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**Negotiating  
'silent reconciliation'**  
The long struggle for  
transitional justice  
in Namibia

ARBEITSPAPIERE DES  
INSTITUTS FÜR  
ETHNOLOGIE  
UND AFRIKASTUDIEN

WORKING PAPERS OF  
THE DEPARTMENT OF  
ANTHROPOLOGY AND  
AFRICAN STUDIES



Herausgegeben von / The Working Papers are edited by:  
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 Forum 6, D-55099 Mainz, Germany.  
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<http://www.ifeas.uni-mainz.de/92.php>

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Zitierhinweis / Please cite as:

Godwin Kornes (2013) Negotiating 'silent reconciliation': The long struggle for transitional justice in Namibia.  
 Arbeitspapiere des Instituts für Ethnologie und Afrikastudien der Johannes Gutenberg-Universität Mainz (Working Papers of  
 the Department of Anthropology and African Studies of the Johannes Gutenberg University Mainz) 141.  
 <URL: <http://www.ifeas.uni-mainz.de/Dateien/AP141.pdf>>.

**Godwin Kornes:** Negotiating 'silent reconciliation': The long struggle for transitional justice in Namibia

### **Abstract / Zusammenfassung**

After more than a century of colonial rule, Namibia became an independent nation-state in 1990, since then ruled by the erstwhile armed liberation movement, SWAPO. During its 23 year-long guerrilla war against South African occupation, SWAPO was rocked by a series of internal crises and violent purges, which – just as the wide range of human rights abuses committed by the apartheid regime – have never been officially investigated. Instead, SWAPO issued blanket amnesty for both sides of the conflict and a Policy of National Reconciliation, which is based on a commitment to closure for the sake of nation-building. However, during the first years of independence state security organs committed new violations which are widely seen as the expression of a 'legacy of political violence' under persistent impunity. In order to enforce accountability for the violations before and after independence, Namibian human rights activists continue to lobby for transitional justice procedures to be installed, culminating in a highly controversial appeal to the International Criminal Court. This paper not only chronicles this long struggle for transitional justice, but also serves to critically engage with SWAPO's practice of 'silent reconciliation', which turns out to be more dynamic and accommodating than usually assumed.

Nach mehr als hundert Jahren Kolonialherrschaft wurde Namibia 1990 unabhängig und wird seitdem von der ehemaligen Befreiungsbewegung SWAPO regiert. Während ihres 23jährigen Guerillakrieges gegen die südafrikanische Besatzungsmacht kam es in den Reihen der SWAPO zu mehreren internen Krisen und ‚Säuberungsaktionen‘. Die dabei begangenen Menschenrechtsvergehen wurden – genau wie die massiven Verbrechen des Apartheidregimes – nie offiziell untersucht. Stattdessen wurde im Zuge der Unabhängigkeit eine Generalamnestie für beide Konfliktparteien ausgehandelt und eine nationale Versöhnungspolitik verkündet, die durch das 'aktive Vergessen' der gewaltsamen Vergangenheit charakterisiert ist. Gleichzeitig kam es jedoch auch nach der Unabhängigkeit zu Menschenrechtsvergehen durch staatliche Sicherheitsorgane, was vielfach als Ausdruck eines 'gewaltsamen Erbes' des Befreiungskrieges gewertet wird. Die Fortdauer der Straflosigkeit wurde und wird von namibischen Menschenrechtsaktivisten mit einer Vielzahl an Maßnahmen bekämpft, die zuletzt in einem kontrovers diskutierten Antrag an den Internationalen Strafgerichtshof gipfelten. Diesen langen Kampf um *transitional justice* in Namibia darzustellen, ist ein Ziel dieses Artikels. Gleichzeitig wird die von der SWAPO angewandte Praxis der 'stillen Versöhnung' untersucht, die sich als weitaus dynamischer herausstellt, als dies in der Forschungsliteratur bislang anerkannt wurde.

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## List of abbreviations

AI	Amnesty International
BWS	Breaking the Wall of Silence
CAT	United Nations Committee Against Torture
CP	Committee of Parents
FFF	Forum for the Future
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTJ	International Centre for Transitional Justice
NCTJ	Namibian Coalition for Transitional Justice
NDF	Namibian Defence Force
NSHR	National Society for Human Rights
PCN	Parents Committee of Namibia
PLAN	People's Liberation Army of Namibia
SWAPO	South West Africa People's Organisation
SWATF	South West African Territorial Force
TRC	Truth and Reconciliation Commission of South Africa
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNITA	União Nacional para a Independência Total de Angola

## Negotiating 'silent reconciliation': The long struggle for transitional justice in Namibia<sup>1</sup>

*“... reconciliation is a long haul and depends not on a commission but on all of us making our contribution. It is a national project after all is said and done.”(Desmond Tutu, TRC Final Report, 1998)*

### Introduction: The ICC submission of the National Society for Human Rights

In November 2006 a Namibian NGO, the National Society for Human Rights (NSHR)<sup>2</sup>, filed a submission to the International Criminal Court (ICC) to investigate human rights violations allegedly perpetrated by the former liberation movement, now ruling party, South West Africa People's Organisation (SWAPO). The incidents in question occurred both during SWAPO's war of liberation against apartheid South Africa (1966-1989) and after independence, in the course of several military operations in the northern and north-eastern regions of Namibia (1994-1996; 1998-2003). The NSHR's submission sparked heated debates on the question of how to come to terms with the atrocities committed both by the apartheid regime and the liberation movement. Much of the controversy was caused by the fact that the NSHR explicitly incriminated several high ranking representatives of SWAPO, due to “their respective command responsibility *vis-à-vis* the serious and well-documented systematic, persistent and widespread perpetration of the crimes of enforced disappearances, torture and other grave breaches of customary international law” (NSHR 2006:2). Those indicted by the NSHR were the former Deputy Commander of the People's Liberation Army of Namibia (PLAN) and Chief of Defence Force until 2006, Solomon Hawala, former Minister of Defence (1998-2005) and current Minister of Works and Transport, Erkki Nghimtina, former commander of First Battalion / NDF (1994-1996), Thomas Shuuya and, most prominently, SWAPO's icon of the liberation struggle, Sam Nujoma. Nujoma, co-founder and long standing President of the party (1960-2007), became Namibia's first President after independence. He served three terms until 2005 and was accorded the official title *Founding Father of the Namibian Nation* by an act of parliament the same year.

While the occurrence of the violations is by and large uncontested and representatives of SWAPO have occasionally signalled repentance and offered individual apologies (Kornes 2010:44; Töttemeyer 2010:122-3), no institutionalised measures of investigation have been implemented by the state. Regarding the pre-independence violations, this has to be seen in

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<sup>1</sup> This article is based on my M.A. thesis (Kornes 2010) for which I conducted four months of field research in Namibia in 2008, supplemented by follow-up research during 2010-2012. I wish to thank the Sulzmann Foundation Mainz, the Scholarship Foundation Rhineland-Palatinate and the German Academic Exchange Service for partly funding my research, as well as Oiva Angula, Pauline Dempers, Samson Ndeikwila and all my interlocutors for their much appreciated cooperation, especially Phil ya Nangoloh for giving me a copy of the original ICC submission; staff at the University of Namibia, the National Archives and the National Library for their immense helpfulness; as well as everyone who commented on various drafts of my thesis and this paper, which has been presented at the 4<sup>th</sup> European Conference of African Studies in Uppsala in 2011. Since my original thesis was published in German, this paper shall serve the purpose to make my research available for an English-speaking audience. At the same time it can be seen as an addendum, introducing new research findings and engaging more profoundly with the discourse on transitional justice in Namibia.

<sup>2</sup> The NSHR changed its name to Namrights in September 2010. For reasons of clarity and coherence I will in the following continue to speak of the NSHR, especially since the ICC submission was filed under that name.

context with the declaration of a Policy of National Reconciliation by SWAPO in 1989 and the subsequent adoption of blanket amnesty in the course of the transitional process. In the words of SWAPO policy-makers, the Policy of National Reconciliation is “the bedrock upon which our constitutional order is built” (Iivula-Ithana 2007), aiming at facilitating “peace and stability in a country that had been divided by apartheid policies for so long”<sup>3</sup>, by means of a collective effort “to close a dark chapter in Namibia’s history” (Geingob 2004:199). This policy of closure, which in academic writing on Namibia is concurrently referred to as “reconciliation by silence” (du Pisani et al. 2010:xi; see also Leys & Saul 1994, 2003; Parlevliet 2000; Hunter 2008, 2010; Höhn 2010), is highly contested, though. At the same time, a ‘legacy of political violence’ (Hunter 2008:20) gave rise to new violations after independence, which reverberates in a highly controversial high treason trial against a group of alleged secessionists that is going on since 2003.

