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U.S. Department of State

Namibia Country Report on Human Rights Practices for 1997

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NAMIBIA

Namibia is a multiparty, multiracial democracy with an independent judiciary. President Sam Nujoma, leader of the South West Africa People's Organization (SWAPO), won Namibia's first free elections in November 1989. President Nujoma and the SWAPO party received just over 70 percent of the vote in the December 1994 Presidential and National Assembly elections, which, despite some irregularities, were generally regarded as free and fair. Although the Constitution limits the President to two terms in office, in May the SWAPO party congress recommended that the Constitution be amended to permit President Nujoma to run for a third term in 1999.

The police, supervised by the Ministry of Home Affairs, and the Namibian Defense Force (NDF), supervised by the Ministry of Defense, share responsibility for internal security. The civilian authorities maintain effective control over the security forces, although members of the police force committed some human rights abuses.

Namibia's modern market sector produces most of its wealth, while a traditional subsistence agricultural sector (mainly in the north) supports most of its labor force. The principal exports are diamonds and other minerals, cattle, and fish. Mining, ranching, and fishing--the mainstays of the market sector--are still largely controlled by white Namibians and foreign interests. Government policy, however, is to "Namibianize" the increasingly important fishing sector, so that more indigenous entrepreneurs are able to participate, and to provide opportunities for black Namibians in the potentially lucrative and labor-intensive tourism industry. Per capita annual gross domestic product is \$1,860. There remains, however,

a wide disparity between income levels of blacks and whites. Whites have an average per capita income of \$14,000 a year and many of the poorest blacks earn just \$65 a year.

The Government generally respected the human rights of its citizens, although there were problems in several areas. There continued to be credible reports that police beat or otherwise abused criminal suspects. Using an apartheid-era law, the President attempted to ban public demonstrations that did not have prior police approval. Police in the north broke up a private meeting between attorneys and their ethnic minority clients. The ruling party voted to amend the local election law in a manner that favored the ruling party's chances in local elections. In addition, the President and other high government and ruling party officials made repeated, well-publicized verbal attacks on the independent press. The Government rejected a request by the South African Truth and Reconciliation Commission to hold hearings in Namibia and still refuses to provide a full accounting of missing detainees who were in SWAPO camps before independence. Namibian defense forces admitted to seven cases of extrajudicial killings since 1994 along the northern border with Angola. Prison conditions remain harsh, and a large court backlog continues to lead to lengthy delays of trials.

Although violence against women and children, including rape and child abuse, continue to be serious problems, the President, members of his Cabinet, and parliamentarians have spoken out forcefully on these problems which are receiving significant attention at all levels of government. Women married under customary law, however, continue to experience serious legal and cultural discrimination. Relatively little has been done to elevate women to high-level positions in government and the ruling party despite promises by the President to nominate more women. Racial and ethnic discrimination and glaring disparities --especially in education, health, employment, and working conditions--continued despite sustained efforts by the Government to reduce them. Discrimination against indigenous people persists, and the problem was exacerbated during the year by governmental actions involving Bushmen.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political or other extrajudicial killings.

After repeated prodding by a local nongovernmental organization (NGO), in July the Government admitted that since 1994, seven civilians had been killed by Namibian security forces along the northern border with Angola. The admission came after the Namibian Defense Force and the Ministry of Defense conducted an investigation into charges that over a thousand civilians had disappeared along the Angolan border (see Section 1.b.). One NDF officer was charged with murder and another was found guilty of culpable homicide. Investigations into the other killings were ongoing.

b. Disappearance

While there were no reports of politically motivated disappearances, a local NGO charged that more than 1,500 persons disappeared along the northern border with Angola after being deported by Namibian security forces. This charge has not been substantiated, and an investigation by the Ministry of Defense found that seven civilians had been killed by Namibian Security Forces (see Section 1.a.). Human rights organizations, political parties, and the public continued to call for a full accounting of unexplained disappearances of persons detained by SWAPO prior to independence. In August 1996, President Nujoma released the long-promised, official SWAPO memorial book, known as the Heroes Book,

lists the names of nearly 8,000 people who died during the liberation struggle. Local human rights organizations harshly criticized the book, characterizing it as an unconvincing cover-up and declaring that the listing is fraught with inaccuracies and omissions regarding those who died or disappeared in SWAPO detention camps.

