

**SURVIVING GENOCIDE: A CRITICAL ANALYSIS OF THE LONG-TERM IMPACT
OF THE HERERO AND NAMA GENOCIDES**

BY

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**MINI-THESIS RESEARCH PROPOSAL SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS (LLM)**

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OCTOBER 2022

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DECLARATION

I, Ruusa Megameno hereby certify that the entirety of the work *Surviving Genocide: A Critical Analysis of The Long-Term Impact of The Herero and Nama Genocides* is my own, original work, and that I have never before submitted it in whole or in part for any qualification. I further certify that all sources used are duly acknowledged.

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Date: 06 October 2022



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Date: 06 October 2022



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DEDICATION

This thesis is dedicated to my Parents Abed Nangolo (Nakiinyangele), Ruusa Mhingana Elago (Gwamnoko), and Benitta-Mkwanambwa Kuumbwa.



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ACKNOWLEDGEMENTS

Completing this study was not a walk in the park, Therefore the prayers, inspiration, guidance, and motivation from these people made it possible. Therefore, I would want to thank and express my gratitude to:

The Lord and Saviour, who has shown me that everything is possible through Him who strengthens me till the end.

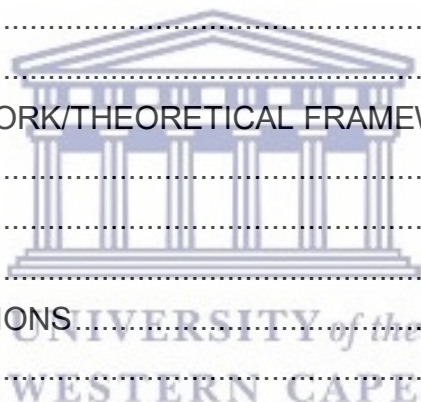
My supervisor, Prof. John-Mark Iyi for his continuous support, enormous supervision and dedication throughout the research project. I do not have words to express my gratitude to you. Thank you Mr MO for the language and the technical editing, UWC for granting me the opportunity to pursue this course and providing me with a partial scholarship to pursue the course.

I further want to thank my Husband Nicanor Nangolo my cheerleader in all my academic endeavors, my son Runicar-Tugamena and daughter Charlene-Twapewa for the endless love, my brothers Abed, Epaphras, Mathew, Soft Nangolo, my aunty Muvule and Martha I appreciate your invaluable contribution, unwavering support and encouragements. To my friends and families and class of 2020 LLM, I am grateful for the emotional support, encouragement and for being there for me constantly.

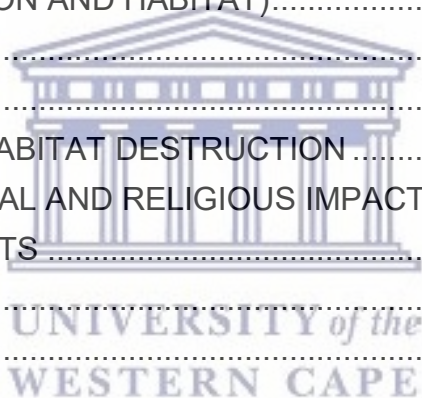


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LIST OF ABBREVIATIONS

AIDS	Acquired immunodeficiency syndrome
ECCR	European Center for Constitutional and Human Rights
GDR	German Democratic Republic
GDP	Gross domestic product
GSWA	German Southwest Africa
HIV	Human immunodeficiency virus
ICJ	International Court of Justice,
IMF	International Monetary Fund
MP	Member of Parliament
MOHSS	Ministry of Health and Social Services
NGTC	Nama Genocide Technical Committee
NTLA	Nama Traditional Leaders Association
OGF	Ovaherero Genocide Foundation
OTA	Ovaherero Traditional Authority
PCIJ	Permanent Court of International Justice
PTSD	Post-traumatic stress disorder
SWAPO	South West Africa People's Organisation
TVET	Technical and Vocational Education and Training
UNHCR	United Nations High Commission for Refugees
UN	United Nations
WHO	World Health Organisation
WWII	World War II



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ABSTRACT

The period 1904–1908 is historically significant among the Herero and Nama, as they still suffer from the impact of the genocide committed by the German colonisers. Nearly 80 per cent of the Otjiherero-speaking people and 50 per cent of Nama-speaking people were brutally killed, tortured and raped after reclaiming their lands from the German settlers. Since this event took place before Namibia's independence in 1990, little was said about the brutal killing until after Namibian independence, when the progeny of the genocide victims sought answers and justice for the act of colonial injustices. They subsequently filed a claim in Washington DC in 2001 for compensation payments totaling over two billion US dollars by the German government. Due to the political situation of the period before Namibia's independence in 1990 and after, a lack of and inadequate government reparation strategy and deficient laws and regulations allowed Germany to avoid accountability. Genocide atrocities have had a devastating influence on many survivors or descendants, leaving them with long-lasting psychosocial, physical, and economic implications. The analysis of the long-term effects of the Herero/Nama genocide requires additional investigation.

The study aimed to examine some of the long-term repercussions of the Herero and Nama genocide, as well as the strategies and hurdles for seeking atonement. Study objectives are: to determine the long-term effects of the Nama and Herero Genocide; to establish the proposed measures to address the colonial injustices to help the affected Nama and Herero people; and to determine some challenges faced by Nama and Herero in obtaining reparation for genocide; and establish methods adopted by Herero/Nama in claiming reparations for genocide by Germans.

A qualitative desk-based research methodology was used. Desktop was chosen to explore data from sources that are already in existence and that depict real events from the perspectives of the people who were directly involved. Articles, databases, newspapers, internet, and book desk evaluations provided the information. The study also examined government policy documents, published reports, legislation, court cases, and relevant reports.

The study indicated that despite Germany's acknowledgment and half-hearted apologies for genocide during the colonial era, the Namibian Herero and Nama communities are still suffering to live with the effects of genocide because the apology to the affected communities and restitution demands have not been addressed or met. Moreover this study argues that there is no prospect of a peaceful resolution to the

atrocities committed between 1904 and 1908 because the primary negotiators in the case, the descendants of the Ovaherero and Nama victims, were not consulted during the talks, and the agreement was made without the direct involvement of the communities affected by the genocide. Thus, in order to reach a tangible agreement, it is urged that the governments of Germany and Namibia come to the negotiating table with the full participation of genocide victims. The German President must make additional formal apologies in person to the afflicted communities in their respective areas and regions. In addition, to achieve a good resolution, it is vital to assess the injuries caused by colonialism by hearing directly from the affected individuals in order to reach an agreement on the reparations package. The report concludes by recommending that the Namibian government and legislators organize the Herero and Nama yearly commemoration day in order to repair the rifts and polarization that now exist in Herero and Nama societies.

KEY WORDS: Genocide, Herero genocide, Nama genocide, New Historicism, plaintiffs, descendants, victims, impact, Namibia



CHAPTER ONE

INTRODUCTION TO THE STUDY

1. INTRODUCTION

The Herero and Nama Genocide was the first genocide of the twentieth century, perpetrated by the German empire against the Ovaherero, the Nama and the San people in German-colonised South-West Africa, today known as Namibia. This genocide occurred between 1904 and 1908.¹ In 2001, the Herero people became the latest plaintiffs and the first ethnic group seeking reparations under the Aliens Tort Claims Act procedures before a United States Federal court for war crimes committed overseas.² This study examines the long-term effects of genocide, unequivocal recognition of the genocide, apologies, and reparations, as well as the legal claims brought by the colonized Herero people against Germany.

On 11 January 1904, war erupted in the small town of Okahandja. The farmers were forced off their land using a strategy of systematic land and cattle seizure as well as the influx of German newcomers. German military obsession, self-fulfilling fantasies, misunderstandings, and terror led to the outbreak of this war, the likes of which had never before been witnessed in Southern Africa. In a conscious policy of genocide, German soldiers and settlers sought, shot, beat, hanged, starved, and raped Herero men, women, and children. The war and its aftermath were characterised by extreme acts of violence and cruelty.³ Indiscriminate shootings, hangings and beatings were the order of the day. Limited and archaic diaries of Ludwig von Estorff, “terrible scenes” and letters of German soldiers and settlers in Namibia at the time are littered with references and photographs that relate to these events.⁴ When the war finally ended in 1908, no less than 80 per cent of the Herero had lost their lives.⁵

The majority of the Herero who remained in Namibia, primarily women and children, survived in concentration camps.⁶ They were ruthlessly treated, imprisoned, and made to work as forced laborers for

1 Niezen R ‘Speaking for the dead: the memorial politics of genocide in Namibia and Germany’ (2018) 24. *International Journal of Heritage Studies*, 547-567.

2 *Herero People’s Reparations Corporation v Deutsche Bank Ag*, (2005) No. 03 Civ. 0991 (RLC) (S.D.N.Y).

3 Gewalt JB ‘The Herero genocide: German unity, settlers, soldiers and ideas. *Die (koloniale) Begegnung : AfrikanerInnen in Deutschland (1880-1945), Deutsche in Afrika (1880-1918)*’ (2003).1945, 109-127.

4 Administrator’s Office Windhuk *Report on the Natives of South West Africa and Their Treatment by Germany Blue Book* (1918) 1-219,; Silvester J and Gewalt J.B *Words Cannot be Found. German Colonial Rule in Namibia* (2003) 325-334.

