



U.S. DEPARTMENT of STATE

Namibia

Country Reports on Human Rights Practices - [2006](#)

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Namibia is a multiparty, multiracial democracy with a population of 2,030,000. On March 21, Hifikepunye Pohamba became the country's second democratically elected president; Pohamba was elected in November 2004 and replaced Sam Nujoma, the country's first president and leader of the ruling South West Africa People's Organization (SWAPO). International and domestic observers agreed the 2004 general elections, in which SWAPO won three-quarters of the national assembly seats, were generally free and reflected the will of the electorate despite some irregularities. The civilian authorities generally maintained effective control of the security forces.

The government generally respected the human rights of its citizens; however, there were problems in several areas. Human rights problems included: unlawful killings, torture, beatings, and abuse of criminal suspects and detainees by security forces; overcrowded prisons; prolonged pretrial detention and long delays in trials; government attempts to curb media and nongovernmental (NGO) criticism; violence against women and children, including rape and child abuse; discrimination against women, ethnic minorities, and indigenous peoples; 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; however, security forces killed persons during the year. The government took action against some perpetrators.

On January 21, police shot and killed Collen Goliath after he was caught trying to break into the offices of the Ministry of Labor. Goliath and an unidentified accomplice fled the scene and police fired several warning shots, one of which ricocheted off a burglar bar and struck Goliath in the chest. The police officer was under investigation at year's end.

On January 30, seven police officers from the southern town of Keetmanshoop allegedly beat five men suspected of theft. One of the suspects, Makarius Iikali, died from injuries; another suspect, Ben Basson, jumped from the first floor of the police building during interrogation but survived with serious injuries and was treated at a local hospital. The surviving suspects alleged that police assaulted them with batons and used an electric device to shock them. On February 23 and 24, police officers Marthinus Punye, Johannes Mushelenga, Niklaas Hoaseb, Heidi Dean, Jacobus Otto, Cyroll Serogwe, and Daniel Nicodemus were charged with murder. The trial was ongoing at year's end.

On May 27, in Okakarara, Linus Muhimba died while in police custody awaiting trial. Local police claimed that Muhimba fell from the ceiling through which he was trying to escape; however, representatives from the National Police Force (NAMPOL) discovered extensive bruising on Muhimba and cellmate John Muhenje and begun investigation into the death.

There were no developments in the 2005 police killings of Hilda Tjitana and her grandmother, Albertina Tjitana by Constable "Kalisto" Mukeve; and of Marvin Tseib by Detective Ferdinand Jacobs.

Unlike in previous years, there were no deaths that resulted from unexploded ordnances; however, persons were injured by them (see section 1.c.).

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 frequently used excessive force, including torture, when apprehending, interrogating, and detaining criminal suspects. Despite a police directive that prohibited the use of sjamboks (heavy leather whips), security forces continued to use them. The government took action against some perpetrators.

Suspects in the Caprivi treason trial complained of intimidation and humiliation while in detention.

On February 17, two off duty members of the Okahao Police's Special Field Force (SFF) constables Amadhila and Kamanya allegedly led a mob in the assault of two women accused of witchcraft, Nashipolo Agashe and Rachel Kapolo. On March 29, Constable Amadhila and four others implicated in the attack were arrested; Kamanya was not arrested because her involvement was being investigated. The case was ongoing at year's end.

On May 2, police sergeant Sakeus Amuele and three civilians Mutilifia Keeleleni, Andreas Nghiwhekwa, and Nakanyala Akuunda were arrested and charged with assault and kidnapping after they allegedly chained and beat Hofenie Angomo Ikolola with sjamboks at a village near Ondangwa to force him to confess to housebreaking and theft. The case was ongoing at year's end.

There were reports that the SFF paramilitary units used excessive force. On March 2, members of the SFF police unit and the Namibian Defense Force (NDF), who were sent to Mariental to maintain law and order after a flood, randomly assaulted residents of the town. Residents filed charges; an investigation was pending at year's end.

During the year two ethnic Mafwe claimed that their testimony in the Caprivi treason trial was made under duress (see below and section 1.e.).

On February 24, the court postponed the case against police officers Geoffrey Scott, Willem Dax, and Dawid Fy, who in July 2005 allegedly tortured Ralph Cloete, a suspected thief.

There were no developments in the January 2005 cases of Elihana Nghimwenas and Pakratius Kawana, who respectively filed civil complaints against the police for torture.

