

NAMIBIA 2021 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Namibia is a constitutional multiparty democracy. In the presidential and parliamentary elections in 2019, President Hage Geingob won a second five-year term, and the South West African People's Organization retained its parliamentary majority, winning 63 of 96 National Assembly seats. International observers characterized the 2019 election as generally free and fair.

The national police maintain internal security. The military is responsible for external security but also has some domestic security responsibilities. The Namibian Police Force reports to the Ministry of Home Affairs, Immigration, Safety, and Security. The Namibian Defense Force reports to the Ministry of Defense 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.

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 investigations of police misconduct 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

The constitution and law prohibit such practices, but the law does not define “torture” or separately classify it as a crime. Torture is prosecuted as a crime under legal provisions such as assault or homicide. The Office of the Ombudsman received one report of police mistreatment of detainees during the year. The report stated the denial of visitation rights during the COVID-19 pandemic state of emergency constituted mistreatment. In 2020 there were two reports of Namibian Defense Force (NDF) members beating suspects. Additionally, investigation continued of images from 2020 released online showing NamPol officers beating detained irregular migrants.

Impunity was not a significant problem in the security forces; however, delays in investigation of allegations of misconduct and in the filing of charges and adjudication of cases meriting prosecution contributed to a perception of impunity. Most cases cited by civil society advocates were pending trial at year’s end.

Prison and Detention Center Conditions

The Office of the Ombudsman documented incidents of gross overcrowding and poor hygienic conditions as human rights violations in its annual report. Overcrowding was primarily due to an increase in the number of pretrial detainees attributable to COVID-19 pandemic related delays in the judicial processing of inmates.

Physical Conditions: Conditions in detention centers and police holding cells remained poor. Conditions were often worse in pretrial holding cells than in prisons. Human rights bodies and government officials reported overcrowding in holding cells. Prisons, however, were not overcrowded.

In pretrial holding cells, sanitation and medical assistance were inadequate. Tuberculosis continued to be prevalent.

Prison and holding-cell conditions for women were generally better than for men. Authorities permitted female prisoners to keep their infants with them until age two and provided them with food and clothing for their infants.

There were programs to prevent HIV transmission in prisons.

The law does not permit holding juvenile offenders with adults. Prison authorities reported they generally confined juvenile offenders separately, but police occasionally held juveniles with adults in rural detention facilities due to a lack of separate facilities for juveniles. The Office of the Ombudsman conducted an investigation of juvenile detention facilities that revealed 30 instances of improper detention of juveniles. It filed a complaint at the High Court against the Ministry of Gender Equality, Poverty Eradication and Social Welfare alleging it failed to effectively implement Child Care and Protection Act statutes.

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 defense by legal counsel of their choice or one provided by the state, and authorities respected this right. Detainees are allowed prompt access to a lawyer of their choice, or one provided by the state.

Pretrial Detention: Lengthy pretrial detention remained a problem. According to the Namibian Correctional Service, in 2020 approximately 3 percent of the inmate population was in pretrial detention, and the average length of time inmates were held before trial was four years. 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, the frequency of appeals, 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. Defendants convicted of a crime and sentenced to imprisonment are credited with time served in pretrial detention.

e. Denial of Fair Public Trial

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

The law delineates the offenses the customary system may handle. Customary courts may hear many civil and petty criminal cases in rural areas. Customary

courts deal with infractions of local customary law by members of the same ethnic group. The law defines the role, duties, and powers of traditional leaders and states customary law inconsistent with the constitution is invalid. Cases resolved in customary courts were sometimes tried a second time in civil or criminal courts.

Trial Procedures

The constitution and law provide for the right to a fair and public trial, and the government generally respected judicial independence. 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, this sometimes does 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 for lawsuits seeking damages for or cessation of human rights violations. The constitution provides for administrative procedures and judicial remedies to redress wrongs. Civil and criminal court orders were mostly well enforced.

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.

Censorship or Content Restrictions: There were reports journalists working for state-owned media practiced self-censorship in favor of the government or the South West African People's Organization (SWAPO). SWAPO led Namibia's independence movement and transformed into a political party when the country won its independence in 1990. SWAPO candidates have won both the presidency and a parliamentary majority in every election since independence.

Libel/Slander Laws: Defamation is a criminal offense. There were several defamation cases tried at the High Court involving prominent public figures and politicians during the year. 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 confirmed reports the government monitored private online communication without appropriate legal authority.

Academic Freedom and Cultural Events

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

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. Nevertheless, in October 2020 there were confrontations between police and protesters during “shut in movement” demonstrations against sexual- and gender-based violence throughout the country. The protests began following the discovery of the remains of a 22-year-old woman who had been missing for six months. In Windhoek police and Special Reserve Force members hit peaceful demonstrators with batons and fired rubber bullets and teargas. According to authorities, protesters were “disrupting commercial businesses” and “increasingly aggressive in actions towards the officers responsible for crowd control.” Police arrested 25 youths and three journalists covering a confrontation with protesters. The arrested protesters were charged and released on bail. They decried police treatment on social media.