5 Gewalt JB ‘The issue of forced labour in the Onjembo: German South West Africa 1904–1908’. (1995) 19(1) *Itinerario Bull Leyden Centre Hist Eur Expans* 97-104

6 Pool G *Die Herero Opstand: 1904-1907*. (1979), 111.

both civil and military authority as well as for private businesses, regardless of their age or gender.⁷ Notwithstanding the 2004 parliamentary apologies, descendants continue to feel that an apology has not been made to date. The German government has made little headway toward memory or apologies directly to the victims, the Herero and Nama find it impossible to forget their terrible pasts because they have received neither an official apology nor restitution. Germany acknowledged the violence but failed to apologize or engage the victims directly. Today's descendants live in abject poverty, and traditionally, livestock and land have been of vital importance to them.⁸

1.2. PROBLEM STATEMENT

Despite the independence of Namibia in 1990, the Herero and Nama tribes continue to live with arguably the greatest loss of life through genocide. There has never been justice for these atrocities. Lack of government restitution policy, inadequate laws and regulations, inadequate victim engagement, constrained and antiquated resources have delayed the direct victim apologies and reparations process. The documentation of genocide in Namibia is far from complete because evidence is confined to outside archives with very little research dedicated to the analysis of the Herero/Nama genocide. Given the observed injustice of these atrocities in Namibia, there is a need for a study to critically analyse some of the long-term impacts of the genocide among the Herero and Nama. To date there are no definitive resolution to the conflict between the Germans and the Herero-Nama and there are no documented agreements or contracts between the parties. This study provides a critical analysis of some of these long-term impacts, and the strategies for possible policy recommendations to ameliorate the effects of this crime and abuse of human rights.

1.3. SIGNIFICANCE OF THE STUDY

Since the genocide, the Herero tribal communities have remained negatively affected in various dimensions. This study examines some of the consequences of the injustices perpetrated against these communities, and the methods of obtaining relief from, and reparations for the injustice through various forms of support.

⁷ Pool G *Die Herero Opstand: 1904-1907* (1979),111.

⁸ Boehme F 'Reactive Remembrance: The political struggle over apologies and reparations between Germany and Namibia for the Herero genocide' (2020) 19, *Journal of Human Rights* 238.

1.4. AIM AND OBJECTIVES

1.4.1 Research aim

The aim of this study is to examine some of the long-term impacts of the Herero and Nama genocide and identify difficulties encountered by the Nama and Herero in seeking restitution.

1.4.2 Research objectives

- a) To determine the long-term effects of the Nama and Herero Genocide.
- b) To establish the proposed measures to address the colonial injustices to help the affected Nama and Herero People.
- c) To determine the obstacles Nama and Herero face in seeking reparation for genocide, as well as the tactics used by Herero and Nama in claiming reparation for German atrocities.

1.5. RESEARCH QUESTIONS

- a) What are some of the long-term effects of genocide on the Nama and Herero?
- b) How should colonial injustice be addressed?
- c) What are some challenges faced by Nama and Herero in obtaining reparation for genocide?
- d) What are the method adopted by Herero/Nama to claim reparations of genocide by Germans?

1.6. RESEARCH METHODOLOGY

A qualitative desktop research methodology was used. The documentary research was chosen to capture a broader understanding of the contentious Herero-Nama genocides matter and explore data from sources that are already in existence and that depict real events from the perspectives of the people who were directly involved.⁹ Articles, databases, newspapers, internet, and book desk evaluations provided the information. The study also examined government policy documents, published reports, legislation, court cases, and relevant reports.

1.7. CONCEPTUAL FRAMEWORK/THEORETICAL FRAMEWORK

This study has used New Historicism as its theoretical framework. This theoretical framework was used to formulate the research objectives. The framework is concerned with the social and cultural forces that

⁹ Bassot B 'Doing Qualitative Desk-Based Research: A Practical Guide to Writing An Excellent Dissertation' (2022) 6-7; Grove SK, Burns N and Gray J *Understanding Nursing Research: Building an Evidence-Based Practice*. Elsevier Health Sciences: 6 ed (2015) 67.

create or threaten a community.¹⁰ New Historicists emphasise the assumption of the role that context, and in particular historical context, plays in shaping literary works, and vice-versa. Also improving on traditional historicism, New Historicism holds that history, rather than being an objective recording of unchanging facts, is subjective and textual. In this research, the new historicist approach can be applied to the long-term impact of the Herero-Nama genocides. The researcher will critically analyse the long term impact of historical genocides.

1.8. LITERATURE REVIEW

An in-depth discussion of the literature related to genocide is provided in chapter 2. According to Melber, the first genocide of the 20th century was between the Germans and the Herero people of Namibia. This was evidence by the atrocities committed by the Germans from 1904.¹¹ The policies that Germany enforced in Namibia were regarded as deception and violence, and resulted in the population of Namibia being pushed into narrow portions of their traditional land-holdings.¹² Nielsen has stated that, in August 1904, the German colonial force or Schutztruppe was deployed to butcher the Herero protestors at the battle of Waterberg.¹³ Statistics have estimated that a total number of 100,000 Herero people and 20,000 Nama, mainly women and children, were killed by the Germans; this was genocide.¹⁴ These people were subjected to torture, rape, forced labour, exhaustion and starvation after being sent to the Shark Island concentration camps.¹⁵

Like many other atrocities, German has avoided responsibility for its conduct in Namibia for a long time. When the affected communities demanded direct representation at the negotiating table the German Ambassador Schlaga rejected any idea of direct involvement.¹⁶ It has rarely been debated by Namibian authorities,¹⁷ Hence they allowed the German side to enter the negotiations without offering any apologies, and with all the meetings conducted, these have yielded no concrete results, but have merely caused some

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- 10 Yerli K 'On Deconstruction and New Historicism'. (2017) 13 *The Journal of Turk-Islam World Social Studies* 63-64.
- 11 Melber H. 'Uncovering the 20th century's first genocide'. (2017). *New Africa*, 26-30.
- 12 Olusoga D and Erichsen, C. W. *The Kaiser's Holocaust: Germany's forgotten genocide* (2010).
- 13 Nielsen MB 'Selective memory: British perceptions of the Herero-Nama genocide, 1904-1908 and 1918' (2017). 43(2), *Journal of Southern African Studies* 315-330.
- 14 Shigwedha VA 'The return of Herero and Nama bones from Germany: the victims' struggle for recognition and recurring genocide memories in Namibia' 2016 *Human Remains in Society. Curation and Exhibition in the Aftermath of Genocide and Mass-violence*, 197.
- 15 Melber H 'Genocide matters-negotiating a Namibian-German past in the present' (2017)¹⁷ *Wiener Zeitschrift für kritische Afrikastudien* 1-24.
- 16 'German rules out financial reparations' *Windhoek Observer* 28 June 2019
- 17 Bergsmo M Kaleck W and Hlaing K (eds). *Colonial Wrongs and Access to International Law*. (2020) 7.

embarrassing moments due to the lack of German diplomacy which gave much frustration to the Namibian government.¹⁸After more than a century passed since these atrocities were committed, the German government and parliament officially refer to the said killings as tantamount to genocide.¹⁹ Notwithstanding such acknowledgments, the German government is yet to yield to the demands for reparations to the descendants of the genocide victims, and the need for justice. Additionally despite the acknowledgement to date, neither government has provided descendants of affected communities with meaningful direct representation.

Namibian scholars who have researched the genocide topic have only detailed the short-term impacts of the genocide. There has been no study of the long-term impacts for comparative purposes, so the researcher has utilised other genocides globally to comment on how their short and long-term impacts have been addressed. According to the literature cited in chapter 2, those responsible for the genocides in Yugoslavia and Rwanda were indicted and held accountable for their acts, but in Namibia the Germans have gone unpunished, and the descendants of the victims continue to live with and bear the negative impact of the genocide. It is accepted that the direct perpetrators of the genocide may no longer be alive. This, however, does not remove the fact that a genocide was committed in Namibia which must be acknowledged, and that reparations should be paid to descendants of victims.

1.9. LIMITATION OF STUDY

The study faced challenges because not much has been written on the long-term impact of the genocide. This study can only obtain its information on an anecdotal basis as all survivors of the genocide have passed on. Although there are some cases to be dealt with in an African context, not much precedent exists. In essence, the literature available is mostly based on second-hand information from international scholars, so precision is elusive.

1.10. CHAPTER OUTLINE

- | | |
|-----------|--|
| Chapter 1 | Introduction, rationale and brief outline of the methodology |
| Chapter 2 | Literature review |

18 Melber H Addressing the genocide in Namibia 2018 *Africa Is a Country* 14.

19 Nielsen MB 'Selective memory: British perceptions of the Herero–Nama genocide, 1904–1908 and 1918' (2017) 43 *Journal of Southern African Studies* 315-330.

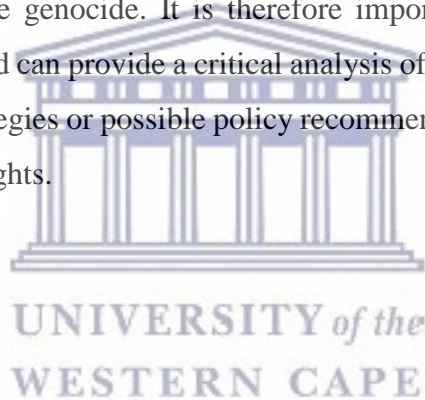
- Chapter 3 The social, economic and psychological impacts on survivors of the Nama and Herero genocide
- Chapter 4 Reparations
- Chapter 5 Recommendations and Conclusion

1.11. ETHICAL CONSIDERATIONS

Due to the fact that the genocide occurred more than a century ago, this research is based mostly on anecdotal evidence or information in which all primary and secondary sources used will be cited in full.