SWAPO was again viewed widely in 1997 as having failed to deal forthrightly with the missing detainee issue. In May the Government formally rejected a request by the South African Truth and Reconciliation Commission to hold hearings in Namibia. Such a hearing might have shed light on disappearances that occurred on both sides during the liberation struggle. While some of the Government's critics would be satisfied with an official apology for SWAPO abuses against these detainees, others are pressing for full accountability through a truth commission, prosecutions, and convictions.

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

The Constitution provides that "no persons shall be subject to torture or to cruel, inhuman, or degrading treatment or punishment." There were published newspaper reports, however, that members of the police beat or otherwise abused civilians, either during arrest or in police station houses in the northern towns of Oshakati, Ombalantu, and Omungwelume. Twenty-five official complaints of police brutality were recorded as of July. According to human rights organizations, there has been an increase in the number of reported cases of police brutality, and the problem remains particularly acute in northern areas. One human rights advocate noted that the increase in reported cases of brutality was likely due in part to growing public awareness of citizens' rights and a willingness to report such cases. The Attorney General has ordered a full investigation of these complaints.

Prison conditions are harsh, and during the year there was at least one case of a prisoner being murdered by fellow inmates in a crowded cell. Human rights organizations continued to complain about prison overcrowding. In March 1995, the Government created a Ministry of Prisons and Correctional Services, charged with administering the country's prisons and jails. The Ministry emphasizes correctional and rehabilitation functions, including vocational training, and has made some concrete progress. The Government is also making efforts to separate youthful offenders from adult criminals, although in many remote and rural areas juveniles continue to be held with adults.

The Government continued to grant NGO's and diplomatic officials regular access to prisons and prisoners.

d. Arbitrary Arrest, Detention, or Exile

The Constitution forbids arbitrary arrest or detention, and the Government generally respected these provisions in practice. According to the Constitution, persons who are arrested must be informed of the reason for their arrest and must be brought before a magistrate within 48 hours of their detention. The accused are entitled to defense by legal counsel of their choice, and those who cannot afford a lawyer are entitled to state-provided counsel. In practice, however, many accused persons in remote and rural areas are not legally represented, primarily due to resource constraints. A trial must take place within "a reasonable time," or the accused must be released. Human rights organizations criticized the length of time that pretrial detainees were held, which stretched up to 1 year in many cases while investigations were pending.

Some traditional leaders reportedly continued to detain and imprison persons accused of minor offenses without recourse to police or judicial review. The Government continued training traditional leaders on the legal limits of their authority.

The Government does not use forced exile.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government respects this provision in practice.

The formal court system has three levels: 30 magistrates' courts, the High Court, and the Supreme Court. The latter also serves as the court of appeals and as a constitutional review court.

Most rural Namibians first encounter the legal system through the traditional courts, which deal with minor criminal offenses, such as petty theft and infractions of local customs, among members of the same ethnic group. A special commission, created to make recommendations on the prospective jurisdiction of traditional courts, concluded that traditional cultural practices and structures should be maintained, provided that they were consistent with constitutional protections and existing laws. The Traditional Authorities Act delineates which offenses may be dealt with under the traditional system.

The constitutional right to a fair trial, with a presumption of innocence until proven guilty, is generally afforded by the judiciary. However, long delays in hearing cases in the regular courts and problems associated with the traditional system limit this right in practice.

The lack of qualified magistrates, other court officials, and private attorneys has resulted in a serious backlog of criminal cases, which often translated into long delays of up to a year or more between arrest and trial. Many of those awaiting trial are treated as convicted criminals. This practice contravenes Namibia constitutional provisions for the right to a speedy trial.

There were no reports of political prisoners.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The Constitution provides all citizens with the right to privacy and requires arresting officers to secure a judicial warrant before conducting a search. Government authorities respected these rights in practice, and violations were subject to legal action.

