

NAMIBIA

EXECUTIVE SUMMARY

Namibia is a multiparty democracy. The presidential and parliamentary elections held in November 2009 resulted in the re-election of President Hifikepunye Pohamba and the retention by the ruling South West Africa People's Organization (SWAPO) of its large parliamentary majority. SWAPO is a multiethnic party, but it is dominated by the large Ovambo ethnic group. Despite some reported irregularities and a legal challenge by nine opposition parties that was ongoing at year's end, international observers characterized the election as generally free and fair. Security forces reported to civilian authorities.

Three predominant human rights abuses in the country included police use of excessive force, poor detention center conditions, and violence and discrimination against women and children, including rape, child abuse, and child labor.

Other human rights problems included prolonged pretrial detention and long delays in trials, harassment and political intimidation of opposition members, and official corruption. Other societal abuses included discrimination against ethnic minorities and indigenous people; child trafficking, mostly for use as labor; and discrimination and violence based on sexual orientation and gender identity.

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

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

a. Arbitrary or Unlawful Deprivation of Life

There were few reports that the government or its agents committed arbitrary or unlawful killings. Namibian Rights and Responsibilities, Inc. (NamRights), a local human rights organization, reported that police allegedly shot and killed Matheus Shipanga on February 6 when he failed to stop at a roadblock. A case of murder was opened against the police officers, but no trial had begun by year's end.

Police reported that in March, four police officers allegedly assaulted a suspect, Albert Shinvula, during his arrest in Katima Mulilo in the Caprivi Region.

Shinvula died from his injuries. Police continued to investigate the matter. All four suspects were arrested and released on bail.

The government took no action during the year to investigate five of six mass graves discovered in 2008 along the country's border with Angola that contained, among others, the remains of five political activists who allegedly were killed without trial by South African security forces in 1972. On May 4, President Pohamba claimed an additional seven people were buried in the same grave as the activists.

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. Human rights bodies and prison officials reported the detention of both pretrial and convicted prisoners in overcrowded conditions. The country's main penal code does not define "torture," potentially leading to legal ambiguity over any claims.

According to NamRights, in September 2010 Windhoek City police assaulted and beat John Haufila until he lost consciousness at the Wanaheda Police Station. The attack occurred in view of Namibian Police Force (NAMPOL) officers, who did not intervene, according to Haufila. NAMPOL officers subsequently instructed city police to take Haufila to the hospital, where, according to Haufila, police told doctors his injuries occurred in a fall. Police later opened a case against Haufila, claiming he had prevented them from executing their duties. In September 2010 police released Haufila on bail. The case was pending at year's end.

Prison and Detention Center Conditions

Prisons were generally overcrowded, and some prison buildings were dilapidated; however, the government continued to make significant improvements, working to renovate and expand overcrowded prisons and holding cells. Renovations and extensions were completed in 2010 and 2011 in half of the 13 prisons. Windhoek Central Prison, the second largest prison, made significant improvements over the past three years, including the introduction of a case management system that

classifies inmates according to risk and assigns accommodations, training, and counseling based on this model. The prison also oversees five vocational skills training workshops targeting unemployment and reducing recidivism.

According to the Ombudsman's Office, which had criticized prison conditions throughout the country in earlier years, general prison conditions have risen to "acceptable" levels in the last one or two years. Authorities try to comply with minimum standards of sanitation, provide three meals per day (although resource limitations mean they have problems providing special diets when needed), water, space, bedding, toiletries, and washing facilities. Each prison has a medical clinic with a registered or enrolled nurse, and inmates with serious health conditions are referred to state hospitals.

Conditions in detention centers and police holding cells – sometimes located inside prisons – remained poor. The country's prisons were built to hold 4,475 inmates. According to the Ombudsman's Office, there were 4,314 inmates in October. Although total figures indicated balance, overcrowding remained a problem in some of the country's largest prisons, especially since many pretrial detainees were co-located with convicted inmates. For example, Windhoek Central Prison was designed to hold 912 inmates but, according to prison authorities, at year's end held approximately 2,000 inmates and pretrial detainees.

Conditions in police holding cells were poor, and overcrowding was a serious problem in Windhoek, Ondangwa, Swakopmund, Oshakati, and Otjiwarango. After a June 2010 visit to police holding cells in the South, Margaret Mensah-Williams, the vice chairperson of the National Council, characterized conditions as inhumane. Mensah-Williams cited dirty and cold cells, insufficient blankets, poor food, unhygienic kitchen utensils and pots, poor lighting in cells, and improperly functioning toilets. The Ombudsman's Office reported that many inmates were confined to a small space with minimal ventilation and washing facilities. In October there were 3,456 suspects in holding cells designed to hold a maximum of 3,515 persons. The cabinet took action to address the need for additional space by authorizing the Ministry of Safety and Security to include funding for new remand prisons in its budget.

