

NAMIBIA 2013 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Namibia is a constitutional multi-party democracy. The presidential and parliamentary elections held in 2009 resulted in the reelection of President Hifikepunye Pohamba and retention by the ruling South West Africa People's Organization (SWAPO) of its large parliamentary majority. Despite some reported irregularities, international observers characterized the election as generally free and fair. Authorities generally maintained effective control over security forces. Security forces sometimes committed human rights abuses.

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

Other governmental human rights problems included unlawful police killing, incarceration of juveniles with adults, corruption by officials, and discrimination against ethnic minorities and indigenous people.

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

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

a. Arbitrary or Unlawful Deprivation of Life

There were a few reports that the government or its agents committed, or were responsible for, arbitrary or unlawful killings. For example, police charged Officer Linus Nzwane with murder after Nzwane, while off duty, shot and killed Joel Martin in Windhoek on August 10. Nzwane claimed he shot in self-defense after Martin threatened him with a bottle. The court released Nzwane on bail while the police continued to investigate the case.

In July a court dismissed the appeal of police constable Gert Titsol who was convicted of culpable homicide in the death of a detainee in Keetmanshoop in 2007. The trial judge found Titsol negligent in failing to prevent an altercation between inmates and subsequently ignoring medical advice that might have

prevented the detainee's death. The trial court sentenced Titsol in 2012 to two years' incarceration, which was suspended for three years if he was not convicted of a similar crime in the interim.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The constitution and law prohibit such practices; however, police sometimes used excessive force when apprehending, interrogating, and detaining criminal suspects. The law does not define "torture," potentially leading to legal ambiguity over any claims. On October 25, Kajere Sake was hospitalized after a police officer from Omega I allegedly beat him after accusing Kajere of stealing a chicken. Human rights bodies and prison officials reported the detention of both pretrial and convicted prisoners in overcrowded conditions. Sex workers continued to allege that police regularly detained them and coerced the workers to have sex before releasing them.

Prison and Detention Center Conditions

Prisons remained somewhat overcrowded, and some prison buildings were dilapidated despite the ombudsman's reports that conditions improved in recent years. The ombudsman's office reported that authorities gave prisoners three meals per day and provided adequate sanitation, potable water, space, bedding, toiletries, and washing facilities. Each prison had a clinic with a registered or enrolled nurse, and inmates with serious health conditions were referred to state hospitals. Conditions were often less adequate in pretrial holding cells where overcrowding and sanitation remained problems, tuberculosis was prevalent, and on-site nursing was inadequate.

Physical Conditions: Conditions in detention centers and police holding cells--sometimes located inside prisons--remained poor. Nationwide, prisons built to hold 4,475 inmates housed 4,314 prisoners (including pretrial detainees) in 2012, the latest year for which data was available. These included 117 female prisoners and 238 juveniles. Overcrowding remained a problem in some of the largest prisons due primarily to the large number of pretrial detainees who were co-located

with convicted inmates (albeit in separate buildings). Because of a lack of prison facilities for juveniles, minors shared holding cells with adults.

Conditions in police holding cells were sometimes poor, and overcrowding was a problem in Windhoek, Ondangwa, Swakopmund, Oshakati, and Otjiwarongo. Despite overall improvements cited in 2011, the Ombudsman's Office reported in 2012 that many holding cells were still not suitable for human habitation. The ombudsman reported no additional findings during the year. Sometimes three inmates shared a single blanket, since police management prohibited family members of prisoners from providing them with additional blankets. Media reported that police in Windhoek housed four prisoners in holding cells designed for only one prisoner.

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

According to the Ombudsman's Office, more than 7 percent of the prison population was HIV-positive. There were only limited programs to prevent HIV transmission in prisons. The government denied that male-to-male sex took place in prison and refused to distribute condoms despite prisoners' requests. The government's refusal appeared directly related to the antisodomy provisions of the law (see section 6).

The law does not permit housing juvenile offenders with adults. Prison authorities reported that they largely observed this law, but police occasionally held juveniles with adults in rural detention facilities because of a lack of specific pretrial detainee facilities for juveniles.

The trial of two inmates of the Windhoek Central Prison for allegedly stabbing and killing a third inmate in January 2012 continued at year's end.

Administration: Recordkeeping on prisoners was adequate. The Ombudsman's Office was available to respond to complaints, investigated credible allegations of inhumane conditions, documented findings, and made written recommendations to

the inspector general of police. The office did not have the authority to intervene in individual cases, however. The government investigated and monitored prison and detention center conditions. Prisoners and detainees had potable water, reasonable access to visitors, and access to religious observances. Victims of prison abuse were able to pursue legal remedies, although lengthy delays were common. Detainees in the Caprivi Treason Trial (see section 1.e.) sued the government for assault and deprivation of medical treatment following their arrest in 1999, and some of those cases were still pending during the year.

Independent Monitoring: The government required NGOs and the media to seek permission from the commissioner general of prisons to visit prisons. The government continued to grant both local and international NGOs access to prisons and prisoners. During the year the International Committee of the Red Cross (ICRC) continued to visit the detainees of the Caprivi treason trial (see full discussion below), in both Windhoek Central Prison and Oluno Prison, and helped arrange for families to visit as well. The UN High Commissioner for Refugees (UNHCR) visited detained refugees and asylum seekers in prisons and detention centers, and experienced no problems of access.

