

Response
By the Federal Government

to the minor interpellation tabled by the Members of the Bundestag Niema Movassat, Sevim Dağdelen, Annette Groth, Heike Hänsel, Inge Höger, Stefan Liebich, Katrin Vogler and the Left Party parliamentary group

The historical, political and legal background to the massacre of the Herero and Nama peoples and the situation with regard to the Special Initiative

Introduction by the questioner

Between 1904 and 1908 the colonial troops (*Schutztruppe* – “protection force”) of the German Empire waged a “campaign of annihilation” against the Herero and Nama peoples in the former colony of German Southwest Africa, the present-day Namibia. The Damara and San peoples were similarly badly affected by German warfare despite the fact that at no time were they involved in a declared war against the German Empire. In the virtually unanimous opinion of experts in colonial history, this was the first genocide of the 20th century perpetrated in Germany’s name. It had its basis in two verbal and written “extermination orders” given by General Lothar von Trotha, the first dated 2 October 1904 against the Herero and the second dated 25 April 1905 against the Nama.

The special relationship between the Federal Republic of Germany and the present-day Republic of Namibia, particularly in the field of development cooperation, is based on decisions of the German Bundestag of 1989 and 2004 which refer to “the special historical and moral responsibility” arising from the “campaign of annihilation” (cf http://www.bmz.de/de/was_wir_machen/laender_regionen/subsahara/namibia/index.html). Right up to the present day, however, there has been a failure to address and come to terms either in politico-moral or in legal respects with what the majority of historians in the field term the first genocide of the 20th century. In this context and in the wake of the personal apology made by the then Development Minister, Heidemarie Wieczorek-Zeul, on the occasion of the ceremony commemorating the 100th anniversary of the Battle of Waterberg, the Federal Government set up a Special Initiative. This special fund, also referred to as the “Initiative for Reconciliation”, which is part of Germany’s general financial cooperation programme, was decided on unilaterally by the Federal Government – without the involvement of the parties affected at local level. A total of 20 million euro has been made available in two phases between 2006 and the present day. Very little is known publicly in Namibia or Germany about the precise use of the money and the situation with respect to the outflow of funds.

For years, one key aspect of the process of coming to terms with the historical, political and legal aspects of the colonial “campaign of annihilation” has been the definition of the term “genocide”. Central to this is a debate on the area of application of the UN Convention on the Prevention and Punishment of the Crime of Genocide (UN Convention on Genocide) of 9 December 1948. The Federal Government rejects retrospective application of the Convention and therefore the use of the term genocide to classify what the Federal Government itself refers to as “atrocities” and “massacre” with respect to the “campaign of annihilation” against the Herero and Nama and the labour and “concentration camps” established specially for them between 1904 and 1908 (see Answers to Minor Interpellations tabled by the Left Party parliamentary group in Bundestag printed papers 17/6011, 17/6754 and 17/7741).

The report of special rapporteur Ben Whitaker on the prevention and punishment of the crime of genocide (Whitaker Report) was adopted by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1985 in Resolution 1985/9. The report stresses that analysis of past cases of genocide is important in preventing similar crimes in the future. It lists the events of the 20th century which demonstrate the characteristic features of a genocide. These include the crimes of the German colonial forces against the Herero, which are categorized as the first genocide of the 20th century. In 1999, the Federal Constitutional Court referred to the Whitaker Report with respect to the interpretation of the Genocide Convention (BVerfG, 2 BvR 1290/99, Constitutional Complaint, judgment of 30 April 1999, marginal notes 28 and 40). As early as in the wake of the Berlin Conference on West Africa in 1884/85, at which Africa was divided up by the colonial powers with a key role played by the Bismarck Government but with no African involvement, Article VI of the General Act of the Conference, which was binding under international law at the time, committed the European colonial powers to protect the indigenous population. In principle any breach of international law by a state obliges the state in question to make reparations for the ensuing damage.