Conditions for women are generally better than for men. Female prisoners in Windhoek were moved to less crowded facilities in outlying areas, although this made family visits more difficult. The space they vacated was used to accommodate the increasing male prisoner population. The Windhoek-based nongovernmental organization (NGO) Legal Assistance Center (LAC) reported

female prisoners can keep their babies with them for two years and are provided food and clothing for them.

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

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

The Ombudsman's Office investigated credible allegations of inhumane conditions, documented results, and made written recommendations; however, it was not authorized to intervene in individual cases. The government investigated and monitored prison and detention center conditions.

The government required NGOs and the media to apply to the Commissioner General of Prisons for permission to visit prisons. The government continued to grant both local and international NGOs access to prisons and prisoners. The International Committee of the Red Cross (ICRC) and the UN High Commissioner for Refugees (UNHCR) visited prisons and detention centers during the year. The government rarely acceded to such requests from the media.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest or detention. In contrast to previous years, there were no reports that the government did not observe these prohibitions.

Role of the Police and Security Apparatus

NAMPOL, which has approximately 12,000 employees, is under the Ministry of Safety and Security; the Namibian Defense Force (NDF), which has approximately 15,000 to 20,000 active duty 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. Police

corruption and impunity caused some problems (see section 4). NAMPOL lacked the resources, training, and personnel to effectively deter or investigate street crime.

Police continued to receive human rights training designed by LAC. Some officers attended training programs with human rights components, including human trafficking, at the International Law Enforcement Academy in Gaborone, Botswana. NAMPOL invited guest speakers to lecture on human rights at the police college, and more than 20 officers completed a three-month certificate course on human rights at the University of Namibia.

According to various civil society organizations, including at least two committed to the protection of sex workers, police officers continued to threaten prostitutes with arrest, or to abandon them in remote areas, if they did not provide free sex.

Arrest Procedures and Treatment While in Detention

Arrest warrants are not required in all cases, such as when a suspect is apprehended while committing a crime. Persons arrested must be informed of the reason for their arrest and brought before a magistrate within 48 hours of their detention, but the government did not always follow these provisions in practice. Detainees generally were promptly informed of the charges against them. The constitution stipulates that the accused are entitled to defense by legal counsel of their choice. For indigent defendants, the state-funded Legal Aid Directorate provides free legal assistance in criminal cases, and as resources were available in civil matters, particularly divorces. Local human rights NGOs reported the Legal Aid Directorate faces severe resource constraints that hampered its ability to provide effectively services in all cases. 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, 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.

Lengthy pretrial detention remained a significant problem. In 2010 approximately 8 percent of the general prison population was awaiting trial. The lack of qualified magistrates and other court officials, high cost of legal aid, slow or incomplete police investigations, and continued postponement of cases resulted in a serious backlog of criminal cases and delays of years between arrest and trial. During the

year the High Court and Prosecutor-General's Office continued searching for and implementing proposals to improve the pace of administering justice, including granting increased case management powers to judges, and considering the introduction of new case management and plea bargaining systems. The lack of a plea bargaining system to expedite case conclusion and poor case management systems generally slowed the pace of trials, which can take years to complete.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and 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.

Military courts try members of the military only and do not provide the same rights as civil criminal courts. Customary courts heard most civil and petty criminal cases in rural areas. The law delineates which offenses may be dealt with under the customary system.

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

In some instances, cases which had been resolved in customary courts were tried a second time in government courts. In at least one case negotiated by a customary court, a teacher accused of impregnating his underage student paid a settlement to the victim's family, only to face criminal charges in a government court.

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 law provides for public trials but not the use of juries. Defendants have the right to be present at trial, to consult with an attorney in a timely manner, and, with their attorneys, to have access to government-held evidence. Indigent defendants are entitled to a lawyer provided by the state in criminal and divorce cases; however, this often did not occur due to an insufficient number of public defenders. LAC reported that even though the Supreme Court found that the state must provide legal assistance where gross injustice would occur otherwise, many cases of rape,

murder, and other serious crimes continue without the accused having adequate legal representation, since the Legal Aid Directorate could not assist them all. 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.