1.12 CONCLUSION

The literature review reveals few studies on the lasting impact of the genocide, but did not reveal any specific research conducted on Herero and Nama survivors' communities, and the economic and political effects on them. A lack of or poor government reparation policies, and inadequate laws and regulations, allow the German to go unpunished. This affects the descendants of the victims, who continue to live with and bear the negative impact of the genocide. It is therefore important to conduct research into this phenomenon so that the data obtained can provide a critical analysis of the long-term impact of the Herero and Nama genocide and look at strategies or possible policy recommendations to ameliorate the effects of this crime and violation of human rights.



CHAPTER 2

LITERATURE REVIEW

2. INTRODUCTION

Chapter one provides an outline of the study, which entailed a background on the Herero and Nama Genocide which was the first genocide perpetrated by the German empire against the Ovaherero, the Nama and the San people in German-colonised Southwest Africa, today known as Namibia. A review of the literature on the impacts of genocide in Africa, Namibia, and other countries in general has been explored and discussed narratively in this chapter. A thorough study of the long-term implications of genocides has been detailed. The aim of the literature review was to get an understanding of current study done, and to acquaint the researcher with the latest developments in the area of the study.²⁰ Moreover, relevant conceptual frameworks has been identified. As indicated in the first chapter, the long-term impact of genocides is contested, and differs from one country to the next, and this has to be investigated using the Namibian genocide of 1904 – 1908, specifically the Herero and Nama genocides, as a case study. One of the objectives of the research is to look into the long-term impact of the Herero and Nama genocides on the Herero and Nama peoples by describing ongoing consequences or effects, as well as developments that the Nama-Herero people have experienced as a result of the genocide. In this way, the study seeks to contribute to the existing literature on the subject. In addition, the study attempts to explain the meaning of genocide in the context of Namibian history. The factors that led to the genocide in Namibia have also been discussed at length.

Acts of genocide have been the subject of research in various disciplines of academia, and examined by epidemiologists, historians, political scientists, psychologists, anthropologists, demographers and others, and genocidal studies have become a unique field of study as a result.²¹ The trauma and long-term generational impact for descendants of genocide victims continues even after the violence has ended, and leaves emotional trauma on survivors and future generations. Recent studies documenting the generational mental health impact of genocides have investigated a variety of outcomes, including depression, anxiety, schizophrenia, suicide, post-traumatic stress as well post-traumatic growth.²² Despite the extreme cruelty

20 Watkins D and Burton M *Research Methods in Law* (2013) 13.

21 Lindert J Kawachi I Knobler H Y Abramowitz M Z Galea S Roberts B Mollica R and McKee M 'The long-term health consequences of genocide: developing GESQUQ-a genocide studies checklist' (2019)13 *Conflict and health*, 1-6.

22 Levine S Z Levav I Pugachova I Yoffe R and Becher Y 'Transgenerational effects of genocide exposure on the risk and course of schizophrenia: a population-based study' (2016) 176 *Schizophrenia research* 540-545.

survivors had endured, some studies have identified a negative impact, while others found resilience or no relationship.²³

2.1 GENOCIDE

Globally, millions of people are injured systematically and killed through the violence of genocide. According to Article 2 of the Genocide Convention, genocide is defined as any act carried out with the intention of completely or partially eradicating a national, ethnic, racial, or religious group. The group intentionally being subjected to conditions of life that are intended to cause its physical destruction, in whole or in part; (a) killing group members; (b) causing serious bodily or mental harm to group members; (c) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group.²⁴ Lemkin added to the definition that genocide has two phases: one, destruction of the national pattern of the oppressed group; and the other, the imposition of the national pattern of the oppressor.²⁵ These crimes are listed in Nuremberg Charter Article 6 and Genocide Convention Article 2, and all the acts are prohibited.²⁶ Millions of people have suffered as a result of genocide throughout the twentieth and early twenty-first century.²⁷ Additionally, according to the United Nations High Commission for Refugees UNHCR's estimation of 50 million people have been forced to flee their homes as a result of such violent crimes.²⁸ Genocidal genocide is a new term established by the author to characterise an old practice in its current evolution. In general, genocide does not always imply the instantaneous destruction of a nation, unless it is accomplished by the systematic slaughter of all citizens of that nation.²⁹ In this context, it is intended to refer to a coordinated strategy of numerous tactics aimed at eroding the basis of national group life with the ultimate goal of annihilating the groups themselves. Disintegration of political and social institutions, culture, language, national feelings, religion, and the economic existence of national groups would be the objectives of such a plan, as would destruction

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- 23 Lindert J McKee M Knobler H Abramovitz M and Bain P 'Systematic review and meta-analysis of the impact of genocide on symptom levels of mental health of survivors, perpetrators and on-lookers: PROSPERO' (2016) 13 *international prospective register of systematic reviews* 1-6.
- 24 Convention on the Prevention and Punishment of the Crime of Genocide art. 2, 78 U.N.T.S. 277, 9 December 1948; Bloxham D and Moses D *The Oxford Handbook of Genocide* (2013) 21.
- 25 Lemkin R *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (2005) 79-95.
- 26 Convention on the Prevention and Punishment of the Crime of Genocide art. 2, 1948 78 U.N.T.S. 277, (1948).
- 27 Bloxham D and Moses D *The Oxford Handbook of Genocide* (2013) 21.
- 28 Anderton C H and Brauer J ed *Economic Aspects of Genocides, Other Mass Atrocities, and Their Prevention* (2016) 3-4.
- 29 Lemkin R *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (2005) 79.

of the personal security, liberty, health and dignity of individuals who belong to such groups, as well as the destruction of personal lives and even the lives of entire families.³⁰

2.2 NEW HISTORICIST FRAMEWORK

New historicism has been utilised as a theoretical framework for this study. Several authors have identified its significance. A theory known as "New Historicism" holds that literature should be examined and analysed in the context of both the author's and the critic's histories.³¹ According to Hickling, the emphasis of new historicism focuses mainly on the impact of emotion in relation to events the author therefore feels that the emotional argument is null and void when historical events are detached from the reality within which they actually happened.³² New historicism insists that literature must be understood in its historical context.³³ In the context of the Herero/Nama genocide for example, the German soldiers and settlers sought, shot, beat, hanged, starved, and raped Herero men, women, and children and one core aim of new historicism is to champion women, children, people of colour, non-Christians, and other previously marginalised groups as essential components of the larger historical narrative.³⁴ Thus this theory has been incorporated in the research to determine the impact the Herero/Nama and Indigenous populations experienced during the German colonial encounter.

The restoration of what it is that makes an individual and a society uniquely Herero is a historical process that started in the immediate aftermath of the war and has continued into the present. The new historicism theory has brought history to millions of families, and enables them to re-imagine and re-interpret historical events. For scholars who identify as members of the minority in terms of culture, class, gender, or ethnicity, the theory has made it easier for them to recognize themselves in such stories. Furthermore, this theory has enabled the researcher to find value and resonance in the Herero and Nama genocide experience. The theory has also sought to define and determine what it is that makes someone Herero, and to enable descendants to fully understand who they are and to fully appreciate their place in the world.

30 Lemkin R Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress (2005) 79–95.

31 Chocano-Díaz M G 'American studies and the new historicism' (1997)10 *Revista alicantina de estudios ingleses*, 15-25.

32 Hickling M 'New Historicism' (2018) 27 *Brock Education: A Journal of Educational Research and Practice* 53-57.

33 Parvini N 'New historicism and cultural materialism' in Richter D H (ed) *Companion to literary theory*, (2018) 238-249.

34 Parvini N 'New historicism and cultural materialism' in Richter D H (ed) *Companion to literary theory* (2018) 238-249.

This is because the theory places emphasis on the power relations operating within the society of its time, as well as consciously engaging the idea that the researcher inevitably reads the past from the present.³⁵

2.3 AFRICAN GENOCIDE EPISODES OF THE 20TH CENTURY AND 21ST CENTURY

Historically, the issue of genocide has been sensitive and yet it remains a crucial issue for discussion and debate. The majority of survivors or their descendants are suffering due to war crimes deliberately inflicted on them. One needs to understand the impact imposed on the victims in order to help create awareness among new generations, including scholars, about the inhumanities committed, and drive them to action to combat injustice. The section below will briefly discuss genocide cases committed in three African countries, so that the author can get a different historical context or a deeper exploration of current genocide cases. The crime of genocide is unique because the proven intentional physical destruction must be committed by perpetrators against groups belonging to a national, ethnic, racial, or religious group. Three episodes of genocides in Africa in the 20th Century and 21st Century: Nama-Herero (1904); Rwanda (1994); Darfur-Sudan (2003) will be discussed.

