

# NAMIBIA 2022 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Namibia is a constitutional multiparty democracy. In the 2019 presidential and parliamentary elections, President Hage Geingob won a second five-year term, and the South West African People's Organisation retained its parliamentary majority, winning 63 of 96 National Assembly seats. International observers characterized the 2019 election as generally free and fair. In 2020 the country held Regional Council elections from which the South West African People's Organisation secured 28 of 40 seats in the National Council, the upper chamber of the bicameral parliament.

The national police maintain internal security; however, the military also has some domestic security responsibilities through joint operations with police. The Namibian Police Force reports to the Ministry of Home Affairs, Immigration, Safety, and Security. The Namibian Defence Force reports to the Ministry of Defence and Veterans Affairs. Civilian authorities maintained effective control over the security forces. Members of the security forces allegedly committed some abuses.

Significant human rights issues included credible reports of serious government corruption and, although not enforced, laws criminalizing consensual same-sex sexual conduct between adults.

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

## **Section 1. Respect for the Integrity of the Person**

### **a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were two reports the government or its agents may have committed arbitrary or unlawful killings; both were under investigation at year's end. The Namibian Police Force (NAMPOL) conducts internal investigation to determine whether

security force killings were justifiable and presents its findings to the Office of the Prosecutor General, which determines whether to pursue charges.

## **b. Disappearance**

There were no reports of disappearances by or on behalf of government authorities.

## **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and Other Related Abuses**

The constitution and law prohibit such practices, and there were no credible reports government officials employed them.

### **Prison and Detention Center Conditions**

Prison conditions were harsh and life threatening due to food shortages, gross overcrowding, physical abuse, and inadequate sanitary conditions.

**Abusive Physical Conditions:** In its *Ombudsman Annual Report for 2021/22*, the Office of the Ombudsman documented incidents of food shortages, denied access to health care, lengthy and overcrowded pretrial detention, and poor hygienic conditions as human rights abuses. The conditions allowed for the increased transmission of communicable diseases; tuberculosis continued to be prevalent among prison and detention center populations.

Conditions were notably worse in pretrial holding cells than in prisons. Human rights bodies and government officials reported significant overcrowding in holding cells. Prisons, however, were not overcrowded. In pretrial holding cells, sanitation and medical assistance were inadequate.

**Administration:** The Office of the Ombudsman, an independent authority, investigated credible allegations of inhuman conditions, and the office reported cooperation with police in resolving complaints and responding to inquiries.

**Independent Monitoring:** The government granted local and international nongovernmental organizations (NGOs) access to prisons and prisoners. Representatives from the Office of the Ombudsman visited prisons and pretrial detention facilities.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention and provide for the right of any person to challenge the lawfulness of that person's arrest or detention in court. The government generally observed these requirements.

##### **Arrest Procedures and Treatment of Detainees**

Arrest warrants are not required in all cases, including when authorities apprehend a suspect while committing a crime. Authorities must inform detained persons of the reason for their arrest, and police generally informed detainees promptly of the charges against them. Authorities must arraign arrested persons within 48 hours of their detention. The government does not always meet this requirement, especially in rural areas far from courts.

The constitution permits detention without trial during a state of emergency but requires publication of the names of detainees in the government's gazette within 14 days of their apprehension. An advisory board appointed by the president on the recommendation of the Judicial Service Commission (the constitutional body that recommends judges to the president for appointment) must review cases within one month of detention and every three months thereafter. The advisory board has the power to order the release of anyone detained without trial during an emergency.

There is a functioning bail system. The constitution stipulates accused persons are entitled to prompt access to defense by legal counsel of their choice or one provided by the state, and authorities respected this right.

**Pretrial Detention:** The *Ombudsman Annual Report for 2021/22* listed overcrowded pretrial holding cells as problematic. A shortage of qualified magistrates and other court officials, the inability of many defendants to afford bail, the lack of a plea-bargaining system, slow or incomplete police investigations, and procedural postponements resulted in a large backlog in prosecuting criminal cases. Delays between arrest and trial could last for years in some cases. There were lengthy delays in criminal appeals as well. According to the Office of the Prosecutor General, however, pretrial detention did not exceed the maximum sentence for conviction of an alleged crime.