Improvements: The Ombudsman's Office reported that Windhoek Central Prison, the second largest prison in the country, made progress over the past three years in introducing a case-management system that classifies inmates according to risk and assigns prisoners accommodation, training, and counseling based on this model. The prison also oversaw five vocational skills training workshops to promote employment and reduce recidivism.

d. Arbitrary Arrest or Detention

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

Role of the Police and Security Apparatus

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

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

Police continued to receive human rights training from various sources. The UN conducted a program on cases involving women and children. The LAC was also involved in designing human rights training for police, especially in cases involving child victims and witnesses and with a focus on interviewing skills. Police extended their basic recruit training by two months to accommodate the introduction of such additional human rights-related training. NamPol further invited guest speakers to lecture on human rights at the police college.

Arrest Procedures and Treatment of Detainees

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

The state-funded Legal Aid Directorate provided free legal assistance for indigent defendants in criminal cases and, as resources were available, in civil matters including divorces. The Legal Aid Directorate continued to face severe resource constraints that hampered its ability to provide services effectively in all cases. In October, Legal Aid's director reported the directorate provided representation for up to 85 percent of the criminal cases in the courts. The justice minister reported that between January and August, Legal Aid received 3,697 applications for Legal Aid assistance, of which 1,791 (48 percent) were approved and 1,131 (20 percent) were pending additional information from the applicants.

There is a functioning bail system. Officials generally allowed detainees prompt access to family members. Under a state of emergency the constitution permits detention without trial, although the names of detainees must be published in the

government's gazette within 14 days, and an advisory board appointed by the president must review their cases. In recent years President Pohamba has declared temporary states of emergency in northern regions because of drought.

Pretrial Detention: Lengthy pretrial detention remained a significant problem. The police inspector general stated that as of October there were 3,514 prisoners awaiting trial in holding cells across the country. The lack of qualified magistrates and other court officials, the high cost to the government of providing legal aid, slow or incomplete police investigations, and continued postponement of cases resulted in a serious backlog of criminal cases and delays between arrest and trial that could last years. In October, for example, the Windhoek Regional Court acquitted three men accused of armed robbery after they spent eight years in jail awaiting trial. During the year the High Court and Prosecutor-General's Office continued to implement proposals made in 2010 to improve the pace of administering justice, including granting increased case management powers to judges.

In January 2011 the High Court's judge president expressed concern about excessive delays in cases where the judge reserves his final decision to review the evidence. Since then the courts have made progress in reducing delays. According to the High Court Registrar, during the year the high court issued 75 percent of all reserved judgments within the guideline's recommended timeframes. As of October, there were 84 cases of reserved judgment in the High Court that exceeded recommended timeframes in the High Court's Guidelines for the Delivery of Reserved Judgments. Of those 84 cases, 24 were reserved during the year, 21 were reserved during 2012, and 39 were reserved during the eight preceding years (2004-11).

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, at times making judgments and rulings critical of the government. Inefficiency and lack of resources hampered the judicial system.

Military courts try only members of the military and do not provide the same rights as civil criminal courts. Customary courts hear 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 encounter the legal system through the customary courts, which deal with infractions of local customary law 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 that had been resolved in customary courts were tried a second time in government courts.

Trial Procedures

The constitution and law provide for the right to a fair trial, but this right was limited by long delays in hearing cases in the regular courts and the uneven application of constitutional protections in the customary system. Defendants are presumed innocent. The law provides for defendants to be informed promptly (and in a language they can understand) of detailed charges against them, and of their right to a public trial. There are no jury trials.

Defendants have the right to be present at trial, to consult with an attorney in a timely manner, and--with their attorney--to have access to government-held evidence. Although indigent defendants are entitled to a lawyer provided by the state in criminal and civil cases including divorce cases, this sometimes did not occur due to an insufficient number of public defenders. The LAC reported that, although the Supreme Court found that the state must provide legal assistance where gross injustice would occur otherwise, many cases of rape, murder, and other serious crimes continued without the accused having adequate legal representation. This was typically due to lack of resources or because the application for representation from one accused was not accepted by Legal Aid.

Defendants can confront witnesses, present witnesses and evidence on their behalf, and have the right of appeal. The law extends these rights to all citizens. The courts provided defendants adequate time and facilities to prepare their defense. Defendants have the right not to testify against themselves or confess guilt.

In 1999 Caprivi separatists attacked government facilities and buildings in Katima Mulilo, the capital of Caprivi Region, in an attempt to separate the Caprivi Region from Namibia. A trial originally involving 131 detainees alleged to have participated in the attacks and 278 counts related to treasonous activities began in 2003. The complexity of the state's case, resource constraints, personnel problems

including the death of prosecutors and defense attorneys, and procedural matters prolonged the case for several years.