2.4 NAMIBIA (HERERO AND NAMA) GENOCIDE

The mass killing of the Herero and Nama by the German Empire between 1904 and 1908 constitutes the first acknowledged genocide of the twentieth century. To date, it is estimated that between 64,000 and 100,000 Herero and 10,000 Nama were killed as a result of genocide or perished due to genocide by attrition through starvation, dehydration, and unattended injuries. A large number of Herero and Nama were imprisoned in concentration camps, where the majority perished from illnesses, mistreatment, and fatigue. Owing to the dry season, victims were driven to either slice the throats of cattle and drink their blood, or squeeze the fluid from the animals' abdomen. Moreover, there were violations such as the dishonouring of women, confiscation of private property, pillage, the seizure of goods belonging to Herero and Nama communities, educational establishments and charities, the arbitrary destruction of public and private goods, deportation and forced labour, and Herero and Nama civilians were executed using false allegations of war crimes and violations against civil and military personnel.³⁶

The head of the Association of the Ovaherero Genocide in the USA, Barnabas Veraa Katuuu, the Ovaherero Paramount Chief Vekuui Rukoro, and Nama Chief Johannes Isaack filed a lawsuit against

35 Prendergast C 'Circulating representations: New Historicism and the poetics of culture' (1999) 28 *SubStance* 90-104.

36 Sarkin-Hughes J *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers* (2011)1.

Germany in January 2017 accusing the government of genocide, theft, and expropriation of property while Namibia was under German colonial rule.³⁷ Plaintiffs demanded reparations akin to those that Jewish Holocaust survivors received after World War II. Additionally they demanded a seat at the table during bilateral negotiations between the Namibian and German governments concerning how to reckon with colonial-era atrocities. After series of court hearing the Germans admitted that the events constitute genocide, however they previously argued that ‘the legal concept of genocide does not apply in this case’, according to Germany’s motion to dismiss the case.³⁸

The Herero-Nama genocide has long been denied or ignored by the German government, and rarely debated by Namibian legislators.³⁹ Muller claims that in March 2012, the German Bundestag discussed a resolution that would have "recognized German colonial atrocities in former German South-West Africa as a genocide and made reparations for them." The interpretation of the German colonial past and the German-Herero War in the former German South West Africa, from 1904 to 1907 has been the subject of heated debate in recent years.⁴⁰ The genocide theory in German national discourse was first developed by Drechsler, a historian in the German Democratic Republic (GDR), in his 1966 historical study on German colonial rule in German South West Africa.⁴¹ Until the 1990s, however, it remained an issue that was not taken up much by scholars or diplomatic engagement, and remained a side note with limited historical research.

In 2012 the German parliament discarded an opposition party’s motion requesting that the government acknowledge that the massacre committed by German troops was genocide. The political elite are afraid of the legal and moral repercussions that a clear definition of this crime might bring in its wake’ according to Kopp of Berlin Postkolonial. The state could be forced to pay reparations.⁴²

37 *Rukoro et al v. Federal Republic of Germany*, (2019) No. 1:2017cv00062 - 64 (S.D.N.Y) available at: <https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2017cv00062/467192/64/> [accessed 7 February 2022].

38 *Rukoro et al v. Federal Republic of Germany*, (2019) No. 1:2017cv00062 - 64 (S.D.N.Y) available at: <https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2017cv00062/467192/64/> [accessed 7 February 2022].

39 Kaleck W On Double Standards and Emerging European Custom on Accountability for crimes in Bergsmo M Kaleck W & Hlaing K (eds) *Colonial Wrongs and Access to International Law* (2020) 7.

40 Müller L ‘We Need to Get Away from a Culture of Denial: The German-Herero War in Politics and Textbooks’ (2013) 5 *Journal of Educational Media, Memory, and Society* 50-71.

41 Rudin H R 1967 ‘Südwestafrika unter Deutscher Kolonialherrschaft: der Kampf der Herero und Nama Gegen den Deutschen Imperialismus (1884–1915). By Horst Drechsler.[Studien zur Geschichte Asiens, Afrikas und Lateinamerikas.](Berlin: Akademie-Verlag’ (1967) 73 *The American Historical Review* 372.

42 Schmeller J ‘Germany refuses to acknowledge Herero massacres as genocide’ 2012 *Deutsche Welle*,23.

German officials had in the past steadfastly rejected the use of the word ‘genocide’ to describe the killings of the Herero and Nama until July 2015, when the Social Democrat foreign minister, Frank-Walter Steinmeier, issued what has been referred to as a ‘political guideline’ indicating that the massacre should be referred to as ‘a war crime and a genocide’.⁴³ Only on 10 July 2015, after more than a century had passed since the commission of the atrocities, did the German government and parliament officially referred to the said killings as tantamount to genocide.⁴⁴ Notwithstanding such acknowledgment, the German government is yet to yield to the demands for reparations to the genocidal victims' descendants and their demand for justice.

2.5 RWANDAN GENOCIDE

The Rwandan genocide occurred between April 7, 1994 and July 15, 1994, during the Rwandan Civil War.⁴⁵ Armed militias in Rwanda murdered members of the Tutsi minority ethnic group over the period of around 100 days, as well as some moderate Hutu and Twa. The most severe effect on human life occurred during the Rwandan Genocide, which was carried out between 1994 and 1998. Between 500,000 and 800,000 Tutsi fatalities were estimated to have occurred and between 250,000 and 500,000 women were raped. As a result, a large number of the survivors became infected with HIV due to the *genocidaires*' recruitment of HIV-positive individuals.⁴⁶ Over the course of the battle, Hutu extremists released hundreds of AIDS patients from hospitals and organised them into ‘rape squads’.⁴⁷ Ultimately, the intention was to infect future Tutsi rape victims with the virus and cause them to die ‘slowly and inexorably’.⁴⁸ Additionally Tutsi women were targeted in order to eradicate their reproductive capabilities. In certain cases, sexual mutilation, which involves mutilation of the vagina with machetes, knives, pointed objects, boiling water, and acid, occurred following the rape. Sexual violence against men, including public genital mutilation has also been documented.⁴⁹

43 Burke J and Oltermann P ‘Germany moves to atone for ‘forgotten genocide in Namibia’ 25 December 2016 *The Guardian* 25.

44 Nielsen M B ‘Selective memory: British perceptions of the Herero–Nama genocide, 1904–1908 and 1918’ (2017) 43 *Journal of Southern African Studies* 315–330.

45 Commemoration of International Day of Reflection on the 1994 Genocide against the Tutsi in Rwanda Report 2010–Office on Drugs and Crime- United Nations.

46 Guichaoua A ‘Counting the Rwandan Victims of War and Genocide: Concluding Reflections’ (2020) 22 *Journal of Genocide Research* 125–141.

47 Kolluri K ‘Global Justice Center Blog The Rwandan Genocide: Rape and HIV Used as Weapons of War’ available at <https://www.globaljusticecenter.net/blog/937-the-rwandan-genocide-rape-and-hiv-used-as-weapons-of-war> (accessed 12 May 2021).

48 Carney J *Rwanda before the Genocide: Catholic Politics and Ethnic Discourse in the Late Colonial Era* (2016) 8.

49 Di Caro, C.B ‘Call It What It Is: Genocide Through Male Rape and Sexual Violence in the Former Yugoslavia and

2.6 DARFUR GENOCIDE

More than 2.5 million Sudanese have been slaughtered since 2003 and the on-going conflict in Western Sudan keeps systematically killing ethnic Darfur people.⁵⁰ There are crimes against humanity, rape, forced transfer, torture and indiscriminate attacks, including the killing of civilians, enforced disappearances, destruction of villages, the looting of economic resources, the pollution of water sources, and various forms of sexual violence. Pillaging was carried out against the Fur, Masalit and Zaghawa tribes.⁵¹ More than one million children have suffered through homicide, rape, injuries, displacement, trauma, or the loss of parents and families.⁵²

2.7 LONG-TERM IMPACT OF GENOCIDES ON DESCENDANT VICTIMS

2.7.1 Health (mental and physical)

Studies have been carried out by researchers which have provided insight into the long-term health effects of genocide. The study conducted in Uganda revealed that genocidal trauma has impacted the communities physically and psychologically. Millions of Africans have been physically tortured by beatings, kicking, gunshots, bombs, cuttings, tying and blindfolding, child soldiering, disfigurements, burnings, forced labour, engagement in sexual abuse (rape, public rape, gang rape, sexual slavery), defilements, executions, mass killings and ethnic killings. Civilians also experience psychological torture such as threats, interrogations, accusations, abductions, mock executions, being held incommunicado, detention, humiliation, deprivation of rights, and through watching incidents.⁵³

The study conducted on the long-term health consequences of genocide highlighted that mental health effects and stigma attached to mental illness are classified as some of the long-term impact of genocides.⁵⁴ Jutta described that a dissociative mental condition is brought by traumatic events.⁵⁵ Traumatic events affect three main brain regions which lead to involuntary memory that may affect the mental health of

Rwanda' (2019) 30 *Duke Journal Of Comparative & International Law* 57-91.

50 Morrock, R *The Psychology of Genocide and Violent Oppression: A Study of Mass Cruelty from Nazi Germany to Rwanda* 2014 62-74.

51 Totten S *An Oral and Documentary History of the Darfur Genocide [2 Volumes]* (2011) 4.

52 Totten S *An Oral and Documentary History of the Darfur Genocide [2 Volumes]* (2011) 3-4.

53 Musisi S Kinyanda E Leibling H and Mayengo, K 'Posttraumatic torture disorders in Uganda-A three year retrospective study of patient records as seen at a specialized torture treatment center in Kampala, Uganda'(2000) 10 *Torture* 81-87.

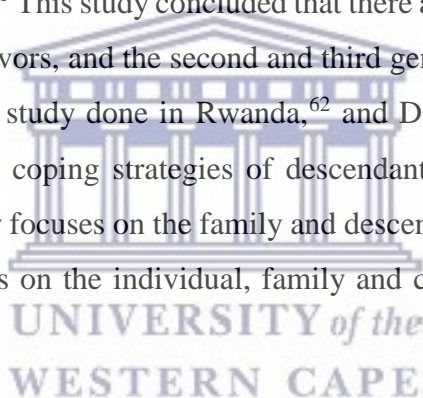
54 Rugema L 2016. *Traumatic episodes related to the genocide period, mental health effects and perceived barriers to care facing young adults in Rwanda*. (Unpublished PHD thesis, University of Gothenburg, 2016)50-52.