## **e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality.

### **Trial Procedures**

The constitution and law provide for the right to a fair and public trial, and the government generally respected judicial independence and impartiality.

Nevertheless, long delays in courts hearing cases and the uneven application of constitutional protections in the customary system compromised this right.

Defendants are presumed innocent. The law provides for defendants to be informed promptly and in detail of the charges against them, in a language they understand, and of their right to a fair, timely, and public trial.

Defendants have the right to be present at trial and to consult with an attorney of choice. Defendants receive free interpretation as necessary starting with their first court appearance through all appeals. Indigent defendants are entitled to a lawyer provided by the state in criminal and civil cases; however, at times this did not occur due to an insufficient number of public defenders, insufficient state funds to pay private lawyers to represent indigent defendants, or because the state-funded Legal Aid Directorate did not accept the application for representation from a defendant. The Legal Aid Directorate provides free legal assistance to indigent defendants in criminal cases and, depending on resource availability, in civil matters.

Defendants may confront witnesses and present witnesses and evidence on their own behalf. The law extends these rights to all citizens. The courts provide defendants with adequate time and facilities to prepare their defense. Defendants have the right not to testify against themselves or be forced to confess guilt. Convicted individuals have the right to appeal adverse decisions.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

## **Civil Judicial Procedures and Remedies**

The law provides for access to a court to file lawsuits seeking damages for or cessation of human rights abuses. The constitution provides for administrative procedures and judicial remedies to redress wrongs. Civil and criminal court orders were generally enforced.

The government's judicial branch consisted of the Supreme Court and lower (magistrate) and higher (such as the Labour Court) courts. The Supreme Court is the final body adjudicating appeals and its decisions are binding on all other courts unless reversed by an act of parliament or a later reversal by the Supreme Court itself.

Adverse domestic decisions may be appealed to the African Court on Human People's Rights.

### **f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

The constitution prohibits such actions, and there were no reports the government failed to respect these prohibitions.

## **Section 2. Respect for Civil Liberties**

### **a. Freedom of Expression, Including for Members of the Press and Other Media**

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

**Libel/Slander Laws:** Defamation is a criminal offense punishable if convicted by imprisonment, fines, or both. Prison sentences were rare and most of those convicted were fined. There were no reports authorities used libel or slander laws to restrict public discussion or retaliate against journalists or political opponents.

## **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority.

## **b. Freedoms of Peaceful Assembly and Association**

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

### **Freedom of Peaceful Assembly**

On May 14, Namibia Economic Freedom Fighters Party activists demonstrated in the industrial district of Windhoek against Chinese retailers they claimed sold poor quality products and violated their employees' rights. Authorities stated the protest was unlawful and that protesters threatened to burn down the Chinatown. The demonstration turned violent when hundreds of demonstrators refused to obey a police order to disperse. Police used excessive force in response, including the use of tear gas and rubber bullets. Among participating demonstrators injured by police were a member of parliament and a pregnant woman. Two journalists covering the demonstration and several bystanders were injured by rubber bullets.

The protest leaders were arrested and detained from May 14 to late August. The leaders alleged they were political prisoners denied bail and subjected to excessive trial delays. A trial date had yet to be set by year's end.

## **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

## **d. Freedom of Movement and the Right to Leave the Country**

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

## **e. Protection of Refugees**

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, or asylum seekers, as well as other persons of concern.

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

**Freedom of Movement:** The government did not permit refugees to move freely within the country. Refugees were required to live at the government's Osire refugee settlement. The government maintained strict control over public access to the settlement but provided regular, unrestricted access to UNHCR, the International Organization for Migration, and UNHCR's NGO partners. The government cooperated with UNHCR to provide food, shelter, health care, water, and sanitation at the settlement; however, refugees reported food and potable water shortages. The government issued identification cards and exit permits allowing refugees to leave the settlement to travel to specified locations for defined periods.

