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2009 Human Rights Report: Namibia

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices

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Namibia is a multiparty democracy with a population of approximately two million. The presidential and parliamentary elections held November 27 and 28 resulted in the re-election of President Hifikepunye Pohamba and the retention by the ruling South West Africa People's Organization (SWAPO) of its parliamentary majority. Both the president and SWAPO won more than 75 percent of the vote. Despite some irregularities, international observers characterized the election as generally free and fair. Several opposition parties have challenged the outcome in court, and the case was pending at year's end. Civilian authorities generally maintained effective control of the security forces.

Human rights problems included police use of excessive force; poor conditions in prisons and detention centers; arbitrary arrest, prolonged pretrial detention and long delays in trials; limitations on press freedom; criticism of nongovernmental organizations (NGOs); harassment and political intimidation of opposition members; and official corruption. Societal abuses included violence against women and children, including rape and child abuse; discrimination against women, ethnic minorities, and indigenous people; and child labor.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

The government or its agents did not commit any politically motivated killings.

The investigation into the February 2008 case in which a police officer shot and killed a demonstrator who stabbed a police constable was ongoing at year's end.

There were no developments in the 2007 suffocation death of William Cloete, who died in a shipping container that police in the town of Rosh Pinah used as a detention center.

The trial of nine police officers accused of killing a suspect during interrogation in 2006 was ongoing at year's end.

On March 6, 14 police officers accused of the 2005 beating of five men, one of whom died from his injuries, were acquitted of all charges; two other police officers charged in the case were acquitted in 2008.

Following the discovery of six mass graves along the country's border with Angola in August 2008, the National Society for Human Rights (NSHR) submitted a dossier to the UN Working Group on Enforced or Involuntary Disappearances, alleging that the graves could be linked to "enforced disappearances" in Caprivi and Kavango regions between 1994 and 2003. The UN subsequently requested that the government confirm the allegations and explain any steps taken to address the discovery. By year's end the government had not provided an explanation. In 2008 the government investigated one of the six grave sites, which contained the remains of five political activists who were killed without trial by South African security forces in 1972. Government officials claimed the site was well known and did not represent a new finding. None of the other mass graves had been investigated by year's end.

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.

Windhoek City police mistreated suspects in a secret cell before handing them over to the main police station, according to media reports. Police denied the accusations, and no investigation had been conducted by year's end.

In September, in Kalkrand, authorities filed criminal charges against four police officers for allegedly assaulting two residents, Gerhard Lodewyk and Johannes Kooper, who were accused of stealing a gas cylinder from a police officer's home. The trial had not started by year's end.

In May police use of force to disperse demonstrators resulted in injuries (see section 2.b.).

Prison and Detention Center Conditions

Prisons and detention centers were overcrowded, were poorly maintained, and lacked basic sanitation and adequate food. Guards sometimes abused prisoners. In April 2008 the newspaper *The Namibian* reported that Windhoek Central Prison held 1,172 prisoners--almost 30 percent more than its official capacity of 912 prisoners. The government-owned newspaper *New Era* reported during the year that one police holding facility designed to accommodate 105 persons held 224.

Conditions of police holding cells showed little change since a 2008 ombudsman's report cited the cells for poor sanitary conditions, overcrowding, insufficient food, unsafe infrastructure, and lack of access to medical care and potable water. In April *The Namibian* reported that police holding cells at the Windhoek, Wanaheda, and Katutura stations, which together have a capacity of 705 persons, held approximately 1,079 pretrial detainees. The Wanaheda police station, with a capacity of about 180 persons, held 325 suspects, while the Windhoek police station, built to hold 100 suspects, housed at least 253.

Minister of Safety and Security Nickey Iyambo, who visited a number of police holding facilities in June, criticized their poor conditions.

In July inmates at the Katutura police station set fire to trash bins and threw sewage at police officers to draw attention to their conditions.

Victims of prison abuse were able to pursue legal remedies, although lengthy delays were common. For example, in April the prosecutor general began to prosecute five Keetmanshoop police officers and their station commander for negligence

in connection with the 2007 death of Noel Thompson, who died after being attacked by another inmate. The court case was ongoing at year's end.

Some detainees were held with convicted prisoners, and juveniles continued to be held with adults in many rural areas. In August a 15-year-old boy who was arrested for theft allegedly was imprisoned with adult males who sexually assaulted him. The Rainbow Project, a group that lobbies for the rights of lesbians, gays, bisexuals, and transgender persons, provided legal counsel to the victim. An investigation was pending at year's end.

The government continued to grant both local and international NGOs regular access to prisons and prisoners. In January, May, and December, the International Committee of the Red Cross (ICRC) visited prisons and detention centers. The government required that media representatives seeking to visit prisons apply in writing to the commissioner for prisons; however, the government rarely acceded to such requests. Media representatives were allowed to accompany the minister of safety and security on his prison tours.

Suspects in the Caprivi treason trial continued to complain of poor medical services and intimidation of their visitors by prison officials.

