

## Speech

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### **CAN GOVERNMENTAL NEGOTIATIONS AND AGREEMENTS ACHIEVE RESTORATIVE JUSTICE AFTER GENOCIDE?**

#### **WHO SHOULD NEGOTIATE RESTORATIVE JUSTICE AFTER GENOCIDE?“**

This year the Ovaherero commemorated the 112th anniversary of the Von Trotha Extermination order issued at Omahakari in the then Sudwest-Afrika on 2 October 1904. On the 22 or is it the 23 April 2017, it will be turn of the Namas to commemorate the 112th anniversary of the Von Trotha Extermination Order issued. Namibia enjoyed its 26th year of independence on the 21 March 2016, and the government has not made any significant headway with negotiations on the Genocide. It should tell you what the political economy around genocide is even on the Namibian side.

The question(s) that confront this esteemed panel tonight is that of “can governmental negotiations and agreements achieve restorative justice after genocide, and who should negotiate restorative justice after genocide?”. IT IS A CATEGORICAL NO – which I will try to motivate during the substantive part of my input on this panel. I will however also respond to the second part of the question, in terms of our sense of who should negotiate restorative justice after genocide.

Aptly, the Congress theme speaks of “restorative justice after genocide”. It is by now common knowledge that crimes perpetrated by colonial Germany during the war of 1904 – 1908 constitutes genocide. With or without a legal basis, we expect the present day representatives of the perpetrators and for that matter the German government to acknowledge and act in accordance with the internationally accepted principles of restorative justice.

The theory of restorative justice emphasizes the repairing of harm caused by offender to a victim, and is best accomplished through cooperative process that includes all stakeholders. Such a cooperative process must be victim-centred and to the full extent possible ensure that in the case of Nama and Ovaherero Genocide, descendants of the victims are able to participate and project their demands for “restoring justice” meaningfully. As such a so called “consultative process” as in the case of current bilateral negotiations between Germany and Namibia explicitly excludes the descendant of victims, and seemingly having as a deliberate objective - the silencing of the legitimate demands of the descendant of victims, clearly cannot achieve a just outcome. In the context of restorative justice, the process to be as consultative and participatory as possible is just as important as the just and

restorative outcome. So if the process is flawed as it is currently – there can surely be no guarantees of a just and restorative outcome from its proceeds. So again, IT IS A CATEGORICAL NO.

Why and how is the process flawed? The process is flawed on many fronts – first the designers of the process have gone against the stated principles that gave birth to the framework for a structured, i.e. the principles established by the 2006 Parliamentary Motion by Paramount Chief Kuaima Riruako (tripartite arrangement whereby government is expected to be a mediator). The current construct of the consultative process on the Namibian side has ignored the basic principles of transparency. It basically foresees 1 person representation on a technical committee that has to report to a political committee, which would possibly report to a Cabinet Committee, before Cabinet will sanction whatever position to be taken which will be communicated through the Special Envoy to their German counterparts. With a deadline of “end of this year” looming for bilateral negotiations on the Namibian Genocide, it is clear that a due, consultative and participatory process involving descendants of victims will play second fiddle to negotiation between the two governments on issues of they are comfortable with, and to which speedy resolution will be sought – “before the end of 2016”. Where in this governmental process do we see genuine interest in restorative justice? Where in this ongoing negotiations do we see the genuine interest in the centrality of the victim (and of course their descendants) in a process that should have as the part of the outcomes the “beginning of the healing of the wounds of the past”?

Kindly note, that we just as aware of the positions the German government’s on key issues that contradicts its expected role as that of the bona fide offender perpetrator of the crime of genocide in the context of restorative justice that it should genuine be interested in and pursue, i.e. amongst others the direct involvement of the descendants of victims in the negotiations “an internal issues for the Namibian government”, the legal standing of the Nama/Ovaherero Genocide of 1904 – 1908 viz. a viz. the UN Genocide Convention of 1948, the use of ongoing bilateral aid and of course its flagship programme – now expired Namibian-German Special Initiative Programme (NGSIP) as a negotiation ploy. I am afraid that as representatives of victims of the Nama/Ovaherero Genocide of 1904 – 1908, thus far the attitude of the German government, its ongoing pronouncements on a crime with impacts that still resonates today almost 4-5 generations later, and of course its part in the dictates of the ill-conceive bilateral negotiations with the Namibian government, is not demonstrative of its genuine pursue of a process that will deliver restorative justice for the descendants of the victims of genocide.

For the Nama/Ovaherero Genocide, what should restorative justice entail? First it must be about the design of a process that is consultative, participatory and cooperative – and for that matter the process must emphasize the centrality of the victims (and their descendants). As the process is just as important as the outcome – it must also deliver on a genuine start to a healing process in terms of actions that will

heal the wounds (formal acknowledgement and apology) – please note that this is not as simple as some scripted apology read by German Representative – there must be a due process accompanying the apology. Lastly, the process must deliver on an adequately sustained reparative programme that will redress imbalances caused by the crime of genocide, for which a few generations have and still are suffering till today.

Who therefore should negotiate restorative justice after genocide? “Nothing about us without us” – underpins our demand for a cooperative negotiation process with due emphasis on the centrality of the descendants of victims, elements of which are contained in the 2006 Namibian Parliamentary Resolution. While the obvious obsession and perhaps the key driver of the ongoing secrecy and exclusion around bilateral negotiations on the Nama/Ovaherero Genocide, is with the “how much should they pay?” or “how much do they expect us to pay?”, it is safe to say that Germany will never be in a position to pay in full for the crime of genocide, and consequently for what we (the descendants of victims) have lost almost a century ago – and which has scarred generations to present day. But pay (reparations) they must and they will.

In concluding, I quote from the joint paper from the Nama and the Ovaherero people on the issue of genocide and reparations signed at Mariental on the 14 December 2007: “To ignore that and try to evade coming to terms with our just demands or to wish that our demands will one day wither away is a wishful thinking, which will always be a vexatious thorn in the flesh of our good and friendly bilateral relations, as we, the affected people, will never give up our just demands for reparation until justice is done”. What is going on now will surely not deliver restorative justice for our people. A good place to start will be a genuine remorse for the crime of genocide and due process that will set in motion the much needed healing and eventual payment of even more due reparations.