him the last man arrested in connection with the Caprivi separatist plot. The defense intends to argue for Liseli's discharge when the case resumes in January 2013.

Civil suits were brought by defendants who claimed to have been tortured at the time of their arrests. In 2011 the High Court ruled in favor of the ministers of home affairs and defense in three more civil suits. To date the High Court has dismissed eight civil claims against the ministers of home affairs and defense, 24 cases have been settled out of court, and 90 cases remained pending. LAC continued to represent detainees.

### **Political Prisoners and Detainees**

Local NGO Namibia's National Human Rights Organization (NamRights) has categorized the surviving Caprivi high treason detainees as "political prisoners," while Amnesty International categorized 70 percent of them as "prisoners of conscience." There were no other reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

The law provides for access to a court to bring lawsuits seeking damages for, or cessation of, human rights violations. The constitution provides for administrative justice as well as judicial remedies for alleged wrongs. Civil court orders were mostly well enforced.

The Southern African Development Community (SADC) Tribunal was a regional institution at which citizens of SADC-member countries could lodge cases. In May 2011 leaders from SADC effectively suspended the tribunal, pending a full review of its functions and purpose. At the SADC Summit in August in Maputo, Mozambique, leaders agreed to consider whether the tribunal could continue to be used by individuals, but there was no resolution of the question by year's end.

### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution prohibits such actions, and the government generally respected these prohibitions in practice. The Communications Act, popularly known as the

“Spy Bill,” which was passed in 2009, has not fully been implemented. The act allows the intelligence services to monitor e-mails and Internet usage with authorization from a magistrate. The legislation also permits the interception of telephone calls and cell phone text messages. Opponents of the law considered it an invasion of privacy and a violation of the right of free expression.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The constitution provides for freedom of speech and of the press, and the government generally respected this right. However, in 2011 *African Media Barometer* reported that the level of free expression also varied among media, with broadcast media feeling more potentially threatened and, particularly in the case of government-owned media, leading to self-censorship.

Freedom of Speech: Individuals generally could criticize the government publicly or privately without reprisal.

Freedom of Press: There were five daily national newspapers (*The Namibian*, *New Era*, *Namibian Sun*, *Die Republikein*, and *Die Allgemeine Zeitung*), four of which were independent, and five independent weekly newspapers (*Confidante*, *Informante*, *the Namibian Economist*, *the Villager*, and *Windhoek Observer*). The government operated one newspaper (*New Era*) and an official press agency, whose boards were appointed by the minister of information and communication technology. The government shared equal ownership of a regional weekly newspaper, *The Southern Times*, with the government of Zimbabwe. The ruling SWAPO party owned one publication, *Namibia Today*.

The government owned and operated the Namibian Broadcasting Corporation (NBC) Radio and Television, which was the most widely broadcast and influential medium in the country, and largely independent. In April some SWAPO members of parliament (MPs) complained that NBC was not sufficiently supportive of the government in its reporting and threatened to cut some of its funding. NBC’s television and nine radio services broadcast in English and indigenous languages. There were 12 private radio stations and two private television networks, One Africa TV and Trinity Broadcasting Network. SWAPO owned 51 percent of the country’s sole cable and satellite television provider.

In 2009 the Namibian Forum of Editors established--with the government's support--the Office of the Media Ombudsman as an independent investigator and arbiter of complaints against the media. The media ombudsman has been appointed since by local newspaper editors and has continued to function free of any government interference. According to the media ombudsman, there were 14 complaints filed during the year, mostly against journalists for allegedly inaccurate, unfair, and unbalanced reporting. He reported all but four had been resolved by year's end, usually when the newspaper or broadcaster--at the media ombudsman's request--responded to the complaint or, if the response was not sufficient, by facilitating an informal meeting between the parties. In 2010 the office received eight complaints, and in 2011, 17 complaints.

In August 2011 the cabinet lifted a 10-year ban on government departments advertising in, or purchasing from, *The Namibian* daily newspaper. Former president Sam Nujoma had imposed the ban because of the newspaper's perceived antigovernment bias. NBC also reintroduced, with some changes, call-in programs that were terminated in 2009 because some callers allegedly were abusing their freedom of speech with derogatory comments directed at the government. One of these programs, in the widely spoken Oshiwambo language, did not return.

The Media Institute of Southern Africa (MISA) issued seven media alerts on the country during the year calling attention to threats against the freedom of speech.

The alerts included:

In November SWAPO Party Youth League (SPYL) information secretary Job Amupanda threatened the editor of the weekly *Windhoek Observer* newspaper, Kuvée Kanguēhi, at a press conference the organization held in Windhoek. SPYL secretary Elijah Ngurare charged Kanguēhi and others with "spicing up stories" in their newspapers to suit their own agendas. When SPYL leaders held a press conference to address these issues, Amupanda started to criticize the newspaper. When Kanguēhi objected, Amupanda told him to keep quiet or risk being expelled from the media briefing.

In October presidential pilot Alois Nyandoro sued the Free Press of Namibia, Ltd, which owns *The Namibian* newspaper, the newspaper's former editor Gwen Lister, and former journalist Jana-Mari Smith for N\$500,000 (\$56,818) over an article published in 2010. Nyandoro claimed the story was defamatory as it alleged he abused his position and office and directed a flight instructor to falsify information to enable a South African pilot to get a Namibian flying license. The South

African pilot later resigned under pressure. The defendants claimed the statements contained in the article were factual, and it was in the public interest to publish the article.

In September police briefly detained NBC cameraman Uushona Hiskia and *Namibian Sun* newspaper journalist Selma Ikela for contempt of court for filming and taking pictures in the Katutura magistrate court. The pair was covering a court case involving two adult suspects accused of armed robbery and assault. By year's end the reporters were still waiting to be informed about the prosecutor general's decision. According to common law, journalists are allowed to take pictures in court as long it is not during the court proceedings.