Pilot programs, such as placing youths in shelters and foster homes, provided alternatives to incarceration for juvenile offenders. During the year the government expanded its community service pilot project from four to all 13 of the country's regions; the program provides an alternative to incarceration for adults and juveniles convicted of petty crimes. The NGO CHANGE, led by a former deputy minister for prisons, also offered counseling, skills training, and job placement to former inmates.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest or detention; however, the government did not always observe these prohibitions.

Role of the Police and Security Apparatus

The Namibian Police Force (NAMPOL), which has approximately 12,000 members, is under the Ministry of Safety and Security. The Namibian Defense Force (NDF), which has approximately 16,000 members, is under the Ministry of Defense. Both NAMPOL and the NDF were responsible for 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. NAMPOL lacked the resources, training, and personnel to effectively deter or investigate street crime.

Police corruption and impunity were problems.

In April police arrested traffic officer Jacobus Coetzee on bribery charges; in exchange for bribes Coetzee allegedly destroyed traffic tickets he had issued, primarily to taxi drivers.

On May 12, police constable Lawrence Foreman arrested Hendrik Mathews for possessing cannabis; Mathews allegedly had 10,350 Namibian dollars (\$1,377) in his possession at the time of arrest. When only 4,100 Namibian dollars (\$546) were returned when he was released on bail, Mathews filed theft charges against Foreman for the missing 6,250 Namibian dollars (\$832). Mathews also claimed that he had more than 100 grams of cannabis when arrested, but that he was charged for possessing only 100 grams.

In June the Anticorruption Commission (ACC) arrested police constables Chris Garoeb and Paul Jarson for allegedly impersonating immigration officials and defrauding a foreign tourist of 1,800 Namibian dollars (\$240). An investigation was ongoing at year's end.

In August the weekly *Informante* reported that more than 20 million Namibian dollars (\$2.7 million) in cash, drugs, counterfeit traveler's checks, and other valuables confiscated from suspects and kept as evidence had vanished from police safes since the beginning of the year. Other media outlets made similar allegations during the year.

In April Andrew Iyambo, the deputy commissioner of police for Erongo Region who was suspended in 2007 for misappropriating funds, was acquitted of all charges and reinstated in his position.

There were continued reports that police officers threatened to arrest prostitutes who did not agree to give them free sex.

Although some security force members accused of abuse and corruption were arrested and tried in military courts or the civilian criminal justice system, the government took no action against others.

Police continued to receive human rights training designed by the Windhoek-based NGO Legal Assistance Center (LAC). Some officers attended training programs with human rights components, including human trafficking, at the International Law Enforcement Academy in Gaborone, Botswana.

Arrest Procedures and Treatment While in Detention

Arrest warrants are not required in all cases, such as when a suspect is apprehended during the commission of 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 respect these provisions in practice. Detainees generally were promptly informed of the charges against them. Those accused are entitled to defense by the legal counsel of their choice, and those who cannot afford a lawyer are entitled to state-provided counsel. 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, and detainees generally were allowed prompt access to family members. Under a state of emergency, however, 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.

The NSHR recorded 12 cases of arbitrary arrest during the year.

In January--five years after the last arrest in connection with the Caprivi high treason trials following the attacks on government institutions in 1999--police arrested Albius Moto Liseli on treason charges. Liseli's name had been mentioned during a trial that concluded in 2007 as an alleged participant in the secessionist movement. The NSHR issued a press statement claiming the police threatened Liseli's mother and forced her to sign a document implicating her son in the secession plot. The prosecutor general had not decided whether to prosecute Liseli by year's end.

On February 4, Windhoek City police assaulted, arrested, and detained without charge Timoteus Amunyela, a youth who was walking around the city looking for employment, according to the NSHR. Amunyela was released the following day.

On September 14, the NSHR reported that an intoxicated police officer arbitrarily arrested and assaulted Lukas Nekongo, who subsequently filed criminal charges against the police officer. No action had been taken on the case by year's end.

Unlike in the previous year, there were no reports of police arresting and detaining homeless children. After the 2008 arrests of such children, the Minister of Gender Equality and Child Welfare condemned the police action and demanded an end to the practice. Most homeless children who were arrested were placed into childcare shelters.

Unlike in the previous year, there were no reports that security forces arrested opposition members.

A trial must take place within "a reasonable time," or the accused must be released; however, lengthy pretrial detention was a problem. Approximately 8 percent of the general prison population was awaiting trial. The lack of qualified magistrates and other court officials, the high cost of legal aid, slow or incomplete police investigations, and the continued postponement of cases resulted in a serious backlog of criminal cases and delays of years between arrest and trial.

e. Denial of Fair Public Trial

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

The formal court system has three levels: 30 magistrate courts; two high courts; and the Supreme Court, which served as a court of appeals and constitutional review court. 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.

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. The remaining 117 Caprivi treason detainees imprisoned in Windhoek, for example, have been detained since 1999 and awaiting the completion of their trials since 2004. The law provides for public trials but not juries. Defendants have the right to be present at trial, to consult with an attorney in a timely manner, and along with their attorneys to have access to government-held evidence. Indigent defendants are entitled to a lawyer provided by the state; however, this often did not occur due to an insufficient number of public defenders. Defendants are presumed innocent, can confront witnesses, can present witnesses and evidence on their behalf, and have the right of appeal. The law extends these rights to all citizens.