1. Does the term genocide have an exclusively legal meaning for the Federal Government which restricts its application to events after 1948, the year in which the UN Genocide Convention came into force (please give reasons)?

In different scientific areas the term genocide is being used according to event and context partly with different meaning. If a term is being used as a term of international law, i.e. with all its legal implications, it is of relevance that the Convention of 09 December 1948 about the Prevention and Punishment of the Crime of Genocide must not be applied retroactively, something which has been repeatedly stated by the Federal government. The Federal Government does not evaluate (assess) historic events on the basis of international law, which at the point of time of the events were neither in force in the Federal Republic of Germany nor in any other state.

2. In the view of the Federal Government, can the term genocide also be used to characterise and rate historical massacres prior to 1948 as historical case examples of genocide in accordance with the criteria of the UN Genocide Convention – as Raphael Lemkin, who coined the term genocide, did in 1948 in a list of past genocides since antiquity (cf Report of the Reference and Research Services of the German Bundestag “on the Area of Application of the Convention on the Prevention and Punishment of Genocide” of 20 April 2012), including the “massacre of

the Herero in Africa”, and as happened in United Nations General Assembly Resolution 96 (1)?
If not, why not?

The Federal Government does not comment in principle on evaluations (assessments) made by scientists of different fields using historic case examples according to the criteria laid down in the UN 1948 Convention of the Crime of Genocide.

3. Does the Federal Government believe that use of the term genocide to assess and describe historical facts and circumstances could result in negative legal consequences for the Federal Republic of Germany and is this the reason why it avoids describing the massacres and atrocities committed against the Herero and Nama as genocide?

Repeatedly the federal government has acknowledged its historic and moral responsibility towards Namibia, and lives up to its special relationship with Namibia through its very intensive cooperation, also acknowledged by the German Bundestag in its two resolutions of 1989 and 2004.

Repeatedly the federal government has clarified that compensation obligations do not exist (compare the answers to questions 7 and 8 of the minor interpellation tabled by the parliamentary caucus THE LEFT, printed matter 17/8057), and therefore representatives of the federal government refrain from any statements which might raise expectations of compensation (compare the response to question 7 of the minor interpellation tabled by the parliamentary caucus THE LEFT, printed matter 17/8057).

4. To what extent does the Federal Government share the substance and findings of the report by special rapporteur Ben Whitaker on the prevention and punishment of genocide adopted under resolution 1985/9 by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (Whitaker Report)?
 - a) In the event that the Federal Government rejects the whole of the Report or parts of it and does not take ownership of it, which parts are these and for what reason does it reject them?
 - b) What conclusions does the Federal Government draw from the fact that the Federal Constitutional Court referred to the Whitaker Report in its interpretation of the Genocide Convention (BVerfG, 2 BvR 1290/99, Constitutional Complaint, judgment of 30 April 1999, marginal notes 28 and 40)?
 - c) Does the Federal Government share the view that, by virtue of this judgment of the Federal Constitutional Court of 30 April 1999, the Whitaker Report has become a firm and established element of Germany’s canon of laws?
If so, what conclusions does it draw from this?
If not, why not?

The federal government does not see any reason to deviate from its position repeatedly explained because of the Whitaker-report (compare the response to questions 1 and 3).

The Federal Constitutional Court applies the Whitaker-Report in a judgement adopting an interpretation of the essential criterion of the Genocide Convention with completely different facts. From the point of view of the federal government there is no connection to the question of this minor interpellation and neither has it consequences for the

opinion of the federal government nor for the question of applying the Genocide Convention to events in the period of 1904-1908 present-day Namibia.

5. Does the Federal Government agree that the crimes committed by the German colonial forces against the Herero in 1904 must be called the first genocide of the 20th century, as the Whitaker Report states?
If not, why not?

We refer to responses to question 1.

6. If the Federal Government rejects the designation of the crimes committed by the German colonial forces against the Herero and Nama between 1904 and 1908 as genocide for legal reasons, can it accept such a designation at least from the historical perspective?
 - a) If not, why not?