In 2012 there were 22 deaths in prison from natural causes of the accused Caprivi separatists and the High Court released one defendant after the prosecution conceded it had not been able to prove any of the charges against him. In 2012 the state rested its case against the remaining 108 defendants, and the defense submitted an application for acquittal of all defendants on all the charges due to lack of evidence. In February, High Court Judge Elton Hoff acquitted 43 of the remaining defendants on the grounds that the government failed to present sufficient evidence that they had attempted to overthrow the state. The defense phase of the 65 remaining defendants began in February and, as of October, 31 of the accused had testified in their own defense while 19 of the accused had closed their defense cases without testifying. The remaining 15 defendants were scheduled to present their testimony at year's end.

In 2012 the state closed its case in the separate trial of Albius Moto Liseli, whose 2009 arrest made him the last person arrested in connection with the Caprivi separatist plot. The defense phase for Liseli was pending at year's end.

In July the Supreme Court ordered the retrial of 10 alleged secessionists convicted of treason in 2007 and sentenced to more than 30 years in prison, on the grounds the High Court judge failed to recuse himself due to alleged bias against the defendants. The retrial of the 10 men has not been rescheduled.

Almost all the Caprivi defendants filed civil suits alleging torture at the time of their arrests, and unlawful arrest and detention for the time spent in jail awaiting trial. The LAC, which represented 90 of the detainees, reported that 60 of these cases were settled out of court with the defendants receiving compensation, seven cases were withdrawn for lack of merit and evidence, and 23 cases remained in process. These numbers included cases filed by the 43 defendants acquitted during the year, of whom 16 subsequently reached out-of-court settlements with the government for their 13 years in custody. Eleven were still suing the government for unlawful detention.

Political Prisoners and Detainees

The local NGO Namibia's National Human Rights Organization (NamRights) has categorized the surviving Caprivi high treason detainees as "political prisoners," while Amnesty International considers many of the Caprivi detainees possible

prisoners of conscience because they were allegedly arrested solely on the basis of their actual or perceived political views, ethnicity, or membership in certain organizations. There were no other reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

The law provides for access to a court to bring lawsuits seeking damages for, or seeking cessation of, human rights violations. The constitution provides for administrative procedures to correct, as well as judicial remedies to redress, 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. The law allows intelligence services to monitor e-mails and internet usage with authorization from a magistrate, but it has not been fully implemented. The act also permits the interception of telephone calls and cell phone text messages. Opponents of the law consider it an invasion of privacy and a violation of the right of free expression.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and press, and the government generally respected this right. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of speech and press.

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

The Office of the Media Ombudsman is an independent investigator and arbiter of complaints against the media. The media ombudsman is appointed by local newspaper editors and, while funded by the government, continues to function free of any government interference. According to the media ombudsman, during the

year businesses and politicians filed 15 complaints, mostly against journalists for allegedly inaccurate, unfair, and unbalanced reporting. The ombudsman reported that seven complaints were resolved by year's end, usually when the newspaper or broadcaster (at the media ombudsman's request) responded to the complaint or, if the response was not sufficient, by the ombudsman's facilitating an informal meeting between the parties.

During the year the Media Institute of Southern Africa (MISA) did not issue any media alerts concerning threats to freedom of speech.

Violence and Harassment: In March police arrested the editor, Gareth Amos, of the *Namib Independent* community newspaper, for obstructing justice after taking photos of police officers attempting to arrest a journalist in the newspaper offices for an outstanding traffic fine. Police forced Amos to delete the photos and then beat him at the police station. The police later released Amos and dropped the charges against him after he agreed not to publicize the event.

Censorship or Content Restrictions: In discussing subsidies to state-owned media outlets in 2012, several members of parliament (MPs) severely criticized the government-owned NBC and *New Era* newspaper for alleged "selective coverage of public figures and events." They also alleged negative coverage of government actions by state-owned media, rather than, as one minister stated, "advancing and protecting the government as they were established to do." SWAPO MPs expressed annoyance that journalists from state-controlled media wrote about some MPs and not others. Some argued against continued support for state-run media because they "always stab us in the back." The government did not renew the contract of the *New Era* editor.

Journalists working for state-owned media practiced self-censorship during the year because of criticism by SWAPO MPs and others that state-owned media did not do enough to support government policies.

Internet Freedom

There were no government restrictions on access to the internet; however, the law allows the intelligence services to monitor e-mails and internet usage with authorization from any magistrate. Civil society noted some allegations and rumors that the government reviewed ways to block or curtail social media sites, but there was no concrete evidence of such action. According to the International Telecommunication Union, 13 percent of individuals used the internet in 2012.

Academic Freedom and Cultural Events

Government regulations require government authorization for all research projects undertaken in the country, provisions which civil society fears could cause a chilling effect on research. The government has not yet implemented those regulations and has agreed to review them in response to a public campaign to challenge the regulations.

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

b. Freedom of Peaceful Assembly and Association

The constitution and law provide for freedom of assembly and association, and the government respected these rights.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/j/drl/irf/rpt.

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

The constitution and law provide for freedom of movement, foreign travel, emigration, and repatriation. The government respected these rights. The government cooperated with the UNHCR and other humanitarian organizations in protecting and assisting refugees, returning refugees, asylum seekers, and other persons of concern.

