

## Angela Mickley

**Overview:** The author reflects on her years of experience in a country that was shaped by the Apartheid system and is now completing the transformation to a constitutional democracy. Her training has enabled people to deal with conflicts in a constructive way. In addition, it is harder for the ombudsman and their staff to resolve conflicts between citizens and government institutions while overcoming burdens of the past.

**Keywords:** Democratic development, interests, transformation, reconciliation, values.

# Ombudsman mediation in Namibia

## Inheriting Apartheid

"I was a prison guard for 16 years under the old regime, and I want to make amends for this." This is how one of the participants explained his motivation to attend the in-house training "Conflict Resolution within Legal Procedures" that I conducted for the Office of the Ombudsman in Namibia in 2005 and 2006. He wasn't the only one in the team who brought up a traumatic past and the need for reparation in his work: Several participants had worked in the police force, the judicial or penal system, or in the administration during the Apartheid. That way, he highlighted one of the problems that Namibia has been confronted with since its independence in 1990: the division and traumatising of the society, manifold victim-offender constellations of the past, and personal involvement of many citizens of the still young republic.

## Intervention by third parties

When I visited South-West Africa for the first time in 1988, I got to know Namibia before it became independent. After researching and comparing German and South-African ways of coming to terms with the past<sup>1</sup>, and their political impact, I asked representatives of agriculture, the economy, the church, the education sector and politics at the beginning of 2003 how they were dealing with the experiences of suppression and exile that most of the

culturally diverse inhabitants of the new state have brought with them.

Expert training in conflict management allows for the fastest possible application of these new skills. It ensures that they will be used to resolve personal, social and individual conflicts and that they will be disseminated in the wider community.

For the planned project "Crisis prevention through building of skills", the following issue presented itself: What can an outsider, a third party, do to increase the ability of key people to cope with the trauma of decades of cultural, economical and political discrimination? To shape the future of the country and its society, inspiring visions are needed, and a critical number of key people with the necessary skills. The original idea was to help with solving the unsettled situation of the Ovaherero/Nama/Damara in the realm of civil society, as well as the German - Namibian

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1) Methods of coming to terms with the past in society as a whole at the Truth and Reconciliation Commission (TRC) in South Africa and the Gauck Authority in Germany, comparison of the approaches taken and their socio-political impact, development of a concept for the processing of perpetrator-victim situations from national security activities. University of Applied Sciences of Potsdam 2002/3.

relationship following the genocide in 1904 in the former imperial colony.

### Controversial experiences and values

Representatives of various political, cultural and economic institutions of Namibia <sup>2</sup> listed the following areas of conflict:

- Experiences of violence resulting from the fight for independence, Apartheid and colonial era;
- HIV/Aids: increased conflict potential due to the breakdown of social structures;
- Tolerance of violence against women and children in the society;
- Gender relations shaped by dominance;
- Uneven distribution of resources;
- Growing gap between rich and poor;
- Need for education, reconciliation, and compensation where necessary;
- Unequal treatment of tribes and cultures;
- Increased conflicts between ethnic groups, some of them across generations
- Ease of access to small firearms from the time of the independence war.

The evaluation of these results with politicians and colleagues gave rise to the concept of a targeted development of the conflict management skills in Namibia, which I commenced in 2004 with two students and conducted in 2005/06 as part of the in-house training for "Directors and Investigators" of the ombudsman's office.

### Transformation, yes – but by which means?

Like many African countries, Namibia is a society in transformation that is trying to overcome occupation, discrimination and suppression in order to achieve political independence and to build a democratic system with a restructured society and economy.

» This transition is supposed to be achieved by people who have hardly known other structures in their lives.

In the office of the ombudsman, the fundamental problems of this transition appear like under a burning glass. The office was established in 1990 to enable the population to voice complaints, and to mediate between government departments/ public authorities and citizens, and it reports directly to the president.

The ombudsman has four mandates: Practices of the authorities, human rights, corruption and the environment. The constitution of the young Republic of Namibia stipulates the independence of the ombudsman in its Ombudsman Act 1990<sup>3</sup>: "*The Ombudsman is appointed by the President on recommendation of the Judicial Service Commission by proclamation in the government Gazette and reports annually to Parliament.*"<sup>4</sup>

Mission Statement of the Office of the Ombudsman: "*The Office of the Ombudsman of Namibia strives to promote and protect Human Rights, fair and effective administration, combat corrupt practices and protect the environment and natural resources of Namibia through the independent and impartial investigation and resolution of complaints and through raising public awareness.*"

With this focus, the office of the Ombudsman has a far-reaching influence on "Human Security" and the

2) Sources, i.e. conversation partners and/or workshop participants:

**'German' institutions:** AA-Zivik, Namibian Embassy in German, representative of the Federal Department for Economic Cooperation and Development at the German Embassy, staff of the GTZ and DED, former director of the dED and director of the former IRD, advisory panel of the Federal Armed Forces, Friedrich Ebert-, Hans Seidl- and Konrad Adenauer-Foundations, Goethe Centre / NADS