## **f. Status and Treatment of Internally Displaced Persons**

Not applicable.

## **g. Stateless Persons**

Persons unregistered by the government living in tribal and traditional communities were de facto stateless. The government has citizenship policies in place and provides opportunities for these persons to register to confirm their citizenship. On September 16, the Ministry of Home Affairs, Immigration, Safety and Security and a foreign government development assistance agency launched a civil registration outreach campaign to assist stateless tribal and other persons native to the country.

## **Section 3. Freedom to Participate in the Political Process**

The law provides citizens the ability to choose their government in free and fair

periodic elections held by secret ballot and based on universal and equal suffrage.

## **Elections and Political Participation**

**Recent Elections:** Presidential and parliamentary elections take place every five years. In 2019 presidential and parliamentary elections were conducted. Voting occurred in an orderly and effective manner with no reports of politically motivated violence or voter intimidation.

The South West African People’s Organisation (SWAPO) candidate Hage Geingob was re-elected president with 56 percent of the vote. SWAPO candidates won 63 of the 96 seats in the National Assembly, the lower house of parliament.

Opposition parties increased their share from 19 to 33 seats in the National Assembly. There are also eight nonvoting seats in the assembly appointed by the president. In 2020 regional elections resulted in SWAPO securing 28 of 40 seats in the National Council (upper house of parliament where elected regional councilors sit). Local authority elections also occurred in 2020, which resulted in economic hubs such as Windhoek, Swakopmund, and Walvis Bay having opposition-led mayorships brought to power by opposition coalitions for the first time.

**Participation of Women and Members of Minority Groups:** No law limits participation of women or members of minority groups in the political process, and they did participate. While women held 44 percent of seats in the National Assembly, they held only 14 National Council seats. Members of minority communities held few seats.

## **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for conviction of official corruption; however, the government did not implement the law effectively. In contrast to 2021, there were no reports of senior officials charged or prosecuted for corruption.

**Corruption:** In late 2019 and early 2020, national media unearthed the “Fishrot” scandal with alleged involvement by former Minister of Justice Sacky Shanghala,

former Minister of Fisheries and Marine Resources Bernhardt Esau, former CEO of the public National Fishing Corporation of Namibia Mike Nghipunya, and seven coconspirators. They were arrested and charged with corruption, fraud, and money laundering for their alleged roles in a scheme that involved bribery in exchange for fishing rights granted to the Icelandic fishing company Samherji. Prosecutors indicted the 10 men on 42 criminal charges. The case had yet to be tried by year's end due to defense motions for judiciary recusal.

## **Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses 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. Government officials were somewhat cooperative and responsive to their views and tolerant of NGO reports provided to the United Nations highlighting matters not raised by the government or pointing out misleading government statements. The Office of the Ombudsman, local human rights NGOs, and the Anti-Corruption Commission reported NAMPOL cooperated and assisted in human rights investigations.

**Government Human Rights Bodies:** There is an autonomous ombudsman with whom government agencies cooperated. Observers considered the ombudsman effective in identifying human rights abuses, including by police and denial of the right to a fair trial; however, the ombudsman lacked an enforcement mandate or other means to correct abuses.

## **Section 6. Discrimination and Societal Abuses**

### **Women**

**Rape and Domestic Violence:** The law criminalizes rape of men and women, including spousal rape. The law defines rape as the commission of any sexual act under coercive circumstances. The courts tried numerous cases of rape during the year. The government generally enforced court sentences of those convicted,

which ranged between five to 45 years' imprisonment.

Factors hampering rape prosecutions included limited police capacity and the withdrawal of allegations by survivors after filing charges. Survivors often withdrew charges because they received compensation from the accused; succumbed to family pressure, shame, or threats; or became discouraged by the length of time involved in prosecuting a case.

Gender-based violence (GBV), particularly domestic violence, was a widespread problem. According to police data, more than 2,643 GBV cases were reported in 2020 and 2021. Police noted significant underreporting of abuses of children and from rural communities.