More than a decade after Caprivi separatists attacked government facilities in the contested region in 1999, 112 surviving Caprivians accused of treason had yet to have their cases resolved. The enormity of the state's case, resource constraints, and legal wrangling continued to delay the Caprivi trial, which consisted of five trials or hearings.

The main trial originally had 131 detainees alleged to have participated in the 1999 attacks charged with a total of 278 counts related to treasonous activities. At least 19 of the accused have died in prison, including one during the year who died from natural causes. The trial of two ethnic Mafwe witnesses resumed in February with no notable developments; the individuals were part of the main Caprivi treason trial and appeared in court in 2006 on charges of perjury and obstruction of justice for denying statements they had made to original investigators in the Caprivi case.

Ten secessionists were convicted of treason in 2007 and sentenced to more than 30 years. However, the judge ruled in 2009 that the 10 could appeal to the Supreme Court against the length of the sentences they received.

The "trial within a trial" is a hearing that began in April 2009 to determine the admissibility of allegedly self-incriminating statements made by 26 of the defendants before various magistrates. In September 2010 the Supreme Court turned down a request by the state to appeal part of a judgment in which presiding High Court Judge Elton Hoff ruled that alleged confessions made by 26 of the men being prosecuted in the treason trial cannot be used as evidence against them. In January Judge Hoff ruled evidence linking four suspects to the 1999 secessionist attempt was inadmissible. Defense attorneys had argued the men were assaulted by police and not informed of their right to legal assistance at the time of their arrests. The Supreme Court justices called for the speedy resolution of the trial, now in its seventh year.

In November the case of Albius Moto Liseli, whose 2009 arrest made him the last man arrested in connection with the Caprivi separatist plot, was postponed to April 2012, when the judge is expected to hear arguments.

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

Political Prisoners and Detainees

NamRights has categorized the 112 surviving Caprivi high treason detainees as “political prisoners,” while Amnesty International categorized 70 percent of them as “prisoners of conscience.” There were no other reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

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

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Status of Freedom of Speech and Press

The constitution provides for freedom of speech and of the press, and the government generally respected this right. Some independent and government

journalists practiced self-censorship. African Media Barometer reported that the level of free expression also varies among media, with broadcast media feeling more potentially threatened and, particularly in the case of government-owned media, leading to self-censorship.

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

Freedom of Press: In its annual Press Freedom Index for 2010, Reporters Without Borders noted a significant rise in Namibia's ranking for respect for media freedom. However, NamRights and at least one newspaper editor reported that some journalists allegedly received threats or derogatory text messages for criticizing the government or the ruling SWAPO party. Minister of Youth, National Service, Sport, and Culture Kazenambo Kazenambo's threats in November against a journalist for questioning his travel expenses for an official trip to Germany were widely reported. Public reaction to Kazenambo's outburst was mixed, with many citizens arguing that the minister's conduct was inappropriate, while others dismissed the threat as empty. The Media Institute of Southern Africa issued an alert, condemning the minister's verbal attack on a journalist. The ruling SWAPO Party, however, remained publicly silent.

There were five daily national newspapers, four of which were independent, and six independent weekly newspapers. The government ran one newspaper and an official press agency, whose boards were appointed by the minister of information and communication technology. The government shared equal ownership of a regional weekly newspaper with the Government of Zimbabwe. The ruling SWAPO party owned one publication.

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

In 2009 the Namibian Forum of Editors established -- with the government's support-- the Office of the Media Ombudsman as an independent investigator and arbiter of complaints against the media. The Media Ombudsman has been appointed since by local newspaper editors and has continued to function free of

any government interference. According to the Media Ombudsman, complaints against the press declined between 2010 and 2011.

On August 30, the cabinet lifted a 10-year ban on government departments advertising in, or purchasing from, *The Namibian* daily newspaper. Former president Sam Nujoma had imposed the ban because of the newspaper's perceived antigovernment bias. NBC also announced it would reintroduce call-in programs that were terminated in 2009 because some callers allegedly were abusing their freedom of speech with derogatory comments directed at the government.

The Media Institute of Southern Africa (MISA) issued four media alerts on Namibia during the year, including the above-mentioned alert regarding the youth minister. The media alerts called attention to threats against the freedom of speech. The other three alerts included:

The Hambukushu Traditional Authority fined NBC's Rundu-based reporter Wilfred Nyambe N\$2,000 (\$247) for allegedly reporting a biased story about the authority.

A soccer official was accused of allegedly punching a journalist, when the journalist pressed for an answer on a player's eviction.

