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Minorities in Independent Namibia

By James Suzman



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The Author

James Suzman is based at Cambridge University's Centre for African Studies. An anthropologist specializing in issues confronted by Kalahari peoples, Dr. Suzman has worked in Namibia since it won its independence. Over the past 10 years, he has managed a number of research projects in Namibia on behalf of governmental and non-governmental organizations. He is the author of numerous books and articles, including *Things from the Bush: A Contemporary History of the Omaheke Bushmen*, Basel, Schlettwein Publishing, 2000.

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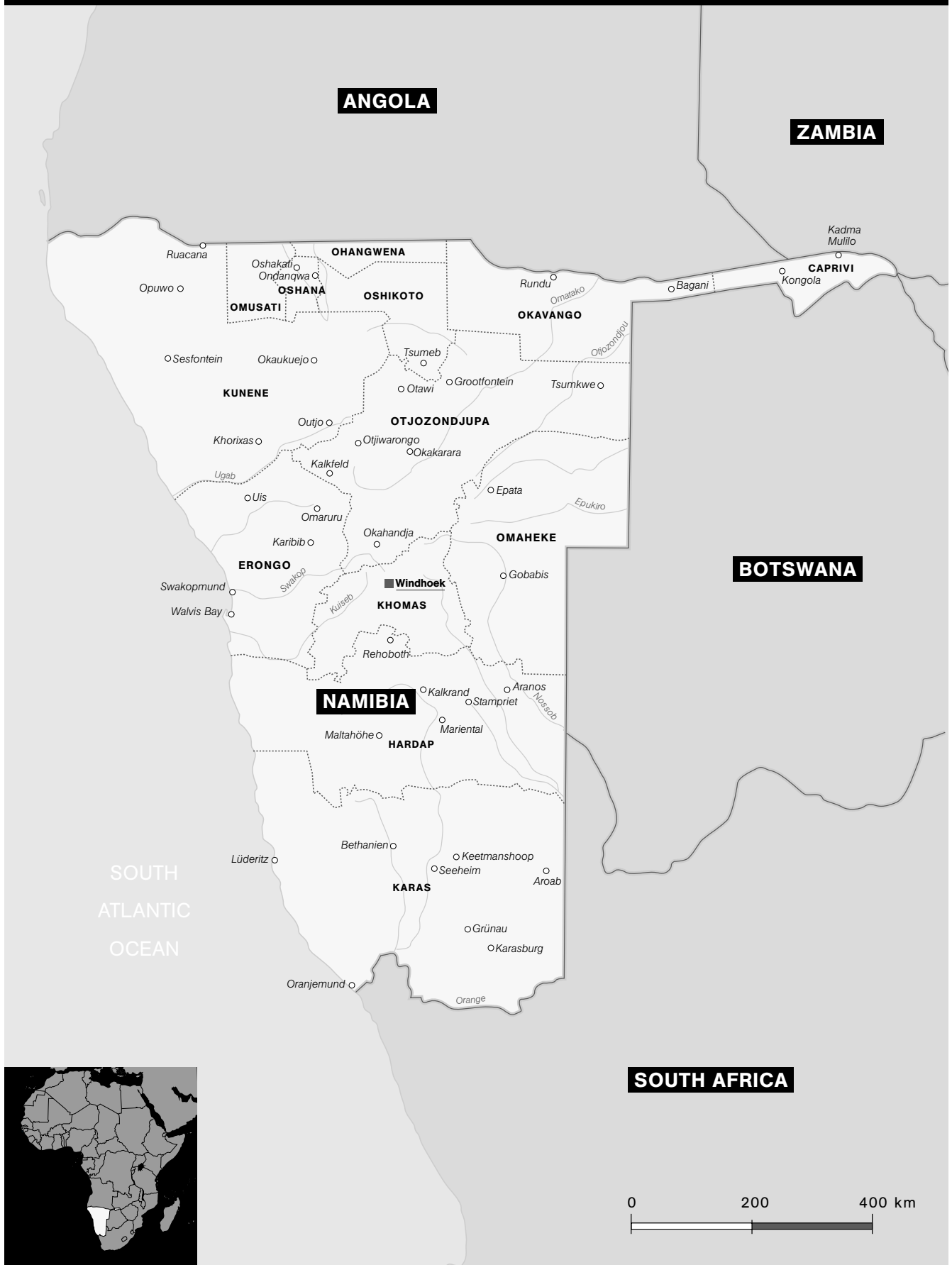
Minorities in Independent Namibia

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Namibia



Preface

Namibia is the one of the youngest African nations, attaining its independence just 12 years ago. Those who were present at the independence elections in 1989 recall it as a tense time, but also one of euphoria as the members of all the country's diverse communities lined up to exercise their democratic rights. In retrospect, it was a moment which also presaged equally momentous changes in neighbouring South Africa.

Namibia, whose population is estimated to be less than 2 million, is one of the driest yet most mineral-rich countries in the region. In addition to the Owambo, making up about half the population, the country is composed of peoples from some 10 other language groups and a range of different communities, including: Basters, Caprivians, Damara, Herero, Himba, Kavango, Nama, San and Setswana. These different ethnic groups reflect not only a picture of a highly heterogeneous population, but also disparate traditions and different histories of 'development'. Some of the above are hunter-gatherers, some are nomadic-pastoralists and others agro-pastoralists. The government of the South West African People's Organization (SWAPO), which has been in power since independence, has been accused of disregarding cultural and ethnic indicators in order to build a new single Namibian culture.

Despite the fact that Namibia is classified as a middle-income country, it exhibits extreme disparities in wealth. The country's wealth and economic opportunities remain concentrated in the hands of a numerically small pre-independence white economic elite, now joined by a growing politically-connected black elite. While disadvantage is widely spread across many groups in Namibia, some minority communities – in particular the San – constitute the poorest of the poor. Some communities of hunter-gatherers and pastoralists have been evicted from their land or are under threat of eviction. This will deprive them of their means of livelihood and deny them access to ancestral land, infringing their economic, social and cultural rights.

Although the Namibian Constitution incorporates a number of important international human rights stan-

dards, the Namibian government has been widely criticized for failing to redress and rectify the marginalization of minority communities left behind by the *apartheid* policies of the former South West Africa Administration, and for pursuing a series of 'development' policies which are detrimental to minority communities. Contrary to the provisions of the United Nations (UN) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, major 'development' projects in Namibia have been formulated without consultation with minority groups and also without considering the impact on their lives. Such projects, if carried out, would carry a very high risk of negatively affecting minority communities in the country. The case of the Epupa Dam and Kalahari game reserve are two examples.

Disadvantaged communities in Namibia typically lack or have restricted access to basic education, employment, health services and shelter. Many minority communities, due to marginalization, are used as sources of cheap labour and live in segregated conditions. More often than not, other work sectors are also closed to them because of a lack of educational and training opportunities to enable them to compete. Minority women in Namibia face particular challenges. They are doubly disadvantaged, generally poorer and more marginalized than the men.

Minorities in Independent Namibia, written by Dr James Suzman of Cambridge University, provides factual description and analysis of the current situation of minorities in Namibia, and describes how inter-group relations affect them. The report discusses the historical background, the liberation struggle, land rights, culture, development, education, gender, governance and affirmative action, as well as Namibia's involvement in the war in Angola. It also identifies key underlying problems and suggests policy recommendations for promoting change, consistent with international human rights standards, that will help make the hopes expressed at Namibia's transition to independence realizable for all.

Mark Lattimer

Director

December 2002

Introduction

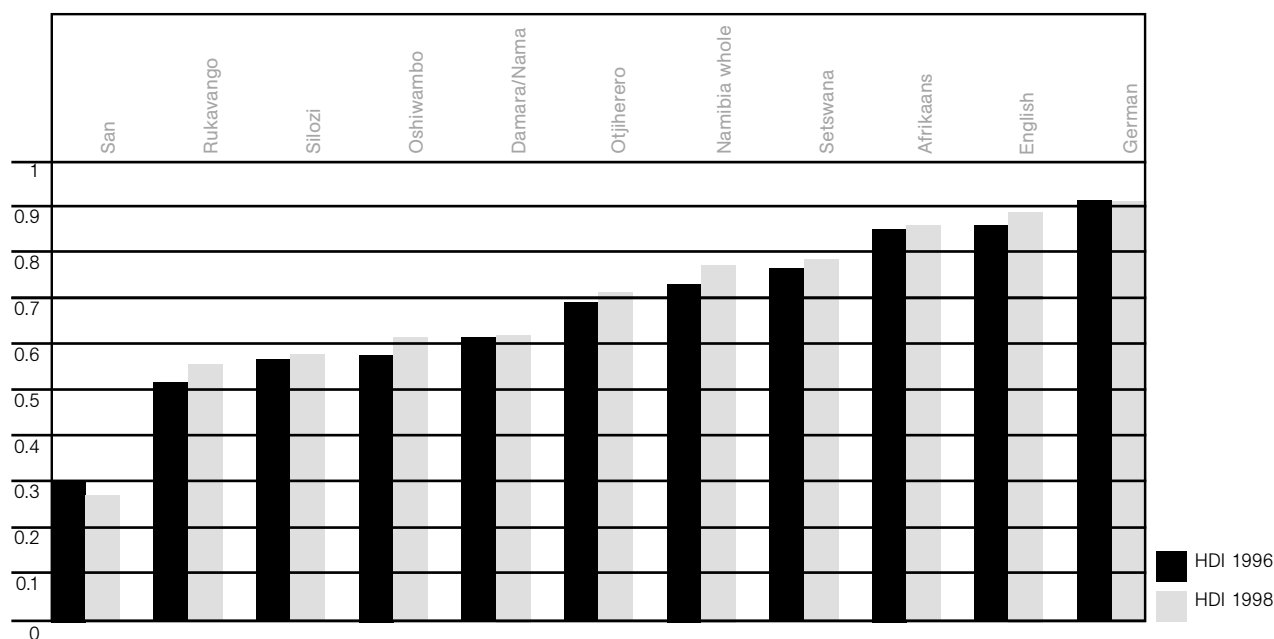
In 1990, Namibia achieved independence from South Africa. It was hoped that the South West African People's Organization (SWAPO)-led government would usher in an era of peace and prosperity, to heal the wounds inflicted during a 25-year liberation war. Few observers had any illusions concerning the difficulty of the task facing the new government or the potential problems that could develop in the fledgling republic. A particular concern for many was the inevitably dominant position that would be assumed by Owambo peoples in national politics, given that they comprised close to half of the national population and because of their prominence in the liberation movement.¹ This concern was a reflection of the antipathies between various ethnic communities in Namibia, which had been fostered and exploited by the South African regime as part of its divide-and-rule strategy.

Given this scenario, the SWAPO government has made some important progress, particularly in education and healthcare. Moreover, despite concerns over Owambo domination, the government has moved towards accommodating the concerns of most minority populations, a

fact reflected in their being returned to government in 1999 with an absolute majority – indicative of support well beyond SWAPO's traditional Owambo constituency. During its first term in office, the government was applauded for its transparency and efforts to foster a climate of national reconciliation. Further, the United Nations (UN)'s Human Development Index (HDI) and Human Poverty Index (HPI) reveal that, with some exceptions, most Namibians enjoy a similar socio-economic status regardless of their ethnic affiliations.

These positive developments have, however, been offset by the government's increasingly authoritarian and uncompromising attitude to some minority concerns, and its failure to meaningfully address issues like land reform. In its second and third terms in government, SWAPO has proved to be less concerned with enhancing its credentials as the leader of a liberal democracy than with asserting a distinctive brand of political authority. As part of this process, the SWAPO government has expressed increasing frustration with some liberal democratic institutions, such as the independent judiciary and the free press. Members

Figure 1: Human Development Index by language group, 1996 and 1998



SOURCE: UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), NAMIBIA HUMAN DEVELOPMENT REPORT 1998.

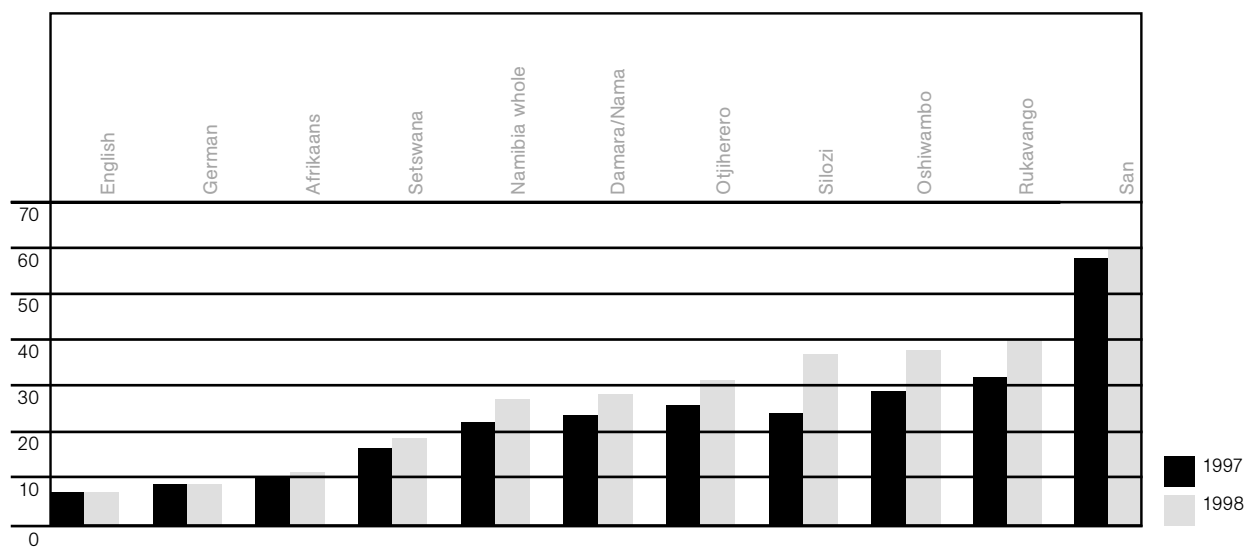
of minority communities also fear the emergence of a new elite in Namibia, comprised mainly of leaders from the liberation war. Further, the government has failed to neutralize inequalities in wealth. A decade after independence Namibia's gini² coefficient of 0.7 shows it to have the least equitable wealth distribution of all the countries in the UN system, with the richest 1 per cent of the population earning more than that of the poorest 50 per cent.³ While this is partly due to the white population's continued economic prosperity, it is also indicative of the emergence of a growing, politically connected, black elite. A significant number of businesses and financial concerns (including commercial farms) are now owned and managed by members of this elite.