Protection of Refugees

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

During the year through August the UNHCR received 232 asylum requests, with almost 80 percent of the asylum seekers coming from the Democratic Republic of the Congo. During the year there were 3,370 asylum seekers and refugees

registered with UNHCR and the government. After the Democratic Republic of the Congo, the largest numbers of refugees came from Burundi and Rwanda, followed by South Sudan, Eritrea, and Zimbabwe. The government continued to issue identification cards to all refugees to facilitate travel outside their settlement.

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

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

Durable Solutions: Fewer than 2,000 former refugees from Angola who wished to integrate locally were still residing in the Osire refugee settlement. In June the cabinet approved the local integration of those refugees, with the Ministry of Home Affairs and Immigration responsible for processing their applications for permanent residence status. As of the end of the year, however, the government had processed no applications.

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 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, voters elected SWAPO candidate Hifikepunye Pohamba to a second term as president with 76 percent of the vote. SWAPO candidates won 54 of the 72 elected seats in the National Assembly, the lower house of parliament (there are also six appointed seats). International observers characterized the election as generally free and fair, despite an inefficient vote tabulation system, problems with voter lists, and unequal access to media coverage and campaign financing. The Supreme Court dismissed complaints of electoral fraud by nine opposition parties.

Political Parties: Individuals and political party nominees could declare their candidacies freely and run for election in accordance with the law. The

government did not restrict the right of political opponents to organize, campaign, or publicize their views. There continued to be allegations that individuals who were not members of SWAPO had difficulty finding civil service employment or winning government tenders.

Participation of Women and Minorities: Women held 21 of 78 seats in the National Assembly. There were seven women in the 26-seat National Council, the upper house of parliament. There were five female ministers and eight female deputy ministers among the 41 ministerial and deputy ministerial officers. There were three female judges among the 11 permanent judges on the High Court.

Virtually all of the country's ethnic minorities had representation in parliament and in senior positions in the cabinet. Historic economic and educational disadvantages limited the participation of some indigenous ethnic groups in politics. Although some perceived the ruling SWAPO party as dominated by Ovambos, members of minority ethnic groups held the offices of prime minister, deputy prime minister, speaker of the National Assembly, and deputy chairperson of the National Council.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials; however, the government did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. There were isolated reports of government corruption during the year.

During the year the Anti-Corruption Commission (ACC) continued awareness campaigns and workshops for government officials, politicians, civil society organizations, church leaders, and schoolchildren on the dangers of corruption.

Corruption: The ACC, the Prosecutor General's Office, NamPol, the Auditor General's Office, and the Office of the Ombudsman are all responsible for combating corruption. The ACC and the Office of the Ombudsman receive and investigate corruption complaints, often from the public. The Auditor General's Office also investigates corruption and turns cases over to the Prosecutor General's Office and NamPol for further investigation and criminal prosecution where appropriate. These organizations actively collaborated with civil society, conducted thorough investigations, and operated both effectively and independently.

During the year the ACC conducted several investigations into corruption. According to a local monthly magazine that tracks corruption, there have been 418 cases of corruption before the courts since 2005. By year's end 80 of those had been resolved.

In September authorities arrested three employees of the Walvis Bay Magistrate's Court for allegedly soliciting illegal payments from motorists to quash traffic tickets and arrest warrants. Police discovered more than 1,100 traffic tickets, including 300 arrest warrants, at one employee's home. The court denied three defendants bail pending trial.

Suspended magistrate Melanie Theron from the northern town of Oshakati allegedly collected and pocketed 6,600 Namibian dollars (\$657) from traffic offenders whose fines were overdue. In return she allegedly cancelled their arrest warrants and withdrew their cases from her court. She made her first appearance before the High Court in Windhoek in 2012. The police were still investigating at year's end.

In 2012 NamPol, with the help of South African forensic experts, investigated N\$97 million (\$9,655,584) in defaulted loans that the Development Capital Portfolio (DCP) made to Namibian companies from the late 1990s until 2002. A 2006 audit revealed numerous irregularities, such as fraudulent loan applications from politically connected businessmen that led to the granting of loans shortly before the businesses concerned failed. Five senior managers of the Government Institutions Pension Fund were implicated in corrupt awarding of the loans. Police forwarded two of 21 resulting cases to the prosecutor general for possible prosecution, but both were referred to the police for further investigation. NamPol cited the complexity of the case, which involved more than 200 witnesses and an estimated 600,000 documents, as the reason for delays in prosecution. Police were still investigating at year's end.

Whistleblower Protection: The law does not provide protection to public and private employees for making internal disclosures or lawful public disclosures of evidence of illegality, such as the solicitation of bribes or other corrupt acts, gross waste or fraud, gross mismanagement, abuses of power, or substantial and specific dangers to public health and safety.

Financial Disclosure: The National Assembly has not adopted a parliamentary code of conduct to make the annual declaration of financial interests a requirement. The National Council, the upper house of parliament, has adopted a code of

conduct and annually produces a register. Civil society organizations charged that the law did not preclude government officials from engaging in private business that posed a conflict of interest with their government duties, and proposed amendments to do so. Parliament, however, neither discussed those proposals, nor amended the code of conduct.