Internet Freedom

There were no government restrictions on access to the Internet; however, the Communications Act provides that the intelligence services can monitor e-mails and Internet usage with authorization from any magistrate.

Academic Freedom and Cultural Events

Unlike in the previous year, there were no reports of government restrictions on academic freedom. However, all government-owned institutions of higher learning, including the University of Namibia, Polytechnic of Namibia, and the Windhoek College of Education, continued to ban the holding of political events on their campuses. In addition, the original draft of the Statistics Bill placed government controls on research, statistics collection, and the dissemination of information. In consultation with civil society, these restrictions were eased in the final iteration of the Statistics Act, as passed.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

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

SWAPO supporters continued to disrupt members of the leading opposition party Rally for Democracy and Progress (RDP) from campaigning in some towns and villages. In one incident, SWAPO supporters staged a series of soccer matches at the site of a planned RDP rally in Omusati Region in November, preventing the RDP from taking the field.

Freedom of Association

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

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/j/drl/irf/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 UNHCR and other humanitarian organizations in protecting and assisting refugees, returning refugees, asylum seekers, and other persons of concern, with one exception during the reporting period. In the final months of the year, UNHCR tried and failed to prevent the government from ordering the deportation of 13 Somali asylum seekers. The government assessed them to be "illegal" migrants, not asylum seekers. The case was ongoing at year's end.

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

Protection of Refugees

Access to Asylum: The country's laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

According to the UNHCR, approximately 7,766 refugees and asylum seekers resided in Osire Settlement, formerly called the Osire Refugee Camp, while 1,228 lived outside the settlement. Angolans represented an estimated 66 percent of the refugee/asylum seeker population, with the remaining estimated 34 percent coming from the Democratic Republic of Congo, Burundi, Rwanda, Zimbabwe, Sudan, Cameroon, and other African countries. The government continued to issue identification cards to all refugees to facilitate travel outside the settlement. Nevertheless, some refugees complained they were still prevented from working outside the settlement. Only six Angolans have opted to repatriate, and a UNHCR study concluded that all remaining Angolan refugees wish to integrate locally or be awarded some alternative status.

Refugees enjoy the same protection and benefits of the law as Namibian citizens do. UNHCR stated it was not aware of any incidents of reprisal, arrest, or deportations as a result of refugees wanting to assert their rights or seek recourse under the law. During the summer, 13 Somalis requested asylum in Namibia, but the government issued a notice to deport them after deciding they were instead "illegal migrants." By year's end, the Somalis remained in two local jails. UNHCR had not provided them refugee status but urged the government not to deport them.

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. International Refugee Day was commemorated at Osire; the prime minister and numerous foreign diplomats attended the ceremony.

Temporary Protection: The government also provided temporary protection to certain individuals who may not qualify as refugees under the 1951 refugee convention or its 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.

Elections and Political Participation

Recent Elections: In the 2009 presidential and parliamentary elections, SWAPO candidate Hifikepunye Pohamba was elected to a second term as president with 76 percent of the vote. SWAPO candidates won 54 of 72 elected National Assembly seats (there are also six appointed seats). International observers characterized the election as generally free and fair, despite an inefficient vote tabulation system and unequal access to media coverage and campaign financing. Nine opposition parties, however, claimed the election was marred by irregularities. The Supreme Court finished hearing their arguments in October but had not issued a decision by year's end.

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

Participation of Women and Minorities: Women held 19 seats in the 78-seat National Assembly, which included 72 elected seats and six appointed ones. There were seven women in the 26-seat National Council. There were five female ministers and four female deputy ministers among the 41 ministerial and deputy ministerial incumbents. There were two female judges among the 11 permanent judges on the High Court.

Virtually all of the country's ethnic minorities were represented in parliament and in senior positions in the cabinet, except the San and Ovahimba. Historic economic and educational disadvantages limited the participation of the indigenous San and Ovahimba ethnic groups in politics. Although the ruling SWAPO party was dominated by Ovambos, members of smaller ethnic groups held the offices of deputy prime minister, speaker of the National Assembly, and deputy chairperson of the National Council.

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. During the year the Anti-Corruption Commission (ACC) continued with awareness campaigns and held workshops for government officials, politicians, civil society organizations, church leaders, and school children on the dangers of corruption. NAMPOL opened nine cases of corruption or extortion against members of the police, all ongoing at year's end. During the year the ACC conducted several investigations into corruption. Through government institutions like the ACC, Prosecutor-General's Office, Namibian Police, Auditor-General's Office, and Office of the Ombudsman, the government took steps to prosecute or otherwise punish officials who engaged in corruption. Cases of corruption, abuse of authority, and conflict of interest still occurred. However, when these bodies investigated cases, they did so thoroughly.