Of particular concern has been the government's attitude towards the special problems encountered by some minority communities like the San. Of equal concern

have been events in Namibia's troubled Caprivi region, in the wake, initially, of an attempted secession bid by Caprivian separatists and, subsequently, the expansion of the Angolan War into northern Namibia following the Popular Movement for the Liberation of Angola (MPLA)'s spring offensive against the National Union for the Total Independence of Angola (UNITA) in 1999.

To some extent, Namibia's capacity to cope with the concerns of minorities has been diminished by other pressing concerns. While the Namibian economy has grown since independence, unemployment remains high. Only 43 per cent of the working age population are currently employed,⁴ and Namibia's income inequality can create a high level of discontent among the poorest. This discontent can be articulated in ethnic terms, with some ethnic groups believing themselves to be discriminated against by others.

Figure 2: Human Poverty Indices⁵ by language group, 1997-8



SOURCE: UNDR, NAMIBIA HUMAN DEVELOPMENT REPORT 1998.

Minorities in Namibia

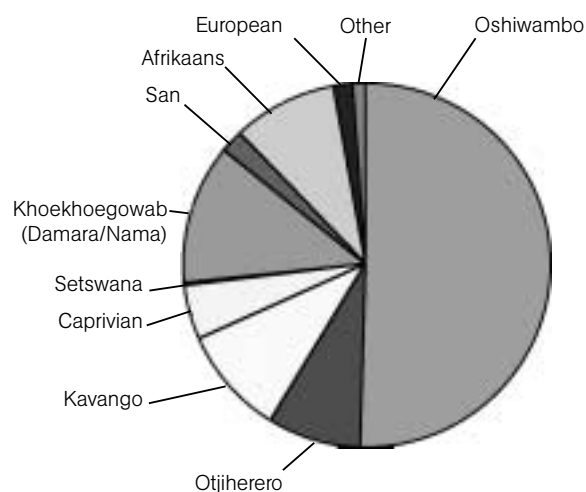
Namibia is home to a population of 1,826,854 people according to the preliminary results of the 2001 national census. Population densities are very low in much of the country, and almost half of Namibia's population live in the comparatively fertile and wet north. Despite its small population, Namibia has an ethnically and culturally diverse population, comprised of 11 major language groups that are made up of numerous self-identifying minority ethnic communities.

The Owambo language group is the largest in Namibia and comprises roughly half of the national population. Maintaining strong links to ancestral territories in Angola as well as Namibia, the Owambo are the dominant ethnic constituency in contemporary Namibian politics. The designation 'Owambo' includes several distinct tribes, or, as they are referred to in Namibian law, 'traditional communities'. Prior to their final subjugation by South African forces in 1917, the Owambo comprised a number of autonomous kingdoms that maintained an uneasy relationship with one another, despite their shared language and culture. While the Owambo still assert their identity according to their affiliations with these kingdoms, most identify themselves broadly as Owambo.

None of the remainder of Namibia's 10 minority language communities comprises more than 10 per cent of the national population, however, all view themselves as minorities and, to a greater or lesser degree, express anxieties about their status in a minority rights idiom.

While Namibians claim a far stronger national identity than they did during the colonial era, ethnicity remains an important marker of social and political identity. This is mainly because Namibia remains geographically and functionally divided into areas in which individual tribes and language communities dominate. In these areas culture and common activities continue to bind people together according to ethnic and linguistic affiliation.

Figure 3: Major languages in Namibia



SOURCE: 1991 NATIONAL CENSUS.

Figure 4: Key socio-economic indices by language group, 1998

Language group	Life expectancy (years)	Literacy (%)	School enrolment (%)	Income (N\$)
Afrikaans	67.2	91	91	13,995
Damara>Nama	56.6	63	80	2,404
English	66.9	97	93	21,708
German	75.0	100	92	30,459
Oshiwambo	61.3	64	91	1,707
Otjiherero	64.1	58	77	3,077
Rukavango	55.9	56	81	1,652
San	48.1	23	21	1,315
Setswana	61.7	70	81	5,326
Silozi	56.6	73	86	1,692
Namibia whole	61.0	66	83	3,608

SOURCE: UNDP, NAMIBIA HUMAN DEVELOPMENT REPORT 1998.

Historical context

First peoples

Namibia is one of the driest countries on earth. Bounded to the north by the Kunene River and with the Orange River to the south, it has no perennial rivers or wetlands save for the Kavango and Cuando rivers that pass briefly through the western Caprivi *en route* to Botswana. Namibia's arid coastal belt is generally unsuitable for large-scale human settlement. Separated from the coastal desert by a mighty escarpment and sliding eastwards into the Kalahari Basin, Namibia's central plateau dominates much of the country. Sustained by the short, albeit often intense, wet season, the plateau's once abundant wildlife is now confined mainly to game reserves and national parks. To the east lies the semi-arid Kalahari Desert that extends across Botswana towards Zimbabwe.

As with other southern African states, the pre-colonial history of Namibia is a subject of some speculation, and it is thought that human settlement in Namibia dates back some 27,000 to 30,000 years.⁶ These earliest humans in Namibia were the forebears of southern Africa's Khoe and San peoples.⁷ These early populations were scattered throughout much of the country, and survived primarily on hunting and gathering. As much as they were unified by their common engagement with the harsh environment, these populations were diverse, speaking different but related languages.

The largest Bantu migrations into Namibia occurred in the second millennium CE. Entering Namibia from the north these groups settled initially in the comparatively fertile regions bordering Angola and only later began to move southwards, led by nomadic pastoralists in pursuit of grazing for their livestock. These pastoralists clashed with indigenous populations of San hunter-gatherers. The mutual suspicion and antipathy between these groups persists in some areas to this day. In the same period Nama-speaking herders trekked into Namibia from south of the Orange River. While some San groups moved away from areas in which pastoralists settled, others vigorously resisted incursions into their territories. For example, in the Omaheke, the San were sufficiently organized to maintain the territorial integrity of their ancestral lands until the advent of European colonialism.

By the mid-nineteenth century, Namibia was home to the immediate ancestors of most of the peoples living there today. The Herero-speaking Himba and Tjimba had settled in and around the Kunene Basin; the Owambo

kingdoms were established in Angola and northern Namibia; Herero and Mbanderu had moved beyond Otjiwarongo, and into the Khomas and Omaheke regions; and various Nama groups from southern Africa had settled in southern and central Namibia. Numerous groups of San lived throughout the Kalahari Basin and its periphery.

German colonization

Germany annexed South West Africa in 1885 in line with agreements made at the Berlin Conference. The colony's borders bore little relation to the various populations' distribution in areas that the Europeans considered as *terrae incognitae*. Germany never successfully imposed its hegemony on the colony, in particular in Owambo territories bordering Angola. By contrast, Herero and Nama populations living in central and southern Namibia experienced the brunt of German empire-building. The German–Herero War of 1904 effectively shattered the Herero dominion over central South West Africa. The Herero leader, Kaptein Samuel Maherero, declared the war ostensibly to prevent Germany from expanding further into Herero territory. The German response was uncompromising. The leader of the German forces, General von Trotha, issued his now notorious extermination order that called for the killing of any Herero encountered by German soldiers. The massively outgunned Herero were forced to retreat. Those not killed fled to seek British protection in the Bechuanaland Protectorate (in modern-day Botswana). Following its victory, Germany increased its presence in Namibia. The number of white-owned farms in the region grew from 338 in 1904 to 1,331 by 1913.⁸

The relatively short tenure of German control in South West Africa meant that, by the onset of the First World War, the colony was still in its infancy. Large areas remained outside effective German control and white settlement, though vastly expanded during the period of German colonization, rarely ranged far beyond established towns or the new railway line.

South African colonization

The surrender of the Kaiser's military forces in German South West Africa to the Union Army of South Africa in 1917 marked the beginning of Namibia's colonial domination by South Africa. As German colonists and soldiers

were repatriated *en masse* to Europe, South Africa, operating under the mandate of the newly formed League of Nations, set about erecting an administration for South West Africa and stamping its authority on the people. South African rule in Namibia was to last over seven decades, during which Namibia's political and economic landscape was radically polarized along racial and ethnic grounds.

During its first decade, the South African-led South West Africa Administration (SWAA) demonstrated its power in unambiguous terms. In 1919 it extended its authority into Owamboland after launching an offensive against the Kwanyama (hitherto the most influential of the Owambo kingdoms) in response to complaints from the Portuguese authorities in Angola of cross-border violations by Kwanyama under the leadership of their youthful King, Mandume ya Ndemefayo. Between 1922 to 1924, the SWAA's forces also crushed rebellions led by the Bondelswarts Nama, the Ju/'hoan Bushmen of the Omaheke and the Rehoboth Basters.

Land and labour

While these violent excesses stirred much resentment, the administration's land policies caused the greatest concern. The SWAA encouraged white South Africans to settle in South West Africa – in order to deal with the poor white problem in South Africa and to bolster the SWAA's sovereignty over the colony. Prospective white settlers were enticed by offers of subsidies and technical assistance. By 1938, in addition to its growing urban population, South West Africa had 3,305 white-owned farms covering a total of c. 25 million ha. By 1989 there were over 6,000 such farms.⁹

In order to satiate the requirements of land-hungry settlers, the administration embarked on a land programme that would culminate several decades later in the Odendaal Plan (see later). The SWAA's appropriation of land for white farmers led to resettlement areas being identified for the black people who were displaced. With prime farming land in central Namibia already allocated to white farmers, this led to the allocation of marginal areas as 'native reserves'. Peoples like the Herero, Nama and San occupying lands within the police zone¹⁰ suffered substantial losses. The San were deemed to be a 'lower expression of humanity' than the other peoples and were not considered sufficiently 'developed' to be granted native reserves. In areas where their territories were not annexed by the SWAA for commercial farming, they were ceded to displaced black farmers. The San's position was reduced to a dependent economic underclass.

Throughout the dispossession of colonial rule, land areas designated as native reserves were progressively expanded. For example, Hereroland (Epukiro Reserve)

was expanded from its initial territory of 178,000 ha in 1923 to 3,095,152 ha by 1975. It is also noteworthy that some ethnic communities, such as the Himba, Kavango and Owambo peoples, escaped any substantial alienation of their traditional territories during the colonial period.

During its first decade, the SWAA issued a range of proclamations aimed at controlling the movements of the native population so as to ensure a steady supply of cheap labour to white-owned farms and industries. This has led to the migrant labour pattern that remains today.

Native autonomy and separate development

Ethnic, linguistic and tribal identity remains a prominent feature of Namibia, this is largely a result of the SWAA's policy of separate development. This policy demanded not only the separate development of 'races', but also the separate development of different ethnic or tribal groups. Members of recognized ethnic communities, i.e. those recognized by the SWAA, were only permitted to settle within areas designated as their 'homelands'; similarly, townships¹¹ in urban areas were divided into discrete locations for occupation by members of particular ethnic groups. Thus Namibian townships remain (now informally) divided into separate *lokasies* (locations) for the Damara, Herero, Owambo and others. Although the South African regime argued that separate development was intended to ensure the tribal and cultural integrity of Namibia's different ethnic groups, it was also clearly used to divide and rule, to exploit ethnic tensions among the black population.

South African policy 'granted' the black or 'native' populations a degree of self-governance and autonomy within the designated tribal reserves or homelands. The Native Reserves Commission of 1921 laid the foundations for the policy of separate development, and stipulated a range of measures aimed at securing land for specific native populations and controlling their movements within the colony. The reserves were allocated on an ethnic basis, with separate reserves for Basters, Caprivians, Damara, Herero, Kavango, Nama and Owambo. While these reserves provided areas for subsistence farming, the land's marginality assured the tightly-controlled flow of migrant labour to white farms and industries. Moreover, it was understood that, because these populations would necessarily be dependent on revenues earned in white areas, they would be more compliant.

The SWAA's separate development policy found its ultimate expression in the Odendaal Plan, which was implemented in the 1960s and 1970s, and laid out the responsibilities and rights of groups residing in the homelands. It devolved a degree of autonomy to native authorities, in the form of chiefs and headmen¹² within

the reserves, who were entitled to administer customary laws and allocate land to their subjects. As greater international pressure was placed on South Africa to pull out of Namibia, it sought to engineer a submissive Namibian state – to be comprised of a federation of quasi-autonomous ethnic sub-states, governed ostensibly by second-tier authorities and elected by specific ethnic constituencies. This process was enabled by the passing of Proclamation AG8 in 1980, which empowered the seven major ethnic groups – the Basters, Damara>Nama, Herero, Himba, Kavango and Owambo – to elect ‘representational authorities’, with broad powers of government in their respective ethnic constituencies.

These policies led to the revival and intensification of these groups’ identities, thereby ensuring that Namibia’s non-white populations would be too divided to form a united opposition to white dominance. Today, ethnicity remains an important marker of social identity, particularly in rural areas.

The liberation struggle

While resistance to South African rule emerged in a number of quarters, SWAPO’s role was unquestionably the most important. SWAPO evolved out of the Owambo Peoples Organization (OPO), a body formed in 1958 to represent the views of Owambo peoples engaged in migrant labour. As the organization grew, its leadership resolved that it should be expanded to represent the interests of all Namibians seeking independence from colonial rule. As a result, the OPO was dissolved and SWAPO was formed in its place in 1960, as an organization devoted to liberating Namibia from South Africa. SWAPO grew in stature, gaining international credibility and legitimacy. Bolstered by the UN General Assembly’s assertion of the illegality of South Africa’s occupation of Namibia in October 1966, SWAPO began its armed struggle through its military wing, the People’s Liberation Army of Namibia (PLAN). Operating out of Zambia, PLAN lacked the logistical support to do more than harass the large South African military presence in northern Namibia. Ironically, a coup in Lisbon in 1974 provided the spur for the intensification of PLAN’s military initiatives. The ousting of the Caetano regime in Lisbon and Portugal’s rapid withdrawal from Angola, meant that PLAN could launch offensives into Namibia from a friendly neighbouring state.