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

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. The Ombudsman's Office, NamRights, and the ACC reported NamPol had cooperated and assisted in corruption and human rights investigations.

NamRights and the LAC, both independent organizations, were the primary human rights NGOs in the country, and police regularly met with both. The LAC often assisted police with human rights training and helped policewomen and child protection units provide legal assistance for victims in cases of gender-based violence and rape. NamRights reported allegations of police brutality and abuse of power.

Government Human Rights Bodies: There is an autonomous ombudsman with whom the government cooperated. Observers considered him effective in addressing some corruption and human rights problems. Between January and October the Ombudsman's Office received 214 human rights-related complaints from the public. These included alleged violations of the right to a fair trial, illegal detention, delays in completing criminal appeals, and alleged assaults by prison officials.

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.” The government did not effectively enforce all these prohibitions.

Women

Rape and Domestic Violence: The law defines rape in broad terms and allows for the prosecution of spousal rape. The courts heard numerous prosecutions for rape during the year, and the government generally enforced penalties providing between five and 45 years’ imprisonment for those convicted. Government officials reported an increase in the number of reported rapes from 1,085 in 2011 to 1,119 in 2012. They believed the actual prevalence of rape was higher, with only a small fraction of cases prosecuted and fewer still resulting in a conviction.

In 2011 the Ministry of Gender Equality and Child Welfare and the LAC initiated, after their multiyear campaign of Zero Tolerance for Gender-Based Violence and Human Trafficking, a formal National Plan of Action on Gender-Based Violence 2012-16. The government, NGOs, and civil society partners continued to implement the action plan during the year.

The LAC’s statistics indicated that more than one-third of rape victims withdrew their court cases due to receiving compensation from the accused, succumbing to family pressure, shame, threats, or being discouraged by the length of time involved in prosecuting a case. Factors hampering rape prosecutions included lack of police transport, poor communication between police stations, lack of expertise in dealing with child rape complainants, and the withdrawal of allegations by alleged victims after the filing of charges.

According to LAC statistics, police arrested suspects in approximately 70 percent of reported rape cases, of which a court of law convicted only 18 percent. Most cases are heard by traditional authorities rather than in government courts. A 2011 article in the *Namibian Law Journal* complained that judges were applying “inconsistent and problematic” approaches to sentencing rapists, a critique that continued to be made during the year.

The law prohibits domestic violence, but 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, range from a fine of N\$300 (\$30) for simple offenses to 10 years’ imprisonment and a fine for assault with intent to cause grievous bodily harm. NamPol does not collect separate crime data on domestic violence.

No official information was available on enforcement of the anti-domestic violence law except as it involved rape. The law provides for the issuance of protection orders in cases of domestic violence and specifies that certain crimes of violence--including murder, rape, and assault--should be handled differently if the crimes take place within a domestic relationship. When domestic violence cases were reported to authorities, police women and child protection units intervened.

There were 15 women and child protection units staffed with police officers, social workers, legal advisors, and medical personnel trained to assist victims of sexual assault. During the year the UN Children's Fund (UNICEF), the People's Education, Assistance, and Counseling for Empowerment Center, and other NGOs continued to provide training to these units. In some magistrates' courts there were special courtrooms to protect vulnerable witnesses from open testimony; the courtrooms featured a cubicle constructed of one-way glass and child-friendly waiting rooms. The Ministry of Gender Equality and Child Welfare provided grants to support privately run shelters for victims of gender-based violence in the regions of Khomas, Kavango, Ohangwena, Omusati, Kunene, and Karas.

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

Reproductive Rights: There are no government restrictions on the provision of contraceptives except to children under 18, the legal age of consent for medical treatment. The government and NGOs provided for equitable access to contraception for all citizens, and an estimated 54 percent of women of reproductive age used a modern method of contraception. In 2010 skilled health personnel attended 81 percent of births. Women who lived in urban areas had better access to skilled attendance during childbirth and postpartum care than those who lived in rural areas. According to statistics released in 2012 by the United Nations Population Fund (UNFPA), the country's maternal mortality ratio in 2010 was 200 per 100,000 live births, a decrease from 310 per 100,000 live births in 2005. General lack of access to effective healthcare in treating eclampsia (seizures during pregnancy), hemorrhage, and obstructed or prolonged labor contributed to the still-high rate of maternal mortality. HIV/AIDS was the leading indirect cause of maternal mortality, linked to almost 60 percent of maternal deaths. UNICEF reported that unsafe abortions accounted 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.

Dozens of women living with HIV were subjected to forced or coerced sterilization at public hospitals throughout the country in recent years. The Namibian Women's Health Network called on the government in November to ensure, at a minimum, that women be given information needed to ensure informed consent to sterilization. In the five years since the practice of forced sterilization came to light, however, the government has done nothing to end it and was appealing during the year a July 2012 High Court ruling that three women with HIV had been subjected to coerced sterilization in violation of the laws and were thus entitled to compensation.