For example, according to the *New Era* daily newspaper, on August 16, Melanie Theron, a magistrate in the northern town of Oshakati, appeared in court for allegedly collecting and pocketing money from traffic offenders whose fines were overdue. Offenders are supposed to pay their fines at the cash hall, and not directly to the magistrate. Theron was released on bail, and her case was ongoing at year's end. In July 2010 media sources reported that former State House deputy director Abisai Shaningwa used his new position as Omusati regional council director of planning to funnel for personal use nearly 1.5 million Namibian dollars (\$185,300) to build 27 public toilets in his region. The ACC conducted an investigation into the possible involvement of Omusati public officials in the scam, determined the case to have merit, and forwarded it to the Prosecutor-General's Office to consider for possible action.

In December 2010 Prime Minister Nahas Angula confirmed that five senior managers of the Government Institutions Pension Fund had been asked to take voluntary leave to facilitate a probe into the Development Capital Portfolio (DCP), which had lent more than 661 million Namibian dollars (81.67 million) to 21 Namibian companies through the DCP from the late 1990s until 2002. Many of the loans were never repaid. A 2006 audit revealed that the loans were fraught with irregularities, such as incomplete loan applications from politically connected businessmen, and were awarded shortly before their businesses failed. Namibian Police were investigating the 97 million Namibian dollars (\$11.98 million) in unpaid loans that occurred before the ACC was created.

Security force corruption and impunity were problems in the recent past, but not on a large scale. The ACC reported it had not observed any impunity in the security forces during the year. Whenever a case of corruption did arise, the Namibian Defense Force and Namibian Police chiefs were cooperative and provided their full support to the investigation.

Members of Parliament were required under their Code of Conduct to declare their assets. However, the assets register has only been published twice since independence, in 2003 and 2009. The law outlaws public officials' conflict of interest and potential abuses of power, but enforcement mechanisms in the act are weak and internal only. Civil society organizations charged that the 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 law provides for public access to government information, and media outlets generally found the government unwilling to provide information, including salary scales, for public officials.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Although government departments have typically proven hesitant to provide assistance, the Ombudsman's Office, NamRights, and the ACC reported the Namibian Police have been cooperative and helpful in corruption and human rights investigations.

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

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

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

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

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

Women

Rape and Domestic Violence: The law defines rape in broad terms and allows for the prosecution of spousal rape. 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 2010, 11,854 cases of gender-based violence were reported, 3,074 of which involved rape (a 294 percent increase from 2009). The true extent of rape is thought to be higher, and only a minority of cases were prosecuted or resulted in a conviction.

In 2009 LAC reported more than one-third of rape victims withdrew their cases, due to compensation from the accused, family pressure, shame, threats, or the length of time involved in prosecuting a case. A number of factors continued to hamper rape prosecutions, including lack of police transport, poor communication between police stations, lack of expertise in dealing with child rape complainants, and the withdrawal of cases by rape complainants after they filed charges. LAC argued additional training and raising awareness was required at all levels, and across all involved government ministries to better address child rape cases.

According to a 2008 LAC study, approximately 70 percent of rape suspects are arrested, but only 18 percent ultimately are convicted in a court of law. Most cases are tried by traditional authorities, rather than in government courts. A January article in the *Namibian Law Journal* complained that judges are applying "inconsistent and problematic" approaches to sentencing rape perpetrators.

The law prohibits domestic violence; however, the problem was widespread. Penalties for domestic violence, which includes physical abuse, sexual abuse, economic abuse, intimidation, harassment, and serious emotional, verbal or psychological abuse, ranged from a fine of 300 Namibian dollars (\$37) to 10 years' imprisonment and a fine for assault with intent to cause grievous bodily harm. No information was available on enforcement of the law, except as it involved rape. When reported, the woman and child protection unit of the Namibian Police intervened in domestic violence cases.

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. During the year the government completed renovation of five shelters for victims of gender-based violence.

Sexual Harassment: The labor act explicitly prohibits sexual harassment in the workplace and requires employers to take reasonable steps to protect employees from such harassment. Employees who leave their jobs due to sexual harassment are entitled to reinstatement or compensation. No sexual harassment case has ever been filed.

Sex Tourism: Neither the government nor civil society keeps statistics on sex tourism, although there is anecdotal evidence that a small amount of it exists. However, sexual exploitation, including the sexual exploitation of children, does exist.