The Convention dated 09 December 1948 about the Prevention and Punishment of Genocide came into effect on 22 January 1951 – in the Federal Republic of Germany on 22 February 1955. It is not applicable retroactively. The federal government does not assess historical events by applying regulations of international law, which were not in effect at the time of these events.

- b) If, as a matter of principle, the Federal Government does not wish to make any historical judgment, can it say it has not made such judgments on other historical events and will not do so in the future?

The Federal Government cannot rule out that the federal government or earlier federal governments made historic assessments regarding other historic cases in the past or will do so in the future.

7. With particular reference to the atrocities and massacres committed by the imperial “protection force” in the former colony of German Southwest Africa, which most experts in colonial history and the Whitaker Report call the first genocide of the 20th century, what precisely does the Federal Government mean when it says that “assessments of historical events from the aspect of international law (...) have to be based on the historical facts of the specific case” (Answer of 10 April 2012 in Bundestag printed paper 17/9307)?

What are the historical facts on which the Federal Government bases its assessment in this specific case?

As has been repeatedly stated by the Federal Government assessments of historic events in the context of international law can only be judged by applying rules and regulations of international law in effect at the point of time of the events and historical facts in the concrete case. Historical facts, however, are the focus of scientific research.

8. In the opinion of the Federal Government, to what extent do the “historical facts of the specific case” (see Answer of 10 April 2012 to the written question in Bundestag printed paper 17/9307) not suffice to designate and classify the “campaigns of annihilation” carried out under the two German “extermination orders” against the Herero and Nama, the subsequent atrocities and massacres and the

labour and concentration camps set up systematically for the Herero and Nama, although not exclusively for them, as genocide?

We refer to response to question 7.

9. By virtue of the spoken and written “extermination orders” of 2 October 1904 and 22 April 1905 and the establishment of labour and “concentration camps”, the war against the Herero and Nama, which also had a massive impact on others such as the Damara and San peoples, was evidently not a “normal war” in the meaning of the 1907 Hague Convention on Laws and Customs of War on Land and humanitarian international law which has been in force and continuously developed since the 19th century. Does the Federal Government classify the war against the Herero and Nama as a crime against humanity?
- a) If so, on the basis of what specific facts?
 - b) If not, why not?
 - c) If the Federal Government refuses to call these events a crime against humanity, how does it justify this exception given the fact that the term came into use in the legal discourse as early as 1915 in the protest note delivered by the Triple Entente on the massacre in Armenia and was given a specific legal status in 1945 in the Nuremberg Trials and applied retrospectively to the crimes of National Socialism in Germany?

On numerous occasions the Federal Government pointed out its historic and moral responsibility towards the victims of the conflicts from 1904 until 1908. This was done independently of a legal assessment. A legal assessment and classification – such as mentioned in questions 9 and 12 of this minor interpellation – has to be done under the international law applicable at the time. The events at the time are not subject to present day, and continually developed rules of humanitarian international law, human rights or international criminal law of which the elements of crimes against humanity and are crimes are part.

10. Does the Federal Government acknowledge that, even under international law as it applied at the time, the massacres and atrocities perpetrated against the Herero and Nama were war crimes?
- a) If so, on the basis of what specific facts?
 - b) If not, why not?

We refer to response to question 9.

11. Does the Federal Government share the view that by its declaration of intent and by its actions in annihilating a large part of the Herero population living in the former colony of German Southwest Africa, the German Empire acted in contravention of (European) international law which was already in force by breaching, *inter alia*, Article VI of the General Act of the Berlin Conference on West Africa of 1884/85 which obliged the European colonial powers to protect the indigenous population?

If not, why not?

We refer to response to question 9.