**Educational institutions:** DHPS, DSW, Waldorf School, TUCSIN, Polytechnic of Namibia (Civil Engineering), UNAM (Dept. of Social Work, History, Politics, Law, Economics), International School of Management

**NGOs:** NANGOF, LAC, Paralegal Association, P.E.A.C.E.-Center, CRIS, PACON, FFF, NSHR, Earthlife Namibia, NID, NAU/NLU, LaRRI, NABCOA, NACOBTA, CCN, ELCRN, DELK  
Government: Hon. Speaker of Parliament, Members of Parliament, Traditional Leaders, Ministry of Education, Ministry of Health and Social Services, Labour Commissioner, Office of the Ombudsman

**and:** Professionals from the fields: organisation consultancy and development, local mediation, regional (South African) conflict experts and networks, UNPD

- Regional coordinator, coordinators of the SADC-Region and head office in New York, businesspeople (hunting, agriculture, tourism, health and finance sectors), farmers, employees, officials, students, school students.

3) <http://www.ombudsman.org.na/about-us/ombudsman-act>.

4) <http://www.ombudsman.org.na/about-us/profile>.

5) The term Human Security has been used since the 1994 report on human development of the United Nations Development

sustainable protection of Namibia's livelihood, i.e. its landscape and natural resources. These goals may lie outside of the immediate contingencies of citizens that seek help, but they define a long-term vision of the authority. This perspective was still foreign to many participants of my training course, they primarily talked about the discrimination and suppression that affected large parts of the population during the Apartheid and the struggle for independence. This vision of the future reminded the employees, in a kind of constructive triangulation, that for the wellbeing and security of individuals and groups, the survival of the entire country and its residents must be ensured.

### Independence from the Department of Justice

Even though the independence of the ombudsman is stipulated by the Constitution, the current ombudsman John Wolters complained in his annual report of 2012 about his personal and financial dependence on the Department of Justice which even generated the majority of all complaints itself.

» 384 of a total of 1925 complaints were related to the Department of Justice, which thereby is at the top of the list, followed by the police<sup>6</sup>:

*"The independence of the Ombudsman is guaranteed in The Namibian Constitution. The Ombudsman appreciates the concern of the government about the independence of the Ombudsman, which is compromised by the linkage of the office to the Ministry of Justice. The Ombudsman therefore calls on government to take the necessary administrative and legislative measures to delink the Ombudsman from the Ministry of Justice and to allow the Ombudsman to control and manage his own budget and to appoint his own staff as required by the Paris Principles"*<sup>7</sup>

In 2012, only 53 percent of all complaints could be resolved, while in 2005, the percentage of resolved complaints was 85% according to the annual report. What is the reason for this? The institutions concerned delay the process, as they take up to 3 years to reply. The ombudsman attributes the substantial deterioration of the situation compared to 1990 and 2005 with the uncooperative and disrespectful attitude of the government departments. John Wolters predecessor Bience Gawanas also struggled with the lethargy of the authorities.

She had been in office since 1996, and in February 2003, she pointed out the urgent need for additional skills.<sup>8</sup> "I can sometimes help with legal advice or at least listen, but we also need something else inbetween. We need to improve the relationship between the parties, and between the citizens and their public authority. During the Apartheid, all this was characterised by fear."<sup>9</sup> She considered mediation with its focus on autonomy and its methodical repertoire directed at increasing skills as a sensible supplement. She would have liked to immediately train her 25 directors and investigators in mediation, in order to close that gap, and to reliably achieve satisfaction with her complainants. Bience Gawanas became the director of the Social Commission of the African Union in Addis Abeba in September 2004 as the representative of Namibia. She was re-elected in 2008, and as of late she is again a member of the Namibian government.

She gave typical examples:

» "We are asked frequently for help with cases that involve trauma from the past, arbitrariness of public authorities, lack of experience in the subject matter, and incompetence of officials.

One problem is the dissatisfaction of the former independence fighters who didn't receive a vocational training in the bush war with the South-African military or in prison, and now they can't find work. This is endangering the social peace in the long run." Other problems emerged when high-ranking former fighters were placed in higher hierarchical positions than their better qualified colleagues. They frequently blamed subordinates for their own wrong decisions, or sacked

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Program for civil areas that need protection from war, crises and natural disasters/ epidemics: "Freedom from want and freedom from fear".

6) Annual report 2012.

7) Annual Report 2012, published 02/14 in: <http://www.ombudsman.org.na/reports/annual-reports/finish/3-annual-reports/21-2012-annual-report>.

8) The meeting was not granted until I mentioned my focus on conflict management/mediation, not purely academic peace and conflict research.