The government and media focused national attention on GBV. The president and first lady spoke out publicly against GBV; the Office of the First Lady actively promoted awareness of GBV and remedies in every region. Activists submitted a petition to the government demanding establishment of a register of convicted sexual offenders, a review of sentencing laws for conviction of sexual offenses and other GBV (including murder), hastening the investigation of all reported sexual offenses and other GBV cases, institution of armed neighborhood patrols, and an evaluation of school practices regarding victim shaming. The matter was debated in parliament, and the Ministry of Justice was instructed to spearhead public consultations concerning establishment of a register and the issues raised in the petition.

The law prohibits domestic violence. Penalties for conviction of domestic violence, including physical abuse, sexual abuse, economic abuse, intimidation, harassment, and serious emotional, verbal, or psychological abuse, range from a token fine for simple offenses to sentences of 10 years' imprisonment, a substantial fine, or both for assault with intent to cause grievous bodily harm.

The law provides for procedural safeguards such as protection orders to protect GBV survivors. When authorities received reports of domestic violence, GBV protection units intervened. GBV units were staffed with police officers, social workers, legal advisors, and medical personnel trained to assist survivors of sexual assault. Some magistrates' courts provided special courtrooms with a cubicle

constructed of one-way glass and child-friendly waiting rooms to protect vulnerable witnesses from open testimony. The Ministry of Gender Equality, Poverty Eradication and Social Welfare operated shelters; however, due to staffing and funding shortfalls, the shelters operated only on an as-needed basis with social workers coordinating with volunteers to place survivors and provide them with food and other services.

In July the Windhoek Magistrate's Court opened a GBV survivor-friendly lower court. The Ministry of Gender Equality, Poverty Eradication and Child Welfare convenes quarterly GBV and Human Rights Cluster meetings with stakeholders in government and civil society. Police continued implementation of the GBV *National Action Plan* to improve responsiveness, expedite investigations, and promote collaborative and consultative interventions with stakeholders.

**Sexual Harassment:** The law explicitly prohibits sexual harassment in the workplace. By law employers must formulate a workplace sexual harassment policy, including defined remedies. Employees who leave their jobs due to sexual harassment may be entitled to legal “remedies available to an employee who has been unfairly dismissed.”

**Reproductive Rights:** There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

Supply chain problems limited access to contraceptives through the public sector.

GBV investigation units present at most state hospitals provided forensic examinations to survivors of sexual violence, including prompt access to medication to prevent HIV, hepatitis B, and other diseases. Emergency contraception was not available. Access to postabortion care was very limited because by law abortion may only be performed under strict medical supervision in cases of rape, incest, and when the life of the mother is in danger.

According to the World Health Organization, the maternal mortality rate was 195 per 100,000 live births. A general lack of access to effective health care, including the treatment of eclampsia, resulted in prolonged labor complications and contributed to the high rate of maternal mortality. HIV and AIDS was the leading indirect cause of maternal mortality, linked to more than 4 percent of maternal

deaths. According to the UN Population Fund, the adolescent birth rate was 62 per 1,000 girls and one in four girls and women become pregnant before age 20. From 2010 to 2022, authorities recorded 160,800 adolescent pregnancies, an annual average of more than 13,000 pregnancies.

**Discrimination:** Civil law prohibits gender-based discrimination, including discrimination regarding employment, divorce, education, housing, and business and property ownership. The government generally enforced the law effectively. Women experienced some discrimination in employment and persistent discrimination in access to credit, salary level, owning and managing businesses, education, and housing. Some elements of customary family law provide for different treatment of women. Civil law grants maternity leave to mothers but not paternity leave to fathers. The law bases marital property solely on the domicile of the husband at the time of the marriage and sets grounds for divorce and divorce procedures differently for men and women. The law protects a widow's right to remain on the land of her deceased husband, even if she remarries. Traditional practices in certain northern regions, however, permitted family members to confiscate the property of deceased men from their widows and children.