Human rights groups continued to report on ongoing civil court cases filed by individuals against the government as a result of alleged security force abuses during the 1999 secessionist attacks (see sections 1.d. and 1.e.). During the year five of the 120 previously reported civil cases were settled out of court and 115 were pending at year's end.

Unlike in previous years there were no reports of sexual misconduct by its peacekeepers on UN missions.

Mob violence occurred; however, unlike in the previous year, no deaths resulted (see above).

During the year civilians were injured as a result of contact with unexploded ordnances. For example, on January 4, two men were injured by a hand grenade while herding goats near Otjiu village.

Prison and Detention Center Conditions

Prisons and detention centers were overcrowded and poorly maintained. During the year the ombudsman conducted a review of police holding cells and noted poor sanitary conditions, overcrowding, insufficient food supplies, unsafe infrastructure, stagnant water, lack of access to medical care facilities and potable water, and insufficient bathroom and shower facilities. The ombudsman also noted police stations were understaffed and that officers could not tend to detainees in addition to their regular police duties. Victims of prison abuse were able to pursue legal remedies.

Some detainees were held with convicted prisoners. In many rural areas juveniles continued to be held with adults. There were several pilot programs that provided alternatives to incarceration for juvenile offenders, such as placing youths in homes. The NGO Criminals Return into Society also offered a number of rehabilitation programs to build vocational skills. The Polytechnic of Namibia also conducted an entrepreneurship training program at most prisons in the country.

Although the government continued to grant NGOs regular access to prisons and prisoners, during the year there was no published review of prison conditions in the country. In May the International Committee for the Red Cross (ICRC) closed its local office and responsibility was transferred to the ICRC Regional Delegation Headquarters in Harare, Zimbabwe.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest or detention; however, security forces did not observe these prohibitions.

Role of the Police and Security Apparatus

The police, including the paramilitary SFF, are under the Ministry of Safety and Security, and the NDF is under the Ministry of Defense. All are responsible for internal security. NAMPOL has 10,000 members and is highly centralized with regional commands responsible to the inspector general of police, who reports to the minister of safety and security. Approximately half of NAMPOL's overall complement is assigned to the SFF, a paramilitary unit made up 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 deter or investigate street crime consistently.

During the year the police received human rights training designed by the Legal Assistance Center (LAC) and some officers attended training programs with human rights components at the International Law Enforcement Academy in Gaborone, Botswana. 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.

During the year the government took action against corrupt officials. The police's Special Branch Commanding Officer Lottinelomba Uusiku and Finance Division Commanding Officer Joseph Kamati were investigated for fiscal impropriety. During the year the two officers were suspended pending the verdict of their corruption trial. Their docket was delivered to the prosecutor general, and by year's end the two officers remained on suspension.

Arrest and Detention

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. Arrest warrants were not required in all cases, such as if a suspect was apprehended during the commission of a crime. 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. In practice many accused persons in remote and rural areas were not represented by counsel, primarily due to lack of resources. Prisoners generally had access to legal counsel and family during regular visiting hours. Detainees had access to their lawyers prior to trial. There is a functioning bail system, and the LAC reported that it generally was observed except in rural areas, where persons often were unaware of their legal rights. 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.

On occasion authorities held detainees incommunicado.

During the year there were reports that family members were denied access to detainees. For example, the relatives of the two witnesses forced to testify in the Caprivi trial claimed they were denied access; the government stated that it had sequestered the individuals for their security.

Unlike in the previous year, there were no reports of arbitrary arrest and detention.

During the 1999 state of emergency declared in response to Caprivi Liberation Army (CLA) attacks in Katima Mulilo, security forces detained several hundred suspected CLA members and sympathizers, most of whom were released after two weeks. Trial proceedings began in 2003 in Grootfontein and were moved to Windhoek in 2005, where they resumed and continued during the year. At year's end 131 suspects remained in detention in Windhoek, 12 of whom were extradited from Botswana and Zambia in 2002 and 2003. All were charged with treason.

The government remunerated persons who were arbitrarily arrested in the past. For example, on June 14, the High Court awarded \$10,000 (N\$65,000) in damages to Ethiopian national Dereje Demmse Getachew, who was illegally arrested in 2004 and held in detention for three months.