Discrimination: The law prohibits gender-based discrimination, including employment discrimination. The law requires equal pay for equal work. Men continued to dominate positions of upper management in both private and public sectors, however, and women experienced discrimination in such areas as credit, pay, owning and/or managing businesses, education, and housing. The Ministry of Labor and Social Welfare and the Employment Equity Commission, both of which report to the minister of labor, were responsible for addressing complaints of discrimination in employment. Neither was effective, however, due to the backlog of cases.

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

The custom by which a widow or widower marries the brother or sister of a deceased to ensure that the surviving spouse and children are cared for was still practiced in some areas of the country. Anecdotal evidence suggests these practices decreased in recent years, however, and during the year occurred mostly with the consent of both parties.

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

Children

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

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

Education: The constitution requires compulsory, tuition-free, and universal primary and junior secondary education until the age of 16; i.e., first through tenth grades. In January the Ministry of Education abolished all primary school fees (called "School Development Funds"), including for uniforms, books, boarding costs, and school improvement, since those fees became, in effect, tuition fees that prevented poor children from attending primary school.

Secondary schools generally enrolled more girls than boys. Many children, including children from destitute families, did not attend school, but the government continued to provide mobile schools for children who lived in semipermanent settlements. In 2012 approximately 1,400 girls dropped out of school due to pregnancy.

Child Abuse: Child abuse was a serious problem, and authorities prosecuted crimes against children, particularly rape and incest, if reported. According to police records and media reports, in 2011 approximately 750 children and juveniles were killed, raped, or assaulted. In 2012 that number grew to approximately 870. Police reported three cases of incest against a child in 2012, up from one in 2011. The true incidence of child abuse was thought to exceed greatly the number of reported cases.

Forced and Early Marriage: The law prohibits civil marriages before the age of 18; however, child marriage occurred in customary ceremonies. According to the UNFPA, 10 percent of women married in 2007 were girls under 18.

Harmful Traditional Practices: During the year there were no reports of female genital mutilation/cutting. 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 age 18, and also criminalizes child pornography and child prostitution.

Sexual exploitation of children occurred. NGOs that worked with sex workers reported that, in most cases, children engaged in prostitution without third party involvement due to economic pressures on the child or as a means of survival among HIV/AIDS orphans and other vulnerable children. These NGOs and social workers reported that children often entered prostitution between the ages of 12 and 14. Such children allegedly often had been abused before leaving home to enter the sex trade. Older partners' offers of money, cell phones, or other gifts lured others.

The maximum penalty for soliciting a child under age 16 for sex, or more generally for commercial sexual exploitation of a child (including through pornography) is a fine not exceeding N\$40,000 (\$3,982), imprisonment for a term not exceeding 10 years, or both. Exposing a child to pornography is also illegal. Penalties for cases involving 16- or 17-year-olds are the same as for adults. The law makes special provisions to protect vulnerable witnesses, including those under age 18 or against whom a sexual offense has been committed.

Under the law the client of a sex worker under age 16 may be imprisoned for up to 15 years for a first offense and up to 45 years for repeat offenses. Any person who aids and abets the trafficking of persons--including child prostitution--either within the country or across the border is liable to a fine of up to N\$1,000,000 (\$99,542) or imprisonment of up to 50 years. The solicitation of a prostitute, living off the earnings of prostitution, or keeping a brothel carries a penalty of N\$40,000 (\$3,982), 10 years in prison, or both. Anyone found to be soliciting in public is

also guilty of an offense under the law. The constitution's strict protection of privacy and the law's emphasis on deleterious and financial aspects of prostitution rather than the sex act itself, however, hindered police in making arrests for prostitution.

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

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

HIV/AIDS orphans--although declining in number during the year--were especially vulnerable to sexual abuse and exploitation.

Infanticide or Infanticide of Children with Disabilities: The media continued to report numerous cases in which parents, usually young mothers, abandoned and sometimes killed newborns for whom they felt they were not able to care. A 2011 public survey conducted by the government, LAC, and UNICEF indicated that the main reasons mothers abandoned their babies were that the father denied paternity, the mother was a student, or the mother did not know about other options such as adoption. Of the 3,742 respondents, 28 percent (mostly between the ages of 19 and 30) indicated they would abandon their baby to die if they found out they or, in the case of men, their girlfriends, were pregnant and did not want the baby.

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

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

Anti-Semitism

There was a Jewish community of approximately 100 individuals 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 constitution protects the rights of “all members of the human family,” which domestic legal experts understand to prohibit discrimination against persons with disabilities. The law prohibits discrimination against persons with physical and mental disabilities in employment, health care, education, or the provision of other state services. The law prohibits discrimination in any employment decision based on a number of factors, including any “degree of physical or mental disability.” It makes an exception in the case of a person with a disability if that person is, because of disability, unable to perform the duties or functions associated with the employment or occupation in question. Enforcement in this area was ineffective, and societal discrimination persisted. The government's National Disability Council of Namibia (NDCN) announced in June that 22 cases of discrimination had been registered with the organization since its establishment in 2004, and it is pursuing legal action in at least some of these. Aside from helping implement the government's National Policy on Disability and raise awareness among the public, the NDCN published a booklet, *Mainstreaming Disability in the Namibian Public Sector*.