In this paper, I will set the NSHR’s ICC submission into perspective with the long and multifaceted struggle of those affected by SWAPO’s violations to press for transitional justice mechanisms to be instituted and to force the party to account for its past. By taking a closer look at initiatives and interventions of SWAPO’s former detainees and dissidents it will be possible to set the submission in relation to contrasting concepts of transitional justice among ex-detainees themselves. As differing narratives of history exist, so do opinions of how to come to terms with the past. I nevertheless will conclude that, despite all controversies, the ICC submission enjoys wide ranging support among former detainees, dissidents, and human rights activists. Their demands for accountability and / or punitive measures thus constantly collide with the government’s pursuit of silent reconciliation. At the same time, I will show that silent reconciliation in the Namibian context is not a static phenomenon, but open for negotiation and as such shaped by the agency of those contesting it. Against this background, Namibia proves to be a compelling case study to reflect on the contestations and intricacies of truth, reconciliation, and transitional justice – in a country, whose population has endured more than a century of war, colonial oppression, displacement, disappropriation, and genocidal violence<sup>4</sup>.

### Some conceptual considerations on the transitional justice complex<sup>5</sup>

The body of literature on transitional justice has grown considerably since the end of the Cold War, when large-scale political transformations went underway in many parts of the world. In the context of highly diverse and complex transitions, the challenge of how to address violent legacies of civil war, authoritarian rule, genocide, or apartheid led to the emergence of both academic and practice-oriented approaches to transitional justice. Central to the ensuing debates is the question of how differing concepts of truth, justice, and

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<sup>3</sup> Interview with Sackey Shanghala, 30 September 2008. At the time of our interview Shanghala was Special Advisor to the Minister of Justice & Attorney-General.

<sup>4</sup> It makes sense to equally fathom the crimes of the apartheid regime and the genocidal nature of German colonial rule within the framework of silent reconciliation. While this paper focuses on SWAPO’s human rights violations in order to highlight specific challenges for transitional justice in Namibia, the author strongly encourages holistic approaches, both in practice and theory, to engage the dynamics of reconciliation.

<sup>5</sup> In German, the terms *Aufarbeitung der Vergangenheit* and *Vergangenheitsbewältigung* are frequently used in reference to dealing with the past. While near impossible to translate accurately, they certainly differ from the meaning of *transitional justice* and also denote quite varying or even contradicting understandings of coming to terms with history. For a discussion of the various notions see Forsberg (2003:67) and Schmidt et al. (2009:10).

reconciliation can be negotiated and integrated into institutionalised forms of transitional justice in post-conflict situations (Forsberg 2003; Buckley-Zistel 2006; Ross 2008; Kayser-Whande & Schell-Faucon 2008; Schmidt et al. 2009; Straßner 2009; Hayner 2011). These considerations can be conceptualised as the expression of a “normative democratic ethos” (Forsberg 2003:65) that is based on the imperatives of accountability and the fight against impunity. This institutionalisation of transitional justice found its most tangible embodiment with the establishment of the ICC in 2002, underscoring that “the choice of a way of dealing with the past is no longer seen as a matter falling purely within a state’s domestic jurisdiction” (Forsberg 2003:66).<sup>6</sup>

The different social, regional, historical, and political environments in which transitional justice is taking place inevitably challenge the applicability of normative frameworks and the ideal of an international punitive rule of law. A diversification of transitional justice mechanisms has taken place, including judicial and non-judicial approaches, truth and reconciliation commissions, restitution programmes, institutional and economic reforms, trauma work, or neo-traditional formats such as the Rwandan *gacaca* trials (Buckley-Zistel 2006:144). Kayser-Whande & Schell-Faucon critically highlight the prevalence of an “implicit assumption [...] that we have a ‘TJ tool box’ that can be brought to any situation once a peace agreement is signed” (2008:12) among many activists and practitioners. Yet, it is important to realise that transitional justice procedures on the local level are highly contingent, prone to contestation and inevitably incomplete. Cause for conflict can be varying conceptions of truth (Forsberg 2003), reconciliation (Straßner 2009), ‘voice’ and agency (Ross 2003, 2008), or diverging opinions about the involvement of external stakeholders (Kayser-Whande & Schell-Faucon 2008:44). The willingness of compromised elites to participate in transitional justice procedures may be triggered by the granting of amnesty, as to some extent happened in the case of the South African Truth and Reconciliation Commission (Hayner 2011:27-32). At the same time amnesties promote the emergence of policies of ‘silence’ or, to emphasise agency of actors in post-conflict societies, active forgetting<sup>7</sup>. Negotiated settlements based on the provision of amnesty may end wars and effect a considerable amount of social cohesion and stability, while at the same time positioning victims of violence and dissidents in their quest for accountability as outsiders in the new democratic order (Hunter 2008:32-3). This entails the risk of (again) being conceived of as agents of social and political destabilisation by the new regime. At the same time it is essential to also acknowledge that an ‘incoming’ government (e.g. a former armed liberation movement) has legitimate demands to not being subjected to a one-sided criminal prosecution – especially when the ‘outgoing’ regime (e.g. an occupying force) is out of reach of jurisdiction. What transpires is a highly contentious and difficult nexus of varying demands advanced by various actors who are involved in a

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<sup>6</sup> This, one should add, continues to pose challenges to the legitimacy of the ICC especially in the African context, where perceptions of the court as a biased or even ‘racist’ institution are wide spread, see <http://www.newafricanmagazine.com/special-reports/sector-reports/icc-vs-africa/is-the-icc-fit-for-purpose>.

<sup>7</sup> While it has become quite common to speak of ‘amnesias’ in transitional justice theorising, the usage of medical terminology is rather awkward. Even though amnesia can be caused by repressed memory, what obviously explains its allure for transitional justice discourse, it is most often caused by neurobiological dysfunction and/or physical trauma. This makes the concept as an analytical tool for social science quite problematic – apart from the fact, that it is frequently applied to collectives such as nations or societies. Buckley-Zistel’s variation of “chosen amnesia” (2006) seems to emphasise human agency, yet she also uses it “as an analogy to refer to the social, collective inability to remember” (2006:134). For an insightful critique of the use of medical or psychoanalytical terminology in social science, see Kansteiner 2002:185-90.

transitional process, very often oscillating between the demands for amnesty and legal prosecution.

This predicament becomes apparent when one tries to conceptualise reconciliation. Despite its characteristics as a “controversial and rather obscure concept” (Forsberg 2003:73), reconciliation features prominently in discourses on transitional justice. Interestingly, it is the necessity of reconciliation that contesting parties in post-conflict situations often can agree to most easily (contrary to *truth* or *justice*). Kriesberg defines reconciliation as “the process of developing a mutual, conciliatory accommodation between formerly antagonistic groups” (2001:48). While this definition implies that reconciliation is based on some sort of emphatic dialogue, one can also conceive of reconciliation as a minimal consensus of peaceful coexistence (Straßner 2009:26), based on tolerance and / or the absence of open conflict. Reconciliation should thus be conceptualised both as intention and as (open ended) social process; as the ‘long haul’ Desmond Tutu referred to – highly contested, contingent, and a primarily domestic issue. Without delving any further into the normative dimension of transitional justice and its manifold subtleties, the dilemma at hand is obvious. Societies in transition are faced with the difficult task of negotiating a disarray of antagonistic demands – establishing functioning democratic structures, enforcing retribution and lustration, providing truth and accountability, ending impunity, granting amnesty, facilitating social cohesion and reconciliation, achieving economic stability and international recognition. It is in this context that in Namibia civil society activists have engaged the ICC to challenge the government to enforce transitional justice mechanisms. Their intervention illustrates the above mentioned intricacies of the transitional justice complex and its underlying concepts of truth, justice, reconciliation, agency, and international involvement.

## SWAPO’s human rights violations and the Caprivi High Treason Trial

SWAPO was established in 1960 and quickly assumed the position of Namibia’s leading nationalist liberation movement. Its guerrilla war against South African foreign occupation commenced in 1966; first from bases in Tanzania and Zambia, and after Angolan independence in 1975 primarily from southern Angola. The war lasted until April 1989 when a ceasefire agreement came into effect that allowed the implementation of UN Security Council Resolution 435 and the holding of constitutional elections, leading to national independence on 21 March 1990. SWAPO has won all national elections since 1990 with either two-thirds or three-quarter majorities, based largely, but not exclusively on its overwhelming support in central-northern Namibia. Here, where the Oshiwambo-speaking majority of the Namibian population lives and the liberation war and South African oppression had its gravest impact, SWAPO has a traditional support base. With that in mind, and before delineating the history of SWAPO’s human rights abuses, both as liberation movement and as ruling party, a short caveat is in order. In historical retrospect, SWAPO’s offences cannot obscure the magnitude and systematic nature of the crimes that were committed in the name of apartheid in Namibia – or anywhere else in southern Africa. They must be seen in correlation instead, in a way that remediates proportions, not responsibility.