12. If the Federal Government describes and classifies the deliberate killings of the indigenous population carried out systematically and in a planned fashion by the German imperial “protection force” during the war against the Herero and Nama and in the labour and “concentration camps” set up for the purpose as “massacres” and “atrocities”, to what extent – in the view of the Federal Government – do these differ in their destructive intent, type, extent and quality from genocide?

As stated in response to question 7 historic events can only be legally assessed according to the regulations of international law applicable at the time.

13. In the view of the Federal Government, were the acts perpetrated by the German “protection force”, which the Federal Government refers to as “massacres” and “atrocities” and which a majority of experts in colonial history classify as genocide, committed largely in the context of a large-scale war (of annihilation) against the Herero and Nama?

If certain massacres and atrocities were not committed in the course of the war of annihilation, under what conditions and orders did they occur?

This is a question of historical research. The Federal Government does not comment on that.

14. To what extent does the Federal Government share the view that reconciliation cannot be achieved through unilateral acts on the part of the politico-moral and legal successors of the colonial government but that rather in principle, following a fundamental admission of guilt on the part of the perpetrating side, the perpetrating and victims’ sides must agree in an open and unconditional dialogue on the conditions to be fulfilled by both sides – in particular the perpetrating side – to achieve reconciliation?

The Federal Government does not comment on processes of reconciliation as these take place in specific contexts which need to be taken into consideration. In this context we refer to the responses 1 and 7 of the minor interpellation of the parliamentary caucus THE LEFT, printed matter 17/6813, as well as question 4 of the minor interpellation of the parliamentary caucus THE LEFT, printed matter 17/9255.

15. Is the Federal Government prepared to engage with the Namibian Government in an open, targeted and structured dialogue involving the population groups affected by the German “campaign of annihilation” on the next stages of the reconciliation process and all associated issues without preconditions?

If so, at what intervals of time and how exactly should this dialogue take place?

If not, why not?

The Federal Government is going to pursue the active dialogue with the Namibian Government and the various Namibian ethnic groups. The Namibian Government is positively inclined towards direct contacts between representatives of Namibian ethnic groups and the Federal Government. Together with these ethnic groups, the Federal Government will pursue the issue of form and structure of such a dialogue. The Federal government regards this intensive process of dialogue as an additional civil soci-

ety component to its comprehensive political dialogue about bilateral questions. In this context we refer to our response to question 6 of the minor interpellation of the parliamentary caucus THE LEFT, printed matter 17/9255.

16. What precisely were and are the funds made available under financial cooperation in 2006 (2 million euro), 2007 (10 million euro) and 2009 (8 million euro), totalling 20 million euro, for the so-called "Reconciliation Initiative" (Special Initiative) used for (please list by projects, programmes, programme phases and respective amounts)?

a) When was the first phase of the Special Initiative completed and what was the outcome, what were the funds used for and who was involved in the project management (planning, administration, execution) to dispense the available funds?

The first phase of the project of financial cooperation, "rural development in areas of special promotional need", was implemented from 20 June 2008 until 30 July 2009. In the first phase 54 individual measures were financed of which 40 were bore-hole rehabilitations (expenses 4.522, 927 Namibian Dollars), five cattle breeding projects (costs 3.900,110 NAM\$), five horticultural projects (costs 2.402,223 NAM\$), and four other projects (costs 1.732,275 NAM\$). All in all direct costs amounted to 12.557,536 NAM\$. Additional expenses amounted to 1.691,320 NAM\$ for planning and consulting services, auditing and other side costs.

The National Planning Commission (NPC) is in charge of implementing the project and contracted additional specialised service providers for this purpose. The planning and design of the individual measures of the project is done by the NPC in close and regular cooperation with the respective local communities. The nature of the project depends on the respective communities (community-based approach).

b) When did the second phase of the Special Initiative start, what have the funds been used for so far and who was and is involved in the project management (planning, administration, execution) to dispense the funds?

The second phase of the special initiative has been running since November 2009. So far, the funds used in the second phase have been expended to service providers such as consultants, architects, construction engineers, agricultural engineers, etc.), who together with the local communities carry out detail planning for the complex projects of the second phase.