Over the following 15 years, the military struggle rapidly intensified in southern Angola and Namibia. The armed struggle has had an enduring legacy on ethnic politics in Namibia.

Legal status and the role of the UN

At the end of the Second World War, the discredited League of Nations was replaced by the UN. This new body sought to dissolve the territorial mandates issued by its toothless predecessor. Despite South Africa’s desire to absorb South West Africa as its fifth province, the UN insisted that it become a UN Trust Territory. The South Africans, however, stood their ground, and the UN proved either unwilling or unable to assert its authority. In 1948, when the National Party of South Africa swept into power on a rising tide of Afrikaner nationalism, South West Africa became a virtual South African dominion, with its white population granted representation in the South African parliament.

Subsequently, the UN demanded ever more robustly that South Africa relinquish its grip on South West Africa, a process bolstered by South Africa’s pariah status in the global community because of its *apartheid* policies. This process gathered momentum in 1966, when the UN General Assembly passed a Resolution declaring the League of Nations-granted mandate invalid. Over the next decade, the UN passed a number of Resolutions aimed at securing South Africa’s withdrawal from Namibia. But South Africa clung resolutely to its dominion of the desert state. This resulted in the intensification of PLAN’s military struggle for Namibian independence.

After lengthy consultations between the UN, SWAPO, the South Africans and representatives from the states bordering South Africa, the UN Security Council passed Resolution 435 in April 1978. It called for the holding of free elections in Namibia under UN supervision, the cessation of all hostilities and the withdrawal of all foreign troops. South African commitment to Resolution 435 proved to be superficial, and created conditions that would only allow Namibia to achieve independence on South African terms. Various inclusive government bodies were established according to a framework agreed at a constitutional conference convened by the South Africans in 1975 – now dubbed the Turnhalle talks. However, SWAPO’s exclusion from the Turnhalle deliberations and subsequent elections for a Constituent Assembly in 1978 and a National Assembly in 1979, as well as South Africa’s continuing control of Namibia through the Administrator General, hamstrung the legitimacy of these developments. Moreover, the increasingly visible presence of South African military forces in Namibia suggested something of the hollowness of South African commitments as the liberation struggle and Angolan War intensified.¹³

Over the next decade, intense diplomatic efforts eventually led to the implementation of Resolution 435. With the United States of America (USA) acting as a mediator and the UN Secretary General's Special Representative, Marti Ahtisaari, playing a key role, the prospect of *rapprochement* during the 1980s became ever more possible. In May 1988, a US-led negotiating team convened a meeting in London that secured agreement from Cuba and South Africa to withdraw their troops from Angola, and thereby paved the way for the implementation of Resolution 435. At the same meeting it was agreed that Resolution 435 would be implemented from 1 April 1989, under supervision of the UN Transition Assistance Group (UNTAG).

Independence

With UNTAG firmly in place, South Africa withdrew its forces from Namibia, some 42,000 refugees returned under the auspices of the UN High Commissioner for Refugees (UNHCR) and by the end of 1989 most discriminatory legislation was repealed. Elections for a transitional Constituent Assembly were held in November 1989 and SWAPO formed the first government of an independent Namibia, winning 41 out of a total 72 parliamentary seats through gaining 57 per cent of the vote. The Constituent Assembly adopted a Constitution in February 1990 and, in March of that same year, Namibia formally gained its independence from South Africa.

Once in office and in line with its commitments to the electorate, the SWAPO government asserted that nation-building was its priority. The process of nation-building, however, demanded the subordination of individual ethnic identities in favour of a broader, all-encompassing, national identity. Nation-building reflected the Namibian government's stated priority of national development and its desire to dismantle the South African regime's *apartheid* structures. Similarly, it was intended to assert the primacy of individual rights over collective rights.¹⁴

The SWAPO government was faced with the problem of building a nation from an ethnically divided state. Not only did it need to reassure minorities, it also needed to demonstrate a commitment to the continuity of the once relatively autonomous traditional 'tribal' authority struc-

tures and the legitimacy of customary law within the former homelands.

Several communities were extremely anxious about their future in an independent Namibia. Such feelings were particularly acute among those ethnic minorities that had supported the South African regime or opposed SWAPO during the liberation struggle. While SWAPO tried to reassure the population that the new republic would accommodate all Namibians, some remained anxious. As a result, close to 4,000 San chose to be resettled in South Africa by the South African Defence Force, because they feared reprisals for their apparent complicity with the colonials. This potentially divisive issue was underlined by the Baster community's explicit demands for their secession from Namibia immediately after independence (see below).

As much as these brought home to the new government the potentially incendiary nature of ethnic minority concerns, it also steered its determination to ensure that legislation did not encourage the tribalization or ethnification of national politics. As with other southern African national governments, the Namibian leadership felt that the ethnic heterogeneity of their population provided a series of ready-made fault lines, the fissuring of which could threaten the integrity of their youthful state.

In view of these sensitivities, the government invited representatives from Namibia's diverse communities to participate in formal deliberations concerning their future roles. Community leaders, headmen and chiefs from almost all of Namibia's myriad ethnic minorities contributed to policy debates concerning traditional leadership, communal land administration and the role of customary law. However, it became increasingly clear that ethnic minority communities' former substantial autonomy would be replaced by a strong central state. Moreover, while there was to be a formal role for traditional leaders in the new Namibia, this was a diminished one. Additionally, traditional authorities were told that customary law would remain valid under the new Constitution, but only insofar as it did not clash with constitutional or statutory law. Some traditional authorities, the Herero for example, made it clear that they were opposed to the dilution of the traditional leaders' formal powers.¹⁵

Constitutional and legal rights of minorities in independent Namibia

The Namibian Constitution is unique in that it provides for the automatic application of international treaties in the domestic legal system, once they are ratified by parliament. Namibia acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1994. Under the Covenant all peoples have the right to self-determination, as well as their right to 'freely determine their political status, freely pursue their economic and social development and to freely dispose of their natural wealth and resources'.

Namibia is also a party to the Covenant on Economic, Social and Cultural Rights (CESCR) and the Convention on the Elimination of Racial Discrimination (CERD). In addition, Namibia is a member of the International Labour Organization (ILO), but like many other African countries, it is not a party to the ILO Convention on the Rights of Indigenous and Tribal Peoples, which is the only legally-binding international Convention dealing with the rights of indigenous peoples.¹⁶

The formal status of ethnic minorities in Namibia is expressed in the Constitution and is further elaborated in legislation. The guiding principle is the formal separation of ethnic and national identity, with the latter given priority. This is intended to assert the primacy of the state without disposing of the reality of ethnic diversity. Article 19 of the Namibian Constitution stipulates:

'Every person shall be entitled to enjoy, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and subject to the condition that the rights contained in these articles do not impinge upon the rights of others or the national interest.'

The government has been cautious about using the language of 'tribalism' in policy documents or statutes. Consequently, self-identifying ethnic and cultural communities are not referred to in legislation as tribes, kingdoms or ethnic groups, but as 'traditional communities'. While somewhat clumsy, the definition of a 'traditional community' as stipulated in the Traditional Authorities Act (TAA, 2001), is intended to accommodate all of Namibia's pre-colonial ethnic groups. In the same vein, the leaders of traditional communities are not formally referred to as chiefs, kings, *kapteins* or headmen in law, but as 'traditional leaders' or 'traditional councillors'.

Affirmative action

The Namibian Constitution recognizes positive discrimination. Article 23(2) states that:

'Nothing... shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons in Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in Namibian society arising out of past discriminatory laws or practices.'

This commitment is reiterated in Namibia's First National Development Plan (1995), which states that:

'some sections of the community continue to practise discrimination on the grounds of race, sex and disability [and] Government will not tolerate this behaviour... [and] will therefore support its arguments with a policy of affirmative action.'

The government's policy of affirmative action has a particular focus on women and those African populations discriminated against during South African rule. As a result, people from historically disadvantaged groups now dominate state institutions and bodies.

The Traditional Authorities Act and the Council of Traditional Leaders Act

Traditional authorities and traditional communities are ultimately subject to constitutional and statutory law. Yet the functions and duties of traditional leaders far exceed those of similar bodies in many other liberal democracies. While traditional leadership is in decline in a number of communities, with the central government having assumed many of the functions, for the San – who are poorly represented in the formal bodies of government – this recognition of their traditional authority structures is of vital importance.

The two most important Acts detailing the role and functions of traditional authorities, and by extension the

status of traditional communities, are the TAA (2001), which superseded the previous Traditional Authorities Act (1995) in its entirety, and the Council of Traditional Leaders Act (1997). Whereas the former outlines the principles for the formation and recognition of a traditional authority – and hence a traditional community – the latter sets out the role of traditional authorities in state governance.

In Section 3 of the TAA, the duties and functions of recognized traditional authorities are identified as the:

- identification and codification of traditional law;
- administration and execution of traditional law;
- preservation and protection of culture and tradition;
- promotion of affirmative action within their communities;
- registration of traditional healers;
- provision of assistance to police and other state organs where necessary;
- conservation and sustainable use of natural resources;
- settlement of disputes over customary matters; and
- establishment of community trust funds.

The statutory limitation of the traditional authorities' powers was agreed on by the Constituent Assembly before independence. It is enshrined in the Constitution and elaborated on in the TAA. The subordination of traditional authorities to state authorities is unambiguous. As the TAA stipulates:

'14. In the exercise of the powers or the performance of its duties... by a traditional authority or a member thereof –

(a) any custom, tradition, or practice, or usage which is discriminatory or which detracts from or violates the rights of any person as guaranteed by the Namibian Constitution or any other statutory law, or which prejudices the national interest, shall cease to apply.'

In addition to this, the TAA prohibits traditional authorities from playing any formal role in mainstream party politics. Thus, for example, should any individual with a recognized position in a traditional authority seek elected office in government he (or very occasionally she) will have to relinquish all their duties and privileges as a traditional leader for this period. While traditional communities and traditional authorities are actively supported by central government, they are also beholden to it. Indeed, one of the most problematic aspects of the TAA is that, in order to take up their mandated roles, traditional authorities require state recognition through the office of the Minister for Regional and Local Government and Housing (MRLGH). This provides scope for abuse because it empowers government to dispute the legitimacy

of an unsympathetic traditional authority or to intervene in the internal politics of a traditional community. This was illustrated by the government's intervention in Mbukushu community politics. In 1999, the Mbukushu community in the Kavango region voted overwhelmingly to dismiss their incumbent traditional leader, the Fumu (Chief) Erwin Mbambo, on the grounds of alleged corruption, extortion and the illicit expropriation of community funds. The Fumu Mbambo, however, was a staunch SWAPO ally who maintained strong ties with the party, and his nominated replacement was an opposition supporter. The SWAPO government refused to acknowledge the legitimacy of the ballot – despite the fact that this was how Mbambo was elected Fumu – and the community's right to choose their own leadership.

An important axiom of the TAA is the relationship between traditional authorities and traditional communities. The TAA stipulates that the recognition of a traditional authority is contingent on the legitimacy of the traditional community that any such authorities may claim to represent. The 1995 Act accommodated 'traditional communities' that may not have had formal leaders during the period of South African occupation or whose leadership structures were dismantled by the colonial regime. This is made clear in section 2 (1) of that Act, where it is stated that 'every traditional community shall be entitled to have a traditional authority'. In other words, formal recognition by government of a traditional authority also signified formal recognition of a traditional community.

The 2001 TAA defines a 'traditional community' as an:

'indigenous homogenous and endogamous social grouping comprising families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and traditions, recognising a common traditional authority and inhabits a common communal area and includes members residing outside the common communal area.'

From a legal (or anthropological) perspective, this definition is problematic since it discriminates against those ethnic minorities (like most San and several Damara groups) that were not granted land rights in communal areas during the colonial era. The weakness of this definition provides government with a mechanism to deny any traditional authority the legal recognition necessary for it to assume its duties. One result of this has been the selective recognition of traditional communities by government, with a lack of consistency in the recognition process.

Non-recognition of minority communities

In anticipation of the drafting and passing of the 1995 Act, the government consulted with traditional leaders from most of Namibia's ethnic communities. While some notably impoverished communities were unable to send representatives to these gatherings, the government made efforts to ensure their inclusion. With the passing of the Act in 1995, the government began assessing the validity of claims to traditional leadership submitted by Namibia's various communities. The government received over 40 submissions. After some consideration, it announced via the *Government Gazette* (no. 1 828) in 1998 that it would recognize 31 traditional leaders and hence acknowledge the existence of 31 traditional communities.

None of the six traditional authorities from the San communities that initially applied for formal recognition were listed. Following a formal complaint, the MRLGH requested them all to put their cases in writing. These claims were then forwarded to the Investigating Committee on Tribal Disputes for assessment. On the strength of the Committee's recommendation, the MRLGH decided that only the two traditional authorities that retained an autonomous land base would be recognized, and that further consultations would be required regarding the four outstanding applications.¹⁷

It subsequently emerged that the Committee had recommended the formal recognition of two of the outstanding San communities and that this view was endorsed by the Council of Traditional Leaders, who passed on their recommendations to the President. However, their recommendations were unilaterally dismissed by the President for reasons as yet undisclosed. Of the 14 issues deliberated on by the Council over the period 1998–2000, the President followed the Council's recommendations on all matters with the exception of those relating to the San.¹⁸ While it is likely that the President's decision will be contested in the courts, his reluctance to follow the Committee's recommendations, or attend closely to the TAA, is a matter of concern.

The San were not the only traditional authorities that were denied recognition. Among others, some 42 Herero leaders were denied recognition by the government. They plan to challenge the government in court on the issue, and allege that their non-recognition is a result of prejudice.