During its 23 year long armed liberation struggle against South Africa, SWAPO and its military wing, PLAN, were rocked by a series of internal crises that took place in exile. While the first purge against perceived dissidents in SWAPO occurred in Tanzania during the

second half of the 1960s (Williams 2009:229-31; Ndeikwila 2010), the first crisis of considerable magnitude was a revolt of PLAN fighters and Youth League members in Zambia in 1976 (Leys & Saul 1994; Dobell 1998:47-54; Nathanael 2002; Hunter 2008:80-92; Williams 2009:73-118; Kornes 2010:27-34; Ndeikwila 2010). The uprising was sparked by intergenerational conflicts and allegations of corruption and military inefficiency against the party leadership, culminating in demands for a party congress that had been overdue for about two years. The revolt was put down by the Zambian military on behalf of SWAPO. In the wake of the uprising, cadres were detained in Mboroma prison camp for about one year in dire conditions, accompanied by ad-hoc military tribunals and summary executions. In his autobiography, Sam Nujoma discards the allegations as outright propaganda: "Much was made of this by our enemies, but the numbers were very small. Fewer than a hundred were involved, and the stories [...] that hundreds and even thousands were being detained were simply lies" (2001:247). Even though the actual number of detentions is still unascertained, it seems to range between 1.000-2.000 people (Leys & Saul 1994:138; Nathanael 2002:142; Hunter 2008:85; Williams 2009:116). The majority of detainees underwent 're-education' and was subsequently reintegrated into PLAN. Of those who remained, about two hundred fighters chose to leave SWAPO and were taken into custody by the UNHCR, while several leadership members were allowed to leave for exile in Europe after international pressure was mounted on SWAPO. Approx. 50-65 cadres, most of them commanders, apparently were executed during the tribunals.<sup>8</sup>

Another, more serious crisis evolved throughout the 1980s: In the unfolding scenario of civil war between the warring factions in post-independence Angola and increasing military engagement of South Africa in the region, SWAPO was drawn into a fully-fledged conventional war. In this context of military escalation, a destructive fear of subversion gained momentum in SWAPO, decisively promoted by the party's security branch under the leadership of PLAN Deputy Commander, Solomon Hawala.<sup>9</sup> Aggravated by internal power struggles, tribalism, class-related conflicts, as well as South African counter-insurgency strategies, a number of purges were carried out against actual and alleged 'enemy agents' within party ranks. Throughout the 1980s suspects were arrested, tortured, and detained in dug-out prison pits ('dungeons') in the vicinity of SWAPO's Angolan headquarters in Lubango, some for as long as nine years. The survivors were only released in the course of the political transition in 1989. It is more or less consensus in academic writing that as a result of the spy hunt of the 1980s at least 2.000 SWAPO cadres were detained (Hopwood 2008:69; Hunter 2008:18; Wallace 2011:298), a majority of whom 'disappeared'<sup>10</sup>. Highly contested in this regard is the question to what extent the party leadership, in the first place SWAPO President Sam Nujoma, had been aware of the events. One explanation for the magnitude of detentions might be that in the course of the 1980s SWAPO's security

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<sup>8</sup> The actual number of people killed during the revolt is also still shrouded in secrecy (Hopwood 2008:69). Shikondombolo (2012) gives an incomplete list of 40 PLAN commanders and political commissars who 'disappeared' in the wake of the rebellion. In 1976, SWAPO's so called Ya Otto-Commission conducted an inquiry into the rebellion, without however questioning any of the accused. Instead, the commission report served to perpetuate allegations of betrayal and insubordination that influence representations of the crisis until today, see Hunter 2008:90-1; Williams 2009:100-15.

<sup>9</sup> SWAPO security was restructured in 1981 with help of the GDR's intelligence service, see Hunter 2008:95-9.

<sup>10</sup> In its ICC submission the NSHR charges SWAPO with the 'disappearance' of 4.200 people during 1966-1989, see NSHR 2006:5.

apparatus assumed an increasingly powerful position to act without checks and balances from the leadership and Central Committee (Hunter 2008:99). This theory of a general control loss within SWAPO is supported by the fact that in some cases even relatives of party leaders came under suspicion or were actually detained, most prominently Sam Nujoma's wife and his brother-in-law. On the other hand there can be no doubt that Nujoma, at least to some extent, was aware of the situation in Lubango, since he and other leadership members inspected the detainees several times (BWS 1997:25; Willams 2009:152-4; Angola 2011:141-3).

Apart from the PLAN revolt of 1976 and the spy-hunting campaign of the 1980s, the NSHR also holds SWAPO accountable for the ceasefire breach of April 1989. Even though a ceasefire agreement between SWAPO and South Africa was to be effected on 1 April 1989, fighting broke out that day after SWAPO combatants crossed the Angolan border into Namibia, lasting for several days and leaving hundreds dead, the majority of them PLAN fighters. O'Linn mentions 314 (2003:316), the NSHR 370 (2006:5) PLAN soldiers who were killed, some of them allegedly shot point-blank by South African forces (Thornberry 2004:121; Hunter 2008:121). The bone of contention is whether Nujoma ordered PLAN to deliberately infiltrate northern Namibia from its Angolan bases, in obvious breach of the ceasefire agreement. O'Linn (2003:315-35) gives a fairly detailed summary of the events, assessing SWAPO's move across the border as "a grave error of judgment" (2003:334; see also Cliffe 1994:91). Former PLAN commander and retired Lieutenant-General, Martin Shalli, recently summarised the events as "a technical mistake" resulting from communication deficiencies between diplomats and the military leadership (*Windhoek Observer*, 25.1.2013). In the NSHR's rendition, Nujoma sent PLAN units into Namibia "in blatant contravention of his own written assurances to UN Secretary General Xavier Perez de Cuellar to abide by a 1988 UN-sponsored cease-fire agreement" (NSHR 2006:5), thus bearing the responsibility for this immense loss of life. While the PLAN revolt of 1976 and the April 1989 ceasefire breach usually receive less attention in public debates on SWAPO's liberation struggle violations, it is especially the issue of the 'dungeons' which has come to epitomise SWAPO's authoritarian shift in exile.

Given the fundamentally altered political frameworks that made them possible, the violations after independence must be seen from a different angle. Similarities exist, though, both in regards to SWAPO's code of conduct in 'ordering the nation' (Williams 2009) which the party adopted in exile, and the involvement of Sam Nujoma as President and Commander-in-Chief of the NDF. The incidents in question took place during military operations in the northern and north-eastern regions of Kavango (1994-1996) and Ohangwena, Kavango and Caprivi (1998-2003<sup>11</sup>). On 29 September 1994 President Nujoma issued a quasi state of emergency along the Okavango River, Namibia's natural border with

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<sup>11</sup> The submission mentions violations from 1998 onwards, without being explicit in regards to the exact time-frame. In the Second Addendum of 2007 this is made more comprehensible. The fact that most of the crimes have taken place before the institution of the Rome Statute on 1 July 2002 (which Namibia ratified on 25 June 2002) and are consequently out of the ICC's jurisdiction has been a focal point of critique held against the original ICC submission. While the NSHR has always maintained that for the crime of 'disappearance' the *continuous violation doctrine* should be applicable, the Second Addendum mentions violations in Caprivi until 2003 (NSHR 2007b). For more information on the violations in 2000-2003, especially the 'disappearance' of members of the Khwe community, some of whom were Namibian personnel of South African military units prior to independence, see NSHR 2008 and 2009b:18-9.

Angola, after a lethal ambush on Namibian nationals was allegedly conducted by UNITA insurgents (NSHR 2008:13-5). His decree, in form of a press release, declared that crossing of the border was to be suspended “indefinitely”<sup>12</sup>. He further announced “that all illegal immigrants are [to be] cleared from the Region. The Defence Force has been ordered to patrol the border area and to deal appropriately with all infiltrations into Namibian territory [...] whoever seeks to threaten our peace will be severely dealt with”. On 26 November the President authorised a ‘shoot-on-sight’ order for the NDF to prevent real or alleged UNITA rebels from operating across the border. According to the submission, the NDF, under command of Thomas Shuuya, killed at least 35 people while causing the ‘disappearance’ of about 1.600-2.000 people assumed to be Angolan nationals – in most cases by driving them off the border or handing them over to Angolan security forces (NSHR 2006:11-2, 2007b:15). The security situation in the region deteriorated again in 1998 when the SWAPO government authorised the Angolan army to operate from Namibian territory in order to root out UNITA bases in southern Angola. Both countries joint forces and in the ensuing military campaign again a number of violations were committed. The ICC submission refers to, inter alia, systematic acts of murder, torture and CIDT [cruel, inhumane and degrading treatment; G.K.] or punishment, enforced disappearances, forcible transfer of people [...] extensive nighttime pillage as well as planting of anti-personnel mines [...] recruitment and use of child soldiers and mercenaries (NSHR 2006:12-3; see also AI 2000).

The situation escalated further when on 2 August 1999 the Caprivi Liberation Front launched its rather ill-fated secessionist attempt, this time leading to a full state of emergency and a military crack-down in the Caprivi region. Hundreds of people, many of them ethnic Mafwe or Khwe, were rounded up, systematically tortured, and in some cases ‘disappeared’; approx. 2.000 people fled to Botswana, where the majority remains until today (NSHR 2006:11-4, 2007b:16, 2008:49-50; Hunter 2008:154-5; Taylor 2008:327-8; Melber 2009; Wallace 2011:310). As a result of large-scale domestic and international criticism, Namibian Minister of Defence, Erkki Nghimtina, was prompted to admit that the NDF had indeed committed “mistakes” (in: NSHR 2006:13). According to Amnesty International, based on eye-witness accounts, many of the alleged human rights violations in the north-eastern regions were committed by the Special Field Force, a paramilitary police unit that reported directly to the President. Results of an investigation into violations committed by state security organs which was conducted by the Complaints and Discipline Unit of the Namibian Police were not made public (AI 2003:21).