55 Jutta L 'The long-term health impact of genocide evidence from research' (2005) 16 *Epidemiology* 22.

genocide survivors. If not addressed survivors may experience higher levels of psychopathological symptoms such as schizophrenia, anxiety, depression, guilt, changes in memory and concentration symptoms, post-traumatic stress and post-traumatic growth. Studies conducted in Israel displayed a higher rate of psychiatric admissions due to schizophrenia among patients who were child survivors.⁵⁶ Findings from Danese and McEwen studies narrated that holocaust survivors suffered more physical illness, where survivors encounter an increased allostatic load, (the wear and tear on the body which accumulates as an individual is exposed to repeated or chronic stress).⁵⁷ In addition to the argument above, many survivors tend to suffer discrimination in some societies due to poverty as well as migration.⁵⁸

Post-traumatic stress disorder (PTSD) has been proven to have a negative impact on the health of individuals and societies in the aftermath of genocide.⁵⁹ PTSD is basically understood as a disorder of memory, with involuntary recall of events and involuntary memories.⁶⁰

A study done in Ukraine concerning 1932 – 1933 has investigated intergenerational trauma from the Holodomor genocide of Ukrainians.⁶¹ This study concluded that there are intergenerational health impacts that have an adverse impact on survivors, and the second and third generations. Similar intergenerational health impacts were reported in the study done in Rwanda,⁶² and Danieli stated that collective trauma impacts emotions, feelings, and the coping strategies of descendants.⁶³ Another study added that the negative impact of genocide not only focuses on the family and descendants of genocide victims, but also has intergenerational trauma impacts on the individual, family and community.⁶⁴ The study concluded



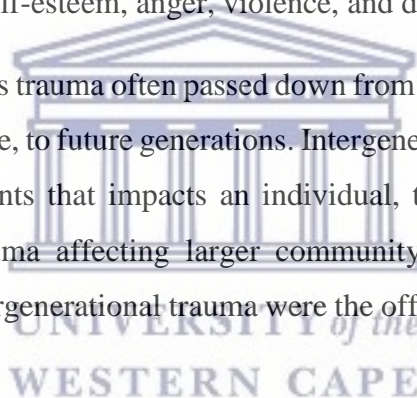
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- 56 Levine S Z Levav I Goldberg Y Pugachova I Becher Y and Yoffe R ‘Exposure to genocide and the risk of schizophrenia: A population-based study’ (2016) 46 *Psychological Medicine*, 855-863.
- 57 Danese A and McEwen B S Adverse childhood experiences, allostasis, allostatic load, and age-related disease (2012) 106 *Physiology & Behavior* 29-39.
- 58 Lindert J Kawachi I Knobler HY Abramowitz M Z Galea S Roberts B Mollica R and McKee M ‘The long-term health consequences of genocide: developing GESQUQ-a genocide studies checklist’ (2019) 13 *Conflict and health* 1 6.
- 59 Jutta L ‘The long-term health impact of genocide evidence from research’ (2005) 16 *Epidemiology* 22.
- 60 Lindert J, Knobler H Y and Abramowitz M Z Genocide and Its Long Term Mental Impact on Survivors – What We Know and What We Do Not Know in Lindert J Marsoobian A.T (ed) *Multidisciplinary Perspectives on Genocide and Memory* (2018) 81-101.
- 61 Bezo B and Maggi S ‘Living in “survival mode:” Intergenerational transmission of trauma from the Holodomor genocide of 1932–1933 in Ukraine’(2015) 134 *Social Science & Medicine* 87-94.
- 62 Rugema L *Traumatic episodes related to the genocide period, mental health effects and perceived barriers to care facing young adults in Rwanda*. (Unpublished PHD thesis, University of Gothenburg, 2016) 5.
- 63 Danieli Y *International Handbook of Multigenerational Legacies of Trauma* (2013)1-12..
- 64 Bezo B & Maggi S ‘Living in “survival mode:” Intergenerational transmission of trauma from the Holodomor genocide of 1932–1933 in Ukraine’ (2015) 134, *Social Science & Medicine* 87-94.

that the Holodomor, a genocide that claimed millions of lives by forced starvation, still has a significant impact on generations born decades later.

The phrase ‘historical trauma’ was created in relation to providing an analysis and framework for understanding the traumatic experiences of holocaust survivors, and the resulting consequence of those experiences on following generations.⁶⁵ Key elements of historical trauma identified include collective intergenerational wounding because of ‘massive cataclysmic events’; historical trauma is experienced personally and transmitted through generations of individuals and communities, and therefore descendants of those who experience the trauma feel the effects.⁶⁶

Additionally, historical trauma refers to traumatic experiences or events that are shared by a group of people within a society, or even by an entire community, ethnic, or national group.⁶⁷ Historical trauma meets three criteria: widespread effects, collective suffering, and malicious intent.⁶⁸ This is especially troubling when one assesses historical trauma responses, which can culminate in substance abuse, suicidal thoughts, depression, anxiety, low self-esteem, anger, violence, and difficulty in emotional regulation.⁶⁹

Moreover, intergenerational trauma is trauma often passed down from generation to generation from those victims who had first-hand experience, to future generations. Intergenerational trauma normally starts with a distressing action or multiple events that impacts an individual, traumatic events affecting multiple family members, or collective trauma affecting larger community, cultural, racial, ethnic, or other groups.⁷⁰ The earliest victims of intergenerational trauma were the offspring of Holocaust survivors,⁷¹ but

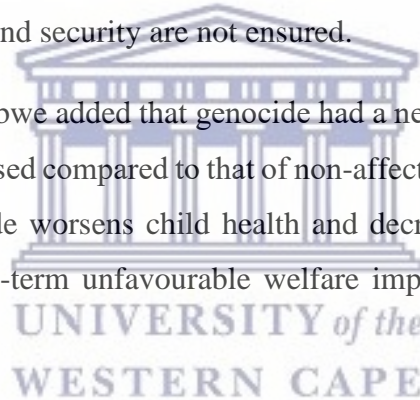


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- 65 Mohatt N V Thompson A B Thai N D and Tebes J K ‘Historical trauma as public narrative: a conceptual review of history impacts present-day health (2014) 106 *Soc Sci Med* 128-136.
- 66 Borrell LN Gee GC. Walters KL Williams DR and Crayton SL ‘Does Racism Make Us Sick? 13th Annual Summer Public Health Research Institute and Videoconference on Minority Health’ (2007). Available at <http://www.minority.unc.edu> (accessed 12 May 2021).
- 67 Barocas H and Barocas C ‘Wounds of the fathers: the next generation of Holocaust victims’(1979) 6 *International of Psycho-Analysis* 331-340.
- 68 Hirschberger G Collective Trauma and the Social Construction of Meaning. (2018) 9 *Frontiers in psychology* 1 14.
- 69 Heart M Y H B ‘The historical trauma response among natives and its relationship with substance abuse: A Lakota illustration’ (2003) 35 *Journal of psychoactive drugs* 7-13.
- 70 Yehuda R and Lehrner A ‘Intergenerational transmission of trauma effects: putative role of epigenetic mechanisms’ 2018 (17) *World Psychiatry* 243-257.
- 71 Fossion P Rejas M C Servais, L Pelc I and Hirsch S ‘Family approach with grandchildren of Holocaust survivors’ (2003) 57 *American journal of psychotherapy* 519-527.

recent research has identified intergenerational trauma among other groups such as indigenous populations in North America and Australia.⁷²

Basuayi further pointed out that throughout genocide women were deliberately raped and the survivors disseminated HIV/AIDS to the general population.⁷³ Untreated traumatic memories can potentially lead to the threat of death, serious injury, or threat to physical integrity. Basuayi added that the destruction of health facilities has a negative impact on the provision of medical care to all those in need. Basuayi further revealed that the administrative system had been weakened and the survivors experienced discrimination consequences with regard to access to national resources.⁷⁴ Herero>Nama huts and gardens were burnt down.⁷⁵ This has led descendant to become property-less. According to Gewald, the education system was not accessible to all during the genocide, and only a few Herero councillors had the privilege of missionary education to learn how to write their names, thus allowing German leaders to take advantage of forged land treaties to ensure sufficient land for future settlement.⁷⁶ Findlay has stated that genocide threatens the world peace process, security and well-being.⁷⁷ Tensions arise in a broken community, leading to mass violence, crimes and harm if peace and security are not ensured.

Additionally, a study done in Zimbabwe added that genocide had a negative effect on children's height.⁷⁸ Children's height for age was decreased compared to that of non-affected children. Studies done in Angola found that the aftermath of genocide worsens child health and decreases fertility during and after the conflict.⁷⁹ It is concluded that long-term unfavourable welfare impacts could result from poor health status.



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- 72 Aguiar, W and Halseth, R *Aboriginal peoples and historic trauma: The processes of intergenerational transmission* (2015) 1-32.
- 73 Basuayi CB *Fertility in Rwanda: Impact of genocide, an analysis of fertility before, during and after 1994 genocide* (published MSc Scientiae thesis, University of the Western Cape, 2006) 66.
- 74 Basuayi C B *Fertility in Rwanda: Impact of genocide, an analysis of fertility before, during and after 1994 genocide* (published MSc Scientiae thesis, University of the Western Cape, 2006) 41.
- 75 Röhrs S 'An Animal-Centered Perspective on Colonial Oppression: Animal Representations and the Narrating Ox in Uwe Timm's "Morenga"(1978)' (2017) 6 *Humanities* 12.
- 76 Gewald J B *Towards redemption: a socio-political history of the Herero of Namibia between 1890 and 1923* (1996) 184
- 77 Findlay M 'Enunciating Genocide: Crime, rights and the impact of judicial intervention' (2013) 13 *International Review*,6.
- 78 Alderman H Hoddinott J and Kinsey B 'Long term consequences of early childhood malnutrition' (2006) 58 *Oxford papers* 450-474.
- 79 Arcand J L and Wouabe E D 'Households in a time of war: Instrumental variables evidence for Angola' (2009) *The Institute, Geneva Working Paper* 1-42.