Three of the 127 civil suits stemming from alleged mistreatment of Caprivi treason detainees while in custody were heard during the year; the court ruled in favor of the Ministry of Home Affairs in one case, and two cases remained pending at year's end.

Procedural problems continued to delay the Caprivi high treason trials. In July a major state witness was involved in a serious road accident, further delaying the trial. During the year a judge ruled that 10 Caprivi detainees sentenced in 2007 could appeal their sentences; however, no hearings on appeals had begun by year's end.

The trial of two ethnic Mafwe witnesses who appeared in court in 2006 on charges of perjury and obstruction of justice for denying statements they had made to investigators in the Caprivi treason trial was ongoing at year's end. The two, who remained incarcerated, claimed their statements were obtained under duress inflicted by security forces.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There exists an independent judiciary in civil matters, which is widely perceived as impartial. 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.

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

The constitution prohibits such actions, and the government generally respected these prohibitions in practice; however, in November the government enacted the Communications Act, popularly known as the "Spy Bill," after intense public debate. 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. In an unusual move, the National Council, the upper house of parliament, sought testimony from the public, including journalists and civil society representatives, many of whom argued that interception should only be authorized by the judge president of the High Court or a judge assigned by the judge president. Despite such objections, the National Council passed the bill without any amendments. Opponents called the law an invasion of privacy and a violation of the right to freedom of 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; however, the government partially limited press freedom. Some independent and government journalists practiced self-censorship.

The 2009 Communications Act establishes the Communications Regulatory Authority of Namibia (CRAN) to regulate communications, including the media. The legislation does not specify how the media will be regulated. The CRAN's other duties include setting up a licensing framework for both telecommunications and broadcasting, determining interconnection tariffs, allocating radio and telecommunication frequencies, promoting competition in the telecommunications industry, and establishing telecommunications data (such as Internet and telephone) interception centers.

There were four daily national newspapers, three of which were independent, and four independent weekly newspapers. The *New Era* newspaper and the Namibian Press Agency were both parastatals, whose boards the minister of information and broadcasting appointed. The government shared equal ownership of the regional weekly newspaper *Southern Times* with the government of Zimbabwe. The ruling SWAPO party owned one publication, *Namibia Today*.

On February 2, the SWAPO Party Elders' Council called on *The Namibian* to stop publishing cell phone text messages that criticized President Pohamba and former president Nujoma, charging that the messages fueled chaos and anarchy. *The Namibian* did not heed the request, and the Elders' Council took no action to convince the government to impose the proposed ban.

In a September 7 article, *The Namibian* charged the Electoral Commission of Namibia (ECN) had not provided it election information distributed to other newspapers. ECN Director Moses Ndjarakana countered that the ECN had no authority to include *The Namibian* in its distribution of election materials due to a cabinet resolution prohibiting the government and its agencies from advertising or buying copies of *The Namibian*. The ECN subsequently provided the election materials but required *The Namibian* to pay for them.

In an October address to a SWAPO rally, SWAPO Party Secretary General and Justice Minister Iivula-Ithana called *The Namibian's* editor Gwen Lister a "big snake in the country" and accused the newspaper of publishing false news to tarnish the country's image and of "desiring to bring war." Iivula-Ithana also said that Lister should "not forget that she is white," and could be held responsible for the "evil deeds" of her parents and grandparents.

During the July arrival of Cuban President Raul Castro, independent media were positioned separately from state media, giving them an inferior angle for coverage. When a cameraman from One Africa Television moved to the state media position without permission, he was handled roughly and, according to some accounts, expelled from the event.

The government owned and operated the Namibian Broadcasting Corporation (NBC) Radio and Television, which were the most widely broadcast and influential media in the country. NBC's television and nine radio services broadcast in English and indigenous languages. There were 12 private radio stations and one private television network, One Africa TV. SWAPO owned 51 percent of the country's sole cable and satellite television provider.

On February 3, SWAPO Secretary for Information and Mobilization Jerry Ekandjo called for the dismissal of NBC Director General Bob Kandetu after a flag of the opposition Rally for Democracy and Progress (RDP) party flashed on the screen following President Pohamba's New Year's speech. The newspaper *New Era* reported that the NBC board cited incompetence and lack of performance as the reasons for the dismissal.

In March NBC modified the format of its popular radio call-in program, *National Chat Show*, to limit the topics for discussion; NBC Director General Matthew Gowaseb, who replaced Kandetu, attributed the move to inappropriate language and comments. The new format limited the topics to socio-economic issues, precluding political discussions. In November Gowaseb required the host of the morning radio program *Keetute* to address only themes provided by the NBC central office; the program had previously featured stories that sometimes criticized the government and ruling party. Gowaseb also threatened to cancel the evening talk show *Openline*; however, *Openline* and the talk show *Ewi la manguluka* (roughly translated as "free to speak") continued to operate and to feature political discussion.