Of those who were detained during the Caprivi crack-down, 132 people were charged with “high treason, murder, sedition, public violence, theft, possession of weapons and malicious damage to property” (AI 2003:6), which became the subject matter of the controversial Caprivi High Treason Trial that started in 2003. Until then, the prisoners had already been held for four years without trial and were only granted state-appointed legal representation after an intervention at the Supreme Court in June 2002. According to Amnesty International, about 70 of the detainees are to be considered ‘prisoners of consciousness’, arrested merely for their “perceived non-violent support for the political opposition in the region, their ethnic

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<sup>12</sup> See President of the Republic of Namibia, *Press Release: On the shooting incident at Omayara area in the Kavango region on 28 September 1994*; photocopy of document is in author’s possession.

identity [i.e. mostly Mafwe; G.K.] or their membership of certain organizations" (AI 2003:2; see also Melber 2009). Detainees have been refused bail, what might be one of the reasons that since 1999 21 prisoners have died in state custody, often due to inadequate medical treatment, the latest being Lister Tualife, who passed away in early August 2012 (*The Namibian*, 5.9.2012). Apart from this rather unsettling occurrence, the trial has been overshadowed by allegations that during the crack-down in 1999 both state-witnesses and prisoners were tortured in order to extort confessions; of the latter about 75% claim to have been tortured (AI 2003:8). Faced with such an amount of irregularities, the Caprivi High Treason Trial has cast serious doubts on the rule of law in Namibia on both national and international levels, especially in regard to the long delay of the verdict (AI 2003; Melber 2009). Recent developments seem to indicate that the trial might come to an end in the near future, as the state closed its case in February 2012. In August the same year, defendant Rodwell Kasika Mukendwa was acquitted free of all charges after having spent thirteen years in prison, immediately announcing to pursue a claim for damages (*Namibian Sun*, 13.8.2012). Mukendwa's case has since become a role-model for the defence and the majority of the remaining defendants have pleaded for acquittal, based mostly on allegations of torture. The Caprivi High Treason Trial, which has turned out to become the longest trial in Namibia's history and which can be seen as a litmus test for the rule of law in Namibia, might well backfire for the Namibian government due to the illegitimacy it has been inscribed with from the very beginning. Regarding the prosecution of members of state security forces who were involved in alleged human rights violations, investigation was said to commence only after the trial has been concluded (AI 2003:22). If this will take place remains to be seen. The most recent acquittal of 43 defendants due to lack of evidence (*The Namibian*, 12.2.2013), however, restored some of the faith many Namibians had lost in the independence of their judiciary, while also raising hopes for an end of the trial in the foreseeable future.

For the NSHR and other observers of SWAPO's postcolonial rule, the violations after independence indicate the continuity of an authoritarian political culture within the ruling party and its security forces (Melber 2003; NSHR 2006; Hunter 2008). The ICC submission reflects this assessment, based on the imperative that "justice is a precondition for peace" (NSHR 2007b:46). Regarding SWAPO's violations, it diagnoses a tradition of impunity that is understood as being antithetic to the goal of national reconciliation. SWAPO's approach to deal with the accusations so far has been characterised by a refusal of accountability and, to a lesser degree, informal concessions, such as individual apologies by SWAPO representatives (Töttemeyer 2010:122-3) and out-of-court settlements between the state and some torture victims in the Caprivi trial.<sup>13</sup> The refusal of SWAPO to install formal transitional justice mechanisms and to officially account for its violations, both as a liberation movement and as ruling party, has been continuously challenged not only by the NSHR but by a broad spectrum of activists, dissidents, ex-detainees and relatives of the 'disappeared'.

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<sup>13</sup> See <http://www.lac.org.na/news/inthenews/archive/2008/news-20081002.html>. Geoffrey Mwilima, who is a former member of the National Assembly, reportedly received N\$ 600.000 in compensation from the government for having been tortured (*The Namibian*, 13.9.2012). In most cases, however, the amounts paid as compensation remain undisclosed.

## The struggle for accountability before independence (1985-1989)

Even though the first reports of human rights abuses in exile transpired as early as the mid-1970s, SWAPO effectively managed to maintain its status as legitimate liberation movement (Dobell 1998:66; Williams 2009:160-3; Kornes 2010:33). When in the course of the escalating counter-espionage campaign of the 1980s more and more SWAPO members began to disappear and rumours of ‘dungeons’ made rounds, relatives established a Committee of Parents (CP). Founded in 1985, the CP first tried to investigate the whereabouts of their family members by seeking dialogue with SWAPO, avoiding public criticism. In response, SWAPO first denied to run clandestine detention centres, defaming the activists as traitors and enemies of the liberation struggle (Beukes 1986; Hunter 2008:108-15; Williams 2009:160-80). When the CP went public and SWAPO was increasingly confronted with demands to take a stand regarding the accusations, the party chose a proactive strategy. In a press conference in London in 1986, SWAPO announced the exposure of a South African spy-network comprising one hundred people that supposedly operated within party ranks. To prove its existence, video-taped confessions of alleged spies were presented – confessions that apparently were exacted under the influence of torture (BWS 1997:25).<sup>14</sup> Alarmed by the accusations, one of SWAPO’s most ardent supporters, the Lutheran World Federation, sent a delegation to visit the Angolan exile camp Kwanza-Sul in 1987 without finding evidence of violations, rejecting the CP’s allegations as unfounded (Hunter 2008:113-14).<sup>15</sup> Even though SWAPO was able to conceal the magnitude of violations committed in its camps up until 1989, it was the CP’s achievement to raise awareness for the plight of the detainees and to force the party to admit that detentions had actually taken place.

The full extent of violations in Lubango and elsewhere became publicly known only during the UN-supervised transition process in 1989. In the course of demobilising SWAPO’s camps in Angola and Zambia and the repatriation of some 43.000 Namibians from exile, the first groups of detainees returned as well. As an “underlying current” (Cliffe 1994:205), their narratives of captivity and torture, together with the political exploitation of SWAPO’s violations by opposition parties, informed the run-up to Namibia’s constitutional elections (Cliffe 1994; Dobell 1998:91; Hunter 2008:126-7). As a consequence of the unceasing accusations, the United Nations Mission on Detainees was instituted by the Special Representative of the Secretary General to investigate the whereabouts of 1.100 missing persons whose names were gathered from pre-existing lists. During September 1989 the mission visited thirty locations in Angola and Zambia where detainees reportedly were held. While it was possible to by and large verify the geographical and physical layouts of the detention centres, as narrated by former inmates (UN 1989:4), no remaining detainees could be traced. Nevertheless, after cross-checking the available lists and evaluating its findings the mission observed that 315 former detainees were still unaccounted for (UN 1989:9; see also Thornberry 2004:173-4).

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<sup>14</sup> It is interesting to note that already in September 1982 SWAPO’s Defence Secretary announced that “[l]ast year alone we apprehended more than 200 of those elements [enemy agents; G.K.]”, see *The Combatant* No.9, 1982, p. 4. While such announcements were a regular feature of SWAPO’s frontline propaganda, the high number of ‘elements’ exposed is at least indicative for the extent of apprehensions that was taking place.

<sup>15</sup> Human rights activist and Lubango detainee, Pauline Dempers, indicated that camps were usually ‘prepared’ for international visitors (Interview with the author, 21.8.2008). At the same time it appears that no detainees were held at Kwanza-Sul proper, but apparently in ‘subterranean caves’ near Cabuta Camp, some 200km northwest of Kwanza-Sul, see UN 1989, Annex 1.

Shortly after the mission report was published and only a few days before the elections were to take place, a number of relatives filed an application at the Namibian Supreme Court in October 1989 to force SWAPO to account for those still missing. Responsible for this intervention was the Parents' Committee of Namibia (PCN), that already in 1985 had split from the CP due to internal disagreements (Hunter 2008:114). The PCN was represented by Phil ya Nangoloh, who later on in 1989 established the NSHR. It is noteworthy that the PCN's application, just like the ICC submission of 2006, explicitly addressed Sam Nujoma and Solomon Hawala, among other high-ranking SWAPO representatives, as respondents.<sup>16</sup> In its opposing affidavit, SWAPO's administrative secretary Moses Garoeb, on behalf of his party, justified the detentions as "a regrettable necessity and a consequence of the war" (in Basson & Motinga 1989:188), while declaring that all detainees had been released according to the provisions of the UN peace plan. At the same time the application was discarded "as a matter of political contrivance [...] by a political group contesting the imminent election in rivalry with SWAPO" (in Basson & Motinga 1989:188). Again, the intervention did not yield any results on behalf of those who sought to investigate the whereabouts of their relatives, due to SWAPO's refusal of cooperation – even though the court ordered for the immediate release of all detainees still held in SWAPO custody (NSHR 2009a).<sup>17</sup>

### The transition to independence: The policy of national reconciliation

A key feature of Namibia's internationally lauded transition to independence has been the declaration of the so called Policy of National Reconciliation that went hand in hand with a general amnesty for both sides of the conflict. The Central Committee of SWAPO declared the policy, in form of a two-page press statement, as "the corner-stone of current and future SWAPO activities in Namibia"<sup>18</sup> in 1989. The document contextualises the need for national reconciliation with the "polarization imposed on the Namibian people by the colonial war" and the "[m]istrust, suspicion and fear" caused by apartheid. Remarkably, the policy statement in five out of ten paragraphs draws extensively on the issue of the detainees, who – still in official frontline rhetoric – are addressed as "misguided elements who infiltrated the rank and file of SWAPO" and who are subsequently "pardoned". This selective representation of the violations obviously perpetuates allegations of betrayal, thus inscribing the Policy of National Reconciliation with a clear-cut division into heroes and traitors (Kornes 2010:58). While this has been a recurring bone of contention for SWAPO's ex-detainees, the document at the same time indicates that the Central Committee apparently

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<sup>16</sup> This is something Sabine Höhn seems to ignore in her criticism of the ICC submission. While I agree with her doubts regarding the individualisation of guilt in face of systemic violence (Höhn 2010:478-80), obviously the ICC submission has not been the "the first document to speak of individual guilt for past violence in Namibian history and its accusation that high-ranking officials were directly responsible for mass disappearances" (Höhn 2010:472). Regarding the question of personal responsibility of Nujoma and Hawala, see also BWS 1997.