Most chronic conditions during childhood are linked to substantially less schooling in adolescence, worsen adult health, and lower adult productivity.

The genocide perpetrated by colonial troops of Germany 1904 – 1908, commanded by General Lothar von Trotha in 1904 and 1905, ordered the extermination and defeat of the Ovaherero and Nama, and significantly changed the course of history and the socio-economic status of the people who lived in Namibia at that time, as well as generations of their descendants.⁸⁰

It is submitted that catastrophic events and horrific atrocities during genocide affect the health and well-being of individuals. Recent research has focused on psychopathological symptoms such as depression, generalised anxiety, substance abuse, and physical symptoms which survivors have suffered as a result of genocide.⁸¹ There is still little research on the effects of genocidal memory on health, so research to elucidate these concepts is required.

2.7.2 Economic and ecological consequences

Acts of genocide do not only affect people, but also the environment, which in turn destroys the means of existence for many people. A study done in Uganda highlighted that during the social and ecological torture experienced mostly after the genocide, property and livestock destruction occurred; most people were displaced, many migrated from their towns and counties, and community and family break-ups began and have continued to date. Much infrastructure was destroyed which has affected today's lifestyle, agricultural policy was abandoned, and land mines persist. Such disturbing events are beyond normal human experience and have led to the numerous post-traumatic consequences we see in Africa. This is so in Namibia too, where some effects of past genocide have impacted descendants and have continued for generations.⁸²

A study done in Rwanda has highlighted that poor economic performance was experienced after the genocide. Physical destruction occurred and, due to the high mortality rate during the war, a disproportionate loss of human capital, especially men, resulted in slower economic growth and recovery.

80 Geiseb S The genocide against the Ovaherero and Nama peoples 2019 *Völkerrechtsblog* 1.

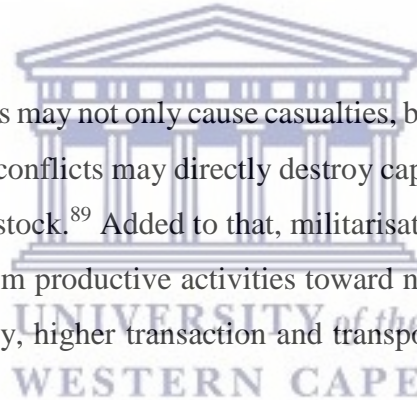
81 Lindert J Knobler H Y and Abramowitz M Z 'Genocide and Its Long Term Mental Impact on Survivors – What We Know and What We Do Not Know' in Lindert J Marsoobian A T (ed) *Multidisciplinary Perspectives on Genocide and Memory*(2018) 8-101.

82 Musisi S Kinyanda E Leibling H and Mayengo, K 'Posttraumatic torture disorders in Uganda-A three year retrospective study of patient records as seen at a specialized torture treatment center in Kampala, Uganda'(2000) *10 Torture* 81-87.

Private and public goods as well as social infrastructure were destroyed.⁸³ The author adds that the genocide reduced the country's growth by 85 per cent in the short term, while in the long term, the genocide reduced growth by 31 per cent, despite some recovery.⁸⁴ Another consequence of the genocide was lowered national nutrition levels. The author further argues that genocide in Rwanda had a negative effect on schooling outcomes. A lasting impact on the educational levels of the population persists generally, because the education system collapsed during genocide.⁸⁵ Conversely, a study done in Angola stated that in the aftermath of that war, school enrolment increased in that country.⁸⁶

Atrocity crimes have a huge effect on opportunity; genocide manipulates the values of opportunity costs such that some options become feasible for victims, while others become infeasible.⁸⁷ Added to opportunity scarcity of resources such as the quantities and qualities of labour, capital, natural resources, entrepreneurial spirit, and time are limited at any given point in history; necessarily, so are the goods and services produced with these resources thus constraining the ability of descendants to escape poverty and victimisation.⁸⁸ The study concludes that mass atrocities result in a greater degree of lasting population damage.

Collier argues that genocidal conflicts may not only cause casualties, but also carry serious lasting negative economic consequences. Genocidal conflicts may directly destroy capital, cause capital flight, and reduce savings, eroding a country's capital stock.⁸⁹ Added to that, militarisation and increased security expenses imply that resources are diverted from productive activities toward nonproductive activities, resulting in a lower factor of productivity. Lastly, higher transaction and transport costs due to disruption of social



83 Serneels P and Verpoorten M 'The impact of armed conflict on economic performance: Evidence from Rwanda' (2015) 59 *Journal of Conflict Resolution* 3.

84 Serneels P and Verpoorten M 'The impact of armed conflict on economic performance: Evidence from Rwanda' (2015) 59 *Journal of Conflict Resolution* 3.

85 Serneels P and Verpoorten M 'The impact of armed conflict on economic performance: Evidence from Rwanda' (2015) 59 *Journal of Conflict Resolution* 3.

86 Arcand J L and Wouabe E D 'Households in a time of war: Instrumental variables evidence for Angola' (2009) *The Graduate Institute, Geneva Working Paper* 1-42.

87 Soudis D Inkla ar R and Maseland R 'The Macroeconomic Toll of Genocide and the Sources of Economic Development' in Charles H. Anderton, Jurgen Brauer *Economic Aspects of Genocides, Other Mass Atrocities, and Their Prevention* (2016) 125-129.

88 Soudis D Inkla ar R and Maseland R 'The Macroeconomic Toll of Genocide and the Sources of Economic Development' in Charles H. Anderton, Jurgen Brauer *Economic Aspects of Genocides, Other Mass Atrocities, and Their Prevention* (2016) 125-129.

89 Collier P 'On the Economic Consequences of Civil War'.(1999) 51 *Oxford Economic* 168-83.

and physical infrastructure and the undermining of the state may result in a less efficient allocation of productive factors.⁹⁰

The genocide carried out by Imperial Germany was part of a wider settler colonial process in which indigenous peoples in Namibia were deprived of their lands and livelihoods through genocidal violence.

Majority of the Herero and Nama people were resettled and displaced internally and externally, leading to a scarcity of labour, affecting the economic performance of a community. Following the forcible occupation of their lands by white invaders, who dominated and further colonized the nation under a protracted South African apartheid system, These lands are predominantly still in the possession of settlers in Namibia,⁹¹ which has an ongoing negative impact on Nama and Herero people's livelihoods. German land confiscation, deforestation, expulsion, the enslavement and extermination of the Herero, as well as the seizure of native livestock such as cattle, sheep, and goats has negatively impacted the Herero, and the Nama.⁹² Genocide affects the production industry, the technology field, and the institutions and culture that boost economic growth.

One of the numerous causes of structural inequality in Namibia was the expropriation of land, livestock, and other assets at the start of Germany's colonization of what was formerly known as German South West Africa.⁹³ Once land and their ensuing livelihoods were dispossessed came immediate poverty on the side of the colonised Namibians, as well as immediate increased wealth on the side of the colonisers. This fundamental inequality continues to re-emerge in contemporary and modern Namibia, which remains one of the most unequal societies in the world. Moreover, memories of the crimes committed by German Schutztruppe soldiers live on for the Namibian people and the Ovaherero and Nama in the diaspora until today, as does the socio-economic impact.

There was a decline in the livestock holdings of the people. The Herero were cattle breeders, but during the rinderpest epidemic, Herero communities lost 95 per cent of their cattle.⁹⁴ This had a fundamental

90 Collier P 'On the Economic Consequences of Civil War'.(1999) 51 *Oxford Economic* 168–83.

91 Rechavia-Taylor H 'Liberal Common Sense and Reparations for Colonial Genocide' (2020) 43 *Journal of the Association for Political and Legal Anthropology* 1-22.

92 Röhrs S 'An Animal-Centered Perspective on Colonial Oppression: Animal Representations and the Narrating Ox in Uwe Timm's "Morenga" (1978)' (2017) 2.

93 Nebe C Namibia: A timeline of Germany's brutal colonial history available at <https://www.dw.com/en/namibia-a-timeline-of-germanys-brutal-colonial-history>. (accessed 22 November 2021).

94 Gewald J B 'Colonization, genocide and resurgence: the Herero of Namibia 1890-1933' 2000 *History, cultural traditions and innovations in Southern Africa*, 197.

impact on Herero society because it limited the ability of descendants to own cattle. As a result of this they lost their means of acquiring capital through trading their livestock.