Violence and Harassment: Members of the ruling party harassed some members of the media. Minister of Youth, National Service, Sport, and Culture Kazenambo Kazenambo allegedly called editor Tileni Mungudhi of *Insight Magazine* a "stupid...Ovambo journalist" for attacking Kazenambo's character (Kazenambo is an ethnic Herero). Mungudhi had asked Kazenambo about perceptions that the minister had acted more as a Herero than as a national representative when dealing with the issue of the colonial-era German genocide against the Herero and Nama people. Kazenambo admitted to confiscating Mungudhi's tape recorder and deleting the text of the interview. The Media Institute of Southern Africa and many other Namibians condemned Kazenambo's conduct, but the government took no action against the minister. Kazenambo left office in December, following a cabinet reshuffle, but remains an MP.

In April the High Court decided in favor of freelance journalist Jonathan Grobler, who sued minister of Justice and former SWAPO Party secretary general Pendukeni Iivula-Ithana, and SWAPO, for libel. Grobler challenged SWAPO's publication of an article on its Web site stating that Grobler was a member of Koevoet, "whose hands are soaked in the blood of the Namibian people." Koevoet was a counterinsurgency unit of the South African army when the country was an occupied territory. Grobler testified that he had served as a power grid guard in the South West African Territorial Force, which was "compulsory for most white Namibians if they wanted to get employment," but that he never killed anybody. Grobler said his reputation was damaged when editors at *The Namibian*, the newspaper at which he worked during this period, began to believe the rumor. He sought up to N\$300,000 (\$36,000) for damage to his professional reputation, as well as his personal reputation and dignity. This was the first time the SWAPO party, rather than an individual member, was held liable for statements made on the party's Web site.

Censorship or Content Restrictions: In discussing subsidies to state-owned media outlets in April, several MPs severely criticized government-owned NBC and *New Era* newspaper for alleged “selective coverage of public figures and events” and also for covering negative aspects of the government, rather than, as one minister argued, “advancing and protecting the government as they were established to do.” SWAPO MPs expressed annoyance that journalists from state-controlled media wrote about some MPs and left others out. Some argued against continued support for state-run media because they “always stab us in the back.” *New Era*’s editor’s contract was not renewed.

### **Internet Freedom**

There were no government restrictions on access to the Internet; however, the Communications Act provides that the intelligence services can monitor e-mails and Internet usage with authorization from any magistrate. Civil society noted some allegations and rumors that the government reviewed ways to block or curtail social media sites, but there was no concrete evidence of such action. In the period prior to the SWAPO Party Congress in November, the SWAPO Party Youth League shut down its Facebook page, supposedly to quell comments that were opposed to the youth league’s chosen candidates at the congress. According to the International Telecommunication Union, 12 percent of individuals used the Internet in 2011.

### **Academic Freedom and Cultural Events**

In November 2011 the government announced new regulations to implement the 2004 Research, Science, and Technology Act. The regulations require government authorization for all research projects undertaken in the country, which civil society feared could cause a chilling effect on research. An October legal opinion by the LAC argued the new requirements violated “both the letter and the spirit” of the constitution, which enshrines the freedom of speech, expression, thought, conscience, and belief, including “academic freedom in institutions of higher learning.” In November concerned civil society organizations launched a public campaign to challenge the regulations.

All government-owned institutions of higher learning, including the University of Namibia, Polytechnic of Namibia, and the Windhoek College of Education, continued to ban the holding of political events on their campuses.

## **b. Freedom of Peaceful Assembly and Association**

### **Freedom of Assembly**

The constitution and law provide for freedom of assembly, and the government generally respected this right.

SWAPO supporters continued to prevent members of the leading opposition party Rally for Democracy and Progress (RDP) from campaigning in some towns and villages. In July RDP accused NamPol of using “colonial” laws to prevent them from demonstrating in front of the Supreme Court and National Assembly to protest delays in the 2009 elections court challenge. In September local SWAPO members padlocked a primary school after the school accepted RDP founder Hidipo Hamutenya as its patron. School patrons provide schools with material resources and lend their names to the schools. Minister of Education Abraham Iyambo transferred the principal, allegedly for her safety, and told parents to agree on a different patron and inform his office of their decision.

In June SWAPO’s top leadership blocked the controversial former president of the African National Congress (ANC) Youth League, Julius Malema, from visiting the country to hold a public lecture. SWAPO leaders, including President Hifikepunye Pohamba, were reportedly concerned that Malema’s visit might sour relations between SWAPO and the ANC.

### **Freedom of Association**

The constitution and law provide for freedom of association, and the government generally respected this right in practice.

## **c. Freedom of Religion**

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

## **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution and law provide for freedom of movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The government cooperated with the UNHCR and other humanitarian

organizations in protecting and assisting refugees, returning refugees, asylum seekers, and other persons of concern, with one exception during the reporting period. In the final months of 2011, the UNHCR tried and failed to prevent the government from ordering the deportation of 13 Somali asylum seekers (see section 2.d., Refoulement).

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

A cessation clause went into effect on June 30, ending the refugee status of more than 3,000 Angolans resident in the country. The UNHCR and the governments of Namibia and Angola began voluntarily repatriating the Angolan refugees from the Osire settlement (formerly called the Osire refugee camp) in February. By year's end 2,813 had left. According to the UNHCR, 1,716 refugees and asylum seekers resided in the Osire settlement at year's end. Following the Angolans' departure, refugees from the Democratic Republic of Congo represented the largest group, at an estimated 83 percent of the refugee and asylum seeker population, with the remainder coming from Burundi, Rwanda, Zimbabwe, Sudan, and other African countries. The government continued to issue identification cards to all refugees to facilitate travel outside the settlement. A UNHCR study concluded that all remaining Angolans, estimated to be 1,600, wished to integrate locally or be awarded some alternative status, rather than repatriate to Angola.