The government requires that all new government buildings be accessible and include ramps and other features. The government, however, neither mandates access to public buildings generally nor requires retrofitting of government buildings. Some ministries thus remained inaccessible. Some street corners in the capital were outfitted with special signal crossings for persons with vision disabilities, and there were sidewalk cuts for those using wheelchairs.

Children with disabilities attend mainstream schools. The rights of persons with disabilities to vote and otherwise participate in civic affairs are not restricted by law, but infrastructural challenges at public venues had a practical effect on the ability of persons with disabilities to participate in civic life.

The Office of the Prime Minister's Disability Advisory Unit was responsible for overseeing concerns of persons with disabilities.

National/Racial/Ethnic Minorities

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

Indigenous People

Other ethnic groups have historically exploited the San, the country's earliest known inhabitants. By law all indigenous groups participate equally in decisions affecting their lands, cultures, traditions, and allocation of natural resources. The San and other indigenous citizens such as the Ovahimba and Ovatie, however, have been unable to exercise these rights fully because of minimal access to education, limited economic opportunities, and their relative isolation. The San people live in rural areas that lack schools and medical facilities. When those facilities were available, teachers and nurses often did not speak any of the San languages. In October a group of NGOs published for the first time San-language textbooks for first and second grades. The lack of police presence and courts prevent San women from reporting and seeking protection from gender-based violence. Indigenous lands were effectively demarcated, but poorly managed. Many of the San tribes live on conservancy (communal) lands, but are unable to prevent the surrounding stronger tribes (such as the Ovambo) from using and exploiting the San lands for their own purposes. The San claim that regional officials refuse to remove the other tribes from the San lands. NGOs such as the Namibia San Council, the Working Group of Indigenous Minorities and Southern Africa, the 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

Although the country's Roman-Dutch common law inherited at independence criminalized sodomy and it remains on the books, the ban was not enforced. Sodomy is defined as intentional sexual relations *per anum* between men. This definition excludes sexual relations *per anum* between heterosexual couples and sexual relations between lesbian women. Many citizens considered all same-sex sexual activity taboo, however. While the Supreme Court ruled in 2001 that homosexual conduct is not illegal, the prohibition against sexual discrimination in the constitution does not prohibit discrimination on the basis of sexual orientation.

Some politicians publicly stated their opposition to legislation specifically protecting the rights of lesbian, gay, bisexual, and transsexual (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, continued to report that police generally did not take complaints of violence against LGBT persons seriously. It claimed police often ridiculed LGBT persons when they reported cases of abuse, and this secondary victimization often dissuaded victims from reporting. The organization reported that since at least 2011, however, the Office of the Ombudsman and the Ministry of Health and Social Services have strengthened their relations with the LGBT community and included it in the National Strategic Framework for HIV/AIDS 2010-16 as a group requiring outreach.

Societal discrimination against LGBT persons remained a problem. The ombudsman's office reported that LGBT persons are often subject to ridicule and even physical and verbal abuse when they walked in a different neighborhood from their own. In the northern Oshiwambo area, seven men beat a transgendered woman. Claiming that the assault was not due to her transgendered status, the police refused to prosecute the case.

The ombudsman's office reported that many cases of human rights violations against LGBT persons went unrecorded, including the use of "corrective rape" against lesbian women, families disowning LGBT children, and the beating of LGBT persons. A large number of LGBT youth were unemployed, did not go to school, abused drugs and alcohol, and remained vulnerable to discrimination.

Other Societal Violence or Discrimination

Societal discrimination against and stigmatization of persons living with HIV/AIDS remained a problem. Military and police recruits are tested for HIV, and those found positive are unable to join. Military members who test positive for HIV while in the service receive treatment and are allowed to stay in the military, however. Some jobs in the civilian sector require a pre-employment test for HIV, but there were no reports of employment discrimination specifically based on HIV/AIDS status. The LAC contended the disease was often deemed an incapacity in the private sector, and employers often sought other bases for dismissal once they became aware of an employee's positive HIV status. The

government supported the work of the Namibia Business Coalition against HIV/AIDS to eliminate discrimination in the workplace.

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, the law prohibits workers in “essential services” 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 then are referred to a labor court for arbitration if conciliation is unsuccessful. The law provides for arbitration and conciliation to resolve labor disputes more quickly, although employers and unions have publicly questioned the system’s effectiveness more frequently in recent years than they did in the past. The law prohibits unfair dismissal of workers engaged in legal strikes, 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 workers’ actions at the time were not in violation of other laws.

The law provides employees with the right to bargain individually or collectively, and for recognition of the exclusive collective bargaining power of the union when a majority of the workers are members of that union. The law 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 that a shortage of labor inspectors and other resources constrained the government’s ability to be fully effective in enforcing its laws. The Ministry of Labor and Social Welfare continued to cite lack of information and basic negotiation skills as factors hampering workers’ ability to bargain with employers successfully.