Land and leadership

An ethnic group's formal recognition as a 'traditional community' has important repercussions regarding access to land in communal areas. The Communal Lands Bill

currently working its way through parliament reaffirms the ethnically-based territorial divisions put in place by the South African regime. As drafted, the Bill provides protection for the majority of established communal-area farmers through the recognition of their 'customary' or 'traditional' rights to land. Significantly, it also allows traditional leaders to retain the right to allocate land for residential or economic purposes, and therefore goes some way towards reinforcing the status quo regarding land in existing communal areas.¹⁹ Traditional or customary rights are granted under section 16 (3) of the Bill, which stipulates that:

'A board shall not grant any right referred to in section one (1) to any person other than a member of a "traditional community" residing in the communal land area in question, except if such a person is specifically exempted by the Minister in writing from the provision of this subsection or belongs to a category of persons in respect of whom the Minister has given general notification granting exemption from these provisions.'

For many of Namibia's ethnic minorities, the Communal Lands Bill is an important document insofar as it reaffirms land as a constituent of their heritage and identity, and it also grants additional power to traditional authorities otherwise weakened in the independence era. This positive development for some ethnic communities is a negative development for others – in particular those minorities not formally recognized by the government under the TAA, and those communities that were excluded from communal areas during the colonial era. As far as these groups are concerned, the Bill underwrites and continues an iniquitous situation. This problem is particularly marked in areas such as the vast Herero communal lands, almost all of which were once the exclusive territory of the Omaheke Ju/'hoansi but are now unambiguously in the hands of the various recognized Herero traditional authorities. Of equal significance for groups like the Omaheke Ju/'hoansi is the fact that they are denied automatic rights to residence in the Herero communal areas. In order for such groups to gain land rights, they must acknowledge Herero sovereignty over them and thereby reaffirm their subordinate status. Given that few of the recognized traditional communities in communal areas that are home to large numbers of San (Herero, Kavango and Owambo communal areas) consider the San to be their social equals, it seems unlikely that the San will be granted land to a meaningful degree. Effectively, the exclusion of minority groups from this process will ensure that they remain landless, highly mobile and economically vulnerable, as well as dependent on opportunistic economic strategies such as begging and casual labour to eke out a living.

The problem of customary law

The devolution of some powers to native authorities in the reserves and homelands of Namibia before independence ensured that customary law would continue as a means of dealing with some criminal and most civil disputes. By independence, the new government realized that, not only did it lack the resources to effectively extend civil law into the communal areas, but also that doing away with customary law would alienate large portions of the electorate – even among its traditional Owambo support base. In addition, strong arguments were presented to suggest that the continuity of customary law in communal areas constituted a collective and inalienable right.

Customary law is therefore constitutionally recognized as a legitimate means to secure social justice in certain contexts. However, as with the status of traditional leaders, customary law is also subordinate to Namibia's statutory and constitutional laws. This is made clear in Article 66 of the Constitution, which stipulates that:

'both customary law and the common law of Namibia shall remain valid to the extent to which such customary or common law does not conflict with the constitution or any other statutory law'

It is also elaborated on in the TAA, which specifies that:

'11 (1) (b) In the performance of the functions and duties and exercise of the powers referred to in section 10 any customary law which is inconsistent with the provisions of the Constitution or any other statutory law, shall be invalid to the extent of the inconsistency.'

The incompatibility of some customary and statutory laws has inevitably been a source of dispute, particularly where customary law is discriminatory. Most instances where customary laws have been challenged in the courts, have concerned the rights of women in customary marriages. Customary laws regarding marriage, divorce and

child maintenance are often heavily weighted in favour of males. These can conflict with constitutional provisions for gender equality and Namibia's obligations as a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Education and culture

The SWAA largely neglected the formal education of the majority non-white population. As a result, the SWAPO government identified the provision of basic education as a priority, and has routinely allocated it between 20 and 25 per cent of the annual budget. With such substantial investments in education important progress has been made over the past decade and school enrolment has increased in line with stated targets, with close to half a million learners now attending 1,489 schools.²⁰

The Ministry of Basic Education, Sport and Culture (MBESC) has taken steps to ensure that minorities are catered for in Namibia's education system. Significantly, Namibia has adopted a policy that demands first-language ('mother tongue') learning during the first three years of schooling for all language communities. The adoption of such a policy recognizes not only the cultural value of language but also the importance of first-language learning in literacy development. In addition to this, the MBESC has established an inter-sectoral task force to deal with problems specific to educationally marginalized communities such as the San and the Himba.

Despite the huge resources that the government has ploughed into educational development, considerable problems remain, especially for some minority communities. In the case of groups like the San – for whom educational status is contingent on a number of other factors, such as secure access to land – educational success has been limited. This is also due to the government's reluctance to deal substantively with these other factors.²¹ Further, in the case of many San from small language communities, there are insufficient resources to allow them to have first-language learning.

Government and governance

The Namibian government is comprised of the executive, the legislature and the judiciary. Excluding the position of the President, the legislature in Namibia has four levels: the National Assembly, the National Council, regional councils and local authorities. The National Assembly is the principal legislative body and is comprised of 72 members, elected on the basis of proportional representation, and six further members appointed by the President. The second tier of government is the National Council, which has 26 members elected from regional councils. Regional councils are comprised of seven councillors elected on a first-past-the-post basis. Operating closely with regional councils are the smaller local councils in the form of municipalities, town or village councils.

The executive is made up of the President, Prime Minister and a Cabinet appointed by the President. The judiciary is comprised of judges nominated by the Judicial Services Commission and appointed by the President. The Chief Justice 'heads' the judiciary, while judges of appeal sit in the Supreme Court. The Judge President and other judges sit in the High Court, while magistrates sit in the Magistrates Court. Magistrates are appointed by the Minister of Justice, as with any other civil servant, and not by the Judicial Services Commission.²²

Despite plans for decentralization, regional and local government structures remain largely subordinate to a strong central government. Regional councils' most important work is currently limited to regional socio-economic planning. Regional and local councils are elected on a constituency basis. This means that they are usually more representative of the local population than central government structures. Certainly for localized communities, such as some RuKwanagali, San and SiLozi-speaking groups, who comprise a small minority on a national scale, local and regional government are more likely bodies in which to gain representation.

Party politics

In the 1989 elections for the transitional Constituent Assembly, SWAPO emerged as the clear victor having secured 57 per cent of all votes cast. Subsequently, in the 1994 elections, contested in the face of increasing voter apathy and a weak opposition, SWAPO was returned again to government, and with a considerably increased majority through winning 73 per cent of the vote. Despite the formation of the Congress of Democrats party in

1998, under the leadership of SWAPO's former High Commissioner to the United Kingdom, Ben Ulenga, SWAPO increased its majority in the National Assembly elections held in December 1999, returning to government with 76 per cent of the vote.

SWAPO still largely relies on the almost universal support of Owambo speakers. The extent of SWAPO's Owambo support base was conclusively demonstrated in the 1999 general elections. It secured between 93 per cent and 99 per cent of the vote in all constituencies in the Owambo communal areas. The fact that Owambo speakers vote more or less *en bloc* for SWAPO has a substantial influence on party politics and voting behaviour in Namibia. Because SWAPO has been able to rely on the Owambo vote in all three elections thus far, other parties have entertained no realistic hope of forming a government. As a result smaller parties' campaigns have tended to focus on either specific minority interests or the need to form a strong opposition to check SWAPO power.

SWAPO's increased majorities partially reflect the perceived weaknesses of opposition parties, including the Democratic Turnhalle Alliance (DTA), which was unsuccessful in its role as official parliamentary opposition from 1989 to 1999.²³ Disillusionment with opposition parties has been influenced by the widespread perception that SWAPO has intentionally neglected areas which have been traditionally hostile to it. This perception was bolstered in the 1999 elections during which SWAPO representatives campaigning in opposition strongholds reportedly suggested that continued support for the opposition would ensure continued neglect by government.²⁴ SWAPO's increased majority in the 1999 elections therefore, not only represented a broadening of its support base on the strength of its achievements in office, but also a belief that the SWAPO government would directly reward its support base with improved services. In other words, for many voters in the 1999 elections, it was a question of 'If you can't beat them join them.'

The electoral system is not ideally suited to ensure the effective representation of minority concerns either in parliament or within individual party structures. Membership of the National Assembly is determined according to ranked party lists, following the rules and procedures of individual parties. In the case of parties like SWAPO, the party leadership effectively controls the nomination of candidates. This top-heavy structure stifles opposition within the party; any individual not prepared to toe the

leadership's line may well find themselves removed from or demoted on existing party lists – as was the case in the 1999 elections. Moreover, despite SWAPO's best efforts to be inclusive, it remains ultimately at the service of its core Owambo-speaking constituency, the alienation of which would fracture its grip on power. Consequently, individuals within SWAPO structures who represent ethnic minority concerns do so only to the extent that their presentation of these concerns do not impinge on those of the majority.

The existence of regional councils and the National Council are intended to offset this imbalance. However, given these bodies' limited effective powers and the dominance of a strong central government, regional councils play only a peripheral role.

Having noted these constraints, SWAPO must be given credit for its efforts to ensure that its membership is drawn from a broad cross-section of Namibia's ethnic communities. Of particular significance is the fact that, while most senior cabinet posts are occupied by Owambo speakers, the Prime Minister and Deputy Prime Minister hail from the Damara and Nama communities respectively. Nevertheless, some members of minority communities perceive SWAPO as a predominantly Owambo party and argue that those members of their communities represented in SWAPO will not generally act in their home communities' interests. Further, this issue has led to deep resentment in some areas. This resentment is particularly acute in areas where the government has given jobs to former Owambo freedom fighters at the expense of local populations who are also desperately in need of employment.

The media and civil society

With SWAPO receiving increased majorities in successive elections, the government has become increasingly forthright and inflexible in the presentation of its views and pursuit of its policies. SWAPO's sizeable majority in parliament increases the need for mechanisms to ensure that minority interests are neither overlooked nor ignored by a powerful populist government.

With its majority mandate, SWAPO has expressed frustration with some of the constraints placed upon it by Namibia's liberal democratic Constitution. Some senior government officials, for example, have questioned the need for the separation of government functions and have outspokenly challenged the autonomy of the judiciary where its findings have clashed with government desires. Likewise, senior SWAPO officials have demonstrated increasing irritation with the independent media. In 2000, the government imposed restrictions on the activities of foreign journalists who are now required to apply

for temporary work permits in order to report directly on Namibian stories.

The Namibian Broadcasting Corporation, the Namibian Press Agency and one national weekly newspaper are state owned and controlled. While these organizations have rarely criticized the government or failed to toe the SWAPO party line, they were chastised by the President in August 2002 for not being sufficiently pro-government.²⁵ As a consequence, the President granted himself the information portfolio to whip these bodies back into line. Without going so far as to challenge the autonomy of the independent press, the government has sanctioned some local independent media. The daily newspaper, *The Namibian*, has been the main target of government ire despite the fact that, historically *The Namibian* was the harshest critic of the South African regime – and by virtue of this was a SWAPO ally in the run-up to independence. Because of *The Namibian's* sometimes critical attitude, the government has now banned the newspaper from all its offices and denied it revenue from public sector advertising. According to the Media Institute of Southern Africa, the state-owned media in Namibia has neglected to give any attention to parties critical of government.

Since 1995, there have been several instances of clashes between the government's intentions and the desires, aspirations and needs of some minorities. This is partially a consequence of SWAPO increasingly presenting itself not as a party within the state, but as a manifestation of the state. This was well illustrated during the campaign for the 1999 general elections, during which SWAPO representatives equated support for key opposition parties as 'treasonous'. While such statements could simply be dismissed as over-heated election rhetoric, prior and subsequent events – such as the Caprivi secession crisis and the extension of the Angolan conflict into Namibia – suggest that they are symptomatic of a potentially more sinister trend.

Notwithstanding sometimes aggressive government posturing, non-governmental organizations (NGOs) concerned with rights and civil society issues have thrived in Namibia since independence and, despite occasional problems, have continued their work relatively unmolested. These organizations have typically been free to chastise government on a range of rights-related issues. Along with the independent media, they have played an important role in ensuring the government's public accountability on matters of concern. Similarly, they have played an important role in increasing the public's awareness of their constitutional and legal rights. Most prominent among these NGOs are the Namibian Society for Human Rights (NSHR) and the Legal Assistance Centre (LAC). Whereas the NSHR has been vigilant in drawing attention to

alleged government infractions of rights, the LAC has played a more proactive role, providing legal assistance to individuals and communities on various rights-related issues, and through its numerous education, research and information projects. These projects have provided a platform for collaboration between state institutions and the NGO sector on issues such as farm-workers' rights, gender rights, juvenile justice and minority rights issues. Thus, for example, Namibian police use a human rights manual designed for their officers by the LAC.

Despite the sometimes fruitful cooperation between the state and NGOs, the government has occasionally reacted aggressively to NGO interventions on rights-related matters. The NSHR has frequently been the target of government ire as a result of its work, and the LAC has faced government criticism for its legal support of minority groups such as the Khwe in western Caprivi and its legal representation of the victims of alleged government harassment or torture. As a result, these organizations have been accused of being unpatriotic, or even treasonous. It is, however, important to note that the government's bark has been worse than its bite in these instances, and these NGOs have been able to persevere with their work.

Gender issues in Namibia

Namibia is now a signatory to CEDAW and has taken steps to ensure that its laws and policies fall within CEDAW's parameters. The Namibian Constitution assures gender equality and the government adopted a National Gender Policy and a National Gender Plan of Action in 1999. These came in addition to the Married Persons Act (1996) that sought to abolish 'marital power' and to deal with issues such as the custody of children, maintenance, and the acquisition and division of property in and after marriage. Nevertheless, legal provisions for gender inequality do not automatically translate into effective gender equality on the ground.²⁶

Despite the government's progressive approach to gender issues, the status of women in Namibia remains problematic at both an institutional and local level. Gender roles in most of Namibia's traditional communities are clearly demarcated, with specific rights and obligations pertaining to an individual's gender identity. While many men and women are satisfied with their designated gender roles, there are a number of areas where women are disadvantaged. (There do not appear to be any obvious negatives for men from a gender perspective.) Moreover, as females gain greater access to education, ever-increasing numbers have expressed a desire to transcend the limitations of their traditional roles. In addition, beliefs concerning the traditional role of women undoubtedly

contribute to the high levels of domestic and sexual violence in Namibia.²⁷ Likewise, traditional attitudes to gender also continue to militate against women's achievement in education and to maintain the exceptionally high rate of teenage pregnancy in Namibia – two factors that make it more difficult for women to assert their status at home or in the workplace.