During the year the government arrested foreign journalists. In July authorities arrested British investigative journalist Jim Wickens and South African filmmaker Bart Smithers for filming undercover the annual seal cull at Cape Cross. The two journalists, who had tourist rather than work visas, also were charged with trespassing in a marine protected area, failure to apply for permission to film at the Namibia Film Commission, and failure to apply for accreditation from the Ministry of Information. Seal hunters assaulted the journalists and confiscated their filming equipment. Wickens and Smithers claimed the attack took place in front of an official of the Ministry of Fisheries and Marine Resources. The journalists pled guilty to the charge of trespassing and were each fined 10,000 Namibian dollars (\$1,331), of which 5,000 Namibian dollars (\$665) was suspended for five years provided the two did not repeat the crime.

The trial of South African television journalist Bonita Nuttall, who was arrested and subsequently released in November 2008 for working on a tourist visa, was ongoing at year's end. In December 2008 the international NGO Reporters Without Borders called Nuttall's detention "an abuse of authority out of proportion to the offense."

The Media Institute of Southern Africa issued six media freedom alerts for the country in its 2008 and 2009 annual reports, including three in which the government was cited for banning journalists from covering events; two for September passage of the Communications Bill; and one for the November 2008 arrest of journalist Bonita Nuttall.

In August the Editors' Forum of Namibia created the country's first media ombudsman and appointed to the position Clement Daniels, a well-respected human rights lawyer. Along with the media-operated Media Complaints Committee and a Media Appeals Board, the media ombudsman receives and adjudicates grievances and complaints by members of the public against the media.

Internet Freedom

There were no government restrictions on access to the Internet; however, the Communications Bill passed in September provides that the intelligence services can monitor e-mails and Internet usage with authorization from any magistrate (see section 1.f.).

According to International Telecommunication Union statistics for 2008, approximately 5 percent of the country's inhabitants used the Internet.

Academic Freedom and Cultural Events

Although there were no reports of government restrictions on academic freedom or cultural events, all government-owned institutions of higher learning, including the University of Namibia, Polytechnic of Namibia, and the Windhoek College of Education, continued to bar 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; however, SWAPO supporters attempted to block opposition RDP gatherings on several occasions.

For example, according to press reports, in February 100 SWAPO supporters surrounded a shack in the Havana settlement of Windhoek for five hours after learning that an RDP branch meeting reportedly was taking place inside. Police fired warning shots to disperse the crowd; no arrests were made.

In May police used tear gas to disperse approximately 500 young members of the "Children of the Liberation Struggle" who had taken control of a bridge and were demanding to see the president to ask for jobs and educational opportunities. The approximately 10,000 registered members of the "Struggle Children," who ranged in age from 19 to 40 years old, grew up in refugee camps and claimed to lack the education and skills required to obtain employment. Six of the demonstrators were hospitalized as a result of their injuries. On September 2, members of the group marched to parliament to present petitions. Police reportedly assaulted and arrested one marcher who was subsequently released.

In two separate incidents in October, groups of more than 200 SWAPO supporters prevented RDP members from campaigning in the towns of Outapi and Onesi in the Omusati region. Police escorted the RDP campaigners out of the traditional SWAPO strongholds.

In November, after an RDP rally in the town of Outapi, a group of approximately 250 SWAPO supporters lined both sides of the road and threw stones at a convoy of RDP vehicles as it departed town. RDP party members retaliated, and police used teargas to control the crowd. Seven people were arrested, and their cases were ongoing at year's end.

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

The constitution provides for freedom of religion, and the government generally respected this right in practice.

Societal Abuses and Discrimination

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

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/g/drl/rls/irf.

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 UN Office of the High Commissioner for Refugees (UNHCR) and other humanitarian organizations in protecting and assisting refugees, returning refugees, asylum seekers, and other persons of concern.

The government continued to limit the freedom of travel of Cuban doctors working in the country under a Cuban bilateral assistance program. These doctors were generally not allowed to travel within or from the country without consent from the Cuban embassy, which held their passports.

The constitution prohibits forced exile, and the government did not use it.

Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, and the 1969 African Union Convention Governing the Specific Aspects of the Refugee Problem in Africa. Its laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

In practice the government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

According to the UNHCR, approximately 7,200 refugees and asylum seekers resided in Osire Settlement, formerly called the Osire Refugee Camp, while approximately 1,300 lived outside the settlement. Angolans represented 75 percent of the population, with another 20 percent from the Democratic Republic of Congo, Rwanda, and Burundi. The government continued to issue identification cards to all refugees to facilitate travel outside the settlement. Nevertheless, some refugees complained that they were still prevented from working outside the settlement. Free education through grade 10 was available to all refugee children, and the government financially sponsored further secondary education for students at schools outside the settlement. The government provided antiretroviral therapy to refugees infected with HIV/AIDS.

On July 8, 41 Congolese refugees voluntarily departed Osire Settlement, where many had been living for the past decade, and subsequently sought asylum in Botswana. The group, which included 23 children, claimed that the government issued "death threats" against them after they had complained about living conditions. UNHCR determined that refugee claims of poor living conditions and government threats were unfounded, and the group decided to stay at the Mamuno border crossing between Namibia and Botswana rather than return to the camp. After the Namibian government stated that the refugees were not welcome to return to Osire, the government of Botswana agreed to take charge of the group until a decision could be reached on the group's request for asylum. At year's end the situation remained unresolved.