<sup>17</sup> The respective affidavits are included in Nico Basson and Ben Motinga's documentation of the detainee issue. This publication in itself is evidence of the politicised nature of the whole debate in 1989: Basson was admittedly financed by the South African Army Troop Information Unit to launch a disinformation campaign in order to tarnish SWAPO's reputation in the election run-up (TRC 1998:79). This, one might argue, did more damage to SWAPO's ex-detainees, than vice versa. Another civil lawsuit against SWAPO in May 1989 was dismissed by the Supreme Court for lack of jurisdiction over SWAPO's affairs in Angola (Hunter 2008:106).

<sup>18</sup> SWAPO Party, *Press Release: Resolution of the Central Committee of SWAPO adopting the Policy of National Reconciliation, Luanda, 23 May 1989*; photocopy of document is in author's possession.

was well aware of the predicament the detainee issue imposed on the task of prospective nation building.

Negotiations concerning general amnesty had started as early as 1979. Disagreements between the UN and South Africa arose mainly on the scope of amnesty provisions for members of the liberation movement.<sup>19</sup> Taken up again in 1989, it was first and foremost the UNHCR that in face of independence effectively lobbied for the granting of blanket amnesty on behalf of SWAPO. South Africa agreed on the terms that amnesty would be extended not only to returnees of SWAPO but to both sides, including Namibian personnel of South African security forces and paramilitary units (Thornberry 2004:175-6). General amnesty for SWAPO's internal and external wing was adopted on 7 June 1989 and amended on 9 February 1990 to include the South African security forces (Hunter 2008:130). The provision of amnesty is intrinsically tied to the conceptualisation of SWAPO's Policy of National Reconciliation (Geingob 2004:199-205; Iivula-Ithana 2007). Given the fragile situation in which the Namibian transition was taking place, it was widely acknowledged that immediate prosecution of war-crimes proved unlikely and an independent commission of inquiry should be instituted only at a later stage (Hunter 2008:131). This, however, never did materialise. While the goal of promoting national reconciliation has found entry into the preamble of the Namibian constitution, no respective act or policy has been formulated to promote reconciliation as was done in the South African case with the Promotion of National Unity and Reconciliation Act of 1995. Neither have any official mechanisms to institutionalise reconciliation been implemented so far. Instead, SWAPO's Policy of National Reconciliation is manifesting itself in the form of *silent reconciliation*, characterised by economic redistribution, gradual concessions, and more or less peaceful coexistence (du Pisani 2009:25; Keulder et al. 2010: 260-1). This status quo has been continuously challenged by a broad spectrum of former detainees and dissidents.

### The struggle for transitional justice since independence: Actors, initiatives and missions of inquiry

One of the key players in the struggle for transitional justice in Namibia is the already mentioned NSHR. The organisation was established in December 1989 by, among others, Phil ya Nangoloh, who left the PCN after "serious disagreements among the PCN leadership" (NSHR 2009a) had come to the fore. A look at the NSHR's personnel reveals that quite a number of former detainees and dissidents of SWAPO are involved in the organisation (Kornes 2010:82) – above all ya Nangoloh himself, who was imprisoned for a short time in 1975 and whose brother was executed by SWAPO in 1977. The NSHR's approach centres on human rights monitoring, civic education, advocacy programmes, rendering of paralegal services and litigation, research and documentation of human rights violations (NSHR 2006:24). One of the core activities of the NSHR is the investigation into the whereabouts of people who were 'disappeared' and the lobbying for judicial measures against perpetrators, using both national and international avenues (Interview with Phil ya Nangoloh, 2.9.2008). The NSHR has observer status with the African Union's African Commission on Human and People's Rights as well as consultative status with the UN

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<sup>19</sup> In her rendition of the transitional process, Hunter floats the idea that this early prospect of blanket amnesty may have triggered the harsh treatment of dissidents by SWAPO later on (2008:130).

Economic and Social Council. Accordingly, its activities and human rights reports are widely recognised on an international scale. The NSHR's approach is confrontational and best characterised by a strategy of 'naming-and-shaming'. This leads to frequent conflicts with the ruling party and constant accusations against the NSHR of supposedly being a front for a personal vendetta of Phil ya Nangoloh against SWAPO and especially Sam Nujoma (Hopwood 2008:282-3; Kornes 2010:82-8). The NSHR advances an understanding of transitional justice that is informed by an emphasis on criminal prosecution, a standing that can clearly be identified in its reliance on legal interventions as well as the disapproval of out-of-court settlements in the Caprivi trial (Interview with Phil ya Nangoloh, 15.12.2011). In this regard the subsequent ICC submission is an expression of the NSHR's position to treat SWAPO's violations as the result of a continuous culture of impunity that has its roots in the authoritarian political culture developed in exile. Consequentially, the NSHR does not consider itself to be a lobby organisation for SWAPO's exile detainees but rather for all victims of human rights violations perpetrated before and after independence, especially concerning the crime of 'disappearing' (Kornes 2010:83-5; Interviews with Phil ya Nangoloh 2.9.2008 and 15.12.2011).

The lobby work of the NSHR and other activists led to another, and final, mission of inquiry into the whereabouts of the 'disappeared' shortly after independence by the International Committee of the Red Cross (ICRC). Between 1991 and 1992 the mission visited 48 former detention places in Angola and investigated 2.161 tracing requests submitted by relatives of missing exiles. In its report the mission stated that "the final evaluation of the exercise can hardly be considered satisfactory" (ICRC 1993), admitting that 1.605 requests were still 'pending' with SWAPO, demanding further clarification. In summary the fact-finding mission of the ICRC established beyond doubt that a large number of SWAPO cadres were still unaccounted for. At the same time it demonstrated the limitations SWAPO's refusal of cooperation imposed on the various initiatives to come to terms with the past. This continuous effort of relatives and human rights activists to force SWAPO to account for its track record of violations seems to stand in remarkable contrast to the wide acclaim the Namibian transition received as "one of the twentieth century's *causes célèbres*" (Thornberry 2004:4).

1996 turned out to be a pivotal year in the struggle for transitional justice in Namibia. In neighbouring South Africa the Truth and Reconciliation Commission (TRC) was instituted, inspiring activists in Namibia to lobby for the installation of a domestic commission. Loyal to its amnesty provisions, the SWAPO government refused an offer by South Africa's TRC to investigate crimes the apartheid regime committed in Namibia (Hunter 2008:133-4). The same year a book by German cleric and anti-apartheid activist Siegfried Groth, *The Wall of Silence*, was publicly launched in Namibia by former SWAPO detainees and sympathising church representatives. His account of the SWAPO crises, rendered through his own experience as a pastor in close interaction with the Namibian exile community, sparked heated debates on the question of reconciliation and the right way to come to terms with the violent legacy of the liberation struggle (Hunter 2008:175-8; Kornes 2010:54).

Together with the publication of Groth's book, the Breaking the Wall of Silence Movement (BWS) was established, an NGO comprising mainly of former Lubango detainees. In contrast to the NSHR, BWS was explicitly founded as "a consistent voice for the dignity of Namibian

ex-detainees of the liberation movement”<sup>20</sup>, promoting human rights and creating a platform for ex-detainees and relatives of the ‘disappeared’. The organisation is, in effect, run by National Coordinator Pauline Dempers and Chairperson Oiva Angula, both former Lubango detainees. The first Chairperson of BWS was Samson Ndeikwila, one of SWAPO’s earliest political prisoners<sup>21</sup>, succeeded by Kala Gertze, who was also a Lubango detainee and who untimely passed away in 2008. BWS can be described as a social platform to preserve and communicate the memory of those who survived the dungeons – an approach that inevitably challenges the ‘heroic narrative’ of SWAPO’s liberation struggle (Kornes 2010:58-67). Core activities of BWS consist in collecting and providing testimonies of survivors, in form of publications or documentaries. Furthermore, as actively performed social memory, the return of the first group of Lubango detainees to Namibia on 4 July 1989 is commemorated annually by BWS, often involving ceremonies of collective mourning, remembrance and recommitment towards those who ‘disappeared’ (Kornes 2010:75-6). BWS is further engaged in active advocacy work, lobbying for a revision of the Policy of National Reconciliation and the institution of transitional justice mechanisms, preferably in form of a truth and reconciliation commission (Kornes 2010:62). A distinctive feature of BWS is – or rather was – the approach to seek a domestic solution regarding the Lubango issue, by entering into dialogue with SWAPO. This inclusive strategy has by and large failed, due to SWAPO’s consistent refusal to cooperate. In face of a growing disenchantment over the failure of local initiatives, BWS is also considering the possibility of international legal interventions (Interview with Pauline Dempers, 7.8.2008; informal talk with Oiva Angula, 14.12.2011). The outcome remains to be seen, since the financial situation of BWS seriously hampers the organisation’s activities. Since its inception, BWS has been financially dependent on its main donor, Brot für die Welt, a German church organisation. After their funding agreement terminated in 2010, BWS had to effectively stall most of its activities, a situation persisting for the time being. Despite these obstacles, BWS had emerged as a key actor among the initiatives challenging SWAPO’s Policy of National Reconciliation, significantly shaping the discourse on transitional justice in Namibia.