In the second phase 33 construction projects in the field of education and youth (planning costs 54.716,968 NAM \$), 23 construction projects in the field of culture and small business centres (planning costs 49.294,870 NAM \$), 20 projects in the agricultural sector (planning costs 16.787,868 NAM \$), 91 construction measures in the field of water supply (planning costs 23.054,413 NAM \$), and four other projects (planning costs 3.031,582 NAM \$). Expenses for specialised service providers will also be incurred. The end of the construction measures has been envisaged for the first quarter of 2014. With regard to project management we refer to response to question 16a.

- c) How much of the total of 20 million euro pledged has already been dispensed and how much is still available until when?

The partner had secured a total of 4.494.402.68 Euros until 30 July 2012. Altogether a total of 15.505.598.32 Euros are available on demand.

17. Does the Federal Government intend to top up the funds for the Special Initiative for a possible third phase, as indicated in newspaper reports of the last visit of the former Director-General for African Affairs at the Federal Foreign Office, Walter Lindner, to Namibia (see The Namibian of 21.05.2012: „Special Initiative on track – Lindner“, http://www.namibian.com.na/index.php?id=28&tx_ttnews%5Btt_news%5D=97183&no_cache=1)?

- a) If so, what sum of money will be made available to top up the Special Initiative and what procedure will be used to determine the amount needed?

On 17 April 2012, the Namibian Government requested an increase of the special initiative from the Federal Government by 11 million Euros to implement all individual measures to the originally planned extent. The financial increase was a result of increased construction and raw materials prices. So far, the Federal Government has not made a decision about further sponsorship.

- b) To what extent is it planned that the population in the areas particularly affected by the German “war of extermination”, acts of cruelty, massacres and labour and concentration camps between 1904 and 1908 and the victims’ associations be included in determining the sum of money to restock the Special Initiative?

The request for additional funding does not include a change of the target group as mentioned in the original programme planning.

- c) To what extent is it planned that the population in the areas particularly affected by the German “campaign of annihilation”, the atrocities, massacres and the labour and concentration camps between 1904 and 1908, as well as victims’ associations, will be included in the project management (planning, administration, execution) and in determining how the remaining funds will be used in the current second phase and any additional amounts made available for any third phase?

We refer to the response to question 16a. The Namibian Government has identified measures in the respective communities and in cooperation with these communities is in charge of the implementation.

18. Whom did the former Director-General for African Affairs at the Federal Foreign Office, Walter Lindner, meet on his last trip to Namibia in May 2012 and what was the specific substance and outcome of his talks (please list individually with details of date, venue and those involved in the talks)?

On 14 and 15 May 2012, the former Director for Africa, Ambassador Walter Lindner, had talks with the Namibian Prime Minister, Nahas Angula; the Minister of Culture and

Sports (sic!), Kazenambo Kazenambo; Permanent Secretary in the National Planning Commission, Leevi Hungamo; as well as the deputy Foreign Minister, Peya Mushelenga. The talks took place in the respective offices of the official discussion partners in Windhoek as is common practice in international diplomacy; if the discussion partners also held the position of MP, meetings also took place in parliament. The Federal Government does not comment on confidential talks with representatives of foreign governments.

Apart from that, Ambassador Lindner also spoke about the special initiative as well as further repatriations of human remains of Nama and Herero from Germany with Chief Kuaima Riruako (Herero), Chief David Fredericks (Nama), and the SWAPO Chief Whip, Prof. Peter H. Katjavivi, and the NUDO chief whip, Arnold Tjihuiiko.

On 15 May 2012, three days after the funeral of the late Ovaherero/Ovambanderu Chief Alfons Maharero, Ambassador Lindner laid a flower bouquet at the graveside of Chief Maharero in Okahandja. Ambassador Lindner also met with representatives of the Herero, who welcomed the continuation of the direct talks.