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

The government also provided temporary protection to certain individuals who may not qualify as refugees under the 1951 convention or the 1967 protocol.

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. Opposition members lodged numerous claims of harassment against SWAPO supporters.

Elections and Political Participation

In presidential and parliamentary elections held in November, SWAPO candidate Hifikepunye Pohamba was re-elected president with 76 percent of the vote, and SWAPO candidates won 54 of 72 elected National Assembly seats.

International and domestic observers characterized both elections as free and reflecting the will of the electorate despite some irregularities. Observers criticized the inefficient vote tabulation system and the unequal access to media coverage and campaign financing. In the National Assembly, eight opposition parties won a total of 18 seats.

Individuals and political parties could declare their candidacy 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 RDP. The majority Owambo tribe dominated the political system. Membership in the dominant SWAPO party was widely perceived to confer advantages, particularly in securing public sector jobs and government tenders.

In August the president signed into law the Electoral Amendment Act, which permits citizens living abroad to vote, empowers the Electoral Commission of Namibia to accredit election observers, and provides that ballots be counted and results announced at polling stations immediately after polls close. The act also provides that new political parties advertise in the *Government Gazette* and that the names of the 500 supporters and founding members required for the registration of the party also appear in the *Gazette*.

In August the police inspector general asked all political parties to stop conducting door-to-door campaigning to avoid political violence and preserve citizen privacy. Most political parties objected, and police did not enforce the request.

On February 8, *The Namibian newspaper* reported that a SWAPO supporter armed with a pistol allegedly attacked opposition RDP member Sam Hamunyela, who filed a criminal charge against his attacker. The case was ongoing at year's end.

The July 2008 case in which a mob of ruling SWAPO party supporters attacked two RDP supporters remained under investigation at year's end.

Two days prior to the by-election for Tobias Hainyeko constituency in 2008, unknown assailants threw tear gas at the house of RDP candidate Erasmus Hendjala. A police investigation into the incident failed to identify the perpetrators, and the case was dropped during the year.

Investigations into the incident in 2008 in which opposition party leaders were charged with advocating a boycott of a parliamentary by-election were still pending at year's end.

Women held 24 seats in the 78-seat National Assembly, which included six appointed seats and 72 elected ones. There were six female ministers, including the deputy prime minister, and five female deputy ministers among the 45 ministerial and deputy ministerial incumbents.

Historic economic and educational disadvantages limited the participation of the indigenous San ethnic group in politics; however, a SWAPO member of the San community represented the community in the National Assembly. Virtually all of

the country's other ethnic minorities were represented in parliament and in senior positions in the cabinet. Members of smaller ethnic groups held the offices of deputy prime minister, speaker of the National Assembly, and chairperson of the National Council.

Section 4 Official Corruption and Government Transparency

Although the law prohibits corruption and the government took steps to address the problem, officials continued to engage in corrupt practices. The World Bank's most recent Worldwide Governance Indicators reflected that corruption was a problem.

In May the government implemented the Prevention of Organized Crime Act, which provides for monitoring and prosecuting money laundering and combating financial crimes, such as tax evasion, false accounting, and corruption. Also in May the ACC organized the "Great Walk against Corruption" to raise awareness of the problem. Several senior government officials joined the march.

During the year the ACC conducted several investigations into corruption, and, unlike in previous years, the ACC was not widely criticized for pursuing only "small fish." In April the National Assembly criticized the ACC for publicizing cases under investigation.

In March the ACC launched an investigation into the Bethanie Village Council for alleged mismanagement of funds, tender irregularities, and abuse of power.

In June the ACC arrested Hardap Regional Governor Katrina Hansa-Himarwa on two counts of corruption. She was accused of failing to account for 2,000 Namibian dollars (\$266) from an entertainment budget and for misappropriating 3,290 Namibian dollars (\$438) to pay a relative to make curtains for her residence. In September Hansa-Himarwa was acquitted of all charges.

In July the ACC arrested Public Service Commissioner Teckla Lameck, businessman Kongo Mokaxwa, and Chinese national Yang Fan on charges of fraud, bribery, and corruption. Assets belonging to the three were frozen following accusations that they received kickbacks of 42 million Namibian dollars (\$5.6 million) in connection with a government contract with a Chinese company for scanning equipment for the Directorate of Customs and Excise. Lameck and Mokaxwa were granted bail of 50,000 Namibian dollars (\$6,650) each, while Yang Fan's bail was set at 250,000 Namibian dollars (\$33,300). The court case was ongoing at year's end.

Also in July, President Pohamba suspended NDF chief Lieutenant General Martin Shalli amid unspecified claims of corruption. The claims related to alleged kickbacks paid by a Chinese company which supplied the NDF with equipment.

In November the ACC began investigating Immanuel Mulunga, the country's petroleum commissioner, regarding his role in a shareholding dispute over an exclusive exploration license for coal methane gas which involved several prominent individuals. The investigation was ongoing at year's end.