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. Status and Treatment of Internally Displaced Persons

Not applicable.

f. 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, asylum seekers, stateless persons, and 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, and UNHCR's NGO partners. The government cooperated with UNHCR to provide food, shelter, health care, water, and sanitation at the settlement. The government issued identification cards and exit permits allowing refugees to leave the settlement to travel to specified locations for defined periods.

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 and was taking measures to improve this process.

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. SWAPO candidate Hage Geingob was re-elected president with 56 percent of the vote. SWAPO candidates won 63 of the 96 elected seats – there are also eight appointed

nonvoting seats – in the National Assembly, the lower house of parliament. Opposition parties increased their share from 19 to 33 seats. Voting proceeded in an orderly and effective manner with no reports of politically motivated violence or voter intimidation. International observers characterized the 2019 election as generally free and fair.

Participation of Women and Members of Minority Groups: No law limits participation of women and members of minorities in the political process, and they did participate. Virtually all the country’s ethnic minorities had representatives in parliament. The president is from the minority Damara ethnic group. Historic, economic, and educational disadvantages often limited participation in politics by the San and OvaHimba ethnic groups.

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. Officials sometimes engaged in corrupt practices with impunity.

Corruption: There were several reported abuses similar to the following examples. On April 7, media reported that the prime minister stated the government would audit the NDF-owned August 26 Holding Company Ltd. regarding allegations of misappropriation of public funds and concealing corruption under the guise of national security. During the year the prosecutor general continued a criminal investigation into former minister of defense and veteran affairs Peter Vilho’s offshore bank account in Hong Kong. Vilho’s 12-year-old Hong Kong account coincides with an arms-deal corruption investigation into allegations a Chinese state-owned weapons company bribed him. The investigation has reportedly been stalled because of a lack of cooperation from Chinese government and Hong Kong authorities. The online newspaper *The Namibian* reported that Vilho called for a forensic audit of allegations of corruption “pertaining to the Ministry of Defense and Veterans Affairs/Namibian Defense Force/August 26 Holdings for the purposes of clearing my name.”

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 chief executive officer 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. Seven of the accused were in pretrial bail hearings at the High Court at year's end.

Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights

Several domestic and international human rights groups operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views and were 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 but stated the office lacked an enforcement mandate or the means to correct problems.

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 and 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.

Traditional authorities may adjudicate civil claims for compensation in cases of rape, but criminal trials for rape are held in courts.

Gender-based violence, particularly domestic violence, was a widespread problem. The government and media focused national attention on gender-based violence. The president and first lady spoke out publicly against gender-based violence; the Office of the First Lady actively promoted awareness of gender-based violence and remedies in every region. In October activists protested government inaction to prevent gender-based violence. Protesters 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 gender-based violence (including murder), hastening the investigation of all reported sexual offense and gender-based violence cases, institution of armed neighborhood patrols, and an evaluation of school practices that promote survivor blaming.

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 monetary fine for simple offenses to sentences of 10 years' imprisonment, a substantial monetary fine, or both for assault with intent to cause grievous bodily harm.

The law provides for procedural safeguards such as protection orders to protect gender-based violence survivors. When authorities received reports of domestic violence, gender-based violence protection units intervened. The gender-based violence 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.

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 challenges limited access to contraceptives through the public sector.

gender-based violence 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/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. The Ministry of Education reported that the number of schoolgirl pregnancies in 2020 increased sharply compared with the previous year.

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 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. Without a government-issued identification card, the San could not access government social programs or register to vote. A lack of access to police, prosecutors, and courts prevented San women from reporting and seeking protection from gender-based violence.

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 Amnesty International report stated unequal access to health care left the San community vulnerable to tuberculosis. The government responded that 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; however, many persons born in

the country lacked birth registration and were therefore unable to prove their citizenship. During the year single mothers registering a birth were no longer 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. According to the Ministry of Gender Equality, Poverty Eradication and Social Welfare *2019 Violence Against Children Survey*, police statistics from 2003 to 2011 revealed that 10 percent of reported homicide victims were children and approximately 32 percent of reported rape and attempted rapes were committed against both boys and girls. By law the penalties for conviction of child abuse include a substantial monetary fine, up to 10 years' imprisonment, or both. There were reports of severe corporal punishment. A 2007/2008 survey found that 36 percent of children were subjected to excessive physical discipline.

Ministry of Gender Equality, Poverty Eradication and Social Welfare employed social workers throughout the country to address cases of child abuse. It conducted public-awareness campaigns aimed at preventing child abuse and publicizing 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, trafficking of children, and the actions of both sex buyers and traffickers in cases of commercial sexual exploitation of children younger than age 18. NGOs reported HIV/AIDS orphans and other vulnerable children engaged in commercial sex without third-party involvement due to economic hardship and lack of supportive services.

The government enforced the law; perpetrators accused of 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 monetary 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 have been 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 monetary fine or up to 50 years' imprisonment.

