

## **Presentation and Speech**

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### **DEFINITION AND COMPREHENSION OF GENOCIDE**

The international legal definition of the crime of genocide is found in Articles II and III of the 1948 Convention on the Prevention and Punishment of Genocide.

Article II describes two elements of the crime of genocide:

- 1) the mental element, meaning the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such", and
- 2) the physical element which includes five acts described in sections a, b, c, d and e. A crime must include both elements to be called "genocide."

GENOCIDE is universally defined as a CRIME AGAINST HUMANITY. I am sure all present are unanimous on this fact.

Genocide is, therefore, "A DEPLORABLE HUMAN RIGHTS VIOLATION" of the first order!

For the last two decades the Nama and Ovaherero-Ovambanderu people have raised their voices to get the government of the Federal Republic of Germany to own up to its moral and material responsibility towards the victims of the Genocide committed in Namibia between 1896 – 1908. And we hasten to add in a context of an unsympathetic post-colonial government of the Republic of Namibia.

### **OUR CASE AS VICTIMS OF GENOCIDE**

Firstly, we want the government of the Federal Republic of Germany to acknowledge that the atrocities, massacres, banishments, deportations, mass rape, starvation, poisoning, expropriation of property, kidnappings, imprisonment and forced labour constitute GENOCIDE! Let alone the Extermination Orders that attest to the "mens rea" principle (mental element) to constitute a legal basis for the GENOCIDE thesis.

Secondly, we expect the government of the Federal Republic of Germany to embrace the principle that the acknowledgement of the crime committed against us entails the undertaking to make good for the injustice done.

THUS OUR CASE IS ABOUT RESTITUTION. PERIOD!!

## **RESTORATIVE JUSTICE!**

Is a point we would like to belabour as part of our input in the proceedings of this historic event. This is a known means to RESTITUTION.

## **RESTITUTION!**

Given the atrocities (enumerated earlier) the world has agreed that our case is essentially and fundamentally about RESTITUTION.

RESTITUTION is “an act of restoring or a condition of being restored”:

- (a) restoration of something to its rightful owner
- (b) making good of or giving an equivalent for some injury.

## **RESTORATIVE JUSTICE!**

We the victims of the GENOCIDE committed in Namibia, namely, the Nama and OvahereroOvambanderu people, and the rank-and-file of progressive Namibians are saying: HITHERTO, RESTITUTION HAS BEEN REALIZED THROUGH THE MECHANISMS AVAILED BY A SYSTEM OF RESTORATIVE JUSTICE. RESTORATIVE JUSTICE IS A THEORY OF JUSTICE THAT EMPHASIZES REPAIRING THE HARM CAUSED BY CRIMINAL BEHAVIOUR.

## **Basic Tenets and Elements of Restorative Justice**

It is best accomplished:

1. Through COOPERATIVE PROCESSES that allow
2. All WILLING STAKEHOLDERS TO MEET
3. Preferably meeting in NEUTRAL VENUE

## **GENOCIDE IS MORE THAN BREAKING THE LAW**

- From a perspective of restorative justice we the victims of the First Genocide of the Twentieth Century view the crime committed against us as more than a mere breaking of international law – because it also caused HARM TO PEOPLE, RELATIONSHIPS, the COMMUNITIES as well as the NATION at large.

- IT IS OUR SUBMISSION THAT A JUST RESPONSE MUST ADDRESS THOSE HARMS AS WELL AS THE WRONGDOING. IF THE PARTIES ARE WILLING, THE BEST WAY TO DO THIS IS TO HELP THEM MEET TO DISCUSS THOSE HARMS AND HOW TO BRING ABOUT A SUSTAINABLE RESOLUTION!

## **FOUNDATIONAL PRINCIPLES OF RESTORATIVE JUSTICE**

Entail, though, not limited to the following:

1. CRIME CAUSES HARM AND JUSTICE SHOULD FOCUS ON REPAIRING THAT HARM.
2. PEOPLE MOST AFFECTED BY THE CRIME SHOULD BE ABLE TO PARTICIPATE IN ITS RESOLUTION.
3. RESPONSIBILITY OF THE GOVERNMENT OF THE VICTIM GROUPS (NAMIBIANS) IS TO MAINTAIN CONTACT WITH THE SUCCESSOR AUTHORITY OF THE PERPETRATOR OF THE CRIME (Government of the Federal Republic of Germany) in order to facilitate a trilogue.

## **CURRENT “GERMAN-NAMBIAN TALKS: A VICTIMS’ VIEW**

WE THE VICTIM COMMUNITIES ARE OF THE VIEW THAT WHAT IS HAPPENING CURRENTLY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY, FALLS FAR AWAY FROM THE HOPES AND ASPIRATIONS OF AFFECTED COMMUNITIES FROM THE PERSPECTIVE OF RESTORATIVE JUSTICE. THIS VIEW IS GROUNDED IN THE FOLLOWING REASONS:

1. No focus on the needs and demands of the affected communities
2. There is no direct encounter between the victim and the perpetrator
3. Present formula ignored the direct descendants of the affected groups who live in the diaspora. Note that these communities resident in Botswana, South Africa, Togo and Cameroon, USA etc. are not subjects of the Namibian state.
4. The dynamic of the talks is focused on an ill-defined notion of REPARATION and coaxed in the artificial cloak of bilateralism anchored in the DEVELOPMENT AID being given to the Namibian government.
5. The initiative lacks the important aspect of a cooperative thrust as it is characterised by a “bullish and coercive attitude” of the Namibian government buttressed by a Hitlerite-arrogance of the government of the Federal Republic of Germany

## **REITERATION OF OUR POSITION AS VICTIM GROUPS ON ELEMENTS FOR RESTITUTION**

It is about:

Loss of Land

Loss of Livestock

Loss of Culture and Heritage

Loss of lives Loss of dignity (emotional torture, rape, etc)

Emotional Healing

### **SUMMARY**

IT IS OUR SUBMISSION THAT THE CURRENT DEVELOPMENTS ARE STRAYING THOUSANDS OF MILES AWAY FROM THE BASIC PRINCIPLES AND VALUES UNDERPINNING THE NOTION OF RESTORATIVE JUSTICE.

WE CANNOT BETRAY THE BLOOD OF OUR ANCESTORS BY REMAINING SILENT!

THAT IS WHY WE ARE HERE TO STEAR THE PROCESS TOWARDS RESTORATIVE JUSTICE.