## **Systemic Racial or Ethnic Violence and Discrimination**

By law all traditional communities participate without discrimination in decisions affecting their lands, cultures, traditions, and allocation of natural resources. Nevertheless, due to their nomadic lifestyle, the San, the country's earliest known inhabitants, were unable to exercise these rights effectively because of minimal access to education, limited economic opportunities, and their relative isolation. Some San had difficulty obtaining a government identification card because they lacked birth certificates or other identification. Government identification cards are required to access government social programs and to register to vote. A lack of access to police, prosecutors, and courts prevented San women from reporting and seeking protection from GBV.

Indigenous lands were effectively demarcated but poorly managed. Many San community members lived on conservancy (communal) lands but were unable to prevent members of larger ethnic groups from using and exploiting those lands. Some San claimed regional officials failed to remove members of other ethnic

groups from San lands. An October 2021 Amnesty International report stated unequal access to health care left the San community vulnerable to tuberculosis. The government responded the problem was not discrimination but a lack of San-speaking health-care providers.

## **Children**

**Birth Registration:** The constitution provides for citizenship by birth within the country to a citizen parent or a foreign parent ordinarily resident in the country, or to those born outside the country to citizen parents. Registration was provided on a nondiscriminatory basis. Nevertheless, many persons born in the country lacked birth registration and were therefore unable to prove their citizenship. Failure to register a child's birth resulted in denial of public services, including education and social services. Single mothers registering a birth are not required to identify the child's father.

**Child Abuse:** Child abuse was a serious problem, and authorities prosecuted crimes against children, particularly rape and incest. By law the penalties for conviction of child abuse include a substantial fine, up to 10 years' imprisonment, or both. The Ministry of Gender Equality, Poverty Eradication and Social Welfare assigned social workers throughout the country to deal with cases of child abuse. They also conducted public-awareness campaigns aimed at preventing child abuse and raised awareness of services available to survivors.

**Child, Early, and Forced Marriage:** The law prohibits civil marriage for both boys and girls younger than age 18. There were reports of child or early marriages in rural areas.

**Sexual Exploitation of Children:** The law criminalizes child pornography, child sex trafficking, and the actions of both sex buyers and traffickers in cases of commercial sexual exploitation of children younger than age 18. NGOs reported HIV and AIDS orphans and other vulnerable children engaged in commercial sex without third-party involvement due to economic hardship and lack of support services.

The government enforced the law; perpetrators accused of the sexual exploitation of children were routinely charged and prosecuted. The penalties for conviction of

commercial sexual exploitation of a child (including through pornography) are a substantial fine, up to 30 years' imprisonment, or both. The law makes special provisions to protect vulnerable witnesses, including individuals younger than age 18 or who were survivors of sexual offense.

An adult convicted of commercial sexual exploitation of a child may be sentenced for up to 15 years' imprisonment for a first offense and up to 45 years' imprisonment for a repeat offense. Any person convicted of aiding and abetting trafficking in persons, including commercial sexual exploitation of children, within the country or across the border is liable for a substantial fine or up to 50 years' imprisonment.

The minimum legal age for consensual sex is 16. According to End Violence Against Children, a United Nations-funded platform for collective, evidence-based advocacy and action, 9.8 percent of girls and 5.1 percent of boys were subjected to sexual violence before age 18. The penalty for conviction of statutory rape, sex with a child younger than age 14 when the perpetrator is more than three years older than the survivor, is a minimum of 15 years' imprisonment if the survivor is younger than age 13 and a minimum of five years' imprisonment if the child survivor is between ages 13 to 16. There is no minimum penalty for conviction of sexual relations with a child between ages 14 and 16. Possession of or trade in child pornography is illegal. The government trained police officers in handling child-sex-abuse cases. Centers for abused women and children worked to reduce the trauma suffered by abused children.

**Infanticide, Including Infanticide of Children with Disabilities:** Media reported cases in which parents, usually young mothers, abandoned their newborns, sometimes leading to the newborn's death. The government enforced prohibitions against this practice by investigating and prosecuting suspects.