Investigations into corruption cases from 2007 and 2008 continued; however, charges were withdrawn in some cases. On February 27, a magistrate dismissed the 2008 charges against Vincent Hailulu, the chief executive officer of the National Housing Enterprise, who was arrested for "enriching himself and for not following proper hiring procedures." In addition, the magistrate ordered that the bail of 30,000 Namibian dollars (\$4,000) that Hailulu had paid be refunded. The ruling confirmed a February 6 court ruling that Hailulu's arrest had been unlawful. Nevertheless, ACC Director Paulus Noa maintained that investigation of corruption in the National Housing Enterprise would continue, and it was unclear whether Hailulu would be charged again.

Public officials were subject to financial disclosure laws. However, civil society organizations charged that financial disclosure laws did not preclude government officials from engaging in private business that conflicted with their government duties. Government institutions, including the ACC, the Office of the Ombudsman, and the Office of the Auditor General, were responsible for combating public corruption.

No laws provide for public access to government information, and media outlets generally found the government unwilling to provide information, including salary scales, for public officials.

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; however, government officials continued to disapprove publicly of NGO criticism of the ruling party and government policies.

The NSHR and the LAC, both independent organizations, were the primary human rights NGOs in the country, and the police regularly met with both. The LAC often assisted police with human rights training, while the NSHR reported incidents of police brutality and abuse of power.

Prominent SWAPO leaders continued to criticize NSHR Director Phil ya Nangoloh, accusing him of "falsehoods" and of being misguided. In August ya Nangoloh sued the SWAPO newspaper *Namibia Today* for 250,000 Namibian dollars (\$34,070) for calling him "a noted twister of facts and pathological liar." The case was pending assignment of a court date at year's end.

The government generally cooperated with international human rights organizations, and the ICRC and other international bodies made visits during the year.

There was an autonomous ombudsman, with whom the government cooperated; he was considered effective in addressing some corruption and human rights problems.

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 these prohibitions.

Women

The law defines rape in broad terms and allows for the prosecution of spousal rape. Numerous cases of rape were prosecuted during the year, and the government generally enforced rape penalties, which provide for sentences of between five and 45 years' imprisonment for convicted rapists. According to police statistics for 2008, 11,611 cases of gender-based violence were reported, 940 of which involved rape. 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.

Domestic violence is against the law; however, domestic violence, including beatings and rape, was widespread. Information on enforcement was unavailable.

There were 15 women's and children's shelters staffed with police officers trained to assist victims of sexual assault. During the year 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 made of one-way glass and child-friendly waiting rooms. On July 31, the government launched the "Zero Tolerance Campaign against Gender Based Violence, Including Human Trafficking," to raise public awareness and highlight ways the public could help address the problem.

The law does not prohibit prostitution, which was widespread; however, generating an income from prostitution is illegal.

The law prohibits sexual harassment. Statistics were unavailable, but the problem was believed to be widespread. No sexual harassment cases were filed during the year.

There are no government restrictions on family planning. The government and NGOs provided for equitable access to contraception to all citizens, although those who lived in urban areas had better access to skilled attendance during childbirth and postpartum care than those who lived in rural areas. The government and NGOs made a strong effort to educate men and women equally in the diagnosis and treatment of sexually transmitted infections, including HIV.

The law prohibits discrimination, including employment discrimination; however, men dominated 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 problems involving 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 Ministry of Gender Equality and Child Welfare was 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

The constitution provides for citizenship by birth within the country's territory (*jus soli*) or from one's parents (*jus sanguinis*). According to a 2006 survey conducted by the government, approximately 40 percent of children--many of whom were born at home in rural areas--did not possess birth certificates, which are necessary to apply for social grants. Although prohibited by law, teachers in regions of the country bordering Angola, Zambia, Zimbabwe, and Botswana reportedly often refused to teach children who could not prove their citizenship. Mothers who delayed registration often faced a difficult process and long delays, particularly if parents had died and death certificates or other needed documents had never been obtained.

During the year the Ministry of Home Affairs, in partnership with the UN Children's Fund, opened offices at hospitals throughout the country to provide birth certificates for newborns. Officials from the Ministry of Home Affairs and Immigration also deployed mobile units to towns and villages countrywide to facilitate issuance of birth certificates and identity documents. The project primarily focused on orphans and vulnerable children; however, the mobile units also targeted San children, and NGOs reported a decrease in San complaints of being unable to obtain proper identification documents.

Although the constitution provides children until the age of 16 with the right to compulsory, free, and universal primary and junior secondary education (grades one through 10), the numerous fees--including fees for uniforms, books, boarding costs, and school improvement--placed a heavy burden on poor families and precluded some children from attending school. In general, more girls than boys were enrolled in secondary schools. Many San children and children from destitute families did not attend school.

Child abuse was a serious problem, and authorities vigorously prosecuted crimes against children, particularly rape and incest. According to police records and media reports, at least 200 children were murdered, raped, or assaulted during the year.

The law protects children less than 18 years of age by criminalizing the actions of the client or pimp in cases of sexual exploitation, child pornography, and child prostitution. The minimum legal age for consensual sex is 16, and the penalty for statutory rape is a minimum of five years in prison. No law specifically prohibits child pornography. 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 actively to reduce the trauma suffered by abused children.