Reproductive Rights: There were no government restrictions on contraception, but abortion remained illegal. 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. According to statistics released in 2010 by the Ministry of Health and Social Services, the country's maternal mortality ratio in 2006 was 449 per 100,000 live births, a near doubling of the rate in 1992; the high rate was attributed to the general lack of access to effective healthcare. UNICEF reported that unsafe abortions account for nearly 20 percent of maternal deaths. The government and NGOs continued to make a strong effort to educate men and

women equally in the diagnosis and treatment of sexually transmitted infections, including HIV.

The government has no policy to forcibly sterilize HIV-positive women. However, a 2008 case against the government, in which doctors at state hospitals allegedly sterilized 16 women following caesarean sections, was still awaiting judgment at year's end. Attorneys for the government claimed the women gave written consent to be sterilized before the procedures were carried out. The plaintiffs, who admit signing consent forms, charged that they were not properly informed of the consequences.

Discrimination: 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 addressing complaints of discrimination in employment; however, neither was effective due to the backlog of cases.

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

The custom by which a widow or widower was obliged to marry the brother or sister of the deceased to ensure that the surviving spouse and children were cared for was still practiced in some areas of the country. A *Namibia Law Journal* report from January found that the practice of widow inheritance (levirate) and widower inheritance (sororate) were still common among the Ovambo, Herero, Lozi, and to a lesser extent, the Kavango.

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

Birth Registration: The constitution provides for citizenship by birth within the country's territory or from one's parents. According to a 2006-07 survey conducted by the government, approximately 33 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, anecdotal evidence suggests teachers in regions bordering Angola, Zambia, Zimbabwe, and Botswana sometimes refused to teach children who could not prove their citizenship. Namibian mothers who delayed registration of their children at birth often faced a difficult process and long delays. If a child's parents died before registering their child with the government, and if the child did not obtain the needed death certificates or other necessary documentation for his or her parents, the child faced still greater challenges in proving his or her citizenship and right to access government services.

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

Education: Although the constitution provides children under the age of 16 with the right to compulsory, tuition-free, and universal primary and junior secondary education (grades one through 10), the numerous fees – including for uniforms, books, boarding costs, and school improvement – placed a heavy burden on poor families and precluded some children from attending. In general, more girls than boys were enrolled in secondary schools. Many San children and children from destitute families did not attend school, but the government continued to provide mobile schools for children who lived in semi-permanent settlements. In 2010 approximately 1,500 girls dropped out of school due to pregnancy. In June the Ministry of Education hosted a conference to address the education system's deficiencies and the cabinet adopted the conference's recommendations in December.

Child Abuse: Child abuse was a serious problem, and authorities vigorously prosecuted crimes against children, particularly rape and incest. According to police records and media reports, in 2010 at least 800 children and juveniles were murdered, raped, or assaulted during the year. The true incidence of child abuse was thought to greatly exceed the number of reported cases.

Child Marriage: The law prohibits marriage before the age of 18; however, child marriage occurred.

Harmful Traditional Practices: Female genital mutilation rarely was practiced. The women's rights organizations Sister Namibia and the Women's Leadership Center continued to condemn cultural practices of initiation sex for young girls,

including dry sex (the practice of applying astringents to the vagina before sexual intercourse to enhance male pleasure) and the stretching of the labia minora.

Sexual Exploitation of Children: The law criminalizes the actions of both the client and the pimp in cases of sexual exploitation of children under 18 years of age, and also criminalizes child pornography and child prostitution. The minimum legal age for consensual sex is 16, and the penalty for statutory rape is a minimum of five years in prison. Possession of, or international trade in child pornography is also illegal. The government continued to provide training for police officials to improve the handling of child sex abuse cases. Centers for abused women and children worked to reduce the trauma suffered by abused children.

NGOs that work with sex workers reported that most child prostitution occurred without third-party involvement, as a means of survival among HIV/AIDS orphans and other vulnerable children. Often, children sold themselves in this way for food, clothing, or other items or money. The existence of HIV/AIDS orphans – although declining for the first time – increased the vulnerability of children to sexual abuse and exploitation.

Infanticide: During the year, the media reported numerous cases in which parents, usually young mothers, abandoned and sometimes killed newborns for whom they felt they were not able to care. For example, in December a leading newspaper reported that a young mother first tried to abandon her infant child and then buried it alive. In 2008 staff at a waterworks facility in Windhoek estimated they discovered an average of 13 newborn bodies every month amongst the human waste flushed down toilets. Anecdotal evidence suggests this trend continues. A 2011 public survey conducted by the Government of Namibia, the Legal Assistance Center, and UNICEF indicated that the main reasons mothers abandon their babies was that the father denies paternity, the mother is a student, or the mother does not know about other options, such as adoption.