## **Antisemitism**

There is a small Jewish community of fewer than 100 persons in the country, most of whom live in Windhoek. There were no reports of antisemitic acts.

## Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report>.

### Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation, Gender Identity or Expression, or Sex Characteristics

**Criminalization:** By law sodomy is criminalized. The law does not address penalties for conviction. There were no records or reports of enforcement of the law in recent years.

**Violence against LGBTQI+ Persons:** Despite progress in the lesbian, gay, bisexual, transgender, queer, or intersex persons (LGBTQI+) human rights movement, widespread discrimination in access to judicial, health, and social services continued. Assaults on LGBTQI+ persons were underreported due to fear of official discrimination and potential legal consequences. NAMPOL faced increased scrutiny during the year due to its poor handling of sexual violence cases.

In January an LGBTQI+ rape survivor alleged discrimination by police and health-care providers, citing denied services in his attempt to report an assault and receive appropriate medical attention. In 2021 the High Court ruled in favor of a transgender woman who in 2018 sued the Ministry of Safety and Security for police physical abuse and awarded her 58,742 Namibian dollars (\$3,400). Also in 2021, a transgender comedienne was attacked by a security guard who demanded that she present herself as a male.

**Discrimination:** The law does not address discrimination by state and nonstate actors based on sexual orientation, gender identity or expression, or sex characteristics. Same-sex marriage is not recognized. Lower courts dismissed challenges to existing law and deferred adjudication to the Supreme Court. Past Supreme Court rulings sustained nonrecognition of same-sex couples.

LGBTQI+ persons encountered discrimination in education, employment, health care, and housing. A study released during the year found that some gender-

nonconforming students were bullied or isolated in schools.

**Availability of Legal Gender Recognition:** Authorities do not allow individuals to change their gender identity marker on legal and identifying documents to bring them into alignment with their gender identity.

**Involuntary or Coercive Medical or Psychological Practices Specifically**

**Targeting LGBTQI+ Individuals:** According to NGOs and LGBTQI+ community members, there were instances of “corrective” rape targeting LGBTQI+ individuals. No information was available on other so-called conversion therapy practices.

**Restrictions of Freedom of Expression, Association, or Peaceful Assembly:**

LGBTQI+ persons and organizations enjoyed freedom of expression, association, and were not restricted from holding events, including a week-long Pride festival featuring a parade and a beauty contest.

**Persons with Disabilities**

Persons with disabilities often did not have equal access to education, health services, public buildings, and transportation on an equal basis with others. The government did not provide information and communication on disability concerns in accessible formats.

The constitution protects the rights of “all members of the human family,” which is interpreted by domestic legal experts to prohibit discrimination against persons with disabilities. The law prohibits discrimination against persons with physical and mental disabilities. The law prohibits discrimination in any employment decision based on several factors, including any “degree of physical or mental disability.” It makes an exception in the case of a person with a disability unable to perform the duties or functions of the job in question. The government did not enforce these laws effectively, and societal discrimination persisted.

By law official action is required to investigate and punish those accused of committing violence or abuse against persons with disabilities; authorities did so effectively.

The government requires the construction of government buildings to include ramps and other features facilitating access to persons with physical disabilities. The government, however, does not mandate retrofitting or other measures to provide such access to already constructed public buildings.

Children with disabilities attended mainstream schools. Blind and deaf children have the option to attend specialized schools. The law does not restrict the rights of persons with disabilities to vote and otherwise participate in civic affairs, but a lack of access to public venues hindered the ability of persons with disabilities to participate in civic life.

The *National Policy on Disability* states the government must pursue equalization of opportunities for persons with disabilities by removing barriers to full participation in all areas to allow persons with disabilities to reach a quality of life equal to that of other citizens.

## **Other Societal Violence or Discrimination**

The law prohibits discrimination based on HIV status, and according to the Namibian Employers' Federation, discrimination based on HIV status was not a major problem in the workplace.