According to Geiseb, a member of the Namibian Nama Genocide Technical Committee:

‘I believe less known and discussed is the impact the rape of young girls and women, as well as massacres (especially of women and children), forced labor, and confinement in concentration camps, had on the psyche of the survivors and descendants’.⁹⁵ Similar negative impacts affect those in the diaspora, who bear the additional burden of being second-class citizens and, as a result, losing their culture and identity. There is no doubt that the present-day socio-economic challenges confronting us as people are the ‘scars’ left by the genocidal atrocities committed more than a century ago.⁹⁶ One author argues that Namibia is still battling with social and economic issues. To date, German-Namibian whites hold most commercial agricultural land and they remain at the economic apex, while dispossessed Herero and Nama continue to be landless, homeless, and without any assets. Generations of descendants end up as street kids and agricultural labourers, living in utter poverty without hope of a different or decent livelihood. Those who reach retirement age while their health deteriorates for lack of proper care are dumped into villages without sanitation as poverty increases. This researcher is of the opinion that social justice to date has not been served. The rich remain richer and poor remain poorer.⁹⁷

The Nama Genocide Technical Committee NGTC's, founder and chairperson Ida Hoffman, posits that, among enduring aspects that still characterise the Nama existence, is their socio-economic status in the Namibian context which includes the loss of their human and community dignity and the erosion of self-worth over several generations. The once proud Nama people, who ruled a significant part of what was then German Southwest Africa, are now confined mostly to communal lands where they mainly exist at subsistence level.⁹⁸ Moreover, they lost hundreds of thousands of hectares of fertile land and the associated rights of that land. The ‘native reserves’ to which we as a people are now confined, offer little potential for economic activity and other endeavours. As a result, the socioeconomic standing and wealth of the

95 Geiseb S The genocide against the Ovaherero and Nama peoples *Völkerrechtsblog*, available at: <https://voelkerrechtsblog.org/de/the-genocide-against-the-ovaherero-and-nama-peoples/> accessed 20 may 2021.

96 Geiseb S The genocide against the Ovaherero and Nama peoples 2019 *Völkerrechtsblog* 1.

97 Swartbooi B On the Land Question available at: https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_NAMIBIA_DS (accessed 20 May 2021).

98 Suzman J *Minorities in Independent Namibia* (2002) 1-40.

Nama people are declining, even in modern-day Namibia, as their economic situation continues to deteriorate.⁹⁹

On the social connection and historical injustices perpetrated against the Ovaherero, there remains structural racialised injustice that has continuities with the institutions and practices of the German colonial authorities. According to Paramount Chief Riruako, "The forced expropriation of land and cattle from the Hereros by the German colonial authorities resulted in the widespread poverty among the thousands of his people. Therefore, it is the responsibility of the German government to assist in righting this historical wrong. He added that the Namibian government's inaction and lack of response to the issue amounted to aiding and abetting Germany in avoiding responsibility for the massacre."¹⁰⁰

Similarly, it is submitted that the Herero and Nama genocide had a significant impact on the growth of economic and geographical areas. Poverty remained, and human capital and the education system were strongly affected. Land scarcity, income difference between farmers, and rural income inequalities persist. The majority of able and active individuals and relatively educated individuals were exterminated. Since the Herero and Nama lived in rural areas, their agriculture production decreased, and they even lost the cattle which they used when ploughing their fields.¹⁰¹ This is especially significant in respect to the impact it had on the victims and future generation's lives when one recognises that the first contact between Germans and the Ovaherero and Nama occurred through missionaries, followed by other colonial agents.¹⁰² These various actors substantially damaged Ovaherero and Nama socio-economic life through fraudulent trading practices, trade agreements and land deals, even before official colonisation.¹⁰³

2.8 MEMORIALISATION

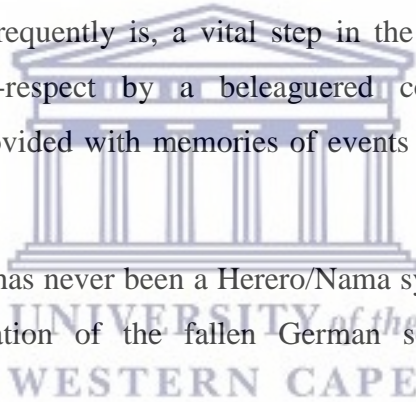
Post-genocide individuals suffered traumas such as epidemics, forced labour, exposure to hunger, thirst, forced migration, loss of their dear ones, robberies, rapes, and assaults.¹⁰⁴ The UN has highlighted that the

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- 99 ECCHR, Colonial repercussions: Namibia: 115 years after the genocide of the Ovaherero and Nam (2019) 1-79.
- 100 Harris C *Reparations under international law: a case study of the Herero/Nama claims for reparations for genocide committed by the German Government* (published LLM thesis, University of Namibia, (2013) 261.
- 101 Sarkin-Hughes J *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers* (2011)8.
- 102 Gewald J B *Towards redemption: a socio-political history of the Herero of Namibia between 1890 and 1923* (1996) 184
- 103 Gewald J B *Towards redemption: a socio-political history of the Herero of Namibia between 1890 and 1923* (1996) 184
- 104 Correa SM DS 'History, memory, and commemorations: on genocide and colonial past in South West Africa' (2011) 31 *Revista Brasileira de História*, 88.

commemoration of genocide signifies and honours the victims of genocide.¹⁰⁵ In order to prevent genocidal conflicts, it is critically important to understand their root causes. The aim of commemoration is to listen to the voices and discuss the impact of international justice responses, including criminal justice, on empowering victims, and to allow law experts to share their experiences in ensuring justice for victims of genocide and preventing further atrocity crimes.¹⁰⁶ Equality and human dignity is attained when society unites, so if there is no remembrance occasion, peace and stability will not be reached, and genocidal conflict will continue because there is no platform available to share views, and prevent and punish the crime of genocide.

A study undertaken in Cambodia in the late 1970s on genocide highlighted that memory of the past enables the society to repair and heal after unexpected division and trauma.¹⁰⁷ Remembrance allows descendants to link to the past trauma, and allows them the capacity for ethical and civic growth. Another study added that memories are socially constructed in the light of present-day interests which enable survivors and descendants to acquire a group identity.¹⁰⁸ Blustein concurs and has added that commemorating genocide victims by survivors can be, and frequently is, a vital step in the process of moral rehabilitation, a genuinely admirable act of self-respect by a beleaguered community.¹⁰⁹ Through collective memorialisation, individuals are provided with memories of events that individuals did not personally experience.

Since German colonial times, there has never been a Herero>Nama symbolic event held. The only event held was the annual commemoration of the fallen German soldiers and civilians which was



105 United Nations General Assembly Prevent and punish the crime of genocide (1948) available at:https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.I_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide (accessed 15 May 2022).

106 United Nations General Assembly Prevent and punish the crime of genocide (1948) available at:<https://www.un.org/en/genocideprevention/documents/atrocity->

[/Doc.I_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide](#) (accessed 15 May 2022); Petersen T ‘The International Day of commemoration in memory of the victims of the Holocaust: Why it matters? Manager of The Holocaust and the United Nations Outreach Programme’ available at <https://www.kas.de/en/web/newyork/un-agera-blog/detail/-/content/holocaust-remembrance-day> (accessed 12 May 2022).

107 Colletti F ‘The Power of Memory and Art to Heal a Society After Genocide’ available at <https://facingtoday.facinghistory.org/the-power-of-memory-and-art-to-heal-a-society-after-genocide> (accessed 30 July 2021).

108 Brehm N H and Fox N ‘Narrating genocide: Time, memory, and blame’ (2017) 32 *Sociological Forum* 117.

109 Blustein J ‘Conceptions of Genocide and the Ethics of Memorialization’ in Lindert J Marsoobian A T (ed) *Multidisciplinary Perspectives on Genocide and Memory* (2018) 30.

commemorated until 2003, and was banned by President Nujoma 13 years after independence.¹¹⁰ Further the only rider statue (genocide historical site) which was erected in 1912 to honour the German soldiers and civilians who died during the 1904 – 1908 colonial war, and acted as a symbol for the communities who fought against colonialism and suffered genocide, was removed in 2013, and replaced by a towering statue of Sam Nujoma holding the constitution.

Gewald pointed out that in today's era, a Herero/Nama commemoration event is not included in the calendar, but the Herero commemorate their dead at different times, especially on Saturdays and Sundays, and at different places in Namibia and Botswana. The author further argues that the event should be held in a structured manner, because failing to recognise the day will lead one into the trap of the 'Ethnographic Present', and the author strongly emphasises that tributes to the deceased, as well as events associated with the deceased, are unique and historically determined.¹¹¹

Genocide remembrances in Namibia tend to be overlooked, although they are a significant marker in the political arena. The absence of a commemoration day affects descendants negatively because they are left in agony and pain. The majority are left scattered, not knowing the whereabouts of their family who died, how many died, who is alive, and who left for other countries. Descendants are left with no platform to air their views on human rights violations nor for mourning the losses.

Despite Namibian independence, the German colonial episode negatively affected descendants psychologically, because there is no symbolic commemoration occasion marked on the Namibian calendar that allows the descendants to partake, pay respects and view a symbolic reading of certain sites, nor to visit places of memory like a cemetery, which symbolises the blood lost during historical events. The Namibian Constitution Article 10 & 17 states that all ethnic groups shall be equal.¹¹² This makes descendants feel worthless, and dissuades them from partaking in any political events, because they feel they are not adding value to the nation. The annual tribute's site will be significant to the ethnic group. A new Genocide museum, monuments, and memorials have highlighted how postcolonial nations seek to heal their scars symbolically and how ethnic groups might be treated fairly based on their historical

110 Kössler R Facing Postcolonial Entanglement and the Challenge of Responsibility Actor Constellations between Namibia and Germany in Schwelling B (ed.) *Reconciliation, Civil Society, and the Politics of Memory Transnational Initiatives in the 20th and 21st Century* (2012) 284.

111 Gewalt J B and Behrend H G T 'Herero annual parades: commemorating to create' (1998) *Afrikaner schreiben zurck: Texte und Bilder afrikanischer Ethnographen*, 144.