Under the Central Intelligence Service bill passed by the National Assembly in July, this agency is authorized to conduct wiretaps, intercept mail, and engage in other covert activities, both inside and outside the country in the interests of national security. Wiretaps and other forms of covert surveillance, however, require the consent of a judge.

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 these rights.

Reporters for independent newspapers criticize the Government openly and do not engage in self-censorship. During the year, there was a series of attacks on the private media by the President, the Prime Minister, and other members of the Government. These attacks included charges that the independent press was "foreign owned" and "an enemy press." While such charges may have been

calculated to quiet criticism, they do not appear to have had any impact on the aggressive style of the independent media.

The government-owned Namibian Broadcasting Corporation (NBC) operates most radio and television services. NBC provided significant coverage to opposition points of view. Some believe that NBC reporters exercise self-censorship on certain controversial issues, such as the question of missing detainees and the issue of a third term for President Nujoma. Despite these complaints, NBC is generally balanced in its reporting.

There are three private radio stations, one private television station in the town of Rehoboth, and a private cable and satellite television service that broadcasts Cable News Network, British Broadcasting Corporation, and a range of South African and international news and entertainment programs. There are no restrictions on the private ownership of satellite dishes.

On October 28, the Ministry of Information and Broadcasting (MOIB) issued new regulations that require foreign journalists seeking to visit Namibia to provide 1 month's advance notice to the MOIB, stating the purpose of their proposed visit. Journalists are required to schedule appointments with government officials through the MOIB and request permission to visit areas under the control of the Ministry of Environment and Tourism. Additionally, journalists must obtain a temporary work permit from the Ministry of Home Affairs. There were no reports of complaints from journalists.

The Government respects academic freedom. During the year there were numerous seminars held at universities and other venues in Windhoek on controversial issues.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly and association.

While in the past the Government has generally respected these rights in practice, in July the President announced a ban on all public demonstrations that did not have prior police approval. This ban was based on an apartheid-era law. The ban was selectively enforced in late July when police in the northern town of Okanguati broke up private meetings between a public interest law firm and its clients, Himba tribesmen opposed to the construction of the Epupa Dam, which the Government supports (see Section 5). In August the High Court struck down the 1989 law used by the President to justify the ban. The Government plans to appeal.

During the year various organizations, including political parties, religious groups, women's organizations, students, and unemployed and former combatants held large meetings and public gatherings without interference.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government respects this right in practice.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government respects them in practice. The Government cooperates with the United Nations High Commissioner for Refugees (UNHCR), and UNHCR officials have observed a marked improvement in the Government's refugee policy. The Government's eligibility committee has met on a regular basis to consider asylum requests. Refugee

status has been accorded to a number of asylum seekers, and those rejected are generally not being deported. There were no reports of forced expulsion of those having a valid claim to refugee status, although illegal immigrants are often detained in prisons for long periods of time before being deported.

Namibia is a first asylum country and continues to permit asylum seekers to enter the country. There are presently more than 2,200 refugees and asylum seekers at Osire camp, 90 percent of whom are from Angola. The rest are from the Democratic Republic of the Congo, Burundi, Rwanda, Tanzania and other African countries. Asylum seekers are interviewed by government officials, and those granted refugee status are permitted to work and attend school including the University of Namibia. Schools have been established at the Osire refugee camp. Residents are free to leave the unfenced facility, and many travel to Windhoek and other towns on personal business and to sell handicrafts. On November 29, 129 Angolan refugees were voluntarily repatriated to Angola. There were no credible reports that persons were forcibly returned to a country where they feared persecution.

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

Citizens exercised this right for the second time in December 1994 in what observers generally agreed, despite some irregularities, to be free and fair presidential and parliamentary elections. The Government printed and distributed useful and informative voter guides with lists of government and opposition candidates and requested international election observers. There were televised debates, and the opposition parties were able to campaign freely. Two new parties were established during the year.

The Constitution establishes a bicameral parliament and provides