The government continued to maintain strict control over civilian access to the Osire settlement; however, the ICRC, the UNHCR, and the UNHCR's NGO partners had regular and unrestricted access to the camp.

Refoulement: During the summer of 2011, 13 Somalis requested asylum in Namibia, but the government issued a notice to deport them after deciding they were instead "illegal migrants." Immigration officials deported all the Somali asylum seekers during the year. According to NamRights the first five were removed from the Seeis police precinct on February 11 and escorted beyond the country's border. The remaining eight were removed from the country at an undetermined later date in the year.

Employment: The government maintained an encampment policy, under which refugees housed at Osire required Namibian work permits for specific jobs they applied for outside the settlement.

Temporary Protection: The UNHCR was unaware of any cases during the year in which authorities provided temporary protection to individuals who may not have qualified as refugees under the 1951 refugee convention or its 1967 protocol. However, approximately 1,866 Angolan nationals, who no longer qualified as refugees under the convention or protocol following the cessation, remained in Osire or elsewhere in the country while they completed their schooling or awaited local integration opportunities.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution and law provide citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic and free elections held on the basis of universal suffrage.

#### **Elections and Political Participation**

Recent Elections: In the 2009 presidential and parliamentary elections, SWAPO candidate Hifikepunye Pohamba was elected to a second term as president with 76 percent of the vote. SWAPO candidates won 54 of 72 elected National Assembly seats (there are also six appointed seats). International observers characterized the election as generally free and fair, despite an inefficient vote tabulation system, voter list problems, and unequal access to media coverage and campaign financing. Nine opposition parties, however, claimed the election was marred by irregularities. The Supreme Court finished hearing their arguments in October 2011 and, in November, announced its decision that, although some administrative problems existed, there was no fraud in the 2009 elections. The opposition parties accepted the verdict and accepted the court's ruling that they pay SWAPO's legal costs for the trial.

Political Parties: Individuals and political party nominees could declare their candidacies freely and stand for election in accordance with the law. The government did not officially restrict the right of political opponents to organize, seek votes, or publicize their views, but SWAPO supporters sometimes disrupted rallies and campaigns of opposition parties, particularly the largest opposition party, the RDP. Some Namibians viewed the Ovambo, the country's largest ethnic group, as dominating the majority SWAPO Party. There continued to be allegations that individuals who were not members of SWAPO had difficulty finding civil service employment or winning government tenders.

Participation of Women and Minorities: Women held 20 seats in the 78-seat National Assembly, which included 72 elected seats and six appointed ones. There were seven women in the 26-seat National Council. Following President Pohamba's cabinet reshuffle in December, there were five female ministers and six female deputy ministers among the 41 ministerial and deputy ministerial incumbents. There were two female judges among the 11 permanent judges on the High Court.

Virtually all of the country's ethnic minorities were represented in parliament and in senior positions in the cabinet. During the year parliament's sole ethnic San representative died. Historic economic and educational disadvantages limited the participation of those indigenous ethnic groups in politics. Although the ruling SWAPO party was perceived by some to be dominated by Ovambos, members of smaller ethnic groups held the offices of deputy prime minister, speaker of the National Assembly, and deputy chairperson of the National Council. In December SWAPO reelected ethnic Damara Hage Geingob as party vice president.

#### **Section 4. Corruption and Lack of Transparency in Government**

Although the law prohibits corruption, and the government took steps to address the problem, some officials continued to engage in corrupt practices. During the year the Anticorruption Commission (ACC) continued with awareness campaigns and held workshops for government officials, politicians, civil society organizations, church leaders, and school children on the dangers of corruption.

Between January and July, NamPol fired more than 160 police officers for various reasons, including collusion with criminals. In 2011 NamPol opened nine cases of corruption or extortion against members of the police; all were ongoing at year's end. During the year the ACC conducted several investigations into corruption. Through institutions like the ACC, Prosecutor General's Office, NamPol, Auditor General's Office, and Office of the Ombudsman, the government took steps to prosecute or otherwise punish officials who engaged in corruption. Cases of corruption, abuse of authority, and conflict of interest still occurred. However, when these bodies investigated cases, they did so thoroughly. According to a local weekly magazine that tracks corruption, there have been 394 cases of corruption before the courts since 2005. By year's end 68 had been resolved.

Suspended magistrate Melanie Theron, from the northern town of Oshakati, allegedly collected and pocketed N\$6,600 (\$750) from traffic offenders whose

finances were overdue. As a result she allegedly cancelled their arrest warrants and withdrew their cases from her court. She made her first appearance before the High Court in Windhoek in December and was due to appear in court again in January 2013. Meanwhile, she remained free on bail.

In 2010 former prime minister Nahas Angula confirmed that five senior managers of the Government Institutions Pension Fund had been asked to take voluntary leave to facilitate a probe into the Development Capital Portfolio (DCP), which had lent more than N\$661 million (\$75.11 million) to 21 Namibian companies through the DCP from the late 1990s until 2002. Many loans were never repaid. A 2006 audit revealed the loans were fraught with irregularities, such as incomplete loan applications from politically connected businessmen, and were awarded shortly before their businesses failed.

During the year NamPol, with the help of South African forensic experts, investigated the 97 million Namibian dollars (\$11 million) in unpaid loans that occurred before the ACC was created. In October police forwarded two of 21 cases to the prosecutor general to consider for prosecution, with the promise that the remaining dockets would be ready within six months. In November the prosecutor general referred the two cases--on Ongopolo and Omina Investments--back to the police for further investigation.