Gender inequality is also apparent in the workplace. Work usually undertaken by women is often underpaid when measured against payments made to men. In part this is because women tend to take on lower-paying jobs than men such as domestic labour. However, it is also a reflection of the fact that women's labour is often devalued. For example, in the agricultural sector, women labourers were paid on average only 60 per cent of their male counterparts' earnings.²⁸ This trend is apparent in a range of sectors. Having noted this, the gender balance in the public sector has improved tremendously since independence. The proportion of women employed in the public sector rose from 36.5 per cent in 1990 to 48.4 per cent in 1998.²⁹

In contrast to the equitable gender balance in the executive branch of government, the legislature remains conspicuously male-dominated, with only four women occupying ministerial or deputy ministerial posts. At present 23 per cent of members of the National Assembly are women and 8 per cent of the National Council. Only one regional governor is female and only 4 per cent of regional councillors are women. Women's representation is highest in local councils, in which 44 per cent of all councillors are women – this follows an agreement between the parties to ensure equal numbers of men and women on their party lists for regional councils.

While many women in rural areas are largely satisfied with their status, there are aspects of customary law that are highly discriminatory. Divorce and inheritance laws in particular are heavily weighted against women in both patrilineal and matrilineal societies. As a result, a divorce or the death of a spouse may (and has in some instances) leave women impoverished and homeless. As much as the subordination of customary law to statutory law effectively provides women with the legal right to contest their disenfranchisement, few women in rural areas have either the wherewithal or capacity to do so.

The government has adopted several important measures to offset the traditional marginalization of women in Namibia. Indeed, Namibia was one of the first countries to ratify the Optional Protocol to CEDAW, which grants women the right to seek redress at international level for violations of it. Working with groups like the Gender Research and Advocacy Project at LAC, the government has made measurable progress since independence and has shown some flexibility in dealing with gender-related

issues. An important aspect of this has been the establishment of a government department and, later, the Ministry of Women Affairs and Child Welfare. In addition, SWAPO has drafted and ratified legislation specifically aimed at improving the state's capacity to combat domestic violence and rape.

While women remain relatively marginal in Namibia, their status has improved dramatically since independence. SWAPO has proved willing and able to design and implement legislation regarding gender discrimination. Nevertheless, it is clear that gender discrimination remains very much part of the fabric of Namibian society and it is unlikely that, in the short term at least, government efforts will be of more than cosmetic value. In the longer term, however, better education and declining levels of teenage pregnancy will contribute greatly to improving the status of Namibian women.

The treatment of sexual minorities

While Namibia's Constitution protects the rights of sexual minorities, gays and lesbians have had a difficult time in independent Namibia having been the subject of government-incited harassment and ridicule. Public criticism of homosexuality by senior government officials first emerged as statements of support for Robert Mugabe (the Zimbabwean President) after his outspoken criticism of homosexuality in 1997. Since then, the Namibian government has become increasingly virulent in its condemnation of homosexuals, with two senior figures, the President and the Minister of Home Affairs, being the most outspoken. The President appears to be deeply opposed to homosexuality, claiming that it is 'against God's will' as 'it is the devil at work'.³⁰ At a public gathering in Okahau in the Omusati region in April 2001 he exhorted regional governors, councillors and traditional leaders to ensure that 'gays, lesbians and criminals' in their

communities are chased from their villages and regions. He explained to the crowd: 'we in SWAPO have not fought for an independent Namibia that gives rights to *botsotsos* [criminals], gays and lesbians'.³¹ This view was further reiterated at the 2002 Earth Summit in Johannesburg, where in a BBC interview, the President explained that:

*'when you talk about human rights you include also homosexuality and lesbianism, it's not our culture we Africans. And if you try to impose your culture on us Africans, we condemn it, we reject it!'*³²

While the President was chastised by numerous local and international rights organizations for these comments, the response of diplomats was conspicuously muted. This is doubtless because the government's approach to homosexuality is not inconsistent with that of many other governments in Africa, where homosexuality is illegal for men in 29 countries and for women in 20 countries. Having said this, it is important to note that anecdotal evidence suggests that many of Namibia's homosexuals have left Namibia for more tolerant climes.

The outspokenly prejudicial attitude of senior government members concerning the gay and lesbian community is symptomatic of an underlying conservatism among the SWAPO government, and its increasing intolerance of some aspects of liberal democratic principals to which it is constitutionally bound. To some degree, the vilification of homosexuality is a sideways swipe at proponents of a liberal society. The government's anti-homosexual rhetoric taps directly into the predominantly homophobic attitude of the Namibian public, and the government uses this as a means to question the legitimacy and appropriateness of liberal, rights-based ideologies. An important aspect to government criticism of homosexuality is its association in Namibian popular culture with foreigners, and Europeans in particular.

Minority rights issues

The Basters

The Baster population of Namibia is c. 40,000 people. They are a group of mixed racial heritage who nevertheless maintain a strong, clearly delineated and exclusive political identity. The Basters migrated into Namibia in the late nineteenth century and settled in the Khomas Mountains south of Windhoek in the Rehoboth area. Having captured land from the Namas, they declared a republic in 1872 and drafted a Constitution that vested power in an elected male chief. Throughout the colonial period the Basters maintained a significant degree of political autonomy, in agreement with the German and later the South African regimes.

Given their relatively privileged status under South African rule, the Basters were deeply concerned about their future in an independent Namibia. These concerns became apparent before the first independent elections in 1989, when the Baster Kaptein, Hans Diergaardt, pulled out of the Constitutional Assembly in protest, after it rejected the possibility of a federal Namibia divided into quasi-autonomous ethnic sub-states. He subsequently occupied government buildings in Rehoboth in defiance of a court order and declared Rehoboth independent. The new government adopted a cautious, yet firm approach to the Basters' attempt to secede. The Prime Minister asserted the unconstitutionality of the Basters' claim and the President sought to reassure Basters that they were an integral part of the new Namibian state. The Basters, however, were not uniformly in favour of secession. Diergaardt drew his support almost exclusively from older generations, who were less willing than younger ones to embrace the post-*apartheid* state.

With the government proving intractable on the issue, Diergaardt ended his occupation of the Rehoboth government offices in September 1990. Nevertheless, his desires for greater Baster autonomy remained. Popular support for greater Baster independence was reinforced by the land and delimitation policies adopted by the new government. Specifically, the Basters objected to the vesting of all communal lands – including the Rehoboth area – to the state, and the apparently arbitrary division of the former Rehoboth area into two different regions.

In 1996 Diergaardt took his concerns to the UN Working Group on Indigenous Populations and the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The Basters submitted a

lengthy document entitled *On the Discrimination of the Rehoboth Basters* to the UN.³³ Their submission received little attention and did little to further their cause. Consequently, the Basters attempted to secure greater autonomy via the Namibian courts. In June 1995, they petitioned the High Court to force the government to 'return their traditional lands'. The High Court found in favour of the government, a ruling that was subsequently confirmed in the Supreme Court. By 1997, with the Basters increasingly troubled by rising legal costs, an elderly and ailing Diergaardt decided to drop his community's land dispute with the government, declaring that he had reconciled with the SWAPO government.

The death of Diergaardt in 1998 temporarily halted the Baster secessionist movement, for which popular support appeared to be dwindling. Indeed, after Diergaardt's death, the Basters were not uniformly convinced of the need to elect a successor. Some argued that the election of a new leader was unnecessary since local matters could be dealt with through regional and local councils. Nevertheless, in January 1999, the Basters elected a new chief, John McNab, with only 25 per cent of those eligible choosing to vote. The low voter turn-out reflected the increasing indifference within the Baster community on the autonomy issue.

Without dismissing the land claim altogether, McNab adopted a conciliatory approach to the government. After a meeting with the President and senior ministers in December 2001, McNab asserted his desire to clear the 'negative atmosphere' that had developed between the government and the Baster community. He reiterated the need for the Baster community to participate in the broader state and urged the President to help solve the ongoing water crisis in Rehoboth, and to reconsider the alienation of Baster ancestral lands.

The changing sentiments of the Baster community were well demonstrated in the 2001 local council elections in which SWAPO secured just under half of all the votes cast in Rehoboth.

While there is little question of the sincerity of Baster concerns, the Basters have not suffered unduly at the hands of the Namibian state. However, Baster sensitivities reflect the continuing racial anxieties in Namibia. This sentiment was well captured by the Baster leader Diergaardt in an interview with a Norwegian researcher before his death.³⁴ He explained:

'It is ironic that when the Boers were here they told us we are too black, and when the blacks come they tell us that we are too white.'

Also, the government's robust response to the Basters' secessionist ambitions gave a clear indication of the approach that it would take to any similar attempts. Further, it served to alert the broader population to the government's uncompromising attitude to minority interests when they were perceived to clash with the national interest.

The Himba

The dry and mountainous north-west Kunene region is home to Namibia's Himba and Tjimba peoples.³⁵ The Himba stand out among Namibia's peoples for their continued adherence to traditional modes of dress and adornment, and the continued value they place on maintaining aspects of their traditional semi-nomadic pastoralist lifestyle.

The Himba migrated into north-west Namibia and south-west Angola along the Kunene River in the sixteenth and seventeenth centuries, and have settled there. Their adherence to traditional modes of dress represents their strong sense of exclusive identity and cultural continuity. Having noted this, while the Himba consider tradition to be of great importance, they are by no means uniformly opposed to change. Indeed, since independence, many Himba have expressed concerns regarding the slow pace of development in the Kunene region and have complained of government neglect. As much as they are portrayed in tourist brochures as living exemplars of an 'unchanging African rural idyll', and by government agencies as under-developed and 'primitive', the Himba maintain a sophisticated and, by Namibian standards, relatively lucrative and prosperous cattle-centred economy.

The accusations of government neglect may be unfounded, since significant developments have taken place in the Kunene region since independence. Of particular significance has been the improvement in healthcare and education, with Himba children – as an educationally marginalized group – receiving special attention from the MBESC. Moreover, while Himba see themselves as marginalized in terms of some key social development indicators, they maintain control over much of their ancestral lands and are prosperous by Namibian standards in terms of livestock capital.

The Epupa Dam debate

In 1969 Portuguese and South African authorities agreed a plan to dam the Kunene River, with a view to providing southern Angola and northern Namibia with access to a

sustainable source of hydroelectric power. The acceptance of this plan led to the establishment of the Ruacana Hydropower Scheme, the building of the Gove Dam and the Calleeque Reservoir. Following independence, the new government used the original plan as a blueprint for further development on the Kunene River. Angola and Namibia formed a joint technical committee to oversee Kunene development, which in turn commissioned a group of consultants to assess the feasibility of building a hydroelectric power scheme at the scenic Epupa waterfall on the Kunene.

The government presented the plans to dam the Kunene as a vital development intervention for the region. It argued that it would create jobs, provide power and give a much-needed kickstart to the development of northern Namibia. The envisaged dam would cover 250 km² and generate up to 200 megawatts of electricity a year, depending on the rainfall.³⁶ Public reaction to the proposed dam was mixed. While the citizenry of Opuwo (the capital of the Kunene region) supported the dam, a faction of rural Himba represented by Headmen Kapika and Tjavara opposed it – claiming that not only would it deny many Himba access to grazing along the fertile floodplains of the Kunene near Epupa, but that it would also lead to the submersion of ancestral graves. For many Himba this latter point is significant, since graves are thought to embody the continuity of social and territorial relations, and have a crucial ritual value.

Should the dam be built at the Epupa site, then c. 1,000 Himba would be permanently displaced, and as many as 5,000 would lose access to the grazing they depend on for their livestock.³⁷ This would increase pressure on grazing further inland and increase the Himba's susceptibility to drought. The building of the dam would inevitably have an adverse effect on the Himba's traditional pastoral economy. Detractors not only raised concerns about the impact that the dam may have on the Himba, but also of the potential ecological cost – in particular the potential habitat destruction that the dam would cause, and also the large loss of water through evaporation. They highlighted the need to explore alternative energy sources like gas and wind.

Kapika and Tjavara both sought legal advice from the LAC in Windhoek, and undertook to mobilize international support for their cause. With the advocacy work of groups like the International River Network, the Epupa debate achieved some profile in the international media in late 1998 but interest has subsequently died down as the scheme appears to have been put on the back burner. The government responded aggressively to Himba efforts to mobilize popular criticism of the dam. In one instance it was reported that the military broke up a consultation between the Himba and their legal representatives.³⁸

While the government insists that it will go ahead with the project, there are currently no concrete plans to do so in the near future. The plans have been stalled because the Angolan government favours another site for the dam, one with less social and environmental impact. Despite these obstacles, the government recently reasserted its desire to go ahead with the project at a meeting organized by the LAC. Represented by the Deputy Justice Minister, Albert Kawana, the government argued that while the Himba had the right to raise objections to the dam, their under-development constituted a 'serious violation of human rights' and that the dam would ensure more rapid development in the Kunene region. Likewise, at the SWAPO Congress in Windhoek 2002, SWAPO delegates resolved to proceed with the construction of the dam.³⁹

It is important to note that the Himba are by no means united in their opposition to the dam. Many of those Himba who feel that the government has neglected the Kunene region since independence argue that the construction of the dam will bring much-needed jobs, and opportunities for economic advancement. While it may be argued that the construction of the dam will partially violate the rights of the Himba as detailed in the CESC, through limiting their capacity to practise their traditional culture and economy, this is not a clear-cut case since the Himba are by no means unanimous in their opposition to the dam. Those in favour of the dam, for example, might argue with equal justification that not going ahead with the dam would violate their right to economic development.