9) Verbal notification Feb. 2003.

them, and these then lodged a complaint because they were worried about their economic subsistence and their social standing. There is a third, substantially more comprehensive problem area that the ombudsman can neither address nor work on: the consequences of the cleansing actions of former SWAPO leaders against members accused of treason.<sup>10</sup> The initiative for resolution started by the church in the mid-1990s was discontinued due to political pressure. The last, very different problem area comes, like in many African states, from the parallel existence of, and discrepancy between modern legislation and traditional ways of regulating social conflicts.

### The training and development program

In 2005/06, the workshop under ombudsman John Wolters took place with public prosecutors, solicitors and the directors of the ombudsman's office, lawyers of the Legal Assistance Center and free law enforcement officers supporting residents of remote regions of the country in the protection of their rights.

The contents were: communication, conflict analysis and management, intervention and de-escalation, as well as reflecting on personal conflict experiences and conflict behaviours.

»» **The participants who had been socialised in authoritarian structures found the neutral third party that acted on behalf of all parties unusual, but extremely helpful.**

To be able to effectively apply the new methods, the participants were invited to enact them as aggrieved parties in a roleplay. The intensity of this work in small groups became apparent in the dynamic swapping between languages: They started in English, changed over to Afrikaans when emotions became increasingly involved, and spontaneously used tribal languages in even more intense stages.

### Political discrepancies relived

That the mediators demonstrated empathy with all participants in the roleplays brought out recollections of personal victim-offender experiences from the Apartheid in many participants. As this is a crucial topic for the majority of the citizens of Namibia and impacts on their entire lives, and dealing with it can contribute to a successful transformation process, we developed the following questions together:

- How do authoritarian and democratic systems of government perceive their citizens?
- What does this mean for political everyday life?
- Which concept of people underlies the actions of government representatives?
- In what ways can people who were shaped by repressive regimes and hierarchies create a political transformation?
- From what can they model the concepts and experiences of a democratic society, as described by the constitution?
- Where do you see Namibia today?

We picked up a current crisis that made deeply rooted authoritarian structures visible and showed just how difficult it is to practice democratic thinking against such a background. For the participants, this had a tangible learning effect.

The Namibian worker's union had called a strike. Together with the ombudsman staff, we handled the situation using conflict analysis and negotiation techniques, and visualised the institutions and politicians involved with differentiated actor mapping: Who had which positions, interests, fears and wishes? The result was surprising for many: Union and government employees were on the same side due to their membership in the government party SWAPO, and they were following the instructions of the same officials.<sup>11</sup> The strikes and demonstrations geared towards the media were now seen critically, as a politically orchestrated distraction. A genuine lobby group of the workers would have demanded an improvement to their life situation.

10) Relatives of the victims and survivors of the "cleansing" that was carried out until the independence in 1975 complain about the social degradation of the accused victims, lack of care, and concealment at the annual commemoration of heroes.

11) SWAPO: Government party with approx. 75% majority since the independence. It is formed by a large proportion of the independence fighters. Smaller groups have joined it, partially out of necessity. Many exiled members of the party were educated in the GDR and the Soviet Union. Their experiences in those political systems have shaped their worldview and values to this day, preventing the transformation of colonial structures, and delaying the rectification of acute contingencies such as the education system.

**Encouraging perspectives**

The staff of the ombudsman continued to be confronted with the consequences of authoritarian ways of thinking, behaviour patterns and political structures that hamper many efforts: clarification of complaints, building of trust in the state administration, acknowledgment of trauma. They creatively use the methods learnt, and have reported visible successes: Representatives of authorities suddenly show understanding for aggrieved citizens, and these in turn listen to the structural limitations of the officials. Both sides have become more aware of the different scopes of action, and have discovered additional ways to make decisions. In many cases, suitable adjustments could be found, and legal detours could be avoided. Satisfaction with the work of the ombudsman has increased.

The directors were so excited about this new course of action that we added three training/supervision days with us to the three mediation days.

Meanwhile, the Polytechnic University in Windhoek introduced a new BA course in Criminal Justice with the module Restorative Justice, which covers ADR (alternative dispute resolution) methods for a mediative management of criminally relevant victim-offender relationships. The law students also learn about the method of consensual victim-offender mediation. The "Alternatives to Violence Program" (AVP) has been running in various social settings for several years, with interested people from the social and economic micro and meso levels, as well as the political macro level. At the Namibian High Court, an American lawyer is training mediators, the first 20 were certified in 2014.

»» **The numerous participants of this education in government and non-government institutions are gradually changing the attitudes and social views in their private and professional environments.**

Valuable personal experiences with alternative courses of action, and the experienced respect from and towards different cultural and political opinions progressively accomplishes a perceptible transition from the rigid views shaped by Apartheid and exile to more flexible attitudes towards people and the society.

Many experts and decision makers have experience with consensual methods of conflict management, and increasingly want to directly work on coming to terms with their past. The neighbouring South Africa is cited as an example that does not need to be adopted by Namibia, but whose experiences with the Truth and Reconciliation Commission can be used.



**Contact**

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