MPs are required under their code of conduct to declare their assets. However, the assets register has only been published twice since independence, in 2003 and 2009. The law outlaws public officials' conflict of interest and potential abuses of power, but enforcement mechanisms in the act are weak and internal only. Civil society organizations charged that the law did not preclude government officials from engaging in private business that conflicted with their government duties and, therefore, proposed amendments to the law to close the loopholes. However, parliament did not discuss their proposals, nor amend the code of conduct. Government institutions, including the ACC, the Office of the Ombudsman, and the Office of the Auditor General, were responsible for combating public corruption. In September the Supreme Court heard corruption cases against former parliamentary secretary Nama Goabab and parliamentary accountant Abraham John. The case was pending at year's end.

No law provides for public access to government information, and media outlets generally found the government unwilling to provide information, including salary scales, for public officials. Civil society sought a new law to ensure access to information, but the government did not take any steps to address this proposal.

## **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Although government departments were traditionally hesitant to provide assistance, the Ombudsman's Office, NamRights, and the ACC reported they had received the NamPol's cooperation and help in corruption and human rights investigations.

NamRights and LAC, both independent organizations, were the primary human rights NGOs in the country, and police regularly met with both. LAC often assisted police with human rights training and, at police Women and Child Protection Units, with legal assistance for victims in cases of gender-based violence and rape. NamRights reported allegations of police brutality and abuse of power.

Government Human Rights Bodies: There is an autonomous ombudsman, with whom the government cooperated; he was considered effective in addressing some corruption and human rights problems. Between January and October 2011, the Ombudsman's Office received 166 human rights-related complaints from the public. These included alleged violations of fair trial rights, illegal detention, delays in completing criminal appeals, alleged assaults by prison officials, and land-grabbing by surviving family members following a death.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The constitution and law prohibit discrimination based on race, creed, gender, language, disability, social status, or religion, and specifically prohibit "the practice and ideology of apartheid"; however, the government did not effectively enforce all these prohibitions.

### **Women**

Rape and Domestic Violence: The law defines rape in broad terms and allows for the prosecution of spousal rape. The courts prosecuted numerous cases of rape during the year, and the government generally enforced rape penalties, which provide for sentences of between five and 45 years' imprisonment for convicted rapists. Government officials indicated more rapes were being reported than

previously. According to police statistics, 1,085 cases of rape were reported in 2011, a slight increase from 2010 when 1,082 cases were reported. The true extent of rape was thought to be higher, and only a minority of cases were prosecuted or resulted in a conviction. In November the Ministry of Gender Equality and Child Welfare and LAC completed their multiyear Zero Tolerance for Gender-Based Violence and Human Trafficking campaign, concluding with a formal *National Plan of Action on Gender-Based Violence 2012-16*. In July LAC released an extensive survey of studies on domestic-based violence since the country's independence and made recommendations to the government for improving the situation.

In one region, Erongo, the regional police commissioner received reports that 21 women and children were raped between January and June. Five of the victims were between the ages of five and eight and 10 were between the ages of 11 and 17. Police arrested at least 14 men and a 16-year-old boy in connection with these cases.

LAC's statistics indicated that more than one-third of rape victims withdraw their court cases, due to compensation from the accused, family pressure, shame, threats, or the length of time involved in prosecuting a case. A number of factors continued to hamper rape prosecutions, including lack of police transport, poor communication between police stations, lack of expertise in dealing with child rape complainants, and the withdrawal of cases by rape complainants after they filed charges.

Expressing frustration about wasted time and resources when victims withdraw their cases, the Erongo region police commissioner announced in August that victims would now be required to approach the courts to have such cases withdrawn. LAC argued additional training and greater awareness were required at all levels, and across all involved government ministries, to address child rape cases more effectively.

According to LAC statistics, approximately 70 percent of rape suspects were arrested, but only 18 percent ultimately were convicted in a court of law. Most cases are heard by traditional authorities, rather than in government courts. A January 2011 article in the *Namibian Law Journal* complained that judges were applying "inconsistent and problematic" approaches to sentencing rapists.

The law prohibits domestic violence; however, the problem was widespread. Penalties for domestic violence, which includes physical abuse, sexual abuse,

economic abuse, intimidation, harassment, and serious emotional, verbal, or psychological abuse, ranged from a fine of N\$300 (\$34) to 10 years' imprisonment and a fine for assault with intent to cause grievous bodily harm.

LAC published a comprehensive survey of domestic violence in August, entitled *Seeking Safety--Domestic Violence in Namibia and the Combating of Domestic Violence Act 4 of 2003*. The report explained that it is difficult to collect statistics on this problem, since domestic violence cases have not been set apart from nondomestic crimes in police records, domestic violence against children has never been directly studied in the country, and very little is known about domestic violence against men, the elderly, or within gay or lesbian relationships. The report further indicated that, based on an earlier study, nearly one-third of reported rape cases occurred within a "domestic relationship." However, no official information was available on enforcement of the antidomestic violence law, except as it involved rape. In 2003 the law codified the issuance of protection orders in cases of domestic violence and provided that certain crimes of violence--including murder, rape, and assault--would be handled differently if the crimes took place within a domestic relationship. When reported, the Women and Child Protection Units of the Namibian Police intervened in domestic violence cases.

There were 15 women's and children's protection units staffed with police officers trained to assist victims of sexual assault, social workers, legal advisors, and medical facilities. During the year UNICEF; the People's Education, Assistance, and Counseling for Empowerment Center; and other NGOs continued to provide training to these units. In some magistrates' courts, there were special courtrooms to protect vulnerable witnesses from open testimony; the courtrooms featured a cubicle constructed of one-way glass and child-friendly waiting rooms. By the end of the year, the Ministry of Gender Equality and Child Welfare had completed renovation of shelters in six regions for victims of gender-based violence.

Sexual Harassment: The Labor Act explicitly prohibits sexual harassment in the workplace. Employees who leave their jobs due to sexual harassment may, under the law, be entitled to "remedies available to an employee who has been unfairly dismissed."

In 2006 LAC brought the country's only sexual harassment claim to court under the 1992 Labor Act. The employer settled the case in 2008, before a judgment was issued.