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

Anti-Semitism

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

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

Persons with Disabilities

The law prohibits discrimination against persons with physical and mental disabilities in employment, health care, education, or the provision of any state services. 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 overseeing concerns of people with disabilities.

National/Racial/Ethnic Minorities

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

Indigenous People

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

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

The Sodomy Act prohibits consensual same-sex sexual activity between men; however, all same-sex sexual activity was considered taboo by many citizens.

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

OutRight Namibia, an organization that advocates for LGBT rights, reported that police generally did not take complaints of violence against LGBT persons seriously. OutRight Namibia claimed police often ridiculed LGBT persons when they reported cases of abuse, and this secondary victimization often dissuaded victims from reporting abuses. However, the organization reported the Office of the Ombudsman and the Ministry of Health's Department of Special Programs had strengthened their relations with the LGBT community, which was included as a focus for assistance in the National Strategic Framework.

Societal discrimination against the LBGT community continued. For example, OutRight Namibia reported that in August, a transgender woman was stoned in the southern town of Keetmanshoop while running errands. She declined to report the incident to police, since they failed to act on similar complaints she made in the past.

In another case, in September, a man stabbed a lesbian to death at a speakeasy in Windhoek's poor outskirts because she was having a conversation with another woman. Witnesses reported the man complained that "men cannot get any women because the lesbians are taking them all."

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

Other Societal Violence or Discrimination

Societal discrimination against and stigmatization of persons living with HIV/AIDS remained a problem. However, there were no reports of employment

discrimination based on HIV/AIDS status. The government supported the work of the Namibia Business Coalition against HIV/AIDS to eliminate discrimination in the work place. The trial concerning 16 HIV-positive women who claimed they were sterilized against their will by doctors performing their caesarean sections at state hospitals was ongoing at year's end (see section 6, Women).

In contrast to 2010, there were no reports that persons with albinism were murdered and that their body parts were missing or mutilated, factors consistent with ritual killings.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

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

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

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

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

The government generally enforced this law, but not always effectively. The Namibian Employers' Federation reported a shortage of labor inspectors and other

resources constrained the government's ability to be fully effective in enforcing its laws, particularly in the area of minimum wages in the security, construction, and agriculture industries. The Ministry of Labor continued to cite lack of information and basic negotiation skills as factors hampering workers' ability to bargain with employers successfully. During the year, the government continued efforts to train labor inspectors and educate workers on their rights.

In general, freedom of association and the right to collective bargaining were respected by the government and employers, and workers exercised these rights in practice. The majority of trade unions were officially affiliated with the ruling SWAPO party, which many argued limited their independence in promoting worker rights. In September following the prime minister's failed attempt at arbitration, President Pohamba intervened to resolve a labor dispute and end a lengthy strike at the country's leading diamond producer, Namdeb. Aside from mediation efforts, the government was not directly involved in union activities. Employers also did not appear to interfere in union activities.

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

Workers called strikes during the year in mining, tourism, and other sectors.

Collective bargaining was not practiced widely outside the mining, construction, agriculture, and public service sectors. Almost all collective bargaining was at the workplace and company level. Employers respected the collective bargaining process, although discussions are ongoing around legitimizing "labor hire" (third party temporary contracts), and there were some accusations that some companies resorted to labor hire to avoid fringe benefits. Most labor hire companies provided such benefits anyway. In 2009 the Supreme Court declared unconstitutional a provision in the 2007 Labor Act that prohibited employers from hiring third-party temporary or contract workers. The government continued to make changes to the law to regulate private employment agencies.

There were instances of companies failing to reinstate workers who were fired for legal union activities. In November China Jiangxi International fired workers who coordinated with a union to demand they be paid a minimum wage, as stipulated in

the Namibian Labor Act. Ministry of Labor inspectors took part in the inconclusive negotiations on reinstating workers.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, including by children. There were no formal reports of forced or compulsory labor, and child labor was investigated when reported. The Ministry of Labor makes special provisions in its labor inspections to look for underage workers, and it has prioritized such special investigations.