The minimum legal age for consensual sex is 16. According to the *2019 Violence Against Children Survey*, 11.8 percent of girls and 7.3 percent of boys experienced 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 survivor is age 13. 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 or 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.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

Anti-Semitism

There is a small Jewish community of fewer than 100 persons in the country, most of whom lived in Windhoek. There were no reports of anti-Semitic acts.

Trafficking in Persons

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

Persons with Disabilities

Persons with disabilities often did not have equal access to education, health services, public buildings, information and communications, and transportation on an equal basis with others. 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. Enforcement in this area was ineffective, 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 attend mainstream public schools and 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 Assembly-adopted *National Policy on Disability* states that 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. The deputy minister of disability affairs in the Office of the Vice President is responsible for matters related to persons with disabilities and oversees the National Disability Council of Namibia. The council is responsible for coordinating the implementation of policies concerning persons with disabilities with government ministries and agencies.

HIV and AIDS Social Stigma

Although the law prohibits discrimination based on HIV status, societal discrimination and stigmatization against persons with HIV remained problems. 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. According to the Namibian Employers' Federation, discrimination based on HIV status was not a major problem in the workplace because most individuals were aware HIV was not transmissible via casual contact.

Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity

The constitution does not prohibit discrimination based on sexual orientation. Although Roman-Dutch common law inherited at independence criminalizes sodomy, the ban was not directly enforced but had discrimination repercussions related to the definition of marriage, legal asylum and immigration procedures, access to medical care, and children. The law defines sodomy as intentional anal sexual relations between men. The legal definition excludes anal sexual relations between heterosexual persons and sexual relations between lesbians. Many citizens considered same-sex sexual activity to be taboo. Lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) groups conducted annual pride parades recognized by the government as constitutionally protected peaceful assembly.

Gender discrimination law does not address discrimination based on sexual orientation or gender identity. LGBTQI+ persons faced harassment when trying to access public services. There were isolated reports of transgender persons being harassed or assaulted. Some politicians opposed any legislation that would specifically protect the rights of LGBTQI+ persons. The ombudsman favored

abolition of the common law offense of sodomy. In October the Supreme Court ruled in favor of same-sex couple defendants in a case in which two men sought citizenship for their child born of a surrogate mother. Four other court cases regarding LGBTQI+ demands for equal marriage, family, and domicile rights continued at year's end.

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.

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.

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 labor court. 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 provided the workers' actions at the time were not in violation of 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, and penalties were commensurate with those for similar crimes. 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. For example, on April 22, workers at Namibian Broadcasting Corporation, which had approximately 600 employees for its radio and television services, went on nationwide strike after two years of failed negotiations between management and their union, the Namibia Public Workers Union.

Employers may apply to the Ministry of Labor, Industrial Relations, and Employment Creation for an exemption from certain provisions if they are able to prove workers' rights are protected, but very few employers pursued 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, and criminal penalties were commensurate with those for conviction of analogous serious crimes. 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 have not been 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 that the law has 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

The law prohibits all the worst forms of child labor. The minimum age for employment is 14. Children younger than age 18 may not engage in hazardous work, including work between the hours of 8 p.m. and 7 a.m., underground work, mining, construction work, in facilities where goods are manufactured or electricity is generated, transformed, or distributed, or where machinery is installed or dismantled. Prohibitions on hazardous work by children in agriculture are not comprehensive. Children ages 16 and 17 may perform hazardous work subject to approval by the Ministry of Labor, Industrial Relations, and Employment Creation and restrictions outlined in the law. Criminal penalties are commensurate with those for conviction of analogous serious crimes, such as kidnapping.

The government effectively enforced the law in the formal economy. gender-based violence protection units enforced child labor law in cooperation with the Ministry of Labor, Industrial Relations, and Employment Creation. The ministry made special provisions in its labor inspections to identify underage workers, although budget constraints did not provide for enough inspectors. The government trained all inspectors to identify the worst forms of child labor. Where child labor was reported, labor inspections were conducted regularly.

Child labor occurred primarily in the informal sector. Children worked herding goats and sheep on communal farms owned by their families. Children also worked as child minders or domestic servants and in family businesses, including informal "businesses" such as begging or street hawking. NGOs reported rising commercial sexual exploitation of girls, particularly in cities and in transit corridors (see section 6).

Also, 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, social status, and HIV-positive 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 Labor, Industrial Relations, and Employment Creation and the Employment Equity Commission are both responsible for addressing complaints of employment discrimination.

The government inconsistently enforced the law. Penalties are commensurate with those of similar laws but were seldom 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.

e. Acceptable Conditions of Work

Wage and Hour Laws: Although various sectors have a minimum wage, there is no national minimum wage law that applies across all sectors. Nevertheless, 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 Labor, 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 Labor, 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 NDF, 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.

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, but they were seldom applied in the informal sector. Inspections occurred proactively, reactively, 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 faced hazardous working conditions. There was one report of a fatal industrial accident. In November 2020 an employee of Dundee Precious Metals Inc. was killed while conducting maintenance activities.

Allegations persisted that, in addition to not adhering to the law on hiring and firing, Chinese 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 included an estimated 57 percent of workers. The law applied to the informal sector but was seldom enforced. The Namibian Employers' Federation reported that 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.