A trial must take place within "a reasonable time," or the accused must be released; however, lengthy pretrial detention was a problem. The lack of qualified magistrates and other court officials, the high cost of legal aid, and slow or incomplete police investigations resulted in a serious backlog of criminal cases, which often translated into delays of up to one year or more between arrest and trial. Human rights organizations have criticized lengthy pretrial detentions. At the time of the Ombudsman's visit to police holding cells nationwide during August and September, there were 2,950 detainees awaiting trial.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary, and while the courts continued to act independently and at times made judgments and rulings critical of the government, the judicial system was hampered by inefficiency and a lack of resources. In September nearly all of the country's magistrates received human rights training in a week long seminar conducted by the University of Namibia.

The formal court system has three levels: 30 magistrate courts; the High Court; and the Supreme Court. The latter served as a court of appeals and constitutional review court. Customary courts heard most civil and petty criminal cases in rural areas. The law delineates which offenses may be dealt with under the traditional system.

Most rural citizens first encountered 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. The law delineates role, duties, and powers of traditional leaders and provides that customary law is invalid if it is inconsistent with provisions of the constitution.

Trial Procedures

The constitution and law provide for the right to a fair trial, with a presumption of innocence until proven guilty, but this right was limited by long delays in hearing cases in the regular courts and the uneven application of constitutional protections in the traditional system (see section 1.d.). The law provides for public trials, but not juries. Defendants are presumed innocent, can confront witnesses, and have the right of appeal. The state provides attorneys for indigent defendants.

During the year procedural problems continued to dominate the high treason trials of detainees arrested in connection with the 1999 attacks on government institutions at Katima Mulilo (see section 1.d.). For example, the defendants contested the legitimacy of any local court to try them, contending that Caprivi is not part of the country.

On July 31, two ethnic Mafwe witnesses, Harrison Muleta Kwala and Gabriel Matengu Sakutiya, appeared in court on charges of perjury and obstruction of justice for denying statements they had made to investigators in the Caprivi treason trial. The two claimed their statements were obtained under duress inflicted by security forces.

Several state witnesses in the Caprivi treason trial were allegedly kept at two guesthouses in Windhoek for four months during the trial. Human rights activists charged that the men were not allowed to move around freely and that the prolonged sequestering amounted to intimidation of the witnesses; however, the government claimed it had sequestered the witnesses for their safety. Their relatives complained to a local human rights body that they were denied access to the detainees.

In response to a UN investigation into sexual misconduct by peacekeeping troops in Liberia, the government recalled three peacekeepers in 2005 and launched its own inquiry. During the year the soldiers were cleared of any wrongdoing.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees; however, numerous persons were held on treason charges.

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 generally respected these rights in practice. Violators were subject to legal action.

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 while the government generally respected these rights, high level government officials sometimes responded to criticism of the government and ruling party with verbal abuse. Journalists working for the government-affiliated media practiced self censorship, although reporters for independent newspapers continued to criticize the government openly.

There were four daily national newspapers, three of which were independent, and two weekly newspapers, both of which were independent. The government contributed financially to the New Era newspaper and the Namibia Press Agency, both parastatals. The ruling SWAPO party owned one publication, Namibia Today.

The government owned and operated the Namibian Broadcasting Corporation (NBC) Radio and Television. NBC television and nine radio services, that broadcast in English and indigenous languages, were the most widely heard and influential media in the country. During the year there were reports of government influence on NBC operations and editorial content as well as self censorship by the staff. There were 11 private radio stations. There were two private television networks, One Africa TV and MultiChoice Direct Satellite TV, and a private cable and satellite television service that broadcast international news and entertainment programs. The ruling SWAPO party owned 51 percent of this direct satellite television service.

During the year Minister of Information Netumbo Nandi Ndaitwah reprimanded the media for publishing a letter that criticized former president Nujoma. The minister also called on NBC to control the content of talk shows in which callers criticized former president Nujoma, the ruling party, and the government.

During the year former president Nujoma filed a libel suit against The Namibian newspaper for a series of articles that characterized Nujoma as corrupt.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail and Internet chatrooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by electronic mail. While Internet access was unrestricted, usage was limited in rural areas due to poverty.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom and cultural events.

b. Freedom of Peaceful Assembly and Association

The constitution and law provide for freedom of assembly and association, and the government generally respected these rights 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; there were no reports of anti Semitic acts.

For a more detailed discussion, see the [2006 International Religious Freedom Report](#).