Child prostitution occurred generally without third-party involvement and primarily as a means of survival among HIV/AIDS orphans and other vulnerable children. The growing number of HIV/AIDS orphans increased the vulnerability of children to sexual abuse and exploitation.

During the year the government continued to take several steps to provide medical care and other assistance to HIV/AIDS orphans and vulnerable children. For example, the government eliminated all school-related fees and provided social grants for such children during the year.

Trafficking in Persons

The Prevention of Organized Crime Act, which was implemented during the year, specifically criminalizes trafficking in persons, slavery, kidnapping, and forced labor, including forced prostitution, child labor, and alien smuggling. However, there were reports that persons were trafficked to, from, and within the country.

In June an assessment by the Ministry of Gender Equality and Child Welfare identified eight cases of confirmed trafficking and numerous reports of suspected trafficking. In one instance, a mother sold her teenage daughter into prostitution in Walvis Bay; an investigation was pending at year's end. In another, in Katima Mulilo, police investigated a Zambian man whom Namibian farmers paid to recruit young Zambian boys to work on their farms. The recruiter fled to Zambia before police could arrest him. The police returned the young boys to Zambia and issued a warning to the farmers.

During the year there were reports that Zambian and Angolan children were trafficked to Namibia for domestic servitude, agricultural labor, and livestock herding. There were also reports of trafficking for sexual exploitation of women from Zimbabwe. The government's assessment conducted during the year also highlighted internal trafficking of girls from rural areas to urban centers to work as babysitters. Girls were commonly denied education, sometimes sexually exploited, and their income forwarded directly to their mothers.

The Prevention of Organized Crime Act provides for fines of up to one million Namibian dollars (\$133,000) or jail terms of up to 50 years for persons who participate in or aid and abet trafficking in persons.

The police's Women and Child Protection Unit is responsible for monitoring and investigating possible cases of trafficking. The Ministry of Gender Equality and Child Welfare coordinated the government's efforts to combat trafficking.

The State Department's annual *Trafficking in Persons Report* can be found at www.state.gov/g/tip.

Persons with Disabilities

While discrimination on the basis of disability is not addressed in the constitution, the law prohibits discrimination against persons with physical and mental disabilities in employment. Enforcement in this area was ineffective, and societal discrimination persisted.

The government does not require special access to public buildings, and some ministries remained inaccessible. However, during the year the government continued to require that all new government buildings include ramps. In addition, some street corners in the capital were outfitted with special signal crossings for the visually impaired. The Office of the Prime Minister's Disability Advisory Unit was responsible for assisting persons with disabilities.

Unlike in the previous year, there were no reports of discrimination against persons with disabilities by state-owned enterprises.

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 majority Ovambo ethnic group. The media occasionally carried reports of farm workers, mostly black, suffering discrimination in remote areas by mostly white farm owners.

Indigenous People

The San, the country's earliest known inhabitants, historically have been exploited by other ethnic groups. 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 have been unable to exercise these rights fully as a result of minimal access to education, limited economic opportunities, and their relative isolation. The government took measures to end societal discrimination against the San, including seeking their advice about proposed legislation on communal lands and increasing their access to education. Indigenous lands were effectively demarcated, but poorly managed. During the year the government continued promoting special projects for the advancement of the San community. For example, the "Back to School and Stay at School for San Children Project" has benefited more than 100 San children by paying for their studies, upgrading the schools and hostels in the San community, and locating mobile schools closer to San villages.

The government has authority to confer recognition or withhold it from traditional leaders even in opposition to local preference. This authority was controversial because of local leaders' influence on local issues, including local police powers. There were continued allegations that the government withheld recognition from traditional leaders for political reasons.

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

The law does not prohibit homosexual conduct; however, sodomy between males is illegal, and the practice of homosexual activity was discouraged, according to The Rainbow Project, which represents lesbians, gays, bisexuals, and transgender persons.

Other Societal Violence or Discrimination

Societal discrimination against and stigmatization of persons living with HIV/AIDS remained a problem. The government supported the work of the Namibia Business Coalition against HIV/AIDS to eliminate discrimination in the work place.

In June the LAC filed a lawsuit against the government on behalf of 20 HIV-positive women who claimed they were sterilized against their will after being told the procedure was a routine treatment for HIV/AIDS. The LAC argued that the alleged practice was discriminatory against persons living with HIV and interfered with their right to procreate. The government denied it had a policy of forced sterilization, and the court case was ongoing at year's end.

In July 22 persons reached an out-of-court settlement with their former employer who allegedly hired a medical doctor to conduct HIV tests on them. The employees, who were told the tests were for "general hygiene," claimed they were unaware of the nature of these tests and that no pre- or post-test counseling was provided. Test results, including the names of all employees who had tested HIV positive, were allegedly displayed on a notice board at the place of business.

Section 7 Worker Rights

a. The Right of Association

The constitution provides for the right to form and join trade unions without previous authorization or excessive requirements, and the government generally enforced this law; however, workers in essential services were prohibited from joining unions. Approximately 25 percent of employees in the formal sector belonged to some form of union or employers organization, while almost 4 percent of unemployed persons belonged to such an organization, according to the 2004 Labor Force Survey.