As a result of the passionate debates of 1996, the question of national reconciliation also informed a parliamentary debate that very same year. Here, Namibia’s contested national history was discussed quite frankly, reiterating established and hardened positions, but also allowing room for minor concessions. In his rendition of the predicaments of the liberation struggle, SWAPO stalwart Nahas Angula tried to explain the atmosphere of fear and uncertainty people experienced in exile. According to him, the war situation triggered false accusations that led to the detention of innocent people, to whom he pleaded for forgiveness: “[T]o those innocent people who got caught in the crossfire, I want to say the following: ‘Human is error, forgiveness divine’”<sup>22</sup>. It was for that reason, so Angula, that SWAPO

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<sup>20</sup> See mission statement on <http://sites.google.com/site/breakingthewallofsilence/Home>. BWS represents approx. 200 ex-detainees, the majority being Lubango survivors, see Kornes 2010:69.

<sup>21</sup> In 1998 Samson Ndeikwila co-founded Forum for the Future (FFF), an NGO focusing on grass-roots human rights education. Ndeikwila’s biography is inseparably intertwined with the history of SWAPO’s violations in exile, having been detained himself for two years in Tanzania in the 1960s for his criticism of SWAPO’s military strategy (Ndeikwila 2010). He and FFF have time and again shown their solidarity with the victims of SWAPO’s violations and remain outspoken critics of SWAPO’s Policy of National Reconciliation, see Kornes 2010:89-92.

<sup>22</sup> Republic of Namibia, 1996: *Debates of the National Assembly. Third Sessions, Second Parliament, 17 September – 16 October*, Vol.2, 262. For the whole debate, see 137-48, 181-97, 201-9, 243-75, 327-49.

committed itself to reconciliation and forgiveness. The debate insightfully illustrates how SWAPO's policy of closure was informed by a conscious and deliberate decision of the party leadership to refuse institutionalised accountability, justified by the imperative of national reconciliation. At the same time it again highlights the fact that SWAPO never denied that the violations in question did indeed occur.

Despite its commitment to closure and apparently unsettled by the renewed interest in the party's track record of human rights abuses, SWAPO reacted by releasing a report trying to account for all members of the liberation movement who died in the struggle. The book, titled *Their Blood Waters Our Freedom*, was already announced as early as 1990 and lists 5.464 people whose cause of death is documented, 862 whose cause of death is unverified, 338 who are only known by their *noms de guerre*, and 948 who went missing in the course of the war (SWAPO 1996). The report was countered with severe criticism by detainees and academics alike, for obvious omissions and distortions (Kornes 2010:55). In its critical assessment, the NSHR concluded that "at least 4.200 are dead though not accounted for" (NSHR 1996:8) – a figure that resurfaced in the ICC submission (NSHR 2006:5).<sup>23</sup> The renewed controversy prompted the NSHR to submit a report to the UN Committee against Torture (CAT), which responded the following year by recommending

that the cases of disappearance of former members of [SWAPO] be [...] promptly and impartially investigated. In all situations where reasonable grounds exist to believe that those disappearances amounted either to torture or to other forms of cruel, inhuman or degrading treatment, the dependants of the deceased victims should [...] be afforded fair and adequate compensation. The perpetrators of those acts should be brought to justice. (CAT 1997)

The CAT submission can be seen as a blueprint for the ICC submission of 2006 in causally linking the pre-independence violations of SWAPO with the incidents in Kavango 1994-1996. This resonates with its assessment that Namibia is "confronted with the legacy of the pre-independence period which hinders desirable efforts to fully harmonize the Namibian legal order with the requirements of international humanitarian law instruments" (CAT 1997), especially in regards to acts of torture. This intervention, as well, did not yield any consequences on behalf of SWAPO.

## The ICC submission and the internationalisation of the Namibian transitional justice discourse

Interventions on behalf of the ex-detainees also came from opposition parties. In October 2006 a motion to discuss the detainee issue was introduced in the National Assembly by then BWS Chairperson and Member of Parliament for the Congress of Democrats, Kala Gertze,

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<sup>23</sup> A salient feature of SWAPO's report is the fact that the most common cause of death in Lubango seems to have been 'natural death', as category used throughout the report. A close reading of the register allows to differentiate four basic categories for causes of death that are attached to names, brackets indicating their frequency in regards to people who died in Lubango: a) combat (1), b) illness (80), c) 'natural death' (259), d) various (49). The category of 'illness' comprises diseases such as beri-beri, malaria, diarrhoea, as well as heart attacks; 'various' comprises causes of death such as suicide, murder or car-accidents, as well as all mortalities without a cause of death attached. Whatever is meant by 'natural death' thus remains rather opaque.

who had spent six years in the dungeons.<sup>24</sup> Even though the motion was rejected, it brought the matter of past-time atrocities forcefully back into public discourse. Only two months later, as a consequence of the rejection, the NSHR launched its ICC submission, informing the President that “[w]e are ready to withdraw the submission in exchange for the establishment of a firm and committed Truth and Reconciliation Commission. It must be effective and home-grown and bring about transitional justice and [a] true national reconciliation process” (*The Namibian*, 23.8.2007). The ensuing debate about the ICC submission and the human rights violations of SWAPO found an insistent context with the discovery of mass graves in the northern regions, some of which could be linked to the fighting of April 1989 (Hunter 2010:428) and massacres committed by South African security forces (Kornes 2010:86).<sup>25</sup> The NSHR was able to utilise these gravesite discoveries successfully in its ICC campaign, forcing Namibia’s recent history into the international limelight.

One result of the controversies was a mission of inquiry of the International Centre for Transitional Justice’s (ICTJ) Cape Town office to Namibia to “[assess] the transitional landscape in the Southern African sub-region” (ICTJ 2008:4). In its mission report the ICTJ concluded that due to SWAPO’s policy of closure “[t]he political context in Namibia is not conducive to any official investigation of the past” (ICTJ 2008:50). It recommended establishing a research project to document past-time atrocities committed by both SWAPO and South Africa, but also of the German colonial era, to challenge the constitutionality of the Veterans Act of 2008, and to “seek legal advice on various national and international options for redress of gross human rights violations” (ICTJ 2008:50). Based on this intervention, activists of BWS, FFF and NSHR, as well as of the Legal Assistance Centre, established the Namibian Coalition for Transitional Justice (NCTJ) in 2009 in order to work for the implementation of the ICTJ’s recommendations. Apparently the NCTJ had a difficult start and is still on hold, what is partly attributed to, at least in the NSHR’s rendition, disagreements on the level of influence of the ICTJ in regard to its Namibian counterparts (Interview with Phil ya Nangoloh, 29.3.2010).<sup>26</sup>

## Detainee issues and the spectrum of transitional justice approaches

At this point it is rewarding to take a closer look at the approaches of NSHR and BWS. In form of these two organisations, two seemingly different models of transitional justice can be identified: in case of BWS a dialogical approach (reconciliation by truth), in case of the NSHR a punitive approach (reconciliation by justice). This alluringly simple binary division raises questions of how the ICC submission was discussed among those who were directly affected by SWAPO’s violations, especially since BWS was not involved in drafting the document. In her assessment of the ICC submission, Höhn argues that the NSHR “submitted the dossier without having systematically consulted the ‘victims’, ex-detainees, or relatives of people who disappeared during and after the liberation war” (2010:478). While, in face of the NSHR’s and especially Phil ya Nangoloh’s long-standing commitment to those who were

<sup>24</sup> See: Republic of Namibia, 2006: *Debates of the National Assembly: Fourth Session, Fourth Parliament, 13 September – 11 October*, Vol.94, 372.

<sup>25</sup> Mass graves were already discovered in the border region in 2005 (Hunter 2008:122-3) and will continue to resurface as material evidence of Namibia’s history of violence, challenging SWAPO’s policy of closure.