Reproductive Rights: There are no government restrictions on the provision of contraceptives, except to children under the age of 18 years old, the legal age of consent to medical treatment. Aside from several narrowly defined circumstances, abortion remained illegal. The government and NGOs provided for equitable access to contraception to all citizens. Women who lived in urban areas had better access to skilled attendance during childbirth and postpartum care than those who lived in rural areas. According to statistics released in 2010 by the Ministry of Health and Social Services, the country's maternal mortality ratio in 2006 was 449 per 100,000 live births, a near doubling of the rate in 1992. The high rate was attributed to the general lack of access to effective healthcare in treating eclampsia (seizures during pregnancy), hemorrhage, and obstructed or prolonged labor. HIV/AIDS is the leading indirect cause of maternal mortality. UNICEF reported that unsafe abortions account for nearly 20 percent of maternal deaths. The government and NGOs continued to make a strong effort to educate men and women equally in the diagnosis and treatment of sexually transmitted infections, including HIV.

The government had no policy to sterilize HIV-positive women forcibly. However, LAC reported these women were often "encouraged" to agree to sterilization by medical personnel. In July the High Court ruled that doctors at state hospitals wrongfully sterilized 16 HIV-positive women in 2008 without their consent, following caesarean sections. However, the court ruled there was insufficient evidence to prove they were sterilized because of their HIV status.

Discrimination: The law prohibits gender-based discrimination, including employment discrimination; however, men continued to dominate positions in upper management in both the private and the public sectors. The Ministry of Labor and Social Welfare and the Employment Equity Commission, which report to the minister of labor, were responsible for addressing complaints of discrimination in employment; however, neither was effective due to the backlog of cases.

The law prohibits discriminatory practices against women married under civil law, but women who married under customary law continued to face legal and cultural discrimination. Traditional practices that permitted family members to confiscate the property of deceased men from their widows and children continued.

The custom by which a widow or widower marries the brother or sister of the deceased to ensure that the surviving spouse and children are cared for is still practiced in some areas of the country. According to a 2005 study, *Women's*

*Property and Inheritance Rights in Namibia*, published by the University of Namibia, the practice of widow inheritance (levirate) and widower inheritance (sororate) were still common among the Ovambo, Herero, Lozi, and, to a lesser extent, the Kavango. However, anecdotal evidence suggests this has been decreasing in recent years, and now is done mostly with the consent of both parties.

The Ministry of Gender Equality and Child Welfare is responsible for advocating for women's rights. The Ministry of Justice's Law Reform and Development Commission advocated for women's rights in legislation.

## **Children**

Birth Registration: The constitution provides for citizenship by birth within the country's territory if born to a citizen parent or a foreign parent ordinarily resident in the country, or from one's citizen parents if born outside the country. The Ministry of Home Affairs and Immigration has stated that approximately 98 percent of Namibians have a birth certificate or other identifying document. Other organizations have questioned the accuracy of this figure. Although prohibited by law, anecdotal evidence suggests teachers in regions bordering Angola, Zambia, Zimbabwe, and Botswana sometimes refused to teach children who could not prove citizenship. Mothers who delayed registration of their children at birth often faced a difficult process and long delays. If a child's parents died before registering their child with the government, and if the child did not obtain the needed death certificates or other necessary documentation for his or her parents, the child faced still greater challenges in proving citizenship and right to access government services.

The Ministry of Home Affairs and Immigration, in partnership with UNICEF, continued efforts to provide birth certificates for newborns at clinics and hospitals throughout the country, including through mobile registration vans and establishing birth registration offices at 11 high-volume hospitals.

Education: The constitution requires compulsory, tuition-free, and universal primary and junior secondary education until the age of 16 (grades one through 10). However, in practice numerous fees including for uniforms, books, boarding costs, and school improvement--placed a heavy burden on poor families and precluded some children from attending. Secondary schools generally enrolled more girls than boys. Many San children and children from destitute families did not attend school, but the government continued to provide mobile schools for

children who lived in semipermanent settlements. In 2010 approximately 1,500 girls dropped out of school due to pregnancy. In June 2011 the Ministry of Education hosted a conference to address the education system's deficiencies. The cabinet adopted the conference's recommendations in December 2011, but few of the recommendations have been implemented.

Child Abuse: Child abuse was a serious problem, and authorities vigorously prosecuted crimes against children if reported, particularly rape and incest. According to police records and media reports, in 2010 approximately 1,000 children and juveniles were murdered, raped, or assaulted. In 2011 that number fell to approximately 750. Police reported one case of incest against a child in 2011, down from three in 2010. The true incidence of child abuse was thought to greatly exceed the number of reported cases.

Child Marriage: The law prohibits civil marriages before the age of 18 years old; however, child marriage occurred under customary ceremonies. According to the Ministry of Education, 167 children dropped out of school to get married in 2011.

Harmful Traditional Practices: There were no reports of female genital mutilation/cutting occurring during the year. The women's rights organizations Sister Namibia and the Women's Leadership Center continued to condemn cultural practices of initiation sex for young girls, including dry sex (the practice of applying astringents to the vagina before sexual intercourse to enhance male pleasure) and the stretching of the labia minora.

Sexual Exploitation of Children: The law criminalizes the actions of both the client and the pimp in cases of sexual exploitation of children under 18 years of age and also criminalizes child pornography and child prostitution.

Anecdotal evidence suggested sexual exploitation of children occurred. NGOs that worked with sex workers reported that, in most cases, children engaged in prostitution without third party involvement due to economic pressures on the child or the family or as a means of survival among HIV/AIDS orphans and other vulnerable children. These NGOs and social workers reported that sex workers often started working between the ages of 12 and 14, and usually had been abused before leaving home to work. Others were lured by older partners' offerings of money, cell phones, or other gifts. A 2010 UNICEF publication indicated that about one in six young women had had sex in exchange for "money or rewards."