The labor code provides for the protection of all workers, but 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. As a result, some farm workers reportedly suffered abuse by employers such as poor access to health care. During the year the government continued efforts to train labor inspectors and educate workers on their rights.

Except for workers in public health, safety, and other essential services, workers have the right to strike once conciliation procedures are exhausted and a 48-hour 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 protects workers engaged in legal strikes from unfair dismissal. The law also specifically protects both union organizers and striking workers from retaliation by employers; however, the scarcity of judges and lack of expertise in labor law caused lengthy and unnecessary delays in such cases.

The parties to a 2008 case in which a private security firm at the Skorpion Zinc mine used rubber bullets to disperse 50 workers reached an undisclosed settlement during the year.

b. The Right to Organize and Bargain Collectively

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; workers exercised these rights in practice. 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. The Ministry of Labor continued to cite lack of information and basic negotiation skills as factors hampering workers' ability to bargain with employers successfully. The majority of trade unions were officially affiliated with SWAPO, which many argued limited their independence in promoting worker rights.

The law provides for arbitration and conciliation to resolve labor disputes more quickly. On December 14, the Supreme Court declared unconstitutional a provision in the 2007 Labor Act that prohibited employers from hiring third-party temporary or contract workers ("scabs").

The law prohibits antiunion discrimination, and there were no instances of companies failing to reinstate workers who were fired for legal union activities.

There are export processing zones (EPZs) at the Walvis Bay and Oshikango industrial parks and a number of single-factory EPZs outside of these parks. The law applies to EPZs, and unions have been active in the EPZs since their establishment.

c. Prohibition of Forced or Compulsory Labor

Although the law prohibits forced or compulsory labor, including by children, there continued to be media reports that farm workers, including some children on communal farms, and domestic workers often received inadequate compensation for their labor and were subject to strict control by employers. Given the Ministry of Labor's resource constraints in vehicles, budget, and personnel, as well as difficulty in gaining access to some large communal and family-owned commercial farms, labor inspectors sometimes found it difficult to investigate possible labor code violations.

d. Prohibition of Child Labor and Minimum Age for Employment

The law provides that persons found guilty of employing children can face a maximum fine of 20,000 Namibian dollars (\$2,660) and/or up to four years' imprisonment; however, child labor continued to be a problem. The minimum age for employment is 14, with higher age requirements for night work and in certain sectors such as mining and construction. The minimum age was inconsistent with the age for completing education requirements. Children worked in construction, unloaded trucks, pushed trolleys, begged on the streets, and worked in family businesses. Children below the age of 14 often worked on family-owned commercial farms and in the informal sector, and some also worked in communal areas or assisted parents working in the charcoal industry.

Sectors in which children were involved in the worst forms of child labor included agriculture and livestock, domestic service, charcoal production, and the commercial sex industry sectors. In August the Ministry of Labor carried out investigations around the country of suspected incidents of child labor in the agricultural sector. The investigations exposed more than 111 child labor cases, and the guilty employers were issued compliance orders. Those employers who failed to comply within 30 days were expected to face criminal charges and prosecution.

During the year the Ministry of Labor established an interagency Project Advisory Committee on Child Labor (PACC) to oversee implementation of the 2008 Action Plan for the Elimination of Child Labor in Namibia. PACC facilitated the review of national and international policies and legislation, developed a list of hazardous child labor activities, conducted an in-depth study of child labor in the agriculture sector, and analyzed the impact of HIV/AIDS on child labor. PACC also identified implementing agencies that could assist in preventing and removing children from child labor situations. In November PACC trained labor inspectors, social workers, and police officers to enforce child labor law better.

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 authority to implement and enforce child labor laws, but generally used regular labor inspections as well as other monitoring mechanisms for orphans and vulnerable children. Enforcement was limited. There were 36 labor inspectors, and all were trained in identifying the worst forms of child labor; however, no inspector focused exclusively on children's services.

The government has introduced several programs aimed at supporting children to 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, the government also participated in a four-year program to withdraw and prevent children from exploitive labor in agriculture and adult-coerced criminal activity. The government

continued to print and distribute a comprehensive guide on the newly implemented 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.

e. Acceptable Conditions of Work

There was no statutory minimum wage law, but the mining, construction, security, and agricultural sectors set basic levels of pay through collective bargaining. Average wages for unskilled workers did not provide a decent standard of living for a worker and family, especially since the average wage earner supported an extended family. Wage levels for the less educated majority remained very low.

The standard legal workweek is 45 hours with at least one 36-hour rest period per week. 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 24 workdays of annual leave per year, at least 36 workdays of sick leave over a three-year period, and three months of maternity leave paid by the employer and the Social Security Commission. However, the Ministry of Labor did not always enforce these provisions.

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, and failing to respect work-hour regulations for public holidays and Sundays. During the year there were reports that some mining companies denied workers sanitary and safe working and living conditions.

The Ministry of Labor and Social Welfare mandates occupational health and safety standards, and the Labor Act empowers the president to enforce these standards through inspections and criminal penalties; however, the government did not always enforce labor laws effectively. The Ministry of Labor lacked an adequate number of trained inspectors to monitor adherence, especially in small family-owned operations. 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; however, some workers could not exercise this right in practice.