Societal discrimination and stigmatization against persons with HIV remained problems. Some jobs in the civilian sector require a pre-employment test for HIV; however, there were no reports of civilian employment discrimination specifically based on HIV or AIDS status.

## **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 trade unions, conduct legal strikes, and bargain collectively; however, the law prohibits workers in certain sectors, such as police, military, and corrections, from joining unions. The law prohibits antiunion discrimination. The law does not provide for the right of trade unions or a federation of trade unions to create or join confederations. The law limits trade union members that fall behind in payment of their membership

dues for three months from participating in the trade union electoral processes. The law provides the labor commissioner with authority to terminate a trade union's registration in the event of continued noncompliance with the obligations of a registered trade union.

Except for workers providing designated essential services, such as in public health and safety, workers may strike once mandatory conciliation procedures lasting 30 days are exhausted and 48 hours' advance notice is given to the employer and the labor commissioner. Workers may take strike actions only in disputes involving specific worker interests, such as pay raises. If workers and employers fail to agree on the rules for conducting a strike, the law provides for conciliation to determine such rules based on the guidance or codes of good practice published by the labor minister. The law does not define, however, what constitutes good practice.

Worker rights disputes, including dismissals, must first be submitted to the labor commissioner for conciliation, followed by a more formal arbitration process if conciliation is unsuccessful. The parties have the right to appeal the arbitrator's findings in a labor court, force labor court arbitration, and call a strike, or seek civil legal proceedings against the company or government. Upon the decision to call a strike, the striking organization must notify the government, who has a specified number of days to review the issue and offer a response. Administrative and judicial procedures were subject to lengthy delays. The law provides for conciliation and arbitration to resolve labor disputes more quickly, although both employers and unions publicly questioned the system's effectiveness. 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 of workers dismissed for union activity if the workers' actions at the time were not in violation of any other law.

The law provides employees with the right to bargain individually or collectively and provides for recognition of the exclusive collective bargaining power of a union when more than half of workers are members of that union. Employers have no obligation to bargain with minority unions. The law covers all formal-sector workers, including migrants, nonessential public-sector workers, domestic workers, and those in export-processing zones. The law on collective bargaining

does not cover the informal sector.

The government effectively enforced applicable labor law in the formal sector, but penalties were rarely applied against violators due to lack of capacity. Inspection was insufficient to enforce compliance in the informal sector. Aside from mediation efforts, the government was not directly involved in union activities. The government and employers generally respected freedom of association, and workers exercised this right. There were no reports of employers interfering in union activities.

Collective bargaining was practiced widely in the mining, construction, agriculture, and public sectors. Almost all collective bargaining was at the workplace and company level. Employers respected the collective bargaining process in the formal sector. Employees exercised their legal rights. In July after not receiving a pay increase in five years and one year of failed negotiations, civil servants voted in favor of a nationwide strike. The government responded with a 3 percent salary increase, and no strike actions were taken. Labor researchers stated frequent strikes occurred in recent years as “a result of workers’ desperation to make ends meet” due to socioeconomic inequality, the effects of the economic recession, and soaring prices.

Employers may apply to the Ministries of Labour, Industrial Relations, and Employment Creation for an exemption from certain provisions, such as overtime pay or working hours, if they are able to prove workers’ rights are protected, but very few employers chose this option.

## **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor, including by children. The government effectively enforced the law in the formal sector. The government investigated allegations of forced or compulsory labor and found no prosecutable cases. Resources, inspections, and remediation were inadequate. Penalties for conviction of violations were not applied under the trafficking act.

By law seamen may be sentenced to imprisonment with labor for breaches of discipline, a provision that the International Labor Organization criticized as forced labor. The Namibia Food and Allied Workers Union confirmed the law had never

been applied.

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

### **c. Prohibition of Child Labor and Minimum Age for Employment**

See the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

### **d. Discrimination with Respect to Employment and Occupation**

The law prohibits discrimination in employment and occupation based on race, sex, religion, political opinion, national origin, citizenship, pregnancy, family responsibility, disability, age, language, and social status. The law requires equal pay for equal work. The law, however, does not specifically address employment discrimination based on sexual or gender orientation. Refugees and legal immigrants with work permits enjoy the same legal protections, wages, and working conditions as citizens.