The potential maximum penalty for someone convicted of soliciting a child (under the age of 16) for sex, or more generally for commercial sexual exploitation of a child--including through pornography--is a fine not exceeding N\$40,000 (\$4,545), imprisonment for a term not exceeding 10 years, or both. Exposing a child to pornography is also illegal under the child protection provisions of the law. Penalties for cases involving 16- or 17-year-olds are the same as for adults. The law makes special provisions to protect vulnerable witnesses, including those under the age of 18 or against whom a sexual offense has been committed.

Under the Combating of Rape Act, the client of a sex worker under the age of 16 may be imprisoned for up to 15 years for a first offense and up to 45 years for repeat offenses. Under the Prevention of Organized Crime Act, any person who aids and abets the trafficking of persons in the country or across the border is liable to a fine of up to N\$1,000,000 (\$113,636) or imprisonment of up to 50 years. Under the Combating of Immoral Practices Act, the solicitation of a prostitute, living off the earnings of prostitution, or keeping a brothel carries a penalty of N\$40,000 (\$4,545), 10 years in prison, or both. Anyone found to be soliciting in public is also guilty under the same act. However, because of the constitution's strict protection of privacy, and prostitution legislation's emphasis on the public (solicitation, brothels) and financial (living off the earnings of prostitution) side of prostitution over the sex act itself, police have been unable to make arrests for prostitution.

The minimum legal age for consensual sex is 16. The penalty for statutory rape (sex with a child under the age of 14) is a minimum of five years in prison. There is no minimum penalty for sexual relations with a child between the ages of 14 and 16. Possession of, or international trade in, child pornography is also illegal. The government continued to provide training for police officials to improve the handling of child sex abuse cases. Centers for abused women and children worked to reduce the trauma suffered by abused children.

Neither the government nor civil society keeps statistics on sex tourism, although there is anecdotal evidence that a small amount of it exists.

The existence of HIV/AIDS orphans--although now declining--increased the vulnerability of children to sexual abuse and exploitation.

Infanticide or Infanticide of Children with Disabilities: During the year the media reported numerous cases in which parents, usually young mothers, abandoned and sometimes killed newborns for whom they felt they were not able to care. A 2011

public survey conducted by the government, LAC, and UNICEF indicated that the main reasons mothers abandoned their babies was that the father denied paternity, the mother is a student, or the mother does not know about other options, such as adoption. Of the 3,742 respondents, 28 percent (mostly between the ages of 19 and 30) indicated they would abandon their baby to die if they found out they or, in the case of men, their girlfriends, were pregnant and did not want the baby.

**Displaced Children:** During the year the government continued efforts to provide medical care, school fees, social grants, and other assistance to HIV/AIDS orphans and other vulnerable children.

**International Child Abductions:** The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child abduction.

### **Anti-Semitism**

There was a very small Jewish community and no reports of anti-Semitic acts.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

The constitution protects the rights of "all members of the human family," which is understood by domestic legal experts to also prohibit discrimination against persons with disabilities. The law prohibits discrimination against persons with physical and mental disabilities in employment, health care, education, or the provision of other state services. The Labor Act prohibits discrimination in any employment decision based on a number of factors, including any "degree of physical or mental disability." However, the act makes exception in the case of a person with a disability if that person is, as a consequence of disability, unable to perform the duties or functions associated with the employment or occupation in question. Enforcement in this area was ineffective, and societal discrimination persisted. The government's National Disability Council of Namibia (NDCN) announced in June that 22 cases of discrimination have been registered with the organization since its establishment in 2004, and it is pursuing legal action in at least some of these. Aside from helping implement the government's National

Policy on Disability and raise awareness among the public, the NDCN published a booklet, *Mainstreaming Disability in the Namibian Public Sector*.

The government does not require special access to public buildings, and some ministries remained inaccessible. However, the government continued to require that all new government buildings be accessible and include ramps and other features. Additionally, some street corners in the capital were outfitted with special signal crossings for the visually impaired although there appear to be no sidewalk cutouts for those using wheelchairs. The Office of the Prime Minister's Disability Advisory Unit was responsible for overseeing concerns of people with disabilities.

### **National/Racial/Ethnic Minorities**

Despite constitutional prohibitions, societal, racial, and ethnic discrimination persisted. Some citizens continued to accuse the government of providing more development assistance and professional opportunities to the Ovambo, the largest ethnic group.

### **Indigenous People**

Other ethnic groups have historically exploited the San, the country's earliest known inhabitants. By law all indigenous groups participate equally in decisions affecting their lands, cultures, traditions, and allocations of natural resources. However, the San and other indigenous citizens, such as the Ovahimba and Ovaherero, have been unable to exercise these rights fully as a result of minimal access to education, limited economic opportunities, and their relative isolation. Indigenous lands were effectively demarcated, but poorly managed. NGOs such as the Namibia San Council, the Working Group of Indigenous Minorities in Southern Africa, LAC, and NamRights helped San communities assert their basic human rights during the year. In August the Office of the Ombudsman released a *Guide to Indigenous People's Rights in Namibia* as one way to sensitize the public and empower these groups.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

The country inherited criminalization of sodomy at independence, as part of its Roman-Dutch common law. There is no criminal statute. Sodomy is defined as consensual same-sex sexual activity between men; however, all same-sex sexual

activity was considered taboo by many citizens. Politicians publicly stated their opposition to legislation specifically protecting the rights of lesbian, gay, bisexual, and transgender (LGBT) persons, but there were no reports that politicians made derogatory public comments about the LGBT community.

OutRight Namibia, an organization that advocates for LGBT rights, reported that police generally did not take complaints of violence against LGBT persons seriously. OutRight Namibia claimed police often ridiculed LGBT persons when they reported cases of abuse, and this secondary victimization often dissuaded victims from reporting. However, the organization reported that since 2011, at least, the Office of the Ombudsman and the Ministry of Health and Social Services had strengthened their relations with the LGBT community, which was included in the National Strategic Framework for HIV/AIDS 2010-16 as a group requiring a special focus.