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

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 and private households, labor inspectors sometimes found it difficult to investigate possible labor code violations. Inspections of family-owned farms continued to be problematic and controversial, since Namibia's constitution enshrines privacy as a fundamental right. The Labor Act, however, makes an exception to the right to privacy in the case of labor inspectors gaining access to family farms. NGOs complained access to private farms was one of the leading challenges in addressing child labor.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip

c. Prohibition of Child Labor and Minimum Age for Employment

The minimum age for employment is 14, with higher age requirements for night work and in certain sectors, such as mining and construction. With certain exceptions, no employee may work more than 45 hours per week, or more than nine hours per day. Children between the ages of 14 and 16 may not work in hazardous or harmful conditions; between the hours of 8:00 p.m. and 7:00 a.m.; or where the work is underground or in a mine, construction or area where demolition takes place, goods are manufactured, electricity is generated, transformed, or distributed, or machinery is installed or dismantled.

All the same conditions apply to a child between the ages of 16 and 18, except that of working under hazardous or harmful conditions. The minimum age was inconsistent with the age for completing education requirements. The law provides that persons found guilty of employing children can face a maximum fine of 20,000 Namibian dollars (\$2,471) and/or up to four years' imprisonment.

The Ministry of Gender Equality and Child Welfare continued to conduct several programs aimed at encouraging parents and guardians to allow children to attend school. The government does not have a separate institution to implement and enforce child labor laws, but generally used regular labor inspections as well as other monitoring mechanisms for orphans and other vulnerable children. There were approximately 40 labor inspectors in 2011, specially targeting smaller towns and districts. All were trained in identifying the worst forms of child labor. Small-scale labor inspections continued on a regular basis, although--contrary to previous years--the Ministry of Labor was unable to secure the involvement of the ministries of security, home and immigration, and education in its inspections. This reduced the inspection teams' ability to immediately open legal cases against alleged abusers, verify legal immigration status, and secure a seat in school for child labor victims. No inspector focused exclusively on children's services, but the Ministry of Labor created a Child Labor Desk to manage this caseload. There were no prosecutions by year's end.

The government continued several programs designed to help children stay in school and away from the labor market. The Ministry of Gender Equality and Child Welfare and the Ministry of Health and Social Services coordinated welfare programs for orphans, including those affected by HIV/AIDS, by providing grants and scholarships to keep them in school. In partnership with the International Labor Organization (ILO), the government also participated in a four-year program to withdraw and prevent children from entering exploitive labor in agriculture and adult-coerced criminal activity. The government continued to distribute a comprehensive guide on the labor law, which included a section on child labor. The government also continued to work with NGOs, such as Project Hope, to assist victims of child labor. The ILO reported it was helping draft regulations to combat child labor in hazardous sectors, which will be presented to the government in 2012. In 2008 the government developed a national action plan on the elimination of child labor, and five key ministries were developing work plans that incorporated anti-child labor initiatives. The ILO further reported that the cabinet issued a directive for joint interministerial investigations where child labor allegations arise.

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

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

d. Acceptable Conditions of Work

There was no statutory minimum wage law, but the mining, construction, security, and agricultural sectors set basic levels of pay in each of their sectors through collective bargaining. Namibia's National Planning Commission (NPC) reported that in 2009-10, Namibians were considered "poor" if they earned Namibian dollars \$395.89 (\$48.91) per month, and "severely poor" if they earned Namibian dollars \$286.84 (\$35.44) per month. Per the NPC, 30 percent of Namibians were poor, and 16 percent were extremely poor.

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

The Ministry of Labor mandates occupational safety and health standards, and the Labor Act empowers the president to enforce these standards through inspections and criminal penalties. The law requires employers to ensure the health, safety, and welfare of their employees. It provides employees with the right to remove themselves from dangerous work situations.

Although these laws apply to all workers, in practice violations occurred. The Namibian Employers' Federation reported the biggest offender, with regards to employee rights and working conditions, was the informal sector, including the common informal bars known as "shebeens." During the year, the Ministry of

Labor carried out a series of inspections in the retail sector of Katima Mulilo, in the Caprivi region. Most offenders were Chinese owners of retail shops, who underpaid and overworked their Namibian employees.

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

Concerns continued that Chinese firms failed to adhere to the labor code, in part by allegedly hiring and firing workers at will, ignoring occupational health and safety measures, failing to pay established minimum wages and benefits in certain industries, failing to respect work-hour regulations for public holidays and Sundays, and requiring construction workers to sleep on site. Investigations into such allegations were ongoing at year's end. Despite the law, some workers could not exercise the right to remove themselves from dangerous work situations. Migrant workers have the same legal rights as citizens, but these may be less vigorously enforced.