<sup>26</sup> Another Namibian initiative founded by former Lubango detainees, the Institute for Transitional Justice, is in the pipeline, indicating the increasing prominence of transitional justice discourse in Namibian civil society.

victimised by SWAPO, this harsh judgement appears as a misconception, Höhn also implies that BWS on their part have a ‘mandate’ to speak for all SWAPO ex-detainees. As outlined above, BWS and NSHR have rather different objectives about what collectives they represent. It became quite clear during my research that support of specific organisations among ex-detainees was very much informed by individual biographical experiences. While BWS is most commonly associated with the Lubango detainees, not all of those who languished in the ‘dungeons’ feel well represented by that organisation. Divisions may crystallise, for instance, on questions of ethnicity or whether a detainee was repatriated with the ‘group of 153’ – the first group of detainees to return to Namibia on 4 July 1989 – or had to return on his or her own (Kornes 2010:110-1). Another reason for aligning with either BWS or NSHR may be generational differences, since SWAPO cadres who were imprisoned in the 1970s had very different experiences compared to the Lubango detainees (Williams 2009:236-7). Accordingly, one will find few detainees from 1976 among the members of BWS. But first and foremost the decision to be supportive of either BWS or NSHR originates from individual opinions of how to address SWAPO on the question of the violations. Here it became obvious during my research that, even though some ex-detainees were critical of the NSHR’s confrontational approach, the majority of my interlocutors supported the ICC submission (Kornes 2010:106-13). While apparently a “lapse of communication” (Interview with Pauline Dempers, 25.9.2008) between BWS and NSHR adversely shaped the decision-making process of the submission (Höhn 2010:477; Kornes 2010:108), the NSHR’s intervention enjoys support also from other activists. This was confirmed by both Samson Ndeikwila, who commented on the ICC submission as “a step forward for Namibia to open up” (Interview with Samson Ndeikwila, 16.11.2011) and Oiva Angula, who endorsed the submission in regards to the failure of BWS’s dialogic approach (informal talk, 14.12.2011), as well as through my own research among SWAPO’s ex-detainees (Kornes 2010:106-18). In light of this, it seems hard to maintain the clear-cut model of a binary BWS/NSHR transitional justice divide in place that Höhn advocates for. Furthermore, it should be noted that discourse on the ICC submission is in most cases discourse centred on the ex-detainees and SWAPO’s human rights abuses before 1990. This results in an apparent omission of the wide range of post-independence violations and of the people affected by it, as for instance the Khwe and other communities in the northern border regions. Here, the NSHR has positioned itself more broadly in targeting the abuses committed by SWAPO before and by the SWAPO government after independence by addressing them as a phenomenon of continuity. In retrospect, the question arises what impact the ICC submission and the campaign for transitional justice has had on the government’s practice of silent reconciliation.

## Negotiating silent reconciliation in Namibia

Soon after the submission went public, commentators pointed out that there was little chance for the ICC to open a case, mostly because of the unlikely implementation of the continuous violation doctrine (Heller 2007; see also Höhn 2010:474).<sup>27</sup> Whether or not the ICC will start an investigation, the submission has already profoundly affected the debates on Namibia’s

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<sup>27</sup> The ICC submission, as well as its two addenda (NSHR 2007a, 2007b), draw extensively on case-studies to prove the applicability of the doctrine. While the validity of that matter cannot be dealt with here, it should again be noted that not all violations happened before the institution of the ICC. For a response of the NSHR to Heller, see <http://www.nshr.org.na/index.php?module=News&func=display&sid=798>.

contested past. Reactions from SWAPO were mostly concerned with the fact that the NSHR explicitly targeted Sam Nujoma, who, as an icon of the liberation struggle, is close to sacrosanct. This prompted harsh reactions, bordering hate speech and hysteria, even though most of this dispute was settled on the programmes of radio chat shows and within the pages of the print media. Here it was especially the *Windhoek Observer* that during 2006/2007 opened its pages for the critics of Nujoma and SWAPO, allowing NSHR members like Phil ya Nangoloh or Steven Mvula to exchange heavy blows with SWAPO's *Namibia Today* and state-owned *New Era*. President Hifikepunye Pohamba disqualified the submission as an "ongoing ploy to disrupt peace and stability in Namibia" (*The Namibian*, 28.8.2007) detrimental to national reconciliation, and warned of impending civil war. Speeches and comments of SWAPO representatives especially during 2007 provide ample evidence that the party saw the submission not only as an attack on the integrity of an elder statesmen, but on its very Policy of National Reconciliation. In one of the more sober assessments, the then Minister of Justice & Attorney-General summarised the predicaments of establishing a Namibian TRC for SWAPO:

Assuming that such a TRC approach was conducted in Namibia, would we have Doctor Death<sup>28</sup> in attendance? Would all the [...] TRC pardoned members of the South African and South West African Territorial Force be subjected to the process? Or is it simply an inquisition into alleged SWAPO detainees? Is it an inquisition only between the Namibian warring parties who themselves were victims of apartheid? What happens to the emotions, which we conjure up with this halfway measure? Who is to be held accountable if persons are defamed and perhaps injured by emotional sons, daughters, brothers, mothers, relatives of dead and missing persons? What is the quantum sufficient to compensate for the trauma, for the loss of life, for carrying scars throughout one's life of the horrors of our war? Do we understand that we have had a war in which siblings and neighbours fought one another? Where do we end in the guilt chain? Isn't the villager who provides protection and information for PLAN fighters as guilty as the other villager doing the same for SWATF and Koevoet [South African military and paramilitary units; G.K.]?" (Iivula-Ithana 2007)<sup>29</sup>

Her commentary highlights the conflicts that emerge from the existence of amnesty provisions both in Namibia and South Africa. Furthermore, since many of the perpetrators from the South African side have left Namibia, domestic interventions, be it penal action or truth commissions, would most likely one-sidedly focus on SWAPO's offences. In light of these legitimate objections, one might doubt whether the submission has increased SWAPO's willingness to negotiate or revise the amnesty provisions and institute transitional justice procedures. On the other hand, apart from the Caprivi case settlements, which constitute an obvious recognition that state security forces committed human rights violations, the SWAPO government already made other important concessions. In August 2009 it

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<sup>28</sup> Wouter Basson, nicknamed 'Dr. Death', was the head of apartheid South Africa's biochemical weapons programme and allegedly responsible for the killing of about 200 SWAPO prisoners, who were drugged and dropped from airplanes into the Atlantic ocean during 'Operation Duel' in late 1982. One of the more heinous crimes covered by Namibia's amnesty provisions.

<sup>29</sup> It is interesting to note in this regard that the family of Minister Iivula-Ithana reportedly started an investigation into the death of the Minister's parents, who were killed in their Namibian homestead in 1981. Rumours persist that PLAN insurgents were responsible for the killing, a claim, the Minister refutes (*The Namibian*, 19.8. and 23.8. 2011). However, despite the commitment to closure a desire for accountability apparently does exist.

announced that the ex-detainees will be officially registered as war veterans (*The Namibian*, 13.8.2009) – a highly significant step towards individual and collective rehabilitation that has always been a central demand of ex-detainees and their advocacy organisations. In May 2012, with remarkable delay, the Ministry of Veterans Affairs further announced that for the first time ever a state-sponsored programme for psycho-social counselling will be launched, directed at war veterans and including the ex-detainees (*The Namibian*, 11.5.2012)<sup>30</sup>. In an interview with the author, the Chairperson of BWS voiced his appreciation for these signs of accommodation shown by the Ministry of Veteran Affairs, which he assessed as a result of the unceasing lobby work of the ex-detainees, including the NSHR (Interview with Oiva Angula, 16.9.2012). One might also recall the funeral service for the late Kala Gertze, which was held as an act of state in the parliament gardens on 19 March 2008. The ceremony, where high-ranking SWAPO representatives like Nahas Angula and Hage Geingob voiced their appreciation for Gertze's contribution to Namibia's independence, ultimately became a platform for Lubango survivors to narrate their histories and address government as equals (Kornes 2010: 77-9). These gradual signs of rehabilitation go along with the earlier practice of integrating ex-detainees into civil service and parastatals, as well as Namibian members of South African security forces into the newly established Namibian defence and police forces after independence. This has explicitly been understood as an effort in reconciliation on behalf of the government (Geingob 2004:204). Geingob himself, current Prime Minister of Namibia, is an interesting case in this regard as only recently transpired that he himself was apparently targeted to end up in the dungeons too. As a Namibian current affairs magazine reported, Geingob was detained by SWAPO security in Zambia and due to be sent to Lubango, saved only by the implementation of the UN Resolution 435 peace plan. In the same article it is alleged that first President Nujoma compensated Geingob "by putting him in charge of the party's election campaign in 1989" (*Insight Namibia*, May 2012). At the 5<sup>th</sup> Party Congress in December 2012 Geingob was elected as Vice President of SWAPO, what makes him the automatic candidate for the succession of Hifikepunye Pohamba in the next national elections and thus, in all likelihood, Namibia's next President.

### Beyond silence: The dynamics of reconciliation

These recent developments may be read as cautious signs that the practice of silent reconciliation is increasingly opening up for negotiation and the accommodation of demands that have been put forward by SWAPO's detainees for decades. This change of political climate, slight as it may be, would not have been possible without the ongoing effort of those lobbying for transitional justice in Namibia. Silent reconciliation in Namibia has thus proven to be a phenomenon that is more dynamic than the highly normative discourse on silencing and closure in transitional justice theorising suggests. Arguing so should not be misunderstood as advocating for a perpetuation of the status quo of impunity, quite the contrary, but rather of putting it into perspective. As Hunter writes: "The gradual concessions towards former SWAPO detainees by Namibia's ruling party should not be confused with the long overdue process of accountability and truth-seeking that remains unsettled on both sides of the struggle" (2010:404) – but equally they should also not go

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<sup>30</sup> PEACE, an NGO founded in 1996 by former Lubango detainee Emma Kambangula, has so far been the only institution dedicating itself to trauma counselling for war veterans and ex-detainees. PEACE has since shifted its activities more towards trauma work in relation to gender-based and domestic violence, see Kornes 2010:92-4.

unrecognised. As a social process, silent reconciliation involves negotiating difficult positions, which constitutes a formidable challenge for the ruling party.