Societal discrimination against the LGBT community remained an issue. OutRight Namibia recorded 15 cases of employment discrimination, violence, harassment, threats, or verbal abuse during the year. In one case in the northern town of Oshakati, a young gay man was beaten and kicked by a group of men who told him homosexuals had no place there. The victim opened a case against the attackers at the local police station, but months later he had still not received a response from police. In another case a transgender woman was threatened with castration by her mother's husband in the Windhoek neighborhood of Katutura if she continued to wear women's clothing.

In June 2011 the government rejected three UN Universal Periodic Review recommendations on LGBT rights. According to OutRight Namibia, the government asserted that its religious and moral position would be compromised by discussions of the subject.

### **Other Societal Violence or Discrimination**

Societal discrimination against and stigmatization of persons living with HIV/AIDS remained problems. LAC found HIV-based discrimination to be widespread in recruitment for the military and police, although there were no reports of anyone being dismissed for being HIV positive while already serving. Fifteen young HIV-positive persons in Kavango region who completed government-sponsored youth service training in 2009 complained they still had not been placed in jobs with the army, police, or public works, whereas their HIV-negative colleagues had been. There were no reports of employment

discrimination specifically based on HIV/AIDS status, but LAC contended it was often deemed an incapacity in the private sector, and employers often sought other bases for dismissal once the company became aware of an employee's positive HIV status. The government supported the work of the Namibia Business Coalition against HIV/AIDS to eliminate discrimination in the work place.

In 2010 the government joined with other countries in lifting travel restrictions on people living with HIV and aligned the country's legislation with international public health standards.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides for the right to form and join independent unions, conduct legal strikes, and bargain collectively; however, workers in "essential services" were prohibited from joining unions.

Except for workers in public health, safety, and other essential services, workers have the right to strike once conciliation procedures are exhausted and 48-hours' notice has been given to the employer and labor commissioner. Strike action can be used only in disputes involving specific worker interests, such as pay raises.

Disputes over worker rights, including dismissals, must first be submitted to conciliation and are then referred to a labor court for arbitration if conciliation is unsuccessful. The law provides for arbitration and conciliation to resolve labor disputes more quickly, although employers and unions have publicly questioned the system's effectiveness more frequently in recent years than they did in the past. The law prohibits unfair dismissal of workers engaged in legal strikes. Labor law also specifically prohibits employer retaliation against both union organizers and striking workers and provides for reinstatement for workers dismissed for union activity, as long as the worker's actions at the time were not in violation of other laws.

The law provides employees with the right to bargain individually or collectively and to recognize the exclusive collective bargaining power of the union when a majority of the workers are members of that union. The labor code provides for the protection of all workers, including migrants, nonessential public sector workers, domestic workers, and those in export processing zones.

The government generally enforced this law, but not always effectively. The Namibian Employers' Federation reported a shortage of labor inspectors and other resources constrained the government's ability to be fully effective in enforcing its laws. The Ministry of Labor and Social Welfare continued to cite lack of information and basic negotiation skills as factors hampering workers' ability to bargain with employers successfully.

In general freedom of association and the right to collective bargaining were respected by the government and employers, and workers exercised these rights in practice. Many trade unions were officially affiliated with the ruling SWAPO party, which many workers argued limited their independence in promoting worker rights. Aside from mediation efforts, the government was not directly involved in union activities. Employers also did not appear to interfere in union activities.

Farm workers and domestic servants working on rural and remote farms often did not know their rights and, in attempting to organize these workers, unions experienced obstacles, such as being prohibited from entering commercial farms. Some activists alleged political interference in rural areas, as well. As a result some farm workers reportedly suffered abuse by employers, including poor access to health care.

Workers called strikes during the year in mining, construction, media, power generation, transportation, teaching, and other sectors. Strikes were more frequent during the year than in previous years. The majority of them involved employees of parastatals or government employees who were seeking higher pay. All strikes were resolved in accordance with the rule of law. The labor court declared in November that a two-week teachers' strike was "illegal," and its proponents were ruled in contempt of court for inciting strikers after the declaration, but the strikers remained peaceful.

Collective bargaining was not practiced widely outside the mining, construction, agriculture, and public service sectors. Almost all collective bargaining was at the workplace and company level. Employers respected the collective bargaining process.

Discussions were ongoing concerning reform of the "labor hire" (third party temporary contracts) system. There were accusations that some companies resorted to labor hire to avoid providing fringe benefits. In March an amendment to the Labor Act effectively ended temporary labor hire and required employers to provide equal benefits to all their employees. The amendment followed a 2009

Supreme Court finding that a provision in the Labor Act that prohibited employers from hiring third-party temporary or contract workers was unconstitutional. In September labor hire company Africa Labor Services challenged the amendment in the High Court, arguing it had the same effect as the unconstitutional Labor Act provision, which effectively banned the use of third party temporary labor. Employers may apply to the minister of labor and social services for an exemption to the act's amendment, if they can prove workers rights are protected, but very few employers pursued this option.

There were instances of companies failing to reinstate workers who were fired for legal union activities. In November 2011 China Jiangxi International fired workers who coordinated with a union to demand they be paid a minimum wage, as stipulated in the Labor Act. Ministry of Labor inspectors took part in the inconclusive negotiations on reinstating workers.

#### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor, including by children. The government did not report any formal allegations of forced or compulsory labor, and child labor was investigated when reported. The Ministry of Labor and Social Welfare makes special provisions in its labor inspections to look for underage workers, and it has prioritized such special investigations (see section 7.c., Prohibition of Child Labor).