The negative reaction of many Himba to the Epupa proposals is partly due to the SWAPO government's failure to adequately consult them concerning the planned hydroelectric scheme. The effective exclusion of the Himba from the planning process was made abundantly clear when the 2002 SWAPO Congress resolved unilaterally to go ahead with the dam. Of greater concern from a minority rights perspective than the actual construction of the dam, is the government's determination to press on with the scheme in the face of mounting opposition, and to brand such opposition as 'unpatriotic'. The government's antipathy towards Himba leaders opposed to the dam and their various supporters is symptomatic of a more totalitarian approach to issues of national governance. Certainly if, as the government asserts, the development needs of the Himba community are a priority, then more attention needs to be paid to ensuring that the Himba are empowered through being able to participate in important decision-making processes.

The San

The status of Namibia's 31,000-strong San ('Bushman') population has emerged as the most clear-cut minority

rights issue within the fledgling republic.⁴⁰ While the SWAPO government made a clear commitment to address the plight of the San soon after taking power, they have generally proved unable or unwilling to implement the kinds of policies and programmes necessary to break the cycle of poverty, social discrimination and marginalization in which the majority of San are trapped. The status of the San has arguably deteriorated in the 12 years since Namibian independence.⁴¹ The government's failure to deal with the apparent intractability of the San's marginalization has been compounded by its refusal to formally recognize the existence of San traditional communities outside of the former 'Bushmanland'; its treatment of the highly marginalized Khwe San community in western Caprivi and its failure to prioritize the San in the land redistribution process.

Despite the fact that they are now widely used, the labels 'San' and 'Bushman' are etymologically pejorative and do not refer to a single self-identifying linguistic or cultural community. The San are comprised of a number of linguistically, culturally and economically diverse communities with distinct histories and cultural practices. Within Namibia alone, the San population hails from three major language groups (Khoe, !Kung and !Xo) that are in turn sub-divided into several self-identifying communities, including the Hai//om, the Ju/'hoansi, the !Kung, the Naro and the !Xoo. What collectively distinguishes the San from others is their historical reliance on hunting and gathering as their primary mode of subsistence; their shared history of marginalization at the hands of both Bantu and white settlers in Namibia; and their continuing marginalized status.

The extent of San marginalization in Namibia is most dramatically illustrated by reference to the UNDP's Human Development and Human Poverty Indices (see Figures 1 and 2). Their HPI is close to three times that of the national HPI and their HDI is roughly one-third that of the national HDI. In addition, the San stand out for their low levels of educational attainment, extreme social problems and weak representation in government. As highlighted in a recent LAC report,⁴² a number of clear problems confront Namibia's San population:

- Despite almost universal dependence on the agricultural sector, only around one-fifth of Namibian San have *de jure* rights to land. Large numbers of San are consequently highly mobile and have no home, lack security of tenure and are economically dependent. Most San are also extremely vulnerable regarding food security, with as many as two-thirds dependent on free food aid.
- Very few San have adequate access to schooling. Despite the efforts of the MBESC in particular, atten-

dance levels are less than half of the national mean, while fewer than one in five San are literate. Only a small proportion of San have attended school and a negligible number have completed formal education.

- Income among the San per head is the lowest in the country. Most San lack access to any independent means of subsistence, and most have no direct cash income.
- San life expectancy is some 22 per cent lower than the national average, indicating poor nutrition and health-care. In addition, a variety of serious social problems have arisen in San communities, including: alcohol abuse, crime, depression, and high levels of domestic violence.
- Many San feel alienated in the 'new Namibia'. As a group they remain under-represented in government structures. Although they have some representation in the Council of Traditional Leaders and the National Assembly, San have no effective representation in local and regional elected bodies.
- Few San outside of the NGO sector feel that they have any real say in their future or in the direction their development should take. In almost all government-run projects, a highly paternalistic top-down approach has been pursued. As a result, these projects have had a poor success rate and have failed to empower project beneficiaries.
- The dominant perceptions of the San are mostly negative. The San complain that they are discriminated against on a daily basis.

Historical context

The contemporary marginalized status of Namibia's San community is largely a function of their unique treatment during the colonial era, and their vilification and subordination by many of their neighbours – who regarded them as an inferior order of humankind. Colonial administrators did not consider the appropriation of San territories to be an act of disenfranchisement. Because they understood the San to be 'nomads', they argued that the San could not 'own' land. Indeed, it was widely believed that, like wild game, the San constituted part of the landscape to be colonized. As such, farmers allocated farms in areas where the San lived, rarely tried to drive them away but enticed, and in some instances, forced them into becoming their long-term workforce.

Up until the 1960s, debate at the government level on the issue of land for any of the Namibian San groups concerned 'nature conservation'. If the San were to be granted land, it was not due to any consideration of their right to have land, but whether they, along with other elements of their 'habitat', might be preserved from 'extinction' for the purposes of scientific study. If there were, after all,

special reserves for elephants and lions, it was reasoned, then why not for the San?⁴³ Significantly though, close to 1,000 Hai//om San who had been considered part of Etosha game reserve were expelled from their ancestral territories on the recommendations of the 1953 Bushman Commission, because they no longer lived in a 'traditional manner'.

The process of land dispossession accelerated during the late 1960s and 1970s, and the few remaining areas in Namibia where the San retained a substantial degree of autonomy were brought directly under the administration's authority. Apart from Bushmanland (which was home to fewer than 1,000 Ju/'hoansi at the time of its formation), all other areas in which significant San populations lived were gazetted as 'communal land' under the control of other traditional authorities, commercial farmland for white farmers or conservation areas administered through the Department of Wildlife. It also signified an end to their economic and political autonomy. By 1971, 66 per cent of Namibia's San population lived within white commercial farming areas and 31 per cent in native reserves under the control of Herero, Kavango and Owambo traditional authorities. Only the remaining 2 per cent of Namibia's San population retained partial *de jure* control over their traditional territories.⁴⁴

With the dispossession of their lands, the San were forced to become dependent on their various neighbours. On the white farms, the extent of San dependency meant that farmers could afford to pay them less and treat them worse than other farm labourers. Similarly, in the communal areas, the San, dispossessed of their lands and livelihoods, came to constitute an often-scorned underclass of cheap labour. Their economic marginalization was underwritten by their social stigmatization. Most residents of the communal areas saw the impoverished and marginal status of the San as a function not of their treatment by others but of their innate inferiority to others.

Land and resettlement

The extent of San alienation from land during the colonial era and its consequences were clear to the new administration. Thus at the National Land Conference, convened in 1991 with a view to designing a framework for land reform in Namibia, it was resolved that:

*'Ever increasing land pressures in the communal areas pose a threat to the subsistence resources of especially disadvantaged communities and groups. Conference resolves that disadvantaged groups, in particular the San and the disabled should receive special protection of their land rights.'*⁴⁵

Soon after independence the need to address the San's

status in commercial farming areas became increasingly urgent. In anticipation of a cut in subsidies and new legislation dealing with labour and social security issues, farmers started laying off excess staff. Large numbers of San and their dependents were dismissed from their workplaces – they literally had no place to go. This problem was particularly apparent in the farming areas with the largest San populations like the Omaheke and Oshikoto regions, where San squatters gathered disconsolately on the peripheries of major towns and villages.

As a result, the San were foremost on the list of the intended beneficiaries of the resettlement lands purchased under the Agricultural Land Reform Act (1995). This Act empowered the government to purchase commercial farmland to resettle the most marginalized of Namibia's landless rural poor. According to the Act, land purchased by the government would subsequently be granted in leasehold to those resettled on it. The land could be used for collateral for small business loans, in addition to providing settlers with a secure space in which to engage in subsistence-related farming. By 1999, the government had purchased 51 farms for resettlement, covering 305,556 ha.⁴⁶

Despite the prioritization of the San in the National Land Policy and the Agricultural Land Reform Act, by 2000, of the 51 farms purchased for resettlement purposes only one farm, Skoonheid, was home to more than 100 San.⁴⁷ Moreover, on this farm, San settlers were not granted the leasehold rights they were entitled to under the Act, with the result that the farm was occupied by a large contingent of Herero whom the government has proved unwilling to relocate. Consequently, the number of landless San squatters living on the outskirts of towns and in communal areas has continued to swell. Farm employment levels are now down to 1950s levels – despite a threefold increase in the rural population.

The government has also neglected the San in its deliberations on the future of communal areas in Namibia. This not only reflects some of the inherent weaknesses in the land reallocation process, but also suggests that the government views the San's needs as of secondary importance. The consequences of this for the San are considerable. Without secure access to land, they will remain highly mobile and economically insecure, eking out a living in the margins of others' economies. This will not only ensure their continued dependency and economic vulnerability, but will also continue to deny them effective access to development services.

A further cause for concern has been the government's expressed intention to relocate refugees from the overcrowded Osire refugee camp near Grootfontein to a proposed new camp, near Mkata in eastern Otjozondjupa (former Bushmanland). The impact of relocating up to 20,000 refugees into an area in which 4,000 of Namibia's

poorest and most vulnerable people live could be disastrous. Not only would it dramatically alter the local social economy but it would also have a considerable impact on the local community's efforts to establish an integrated natural resources management, tourism and development programme. While the recent termination of hostilities in Angola and the likely drop in the need for additional facilities for refugees may put an end to the need to relocate the refugees to Mkata, the government's actions in this regard are a cause for concern, and reinforce the peripheral status of the San in the Namibia.

Traditional authorities and representation

As previously discussed, the San remain poorly represented in Namibia's various government structures. At present, there is only one San in the National Assembly; none have as yet sat on regional or local councils, and none occupy senior or management positions in the civil service. This lack of representation is a cause of some of the San's numerous problems, because they have been unable to voice their concerns and interests. Few San have a full appreciation or understanding of their rights under a democratic system or of how to exercise them. As a result, many San are apathetic about mainstream politics, in which they generally feel that they have little or no real stake, and even less influence.

Therefore, the San and their community organizations have worked hard to ensure the San's recognition as traditional communities. As discussed earlier, the President has declined to recognize four of the San's traditional authorities. The grounds for rejecting the claims of these other applicants are unclear. As far as the rejected San traditional authorities are concerned, the government's refusal to recognize them simply represents a contemporary manifestation of the prejudicial treatment that they have received throughout the last century.⁴⁸ It could also be indicative of the government's unwillingness to acknowledge the scope and scale of the San's problems.

Social discrimination

The low status of the San is further compounded by the fact that they are considered to be social inferiors by the majority of Namibians. Since independence, the San have complained with increasing voracity of social discrimination. The extent of this problem is well demonstrated in western Caprivi, home to one of Namibia's largest San groups, the Khwe.

The Khwe population in western Caprivi have had a particularly difficult time since independence. Currently, close to half of the Khwe population of western Caprivi are in Dukwe refugee camp in Botswana, having fled there following the extension of the Angolan War into Namibian territory in December 1999. Those remaining

in Namibia allege that, since 1997, they have been the targets of a sustained campaign of intimidation and harassment by Namibian police and military units based in western Caprivi.⁴⁹

The fractious relationship between the Khwe and the SWAPO government became increasingly apparent during the mid-1990s when the government embarked on plans to build and expand on a prison farm adjacent to the Khwe community campsite situated along the banks of the Kavango River. Since independence, the Khwe have participated in a community-based natural resources management programme in western Caprivi assisted by a Namibian NGO, Integrated Rural Development and Nature Conservation (IRDNC) and funded by the United States Agency for International Development (USAID) and the World Wide Fund for Nature (WWF). The programme was intended to devolve the responsibilities and benefits of wildlife management in western Caprivi to the Khwe community.

Although the Khwe of western Caprivi are the most established of all the San traditional authorities, theirs has not been recognized by the government. Instead the government has supported claims by the Mbukushu Chief, Erwin Mbambo, that the Khwe are his subjects and hence that the territory of the western Caprivi should fall under Mbukushu control. That the Mbukushu considered the western Caprivi to be theirs became apparent soon after independence when large numbers of Mbukushu settled there without first securing the permission of the then Khwe Chief, Kipi George (who died in December 2000). The government's support to the Mbukushu's claims to sovereignty over western Caprivi was emphasized when it negotiated and agreed government proposals to build and later to extend the prison farm in the heart of Khwe territory with the Mbukushu traditional authority. Only after a protracted legal process, with the Khwe challenging the government in court, did this process end, with the government agreeing to establish a commission of inquiry to assess the status of western Caprivi.

The commission of inquiry was never convened, however, and the government continues to publicly assert the legitimacy of Mbukushu claims to be the *bona fide* traditional authority of the Khwe, in defiance of several Articles of the TAA.

The Caprivi coup

Midway through 1998, Khwe community representatives reported that they had been harassed, intimidated and interrogated by government forces seeking out a 'secret military training camp' in western Caprivi. In November of that year, the Botswana authorities reported at first a trickle and then a stream of Namibian refugees coming across its Caprivi border. By January 1999 it was estimat-

ed that more than 2,000 Namibians had crossed into Botswana, where they were picked up by the Botswana Defence Force and billeted at Dukwe refugee camp north of Francistown.⁵⁰ It later emerged that among the refugees that crossed into Botswana were Khwe Chief Kippie George and as many as 650 Khwe from the villages Omega III and Chetto. It was clear that those Khwe who chose to flee did so spontaneously, leaving behind not only their livestock, but also essential items such as blankets, clothes, cooking pots and knives. The Khwe that fled alleged that they did so in response to threats to their safety made by military personnel.⁵¹

After the abortive secession attempt in August 1999 (see later), it became apparent that the Khwe were not actively involved in any sinister plots to break up the nation. As a result, the government allowed them to return to western Caprivi, a process that was underway in mid-1999, by which time Khwe fears of government harassment had been assuaged by the UNHCR.

The Angolan War

Immediately following the 1999 elections, the Namibian government granted the Angolan army (FAA) permission to attack UNITA positions in southern and eastern Angola from Namibian soil. To this end Angolan troops were deployed in western Caprivi from December 1999 to August 2000. In response, UNITA forces carried out numerous attacks in Namibia – reportedly to secure food and other essential resources after having had their supply lines cut off.⁵²

Following the deployment of FAA troops in western Caprivi, the UNHCR again reported large numbers of mainly Khwe-speaking refugees from western Caprivi arriving in Botswana. The UNHCR reports that between 31 December 1999 and mid-March 2000, around 1,400 refugees crossed into Botswana, most of them Khwe. A large proportion of these refugees were Khwe that had recently returned to Namibia from Dukwe.