Most academic contributions to the debate on transitional justice see SWAPO's policy of silence as an obstacle to genuine reconciliation (Parlevliet 2000; Leys & Saul 2003; Hunter 2008, 2010; Höhn 2010). Yet, even though SWAPO's dominance has allowed the party to dictate the terms of reconciliation and transitional justice, this at the same time guaranteed a certain amount of social and political stability twenty years into independence (Keulder et al. 2010:261). In a recent study, Lindeke concluded that SWAPO's practice of silent reconciliation "facilitated a generally peaceful and democratic independence experience for all citizens" (2012:42), even though society is still characterised by a high level of interpersonal mistrust and a culture of self-censorship regarding controversial issues with and within the ruling party. This ambivalence resonates with the legacy SWAPO accepted in the wake of the transition process. By becoming Namibia's ruling party, the former liberation movement inherited the responsibility to unite a highly fragmented society, shaped by huge social, political, and historical cleavages. In light of this, silent reconciliation, as well as the provision of blanket amnesty, should be seen as strategies employed by SWAPO to establish the minimal consensus of peaceful coexistence that has been outlined as the basic requirement for reconciliation. This approach, as has been shown throughout this paper, has been received with an abundance of criticism and opposition by civil society actors, who lobby for the installation of transitional justice mechanisms. As Forsberg observes, "[t]he representatives and institutions of a state may choose to 'forget' certain events, while individuals and particular groups remember them and academics conduct animated debates over them" (2003:69) – a process, that is in full swing in Namibia, where the past is alive and highly contested. With this observation in mind, one might ultimately consider to question the appropriateness of the 'silencing' metaphor altogether. In one of the more innovative approaches in recent times to conceptualise the predicaments of remembering and forgetting in the Namibian context, Williams argued that

people articulate stigmatized histories and establish social relations through them regardless of whether they do so in an easily accessible form in a highly public space. To render those whose histories have been excluded from a socially accepted narrative as 'victims' and to reduce the social life of these histories to 'silence' divests marginalized subjects of the agency that they do have and assert through articulating such narratives. (2009:264)

These histories, which put SWAPO's selective liberation struggle narrative into perspective, actively contribute to the negotiation of national history that is going on in Namibia on a daily basis – in civil society, on facebook, at funerals, in old age homes and on street corners (Williams 2009: 218-63; Korneš 2010).<sup>31</sup>

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<sup>31</sup> One might also mention the ongoing success, on national and international levels, of the documentary *From Namibia with Love*, which portrays some of the people involved in the SWAPO crisis of 1976. I attended several screenings of the movie in Namibia and each time encountered a receptive, mostly young audience keen on debating the historical background of the film along the lines of 'we don't hear about this in school' (fieldnotes 2011/2012); see official homepage: <http://www.fromnamibiawithlove.com>.

A most recent manifestation of this agency has been a commemoration of the ‘Mboroma Mass Detention Camp Shooting’ to remember those SWAPO cadres that were killed in the wake of the PLAN and Youth League revolt of 1976.<sup>32</sup> The event, which was held at the Red Flag Commando Hall in Katutura on 5 August 2012, was organised jointly by BWS, FFF, NSHR /Namrights and Citizens for an Accountable and Transparent Society, thus bringing together a range of outspoken critics of SWAPO’s Policy of National Reconciliation. Apart from the members of the organising groups, the audience consisted of a number of SWAPO ex-detainees, including those of Mboroma, as well as representatives of churches, opposition parties and of the Herero and Nama genocide committees. In speeches, songs, prayers, and testimonies the events of 1976 were recalled, commemorated and embedded into a framework of ‘unfinished business’ that included not only SWAPO’s violations but also apartheid atrocities and the German genocide campaign of the early 20<sup>th</sup> century. The significance of the event was the demonstration of cohesion and common purpose of the initiatives involved who offered an inclusive approach to challenge SWAPO’s reconciliation policy. Furthermore, seeing SWAPO detainees of the three ‘generations’ (Tanzania 1960s, Zambia 1970s, Angola & Zambia 1980s) side-by-side proved to be an interesting take on the above mentioned divisions existing among ex-detainees. The commemoration is supposed to not only become an annual event but also lay the foundation for yet another organisation to lobby for transitional justice in Namibia, the Namibia Truth and Justice Association. By opening up the event for other mnemonic communities, the organisers created a platform to jointly commemorate all victims of the various liberation struggles and thus further enhance the social space existing in Namibia to communicate alternative histories about the national liberation struggle.

With Williams’ observations in mind, the question should accordingly not be whether these narratives are ‘silenced’, but how they can become part of an accepted narrative of the Namibian history of liberation. For most of my interlocutors, whom I interviewed about their expectations for transitional justice in Namibia, it was first and foremost rehabilitation and the recognition of their contribution to liberation they demand from SWAPO. Here, an official apology from the party leadership would be the significant step many regard as necessary to forgive or even to realign with SWAPO. While it is questionable how legal prosecution of perpetrators will have a positive effect on reconciliation given the controversy that accompanied the launch of the ICC submission, a commission to verify the fate of the ‘disappeared’ of both sides of the conflict might give some ease to their families at least. In many cases the status of unascertained death of the ‘disappeared’ still has negative legal and economic consequences for relatives. Establishing their whereabouts will ultimately also restore their histories – histories, which are inseparably entwined with the struggle for the liberation and national independence of Namibia.

## Conclusion

As Marion Wallace, in regard to SWAPO’s exile violations, emphasised in her recently published and already seminal *History of Namibia*: “That these events occurred [...] has been shown by substantial research and cannot now be in any serious doubt” (2011:281). Instead of denying the violations, SWAPO chose to actively ‘forget’ about them for the sake of nation

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<sup>32</sup> On 5 August 1976 the Zambian army opened fire on SWAPO detainees in Mboroma, killing four and wounding many more, see also Williams 2009:115-18.

building. This practice of silent reconciliation has been challenged by human rights activists, dissidents, and relatives of the 'disappeared' for decades. In their enduring effort they have chosen a wide array of approaches and increasingly embraced international concepts of transitional justice, the submission to the ICC being the most controversial of them. It is highly questionable whether SWAPO will give in to the pressure imposed on its legacy and the personality of its most iconic leader, as it is idealistic to assume that prosecution of individuals will inevitably lead to reconciliation. SWAPO has always maintained that any institutionalised form of investigating the past should not be a one-sided affair. This is the ultimate predicament for SWAPO, and for the question of transitional justice in Namibia.

However, by offering an open apology of its leadership, SWAPO could set a precedent, not only for its critics and opposition parties, but also for those SWAPO members who themselves came 'into the crossfire' or who lost relatives and since have not reconciled with the moral conflict of remaining loyal to SWAPO. Regarding the post-independence violations, the way government deals with the allegations of human rights abuses will be the ultimate benchmark on the question whether the 'legacy of violence', SWAPO brought home from exile, is a phenomenon of the past. It is obvious, that from being a reaction to a political crisis, the Caprivi High Treason Trial has become the expression of a political crisis, and as such deserves a political solution – including an investigation into the torture allegations.

Ultimately, the 'long haul' of reconciliation and coming to terms with the atrocities of colonialism, apartheid and the *longue durée* of the liberation struggle is a profoundly national matter. Maybe one day it will be possible to include all those Namibians who died during the various liberation struggles, in resistance to German colonialism, in the Lubango dungeons, by the hands of Wouter Basson, or in the service of South African security forces, indiscriminately into a narrative of liberation that can accommodate the antagonisms of national history. Yet, even though the policy of closure still prevails, the past is increasingly subject to negotiation in Namibia, as initiatives such as the Mboroma commemoration or the programmes of the Ministry of Veterans Affairs demonstrate. Twenty-three years into independence, Namibia is a country with distinguished democratic structures, a vibrant free press and a civil society, which can challenge government without fear of repression. While a more authoritarian political climate prevailed in the first fifteen years under SWAPO rule, manifesting itself in the 'legacy of violence' that spawned the violations under review in this paper, a more tolerant political culture has entered under the leadership of President Hifikepunye Pohamba. In light of this, silent reconciliation should be understood as a process that is more dynamic than the normative discourse on silencing suggests and which is actively shaped by the agency of those who were victimised by SWAPO during the liberation struggle and by the SWAPO-led government after independence. Research on transitional justice can only benefit from a more thorough analysis of such agency and social practice, allowing us to better understand the dynamics that inform reconciliation on the ground. Assessing the process of democratic transition and reconciliation twenty years after independence, a recent study concluded that "Namibia is a successful case of post-conflict transformation. However, the door on public disorder has not closed" (du Pisani et al. 2010:xvii). Contestation over the past will continue, as will silent reconciliation, even though the latter has grown considerably less 'silent' in recent years.

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