Given the Ministry of Labor and Social Welfare's resource constraints in vehicles, budget, and personnel, as well as difficulty in gaining access to some large communal and family-owned commercial farms and private households, labor inspectors sometimes found it difficult to investigate possible labor code violations. Inspections of family-owned farms continued to be problematic and controversial, since the country's constitution enshrines privacy as a fundamental right. The Labor Act, however, makes an exception to the right to privacy in the case of labor inspectors gaining access to family farms. NGOs complained access to private farms was one of the leading challenges in addressing child labor.

NGOs and the media alleged forced labor occurred. There continued to be media reports that farm workers on communal farms and domestic workers often received inadequate compensation for their labor and were subject to strict control by employers, including physical punishment and prolonged work hours. The alleged victims were usually women and (sometimes migrant) children.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The minimum age for employment is 14 years old, with higher age requirements for night work and in certain sectors, such as mining and construction. Children between the ages of 14 and 16 may not work in hazardous or harmful conditions; between the hours of 8:00 p.m. and 7:00 a.m.; or where the work is underground or in a mine, construction or area where demolition takes place, goods are manufactured, electricity is generated, transformed, or distributed, or machinery is installed or dismantled. The same conditions apply to children between the ages of 16 and 18, except the ban on working under hazardous or harmful conditions. The minimum age of employment was inconsistent with the age for completing education requirements. The law provides that persons found guilty of employing children can face a maximum fine of N\$20,000 (\$2,272) and/or up to four years' imprisonment.

The Ministry of Gender Equality and Child Welfare continued to conduct several programs aimed at encouraging parents and guardians to allow children to attend school. The government does not have a separate institution to implement and enforce child labor laws, but generally used regular labor inspections as well as other monitoring mechanisms for orphans and other vulnerable children. There were approximately 40 labor inspectors during the year. They often targeted smaller towns and districts. All were trained in identifying the worst forms of child labor.

Small-scale labor inspections continued on a regular basis, and all labor inspectors were trained to look for signs of child labor. The Ministry of Labor and Social Welfare created a Child Labor Desk to manage cases involving child labor. There were no prosecutions by year's end.

The government continued several programs designed to help children stay in school and away from the labor market. The Ministry of Gender Equality and Child Welfare and the Ministry of Health and Social Services coordinated welfare programs for orphans, including those affected by HIV/AIDS, by providing grants and scholarships to keep them in school. In partnership with the International Labor Organization (ILO), the government also participated in a four-year program to withdraw and prevent children from entering exploitive labor in agriculture and adult-coerced criminal activity. The government continued to distribute a

comprehensive guide on the labor law, which included a section on child labor. The government also continued to work with NGOs, such as Project Hope, to assist victims of child labor. The Ministry of Gender Equality and Child Welfare released in 2011 *Pilot Guidelines and Tools for Child Care and Protection Forums at National, Regional, and Constituency Levels* and during the year the *National Plan of Action on Gender-Based Violence for 2012-16*, both of which include sections on addressing child trafficking and child labor. The ILO further reported that the cabinet issued a directive for joint interministerial investigations where child labor allegations arose.

However, child labor continued to be a problem. Children worked mostly on private and commercial farms; herded cattle, goats, and sheep; worked as child minders or domestic servants; and worked in family businesses. In 2011 there were media reports that children on communal farms and domestic workers were subject to strict control by employers, including physical punishment, long work hours, and not being allowed to attend school.

Sectors in which children were involved in the worst forms of child labor included agriculture and livestock, domestic service, and the commercial sex industry.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

There was no statutory minimum wage law, but the mining, construction, security, and agricultural sectors set basic levels of pay in each of their sectors through collective bargaining. In its November comparative analysis of Namibia Household Income and Expenditure Surveys (NHIES), the Namibia Statistics Agency reported that in 2009-10, Namibians were considered "poor" if they earned N\$377.96 (\$42.95) per month, and "severely poor" if they earned N\$277.54 (\$31.54) per month. According to the NHIES, in 2009-10, 29 percent of Namibians lived below the poverty line, 9 percent fewer than in 2003-04, and 16 percent of the population was extremely poor.

The standard legal workweek was 45 hours, with at least one 36-consecutive-hour rest period between workweeks. An employer may require no more than 10 hours per week of overtime, and the law requires premium pay for overtime work. The law mandates 20 workdays of annual leave per year for those working a five-day workweek, at least 30 workdays of sick leave over a three-year period, and three

months of maternity leave paid by the employer and the Social Security Commission.

The Ministry of Labor and Social Welfare mandates occupational safety and health standards, and the Labor Act empowers the president to enforce these standards through inspections and criminal penalties. The law requires employers to ensure the health, safety, and welfare of their employees. It provides employees with the right to remove themselves from dangerous work situations. The Labor Act covers all employers and employees in the country, except independent contractors and members of the NDF, Namibian Central Intelligence Service, the Prison Service, and NamPol. The March amendment to the Labor Act expanded the definition of “employee” to include individuals placed by a private employment agency (labor hire).

The government did not always enforce labor laws effectively. Inspections occurred proactively, reactively, and at random. The Ministry of Labor and Social Welfare established a national task force on safety but lacked an adequate number of trained inspectors to monitor adherence, especially in small family-owned operations.

In practice violations occurred. The Namibian Employers’ Federation reported the biggest offender, with regards to employee rights and working conditions, was the informal sector, including the common informal bars known as “shebeens.” In 2011 the Ministry of Labor and Social Welfare carried out a series of inspections in the retail sector of Katima Mulilo, in the Caprivi region. Most offenders were Chinese owners of retail shops, who underpaid and overworked their employees.

Concerns continued that Chinese firms failed to adhere to the labor code, in part by allegedly hiring and firing workers at will, ignoring occupational health and safety measures, failing to pay established minimum wages and benefits in certain industries, failing to respect work-hour regulations for public holidays and Sundays, and requiring construction workers to sleep on site. Investigations into such allegations were ongoing at year’s end. Migrant workers have the same legal rights as citizens.