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

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

Workers called strikes during the year in mining, health, transportation, and other sectors, but they were fewer in number than in 2012. The majority of those strikes involved employees of parastatals or government employees seeking higher pay. All strikes were resolved in accordance with the rule of law. Following the labor court's declaration that the Teacher's Union of Namibia's strike in 2012 was illegal, the Ministry of Education took deductions from the striking teachers' salary for unpaid leave. In October the labor court ordered the ministry to stop the deductions and referred the matter to a labor arbitrator.

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.

The law requires employers to provide equal benefits to all their employees. Employers may apply to the minister of labor and social services for an exemption to these provisions if they can prove workers' rights are protected, but very few employers pursued this option.

On October 21, Labor Commissioner Bro-Matthew Shinguadja announced an indefinite moratorium on new registrations of unions and employee associations. The moratorium has prevented the registration of a new union, the Namibian National Labor Organization (NANLO). In justifying the moratorium, the labor commissioner cited an unprecedented surge of applications, many by allegedly unqualified organizations. The Ministry of Labor, for which the labor commissioner works, has launched an investigation into the moratorium.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, including by children. The government did not report any formal allegations of forced or compulsory labor, and investigated child labor when reported.

Forced labor occurred. Traffickers exploited children in agriculture, cattle herding, and domestic service. There continued to be media reports that farm workers on communal farms and domestic workers often received inadequate compensation for their labor and were subject to strict control by employers, including physical punishment and prolonged work hours. The alleged victims were usually women and (sometimes migrant) children. In addition, among ethnic groups, San girls are particularly vulnerable to forced labor on farms or in homes.

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 years, with higher age requirements for night work and in certain sectors such as mining and construction. Children between the ages of 14 and 16 may not work in hazardous or harmful conditions, but the Ministry of Labor and Social Welfare did not approve a proposed list of such hazardous or harmful conditions by year's end. The law prohibits children between the ages of 14 and 16 from working between the hours of 8:00 p.m. and 7:00 a.m. The law also prohibits children from working underground or in a mine, on a construction site or other area where demolition takes place, or in facilities where goods are manufactured or electricity is generated, transformed, or distributed, or machinery is installed or dismantled. The same conditions apply to children between the ages of 16 and 18, except for the ban on working under hazardous or harmful conditions. The minimum age of employment was inconsistent with the age for completing education requirements. The law provides that persons found guilty of employing children face a maximum fine of N\$20,000 (\$1,991) and/or up to four years' imprisonment.

The government does not have a dedicated institution to implement and enforce child labor laws. For enforcement, the government relied on regular labor inspections as well as other monitoring mechanisms for orphans and other vulnerable children. There were approximately 40 labor inspectors during the

year. The government trained all to identify the worst forms of child labor. The Ministry of Labor and Social Welfare made special provisions in its labor inspections to look for underage workers, and it prioritized such special investigations, often targeting smaller towns and districts. Small-scale labor inspections continued on a regular basis. The Ministry of Labor and Social Welfare created a Child Labor Desk to manage cases involving child labor. There were no prosecutions by year's end, however.

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

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 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, through grants and scholarships to keep them in school. In partnership with the International Labour 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. In 2011 the Ministry of Gender Equality and Child Welfare released *Pilot Guidelines and Tools for Child Care and Protection Forums at National, Regional, and Constituency Levels* and during the year the *National Plan of Action on Gender-Based Violence for 2012-16*, both of which include sections on discouraging child trafficking and child labor. The ILO further reported that the cabinet issued a directive for joint interministerial investigations where child labor allegations arose.

Child labor continued to be a problem. There were no child labor statistics. 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. Media continued to report that children on communal farms and domestic workers were subject to strict control by employers, including physical punishment and long work hours. Many such workers were not allowed to attend school.

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

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

d. Acceptable Conditions of Work

There was no statutory minimum wage law, but the mining, construction, security, and agricultural sectors set basic levels of pay in each of their sectors through collective bargaining. In the latest comparative analysis of Namibia Household Income and Expenditure Surveys (NHIES), the Namibia Statistics Agency reported that in 2009-10, Namibians were considered "poor" if they earned N\$377.96 (\$37.62) per month, and "severely poor" if they earned N\$277.54 (\$27.63) per month. According to the NHIES, 29 percent of Namibians lived below the poverty line in 2009-10 (9 percent fewer than in 2003-04), and 16 percent of the population was extremely poor.

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

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

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

Violations occurred. The Namibian Employers' Federation reported most prominent offenses concerning employee rights and working conditions were in the informal sector, including the common informal bars known as "shebeens." Most offenders were Chinese owners of retail shops, who underpaid and overworked their employees.

Concerns continued that, apart from failing to adhere to the labor code concerning hiring and firing, Chinese firms allegedly continued to fail to pay established minimum wages and benefits in certain industries, failed to respect work-hour regulations for public holidays and Sundays, and ignored occupational health and safety measures, for example, requiring construction workers to sleep on site. In October 10 workers accused two Chinese contractors building a government regional office in Oshakati of unfair labor practices after the contractors summarily dismissed the workers without warning and refused to pay the previous month's wages. Investigations into such allegations continued during the year. Migrant workers have the same legal rights as citizens.