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

The constitution and law provide for these rights, and the government generally enforced these rights in practice; however, the government reportedly has a bilateral agreement with Cuba that limits the freedom of travel of Cuban assistance professionals working in the country through Cuban bilateral assistance. These Cubans are not allowed to travel within or from the country without consent from the Cuban Embassy, which holds the passports of these professionals.

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

Protection of Refugees

The law provides for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees, although the country is not a signatory to its 1967 protocol; the government has established a system for providing protection to refugees. In practice the government provided protection against refoulement, the return of persons to a country where they feared persecution, and granted refugee status or asylum. The government cooperated with the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees. The government also provided temporary protection to certain individuals who may not qualify as refugees under the 1951 convention and 1967 protocol.

Approximately 6,000 refugees resided in Osire Refugee Camp and another 500 lived outside the camp among the general population. Approximately 4,500 of the refugees were from Angola; the others primarily were from the Democratic Republic of the Congo, Burundi, and Rwanda. The government generally did not permit refugees and asylum seekers to work or live outside the Osire refugee camp. Education through grade 10 was available to all refugees at the camp, and the government facilitated further secondary education for students with financial sponsorship at schools outside the camp. Some tension with local farmers persisted, fueled by frequent intrusion of refugees into farmers' properties. On March 30, the government launched an initiative to provide antiretroviral therapy to refugees infected with HIV/AIDS.

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

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, free, and fair elections held on the basis of universal suffrage.

Elections and Political Participation

Presidential and parliamentary elections were held in November 2004. SWAPO candidate Hifikepunye Pohamba was elected president with 76.4 percent of the vote; SWAPO won 55 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, six opposition parties won a total of 17 seats.

During 2005 opposition parties challenged the results of the 2004 parliamentary elections, which resulted in a court ordered recount. The recount produced the same parliamentary seats for all parties but failed to allay some opposition concerns regarding irregularities. The Republican Party subsequently launched another court challenge of the recount, which remained pending before the high court at year's end.

Women held 20 seats in the 78 seat National Assembly. There were six female ministers, including the deputy prime minister, and five female deputy ministers among the 45 ministerial and deputy ministerial positions.

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

Government Corruption and Transparency

The law prohibits corruption; however, it was a problem. Government institutions including the Anti Corruption Commission, the Office of the Ombudsman, and the Office of the Auditor General were in place to combat public corruption. President Pohamba continued to encourage the nation to be vigilant against corruption and to report financial impropriety to the authorities. The president often publicly reiterated his support for the Anti Corruption Commission.

During the year the government took action against corrupt officials. For example, on September 17, police working with the Anti Corruption Commission arrested Deputy Director of Wildlife Management Sackey Namugongo, who faced charges of issuing fraudulent gambling licenses.

There were notable cases of malfeasance in several of the country's parastatals. Reports of corruption in the Roads Contractor Company, the National Petroleum Corporation of Namibia, Game Management Division of the Ministry of Environment and Tourism, and the Ministry of Health and Social Services received widespread media coverage and were being investigated by government agencies at year's end.

Gerry Munyama, the former director general of NBC who was suspended in November 2005 for alleged embezzlement, was released on bail during the year and his case remained pending.

No laws provided for public access to government information, but the government generally provided such access in practice.

Section 4 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. NGOs continued to criticize government policies freely. During the year human rights organizations noted greater openness by the government to opposing viewpoints. For example, President Pohamba met with civil society and NGO leaders during the year, including some deemed to be antigovernment.

During the year the ICRC closed its local offices, however visits by the ICRC and other international NGOs occurred 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 5 Discrimination, Societal Abuses, and Trafficking in Persons

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

Women

Domestic violence against women, including beating and rape, was widespread. Traditional attitudes regarding the subordination of women exacerbated problems of sexual and domestic violence. Domestic violence is against the law, and the law defines rape in broad terms and allows for the prosecution, of spousal rape. The penalties for rape ranged from five years to 45 years imprisonment, and the government generally enforced the law. Numerous rapists were prosecuted during the year. 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.

There were 15 women and children protection units 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. The media continued to report on rape and domestic violence.

The law does not prohibit prostitution, and it occurred.

The law prohibits sexual harassment; however, it was a problem.

The law prohibits discrimination against women, including employment discrimination; however, men dominated positions in upper management. 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 (traditional) 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 still existed. During the year the Legal Assistance Center successfully litigated on behalf of several widows and orphans who were victims of property grabbing; most cases were settled out of court.