The Ministry of Labour, Industrial Relations, and Employment Creation and the Employment Equity Commission are both responsible for addressing complaints of employment discrimination.

Penalties are commensurate with those of similar laws but were rarely applied. Discrimination in employment and occupation occurred with respect to gender, most frequently in the mining and construction industries. Men occupied approximately two-thirds of upper management positions in both the private and public sectors. Indigenous and marginalized groups sometimes faced discrimination in employment involving unskilled labor. Persons with disabilities faced discrimination in employment and access to the workspace. The International Trade Unions Confederation observed that few persons with disabilities were employed (see also section 6).

### **e. Acceptable Conditions of Work**

**Wage and Hour Laws:** The Ministry of Labour, Industrial Relations and

Employment Creation issued minimum wage regulations for various sectors. There is no national minimum wage law that applies across all sectors. All sector-specific minimum wage rates are applied nationally and were above the poverty line. Unions and employers negotiated industry-specific minimum wages under Ministry of Labour, Industrial Relations, and Employment Creation mediation.

The standard legal workweek was 45 hours, with at least 36 consecutive hours of rest between workweeks. By law an employer may not require more than 10 hours' overtime work per week and must pay premium pay for overtime work. The law mandates 20 workdays of annual leave per year for those working a five-day workweek and 24 workdays of annual leave per year for those working a six-day workweek. The law also requires employees receive paid time off for government holidays, five days of compassionate leave per year, at least 30 workdays of sick leave during a three-year period, and three months of maternity leave paid by the employer and the Social Security Commission.

**Occupational Safety and Health:** The Ministry of Labour, Industrial Relations, and Employment Creation mandates occupational safety and health (OSH) standards, and the law empowers authorities to enforce these standards through unannounced inspections and criminal prosecution. The law requires employers to provide for the health, safety, and welfare of their employees; the responsibility for identifying unsafe situations remains with OSH experts and not the worker. The law covers all employers and employees in the country, including the informal sector and individuals placed by a private employment agency (labor hire), except independent contractors and members of the Namibian Defence Force, the Namibia Central Intelligence Service, the Namibian Correctional Service, and police. By law employees have the right to remove themselves from dangerous work situations, and authorities effectively protected employees in such situations.

**Wage, Hour, and OSH Enforcement:** The government enforced wage, hour, and safety standards laws in the formal sector but did not effectively enforce labor law in the informal sector. Penalties are commensurate with those for similar violations. Penalties were sometimes applied in the formal sector but rarely applied in the informal sector. Inspections occurred proactively, in response to complaints, and at random. Due to the ministry's resource constraints in vehicles, budget, and personnel, as well as difficulty in gaining access to some large

communal and commercial farms and private households, labor inspectors sometimes found it difficult to investigate possible violations. Workers in the construction, agriculture, and mining sectors sometimes faced hazardous working conditions. There was one report of a fatal industrial accident. In 2020 an employee of Dundee Precious Metals Inc. died while conducting maintenance activities.

Allegations persisted that, in addition to not adhering to the law on hiring and firing, foreign-invested firms failed to pay sector-established minimum wages and benefits in certain industries, failed to respect work-hour regulations for public holidays and Sundays, and ignored OSH standards, for example, by requiring construction workers to sleep on site.

**Informal Sector:** The informal sector accounted for an estimated 57 percent of workers. The law applied to the informal sector but was seldom enforced. The Namibian Employers' Federation reported the most prominent offenses concerning employee rights and working conditions were in the informal sector, including for domestic workers, street hawkers, and employees in the common informal bars known as *shebeens*. Sectors having hazardous working conditions included construction and agriculture. Inspection was inadequate and penalties were seldom applied. The law provides for informal workers participation in the social security programs, including the universal social assistance and social insurance.