Khwe allege that, following the resumption of military operations in western Caprivi in December 1999:

- there were repeated, active and forceful attempts to recruit Khwe men into the FAA as mercenaries;
- there were repeated raids by UNITA, especially in and around Mutciku/Bagani;
- several Khwe were killed by UNITA forces and landmines;
- there were numerous incidents of harassment by and conflict with the FAA before they returned to Angola in August 2000;
- landmines have been laid in Mutciku and blocks Charlie and Delta are now uninhabitable; and

- Namibian security personnel embarked on a sustained campaign of harassment and intimidation of Khwe community leaders.⁵³

The seriousness of these issues was first brought to light in December 2000 after Khwe community leaders held an emergency meeting to highlight what they considered to be an 'untenable situation' and to seek an end to what they referred to as 'persecution and harassment' by Namibian security services. This meeting was called in response to the detention and subsequent 'disappearance' of 15 community members, and the arrest of three community leaders on charges of high treason.⁵⁴

Prominent among those alleging harassment were IRDNC project participants and San community leaders. According to a report of the meeting released by IRDNC:

*'virtually every man who had a salaried job, was a [IRDNC] project committee member, or drove a car had been detained, or was being repeatedly arrested and harassed.'*⁵⁵

The report also notes that the Khwe 'are living in fear of the Namibian Security Forces, the Angolan FAA and UNITA', and in their despondency, 'people just sit at home waiting to die'. It also notes that community members feel that they are being 'persecuted' both because of their former association with the South African Defence Force⁵⁶ and because of their ethnicity.

Subsequent to the release of the IRDNC report, rumours emerged that the 15 Khwe men that were detained by the Namibian Defence Force in August 2000 for alleged complicity with UNITA had been executed by their captors.⁵⁷ The Khwe demanded that these rumours be investigated and, with help from the LAC, launched a legal inquiry into the matter. After persistently denying that they had taken the 15 captive, the police and army finally acknowledged detaining the men but claimed that the 15 detainees had escaped within a day of their arrest, after their guard had left to seek medical assistance for malaria. Due to a lack of hard evidence supporting the Khwe case, the court found in favour of the police and army. Despite the court's findings, many Khwe and some other observers remain convinced that the 15 were executed.

Options for the future

Beyond conferring valuable political rights and the chance to participate in a functioning democracy, independence has brought few immediate benefits to the San, the majority of whom still battle with the continuing legacy of *apartheid*. More than a decade after independence, the San stand out because of the extent of their dependency, extreme poverty, political alienation and a variety of

social, educational and health problems. Of course these problems are not unique to the San, however, what makes the San conspicuous among Namibia's poor is the fact that while only a proportion of the members of each of the other language groups are extremely poor, the San are almost universally extremely poor.

With such a marked gap between the San and other Namibians, there are strong practical and ethical grounds for addressing their status as a matter of some urgency. Although poverty is the most conspicuous facet of the 'San issue' in Namibia, it is clearly also about access to land and natural resources, historical marginalization, social prejudice, social identity, the trauma of radical cultural change, and more elliptically, political rights. To focus on poverty alleviation without simultaneously addressing these related matters would be of limited long-term benefit.

White Namibians

While white Namibians constitute a demographic minority⁵⁸ their status is not comparable to that of other minority groups since they control the lion's share of the economy and own vast swathes of land. While they are politically vulnerable they are by no means economically marginal, and arguably influence politics in their favour through their effective control of some key economic institutions.

Unlike Zimbabwe, where universal suffrage resulted in the exodus of a large proportion of its white population, the majority of Namibia's white population opted to remain in the new republic after independence, despite their misgivings about 'black rule'. The willingness of white people to remain in Namibia reflected the extent to which they were bound into the Namibian economy and their confidence in the new dispensation. Indeed, today, white people continue to dominate Namibia's commercial sector. That they chose to remain in Namibia was also a function of the reassurances that SWAPO gave them concerning their future role in Namibia, and the decision to grant amnesty for all actions committed in the name of the independence struggle.

Afrikaans speakers, as a result of South African immigration after the First World War, comprise the bulk of Namibia's white population. Their influence in Namibia has been immense and is illustrated not least by the fact that Afrikaans remains the country's *de facto lingua franca*, particularly in southern and central regions. Despite almost 50 per cent of the pre-First World War German-speaking population being repatriated to Germany following the Kaiser Wilhelm II's defeat, they remain an influential community in Namibia.

The past five years have seen the relative marginalization of white people within party political structures. This is a reflection of the poor performance of opposition parties, in particular the DTA; and of the declining role of white people in SWAPO, such that after the 1999 elections no white people were high enough on the SWAPO party lists to gain a seat in the National Assembly. Moreover, the targeting of white people in Zimbabwe by SWAPO's ally, the Zimbabwe African National Union Patriotic Front (ZANU-PF), has contributed to white Namibians' anxieties; they fear that they may experience a similar fate, particularly if the government fails to address the land issue. These anxieties were sharpened by a series of contradictory statements about white people uttered by senior government officials. For example, in March 2001, President Nujoma took a swipe at white farmers for their 'imperialist actions', yet in April 2001 he argued that white people should be recognized as 'Africans'.⁵⁹

The continued economic dominance of white people in Namibia is something of a double-edged sword. While it serves to maintain their place in an independent Namibia, it is also a cause for others' resentment. The fact that independence did not bring about the collapse of the informal structures of economic *apartheid*, or dispose of the vast gap in wealth between the majority of black and white people, has led to deep sensitivities about white people's continuing economic prosperity and the dominance that this affords them. This is particularly the case in the workplace, where white people tend to dominate in managerial positions that grant them effective power over, usually black, menial workers. These problems are further exacerbated by a proportion of the white population maintaining a racist outlook. A consequence of this is that all white people are sometimes judged to be racist. Additionally, the continued economic power of white people has fostered the not unrealistic perception that the policy of national reconciliation adopted by SWAPO has benefited white people more than black people. This is a potentially explosive issue when placed in a regional context. The recent seizing of white-owned land and businesses in Zimbabwe is justified by SWAPO's ZANU-PF ally on the grounds that the economic dominance of white people in that country constitutes a continuation of 'British colonial domination'. The emergence of a Zimbabwe-like scenario in Namibia, while unlikely, is by no means impossible should the government fail to address the land situation expeditiously and constructively.

Caprivi and the secession crisis

On the morning of 2 August 1999, residents of Katima Mulilo in Namibia's Eastern Caprivi awoke to the sounds of gunfire. During the night around 100 people assaulted

government buildings in Katima and the nearby military base at Mpacha airport. While the attacks caught the Namibian security forces napping, the poorly trained and armed insurrectionists soon had to retreat as government forces rapidly gained the upper hand. Within 24 hours, the Namibian police and army were in almost complete control. A state of emergency was declared, a curfew imposed and citizens were confined to their homes. Under emergency powers, Namibian security forces set about rounding up suspected collaborators. It emerged that the Caprivi Liberation Front, an organization determined to secure Caprivi's secession from Namibia, was responsible for the assaults. Over the next few months, Namibian security forces arrested and charged over 100 suspected collaborators, including former opposition parliamentarian Geoffrey Mwilima. The crackdown on the self-proclaimed secessionists was unremitting. Many of those taken captive by the government complained of beatings and torture, and that their ethnicity was constantly referred to during these interrogations.⁶⁰

Although the attempted military takeover of Eastern Caprivi by secessionist guerrillas caught the government unawares, it did not come as a surprise. Intelligence sources had warned of a potential uprising the previous year following the flight of the Mafwe Chief, Boniface Mamili (a prominent Lozi chief); the former leader of the DTA, Mishake Muyongo; the governor of Caprivi, John Mabuko; and 108 armed followers to Botswana in October 1998.

The Caprivi uprising of August 1999 was not a spontaneous expression of discontent. Rather it represented a dramatic turn in an ongoing political dispute whose roots stretch back to the nineteenth century.

Historical context

The Caprivi Strip of land extends awkwardly from the north-east corner of the main Namibian landmass. It was appended to the colony as a result of agreements forged by colonial powers at the Berlin Conference in 1890. Originally part of the Bechuanaland Protectorate, Caprivi was granted to the Germans in part exchange for the Zanzibar Spice Islands. The physical remoteness of eastern Caprivi from administrative centres in Namibia is mirrored by perceptions of ethnic remoteness articulated by its predominantly SiLozi-speaking population.

Eastern Caprivi forms part of what was once the Kingdom of Barotseland that extended through Botswana, Namibia, Zambia and Zimbabwe. Caprivi's SiLozi-speaking population maintains strong ties with the larger Lozi population, most of whom live in south-east Zambia. Caprivi owes its name not to any indigenous label but to Bismarck's successor, the German Chancellor, Leo van Caprivi.

Namibia's SiLozi-speaking population is comprised of several distinct traditional communities. Included among these are the Mafwe, the Masubiya and the Matotela. The Mafwe and Masubiya are the two most influential groups in Caprivi, and despite having both been part of the larger Lozi Kingdom, they have maintained an often antagonistic relationship with one another. Although the Masubiya comprise around 40 per cent of the Caprivi population, smaller groupings like the Bayei and the Matotela have traditionally offered their fealty to the Mafwe. Friction between the Masubiya and the Mafwe has been most acute on issues of tribal status and, correspondingly, in recent decades, political affiliation. Prior to independence, Masubiya and Mafwe were at loggerheads with one another over the jurisdictions of their respective chieftaincies. In the build up to and the period following independence, tensions between Mafwe and Masubiya were increasingly played out in the party political arena. The Mafwe and those they had influence over offered their political loyalties to the DTA, while the Masubiya opted to support SWAPO.

The now exiled former DTA leader, Mishake Muyongo, emerged as the central figure in Caprivi's struggle to secede from Namibia. Born into the Mafwe royal house, Muyongo grew up to become a staunch opponent of the South African regime. In 1964 he joined the Caprivi African National Union (CANU) to campaign for Caprivian independence. In the same year CANU merged with SWAPO, apparently after forging an agreement with the SWAPO leadership that, once Namibia won its independence from South Africa, Caprivi would be allowed to secede – although the current SWAPO leadership deny that such an agreement was ever made. Muyongo rose rapidly through the SWAPO hierarchy, eventually achieving the rank of Deputy President prior to deserting SWAPO in 1980. According to SWAPO, he was expelled because of his secessionist ambitions. CANU sources suggest that Muyongo left SWAPO of his own accord as a result of conflict with its Owambo-dominated leadership. After spending several years exiled in Zambia, Muyongo returned to Namibia in 1985 to join the Turnhalle process and assumed leadership of the DTA.

With independence, Caprivian ambitions to secede did not diminish and neither did the tensions between the Mafwe and the Masubiya. Caprivi was one of the few regions in which the DTA won greater support than SWAPO in both the 1989 and 1994 general elections. While it is difficult to assess the extent of popular support for the secessionist cause in eastern Caprivi, it is clear that many Caprivians felt neglected by the new government, which they accused of ethnic favouritism. Such feelings were particularly acute among the Mafwe who, unlike the

Masubiya, maintained a traditionally antagonistic relationship to SWAPO.

Mafwe discontent was brought to a head in 1996 by the 'defection' of the Bayei, a small yet influential traditional community in Eastern Caprivi. Throughout the colonial period, the Bayei offered their fealty to the Mafwe, but in 1996 the government granted the Bayei traditional authority formal recognition and thus equal status to the Mafwe. The recognition of the Bayei traditional authority led to the Bayei articulating support for SWAPO, hence shifting the balance of power in Eastern Caprivi away from the Mafwe and the DTA. Mafwe leaders were furious with the Bayei, fearing that the delicate political balance would be tipped in favour of SWAPO in Caprivi.

In this fractious political climate the secessionist message fell on fertile Mafwe soil. Tensions in the region continued to grow, and with public support from Lozi separatists in Zambia, regional leaders like Muyongo, the Caprivi's governor John Mabuku and the Mafwe Chief Boniface Mamili asserted their secessionist credentials ever more robustly. In Muyongo's case this led to his expulsion from the DTA by the party's executive committee who wished to have no part in any plans to sub-divide the nation.

Government officials who suspected that rebellion was brewing in Caprivi had their suspicions confirmed in November 1998 when Mabuku, Mamili, Muyongo and several hundred other Caprivians, some bearing arms, crossed into Botswana fearing that their planned insurrection had been compromised by Namibian security services. Government reaction to the news that leaders of the Caprivian Liberation Front had fled to Botswana was harsh. The President called upon the Botswana government to extradite the leaders to Namibia to face Namibian justice. Botswana, however, was bound by its UN commitments to protect refugees and asylum seekers. As a result, Muyongo and his senior associates were not forced to return to Namibia and were later offered asylum in Denmark – providing that they did not engage in political activities. Most of their followers chose to remain in the relatively safe confines of Botswana's Dukwe refugee camp. The government clearly thought that Muyongo's exodus to Botswana was the end of the matter. However, as the events of August 1999 demonstrated, the matter was far from resolved.

Perhaps the most difficult question that emerged in the wake of the Caprivi uprising was the extent to which the secessionists represented the views of most of the population. In the elections that followed two months after the insurrection, SWAPO won a majority in Caprivi for the first time. These election results suggested that, while many Caprivians felt alienated by the government, they

had little sympathy for the secessionists. The government's uncompromising response to the secessionists' concerns must have convinced some Caprivians hitherto sympathetic to the secessionist cause of the futility of armed rebellion, but their numbers are likely to have been small. This is further suggested by the fact that only 5 per cent of voters in Caprivi voted for the DTA. Those wishing to register their discontent with the incumbent government instead chose to support the newly-formed Congress of Democrats party.

That there appears to be little widespread support for the Caprivian secessionists does not dispose of the problems experienced by Caprivians nor the belief that they are marginalized by government. Neither does it diminish the desire of some for an independent Caprivi as illustrated by the 120 Caprivians currently remanded in custody on charges of high treason, who remain unbowed in their political beliefs.⁶¹ Given this, it is recommended that the government seeks to constructively engage with the concerns of disaffected Caprivians.