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 law enumerates children's rights, including those in the area of education and health, and the government dedicated approximately 21 percent of its budget for education and 9 percent for health care. However, resource constraints and untrained support staff resulted in inadequate attention to child welfare. During the year the government passed the Children Status Bill that provides for equal treatment of children born outside marriage, and regulates custody, guardianship, and inheritance. This legislation for the first time grants children born outside marriage the right to inherit from their parents. Civil society opposed a provision in the act whereby if parents of a child born outside of marriage cannot agree on the primary custodian of the child, the child would be without a legal custodian and guardian. At year's end the court was ruling on the matter.

Although the constitution provides children with the right to primary and junior secondary education (grades one to 10), the numerous fees, which included fees for uniforms, books, boarding costs, and school improvement, placed a heavy burden on students' families and precluded some children from attending school. Education was compulsory until the age of 16. The country has a net school enrollment rate of 94 percent for grades one through seven and of 93 percent for grades one through 10. In general, more girls than boys were enrolled in secondary schools. Many San children did not attend school.

During the year the government took several steps to provide medical care and other assistance to the approximately 108,500 HIV/AIDS orphans and other vulnerable children. For example, the government reduced or eliminated school fees and provided social grants.

Child abuse was a serious problem, and authorities vigorously prosecuted crimes against children, particularly rape and incest. The law protects children under 18 years of age by criminalizing sexual exploitation, child pornography, and child prostitution. The age of sexual consent is 16 years. During the year 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.

During the year Supreme Court Judge of Appeal Pio Teek was acquitted on charges of attempted child molestation. In 2005 Teek was forced to resign to face the charges.

Child prostitution occurred, and parents as well as perpetrators were liable in such cases. The growing number of HIV/AIDS orphans increased the vulnerability of children to sexual abuse and exploitation.

Numerous children orphaned by HIV/AIDS engaged in prostitution as a means of survival.

Child labor was a problem (see section 6.d.).

Trafficking in Persons

The law specifically prohibits trafficking in persons, and there were no reports of persons being trafficked to, from, or within the country; however, child prostitution occurred. The law also prohibits slavery, kidnapping, and forced labor, including forced prostitution, child labor, and alien smuggling. Traffickers were subject to fines of up to \$166,000 (N\$ one million) or up to 50 years' imprisonment.

Child prostitution occurred (see section 5 children).

Persons with Disabilities

While discrimination on the basis of disability is not addressed in the constitution, the law prohibits discrimination against persons with disabilities in employment. Enforcement in this area was ineffective. Societal discrimination also persisted. The government does not legally require special access to public buildings for persons with disabilities, and some ministries remained inaccessible to them. Although some municipal governments have installed ramps and special curbing for persons with disabilities at street crossings, physical access for those with disabilities remained a problem. Disability concerns continued to receive greater public attention than in previous years, with wider press coverage of the human rights problems that confront persons with disabilities.

National/Racial/Ethnic Minorities

Despite constitutional prohibitions, societal, racial, and ethnic discrimination persisted. Many citizens continued to complain that the government was not moving quickly enough to provide education, health, housing, employment, and access to land. Some citizens continued to accuse the government of providing more development assistance and professional opportunities to the majority Ovambo ethnic group. There also were reported cases of black farm workers suffering discrimination in remote areas at the hands of white farm owners.

On January 12, the High Court found unconstitutional the Walvis Bay Municipality exclusion of white persons from bidding for open plots during a municipal property auction in 2003.

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 communally held lands and increasing their access to education. During the year the deputy prime

minister repeatedly sought to raise awareness about the needs of the San. Despite these measures, many San children did not attend school. In 2004 the LAC filed charges on behalf of 18 members of the San community against more than 20 communal farmers who allegedly beat them after accusing the San of stock theft. After the case had been postponed for lack of evidence on numerous occasions, in May the LAC abandoned the civil case and opened several criminal cases. NGOs reported a decrease in complaints that the San were unable to obtain proper identification documents; however, problems continued due to lack of birth records and lack of government officials with the necessary language skills.

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 the local leaders' influence on local events, including local police powers. In some cases the government withheld recognition from genuine traditional leaders for political reasons. For example, the government recognized traditional leaders from the Mafwe community, reportedly because their leaders were close to SWAPO; however, the government had not recognized leaders of the Khwe in West Caprivi or the Herero in several other regions throughout the country.

During the year 40 Herero chiefs, who were not officially recognized by the government as traditional authorities, sent a petition to the UN and several western governments to protest what they viewed as ongoing marginalization by the government.

Other Societal Abuses and Discrimination

Discrimination of homosexuals occurred. During the year senior government officials continued to make disparaging public remarks about homosexuals or used the word "homosexual" as an epithet. For example, Sam Nujoma the SWAPO President and former President of the country, reportedly called the director of the National Society for Human Rights and members of the Shabeen Owners Association "homosexuals" for criticizing government action on the closure of illegal shebeens. His remarks sparked wide criticism in the media and by human rights groups. Observers believed the slur generated greater societal pressure on homosexuals and undermined the human rights organization.

Section 6 Worker Rights

a. The Right of Association

The constitution provides for the freedom to form and join trade unions without previous authorization or excessive requirements, and workers exercised this right in practice. The law provides a process for employer recognition of trade unions and protection for members and organizers.

Farm workers and domestic servants working on rural and remote farms often did not know their rights, and unions experienced obstacles in attempting to organize these workers. As a result, farm workers reportedly suffered abuse by employers. They also had poor access to health care. During the year the government continued efforts to train labor inspectors and educate workers on their rights.

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

b. The Right to Organize and Bargain Collectively

The law allows unions to conduct their activities without interference, and the government protected this right in practice. 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 were 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 cited lack of information and basic negotiation skills as factors hampering workers' ability to bargain with employers successfully.

Except for workers providing essential services, such as jobs related to public health and safety, workers have the right to strike once conciliation procedures are exhausted and 48 hour notice has been given to the employer and labor commissioner. Legal strikes were conducted during the year. Under the law, strike action can be used only in disputes involving specific worker interests, such as pay raises. Disputes over worker rights, including dismissals, must be referred to a labor court for arbitration. The law protects workers engaged in legal strikes from unfair dismissal. The law also specifically protects both union organizers and striking workers from employer retaliation; however, the scarcity of judges and lack of expertise in labor law caused lengthy and unnecessary delays in such cases. Legal strikes were conducted during the year.

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, labor inspectors sometimes encountered problems in gaining access to the country's large communal and family owned commercial farms to investigate possible labor code violations.

d. Prohibition of Child Labor and Minimum Age for Employment

There are laws to protect children from exploitation in the workplace; however, child labor continued to be a problem. Criminal penalties and court orders were available to the government to enforce child labor laws, but such action involved a complicated legal procedure. Under the law, the minimum age for employment is 14 years, 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 (see section 5). 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.

Child prostitution occurred (see section 5).

The Ministry of Labor is responsible for enforcing child labor laws and investigates child labor as part of its regular labor inspections. Approximately five complaints of child labor were lodged with the ministry during the year.

The Ministry of Labor's National Initiative to Eliminate the Worst Forms of Child Labor continued its baseline study of the extent of child labor in the country. The Ministry of Gender Equality and Child Welfare conducted several programs aimed at encouraging parents and guardians to allow children to attend school.

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. Additionally, the government also collaborated with the Namibia Agricultural Union and the Namibia Farm Workers Union in efforts to eliminate child labor through awareness campaigns. The government also continued to work with NGOs such as Project Hope to assist the victims of child labor.

e. Acceptable Conditions of Work

There was no statutory minimum wage law, but the mining, construction, 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 the 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. The law mandates 24 workdays of annual leave per year, at least 30 workdays of sick leave over a three year period, and three months of maternity leave paid in part by the Social Security Commission. The Ministry of Labor did not always enforce these provisions.

During the year government officials and the media criticized Chinese firms for allegedly not adhering to the country's labor code, including claims of hiring and firing workers at will, failure to pay established minimum wages and benefits in certain industries, and failing to respect work hour regulations for public holidays and Sundays.

The ministries of labor and social welfare mandate occupational health and safety standards, and the Labor Act empowers the president to enforce these standards through inspections and criminal penalties. Labor laws generally were implemented efficiently, but the Ministry of Labor lacked an adequate number of trained inspectors to monitor adherence to such labor regulations as providing overtime pay and social security by some companies, especially 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 did not have this right in practice. The government has not fully implemented the 2004 Labor Act. In September the government submitted to parliament a new draft bill that would eventually replace the previous labor act; however, it has been tabled for future action.

The law accords the same rights to legal foreign workers as to citizens.