Conclusion

Taking into account the degree to which Namibia was ethnically, racially, culturally and linguistically fragmented at the time of independence, the SWAPO government has achieved a great deal since taking power. Nevertheless, some serious problems concerning the political and economic status of certain minorities need to be addressed. These problems have become particularly acute as SWAPO's majority has increased in successive elections. The Caprivi crisis, the Basters' one-time secessionist ambitions and the status of the San remain particular concerns.

The status of minorities in Namibia is further compounded by economic problems – in particular the high rate of unemployment and the extent of rural poverty. The latter issue is potentially problematic since it fuels speculation of ethnic favouritism. As much as Namibia has made important concessions to maintain the continuity and integrity of its diverse traditional communities, there remains scope for improvement. Ethnic politics in Namibia tend to reflect economic inequality, and the government's ability to accommodate minority concerns hinges in part on its capacity to manage the Namibian economy.

Given Namibia's fractious history and the current statistical dominance of Owambo speakers, it is clear that special efforts need to be made, not only to ensure that minorities are appropriately catered for in the new Namibian state, but also that minority concerns are taken seriously by the government. While the Owambo are col-

lectively no better off than most other Namibians, as the UNDP data indicates, it is crucial for the government to take action to ensure that minority groups do not feel that they are of secondary importance. Similarly, it is important that such groups do not feel that their individual identity is being eroded at the expense of a notionally Owambo-dominated national identity.

Minorities in a number of areas consider the appointment of people from other regions into positions of local government to be discriminatory. Despite statutory provisions that are designed to ensure the depoliticization of traditional leadership issues, the fact that traditional leaders require government recognition implicitly locks their status into a political framework. The present government's failure to recognize the legitimacy of some traditional authorities, like those of the San outside of former Bushmanland, and their intervention in some traditional authority disputes like that of the Mbukushu, suggest that additional measures need to be developed to ensure that communities have greater autonomy regarding the selection and ratification of their traditional leaders.

Land access remains a serious problem in Namibia and the current distribution of land in both commercial and communal areas is clearly unsustainable. As has been demonstrated in Zimbabwe, land issues can be incendiary among populations largely dependent on underpaid wage labour and subsistence agriculture, and need to be dealt with quickly and equitably.

MRG's recommendations

MRG recommends that:

1. Public participation

The government should ensure that minorities and indigenous peoples are represented in local and national government. The government should consider devising electoral laws to encourage political parties to broaden their appeal to minorities and indigenous peoples, and require or encourage parties to nominate a minimum specified proportion of candidates from such groups.

2. Traditional authorities

An autonomous non-governmental committee should be established and empowered to assess the legitimacy of registration claims by traditional communities. This committee should also ensure that such communities perform in accordance with their statutory roles. The criterion regarding habitation of 'a common communal area' contained in the Traditional Authorities Act should be reconsidered as a matter of urgency, as it discriminates against peoples who were deprived of land under previous regimes. Communities should be free to elect the leaders of traditional authorities without interference from the authorities, and in accordance with international standards for free and fair elections.

3. Land and land rights

The government should implement measures to ensure that marginalized minorities and indigenous peoples are given strong legal rights to land under the acquisition and resettlement process, in accordance with the principle of non-discrimination. Preference should be given to the granting of such rights to land corresponding as closely as possible to the areas traditionally inhabited by those peoples. Where this is not possible, land of equal quality and size should be provided as close as possible to the original area of habitation, with parity as the key organizational principle in this granting of land rights.

4. The role of civil society

NGOs and community-based organizations that respect national laws and international human rights standards must be allowed to function in complete freedom from harassment or criticism by the state. States, international development agencies and other donors should consider supporting these organizations. The government and

NGOs should seek to engage in fruitful dialogue on key minority and indigenous rights issues.

5. Affirmative action

The government should establish a programme of affirmative action for the most marginalized indigenous and minority groups in the country, with particular attention to the San. The groups in question should be actively involved in the design, implementation and evaluation of such programmes, in both executive and operational capacities. These programmes should target, among others, the areas of education – in particular learning *of* and *in* first languages – employment and health. States, international development agencies, local NGOs and other donors should consider supporting such initiatives.

6. Development programmes

The government should ensure that indigenous and minority communities are fully and effectively involved in decision-making processes around the design, implementation and evaluation of development programmes affecting them. Such programmes should not be implemented if the communities affected express their disapproval by means of an independently monitored, fair and fully inclusive consultation process.

7. Awareness-raising measures to combat racism

To counter perceptions of ethnic favouritism, and combat discriminatory attitudes towards certain communities, the government should establish a body, possibly through the office of the Ombudsperson, to investigate and monitor the relative status of ethnic groups in Namibia. This body should start awareness-raising programmes among the general population about the different minority and indigenous communities, particularly regarding their contribution to Namibian society and culture, and promote principles of peaceful coexistence and non-discrimination, particularly at primary and secondary school level. Such a body should be comprised of representatives from both the government and non-governmental sectors.

8. Caprivi

The government should undertake special efforts in Caprivi to assure local populations that their interests and concerns are being taken seriously. It should forge strong local institutions in Caprivi, with the full and effective

participation of all communities in the area, to foster a sense of their local identity while also ensuring that Caprivians feel that they are an important part of the Namibian state.

9. Legislation

The government should institute a thorough review of all legislation and repeal or modify any laws that are directly or indirectly discriminatory on the grounds of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.

10. International human rights instruments

Namibia should take steps to implement all provisions of the main human rights instruments, particularly the International Covenant on Civil and Political Rights, and the Convention for the Elimination of All Forms of Racial Discrimination; it should also implement the recommendations made to it by the Committee on the Elimination of Racial Discrimination at its 49th session, and submit those reports that are overdue to the Treaty bodies. It should also consider ratifying ILO Convention 169 on Indigenous and Tribal Peoples.

Relevant international instruments

United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

Article 4

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

United Nations International Covenant on Civil and Political Rights, 1966

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

United Nations International Convention on the Elimination of all Forms of Racial Discrimination, 1965

Article 2

- 1 (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend,

rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

- (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

United Nations Convention on the Rights of the Child, 1989

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - [...]
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

International Labour Organization Discrimination (Employment and Occupation) Convention, 1958

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Notes

- 1 It is important to note that the liberation movement was broad-based and included members of many of Namibia's diverse communities as was demonstrated at the Hero's Day commemoration in August 2002.
- 2 The gini coefficient is a universal measure of wealth inequality. A coefficient of 0 suggests an ideal wealth distribution whereas a coefficient of 1 suggests absolute inequality.
- 3 Namibia Economic and Policy Research Unit, *A NEPRU Viewpoint*, no.22, October 1999.
- 4 See Schade, K., *Overview of the Employment Situation in Namibia*, paper presented at the 'Round Table on Unemployment', Windhoek, NEPRU, 2000.
- 5 The HPI is calculated from data relating to life expectancy, illiteracy, children's health, access to safe water, access to healthcare and poverty (see UNDP 1998).
- 6 See Dierks, K., *Chronology of Namibian History: From Pre-historical Times to Independent Namibia*, www.klausdierks.com/chronology/index.html
- 7 *Ibid.*
- 8 See Gordon, R. and Sholto-Douglas, S., *The Bushman Myth: The Making of a Namibian Underclass*, Oxford, Westview Press, 2nd edn, 1999.
- 9 *Ibid.*
- 10 The police zone was in effect the area set aside for white settlement. The term 'police zone' was intended to roughly indicate the kind of civil administration within the area. It implied that in areas beyond the police zone civil matters were to be dealt with through traditional means.
- 11 Townships were 'native islands' in white areas, and reserves were strictly 'native areas'.
- 12 There were no women with this authority.
- 13 The Angolan War was between the MPLA, supported by Cuba and the Soviet Union, and UNITA, supported by South Africa and the United States of America. It began immediately after Portugal, the former colonial power pulled out in 1974 and ended in 2001.
- 14 See the Namibian Constitution.
- 15 See Hinz, M. and Malan, J., *Communal Land Administration: Proceedings of the Consultative Conference on Land Administration*, Windhoek, MLLR, 1997.
- 16 It is highly unlikely, however, that Namibia will ratify this. See Suzman, J., 'Human rights and indigenous wrongs: national policy, international resolutions and the status of the San in southern Africa', in J. Kenrick and A. Barnard (eds), *Africa's Indigenous Minorities: First Peoples or Marginalised Minorities*, CAS (University of Edinburgh), 2001.
- 17 See WIMSA *Annual Reports*.
- 18 Pateman, H., *Traditional Authorities in Process*, CASS Traditional Authorities Recognition Assistance Prospect, Windhoek, CASS, 2002, provides details of this process. In the case of the Omaheke Ju/'hoan and !Xoon traditional authorities the President rejected the Council's recommendations outright. In the case of the Hai//om traditional authority they deferred judgment because the Hai//om were unable to present an undisputed traditional authority. In the case of the Khwe of western Caprivi where the Council recommended the establishment of a high level Committee to arbitrate, the President unilaterally declared western Caprivi to be the traditional land of the Mbukushu.
- 19 The accommodation of traditional leaders in the process of land distribution and allocation in communal areas must be understood as a compromise, given that the initial intention was to alienate them from the process, as shown by earlier drafts of the Bill excluding them from the land allocation process.
- 20 Ministry of Basic Education Sport and Culture, *Annual Report*, Windhoek, Government Printer, 1999.
- 21 See Le Roux, W., *Torn Apart: San Children as Change Agents in a Process of Acculturation*, WIMSA and Kuru Development Trust, 1999, for a more detailed assessment of the educational problems encountered by Namibian San.
- 22 The Namibian Constitution guarantees the independence of the judiciary. The appointment of magistrates by the executive (the Minister of Justice) is currently subject to a constitutional challenge in two separate cases in the Supreme Court and the High Court.
- 23 The DTA's lack of success can be seen from its decline in seats in successive elections. Other opposition parties in Namibia include the United Democratic Front (UDF), which grew out of the old Damaraland Administration and the Monitor Action Group (MAG) that represents white, mainly Afrikaans interests. Neither party has much influence. The UDF currently holds two seats in the National Assembly and MAG currently holds one.
- 24 Witnessed by the author while acting as an election observer in 1999.
- 25 See reports on the Namibian Broadcasting Corporation's news and *The Namibian* in August 2002.
- 26 See Hubbard, D., *Gender and Law Reform in Namibia: The First Ten Years*, Windhoek, LAC, 2001.
- 27 For further information on the extent of domestic and sexual violence, see Hubbard, D. and Wise, D., *Domestic Violence: Proposals for Law Reform*, Windhoek, LAC, 1998.
- 28 Katjujanjo, V., Devereux, S. and Van Rooy, G., *The Living and Working Conditions of Farmworkers in Namibia*, Windhoek, LAC, 1996.
- 29 *The Namibian*, no.12, 2000.
- 30 See *The Namibian*, 2 April 2001.
- 31 *Ibid.*
- 32 See *The Namibian*, 10 April, 2001.
- 33 *On the Discrimination of the Rehoboth Basters, An Indigenous People in the Republic of Namibia*, A fact file prepared by Dr Y.J.D. Peeters.
- 34 See Kjaeret, K. and Stokke, K., *Rehoboth Baster, Namibian or Namibian Baster, An Analysis of National Discourses in Rehoboth*, Namibia, 2002.
- 35 There is no data available on the size of the Himba population.
- 36 Corbett, A., 'The Epupa question: its impact on the local Himba and the natural environment', unpublished manuscript, LAC, 1998.
- 37 *Ibid.*
- 38 Author's personal communication.
- 39 See *The Namibian*, 26 August, 2002.
- 40 Information in this section is drawn mainly from Suzman, J., 'An assessment of the San in Southern Africa', *Regional Assessment of the Status of the San in Southern Africa*, vol. 4, Windhoek, LAC, 2001.
- 41 *Ibid* for further details.
- 42 Discussed in *Ibid.*
- 43 Gordon and Sholto-Douglas, *op. cit.*, pp. 161-7.
- 44 Suzman, 'An assessment of the San in Southern Africa', *op. cit.*, 2001.
- 45 Consensus no. 14, National Land Conference, 1991.

- 46 Ministry of Land, Resettlement and Rehabilitation, *Annual Report 2000*, Windhoek, MLRR.
- 47 Suzman, 'An assessment of the San in Southern Africa', *op. cit.*, 2001.
- 48 Pateman, *op. cit.*
- 49 Allegations made to the author.
- 50 UNHCR author's personal communication, see Suzman, 'An assessment of the San in Southern Africa', *op.cit.*
- 51 Author's observations on the ground.
- 52 *Ibid.*
- 53 IRDNC unpublished report, see also Suzman, *ibid.*
- 54 *Ibid.*
- 55 *Integrated Rural Development and Nature Conservation Report on Emergency Meeting in the Western Caprivi*, 10 December 1999.
- 56 Some San were uniformed soldiers.
- 57 Author's information obtained while working at the LAC.
- 58 There are no reliable population figures available.
- 59 See reports in *The Namibian*, 23 April 2002.
- 60 Author's personal communication from the LAC. Some 135 individuals are suing the government for alleged torture during the Caprivi rebellion.
- 61 There were 128 but eight have since died in custody. *The Namibian*, 14 October 2002.

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Minorities in Independent Namibia

Namibia is one of the youngest African states, having gained its independence in 1990 from South Africa. Since then, the South West African People's Organization (SWAPO)-led government has attempted to heal the divisions of a 25-year liberation war, overcome inequalities, and govern to meet the needs of all of Namibia's peoples.

Despite its small population of just over 1.8 million, Namibia is home to at least 11 distinct language groups, comprised of numerous self-identifying communities. Roughly half the population are Owambo-speakers, who are closely linked to SWAPO. Herein lie some of the difficulties that are covered in this report.

Minorities in Independent Namibia by James Suzman considers the extent to which SWAPO's attempts at nation-building have favoured some communities over others. In a balanced study, the author documents the constitutional and legal safeguards for minorities in Namibia, and discusses the government's human rights record. The report covers many of Namibia's ethnic minority communities and topical concerns, including: the crackdown on secessionists in Caprivi, the potential impact on the Himba of a proposed dam on the Kunene River, the extreme marginality of the San, the role of traditional authorities and leaders, and women's equality.