112 The Namibian Constitution, Act 23 of 1990.

experiences. Post-colonial and post-conflict cultures have varied memories, but victim groups' narratives remain influential.¹¹³ Thus, understanding their history requires looking at earlier activities.

With all sources reviewed, respect remains something which Herero/Nama victims did not receive. Despite other commemoration events in Namibia, the annual commemoration of the Herero/Nama genocide remains unstructured. Remembrance and commemoration are luxuries, not for those who are starved and homeless. For descendants to pursue memory initiatives, they have to be reparated, re-united and locate family members who fled, in order to rebuild their lives. Honouring of the victims of genocides remains an appropriate attitude to have toward them; this can be done through participation in memorial events, and through monuments, ceremonies, education, the media, and social discourse. The right to memory can easily lead to post-atrocity repair. It is submitted that the Herero annual commemorations of the dead do not seem to be honoured. Thus it is necessary to consider symbolic acknowledgment, such as monuments, memorials, and museums, as well as apologies. When dealing with traumatic events, memory and history can be beneficial, so it is essential for history and culture to be liberated.

2.9 POWER DIVISION (POLITICAL, SOCIAL, CULTURAL, ECONOMIC, RELIGIOUS)

Lemkin has undertaken a study to evaluate the long-term impact of genocide. The study revealed that genocide affects all aspects of life, not just through mass killing. These include social, cultural, political, legal, intellectual, spiritual, economic, biological, physiological, moral and religious aspects.¹¹⁴

Political systems are affected because local government and self-government are interrupted and authority is replaced by the coloniser and occupier. Gewald states that the Herero leadership was killed or deported from the country, and that all forms of leadership were prohibited. Herero natives found themselves struggling to maintain their power positions in leadership, and the majority of their descendants lost their independence.¹¹⁵ The author further adds that lack of knowledge on how to run a society manifested itself because most of those with the capacity and knowledge had been killed. Social systems and leadership were weakened when systems of knowledge, and national and spiritual resources were demolished.

113 Reitz N B and Mannitz S 'Remembering Genocide in Namibia' (2021) 53 *PRIF Working Papers* 2.

114 Lemkin R *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (2005) 82–90.

115 Gewald J B 'Colonization, genocide and resurgence: the Herero of Namibia 1890-1933' in M. Bollig and JB Gewald (ed) *People, cattle and land : transformations of a pastoral society in southwestern Africa* (2000) 192

Cultural practices were prohibited, youths were instilled with false information, and the use of mother tongue in training was prohibited.¹¹⁶ Economic and Religious systems were affected.¹¹⁷¹¹⁸

A study done by Gewald revealed that many customs, languages, cosmologies, and values were lost. The author further added that ancestor worship and the repairs of Okuro (holy fire) as well as the upkeep of a Herero pastoralist society were prohibited.¹¹⁹ This affected the descendants negatively because all ritual experts in the field of conducting marriages and circumcision ceremonies had been killed.

A study done in Rwanda stated that genocide changed the educational system in Rwanda. The majority of educated teachers and scholars were killed, schools were burned and looted, and teaching materials were destroyed, causing the education system to collapse; these problems continue to the present day.¹²⁰ Apart from education, moral systems such as spiritual resistance policies were weakened for the national group.¹²¹ However, Rwanda is a success story, in regard to post-genocide education reconstruction. The country's education policy has been a strong advocate for reconciliation national unity and focussing on access and inclusion in the education system.¹²² Thompson posits that injustice can have multiple consequences. It does not only harm the immediate victims of injustice. The suffering of their parents or grandparents and other indirect societal impacts of the wrong might have a harmful impact on the victims' offspring.¹²³

2.10 DECLINING FERTILITY

The study conducted by Basuayi revealed that the fertility consequences of genocides have impacted demographic change. Herero and Nama were arrested and incarcerated in concentration camps. Innocent victims were appallingly, put into reed dwellings where they were slaughtered, the houses lit, and the

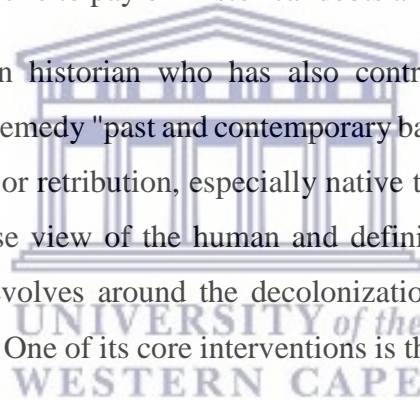
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- 116 Gewald J B 'Colonization, genocide and resurgence: the Herero of Namibia 1890-1933' in M. Bollig and JB Gewald (ed) *People, cattle and land : transformations of a pastoral society in southwestern Africa (2000)* 192.
- 117 Gewald J B 'Colonization, genocide and resurgence: the Herero of Namibia 1890-1933' in M. Bollig and JB Gewald (ed) *People, cattle and land : transformations of a pastoral society in southwestern Africa (2000)* 193.
- 118 'The occupied lost economic resources to the occupier. Restricting food, endangering people's health, and mass murdering were used to 'physically debilitate and even annihilate national groups in occupied countries', church property was destroyed, and spiritual leaders were tortured to destroy the religious system.'
- 119 Gewald J B 'Colonization, genocide and resurgence: the Herero of Namibia 1890-1933' in M. Bollig and JB Gewald (ed) *People, cattle and land : transformations of a pastoral society in southwestern Africa (2000)* 193.
- 120 Mathisen J *Education reform in Rwanda: impacts of genocide and reconstruction on school systems* (Published Doctor of Education thesis George Fox University 2012) 11.
- 121 Lemkin R *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (2005) 82-90; The 'mental energy of the group' was diverted from 'moral and national thinking' to 'base instincts'.
- 122 Obura A 'Never again: educational reconstruction in Rwanda' (2003) 30.
- 123 Thompson J *Taking responsibility for the past: Reparation and historical injustice* (2002) 104-107.

bodies burnt to ashes.¹²⁴ Many of the descendants became orphans.¹²⁵ The genocide caused family break-ups because of incarceration in camps and prisons and led to child-headed households. A lower frequency of intercourse took place because of the increase in single women and widows because during the mass killing, there were a lot of men who died.¹²⁶ It has been argued that a decline in fertility has been observed during and after genocide.¹²⁷ In contrast, a study done in Angola found that, although large numbers were killed during the war, no significant long-term impact was found related to fertility.¹²⁸

2.11 ADDRESSING COLONIAL INJUSTICES

Nearly 50 years after the UN General Assembly declared continuing colonialism a crime,¹²⁹ conversations and studies continue about its grievous wrongs and lasting impact on contemporary politics in Africa and elsewhere. Some feel colonialism as a social, human rights, and economic injustice ended when colonized peoples attained political freedom, while others believe it was a continuous wrong done by largely European powers against mainly non-European victims. Current appeals for redressing colonialism's wrongs and harms are driven by a desire to pay off historical debts and make peace with an unfair past.

Chakrabarty, a distinguished Indian historian who has also contributed to postcolonial theory and subaltern studies, calls on the law to remedy "past and contemporary barbarisms."¹³⁰ This refers to historical injustices' rehabilitation, restitution, or retribution, especially native title and land rights. It also refers to the topic of human rights and whose view of the human and definition of rights is considered during negotiations. Postcolonial justice revolves around the decolonization of law and its Eurocentric bias. Eckstein says it goes beyond lawful. One of its core interventions is the decolonization of knowledge and



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- 124 Röhrs S 'An Animal-Centered Perspective on Colonial Oppression: Animal Representations and the Narrating Ox in Uwe Timm's *Morenga* (1978)' (2017)6 *Humanities* 3.
- 125 Gewald J B 'Colonization, genocide and resurgence: the Herero of Namibia 1890-1933' in M. Bollig and JB Gewald (ed) *People, cattle and land : transformations of a pastoral society in southwestern Africa* (2000) 219.
- 126 Sarabwe E Richters A and Vysma, M 'Marital conflict in the aftermath of genocide in Rwanda: An explorative study within the context of community based sociotherapy' (2018) *Intervention*, 16(1) 14.
- 127 Kraehnert K Brück T Di Maio M and Nisticò R 'The effects of conflict on fertility: Evidence from the genocide in Rwanda' (2019) 56 *Demography* 935-968.
- 128 Avogo W and Agadjanian V 'Childbearing in crisis: War, migration and fertility in Angola'(2008) 40 *Journal of Biosocial Science* 725-742.
- 129 United Nations General Assembly, 1970 Programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, (1970), A/RES/2621.
- 130 Chakrabarty D 'Subaltern Studies' available at <https://history.uchicago.edu/directory/dipesh-chakrabarty> (accessed 13 May 2021)

the acknowledgement of other worldviews.¹³¹ He says this includes academic fields and how scholars and researchers learn about themselves rather than others.

Postcolonial justice is more than official apologies, restitutions, and reparations, they say. However, it is evident that such overtures are necessary and are very necessary dimensions of interventions which seek to address and strive for a more egalitarian present and future.¹³²

2.12 ACCOUNTABILITY

When debating their need to pay reparations to the descendants of the Herero and Nama exterminated by German troops, German officials said the law of nations does not protect "rebel groups" seeking restitution for crimes committed during hostilities.¹³³

Recent historic negotiations have been characterised as discussions surrounding the proposed implications of reparations processes. The German and Namibian governments have not directly represented the victims' descendants.

Challenges and little hope have been experienced by the Herero and Nama descendant in accessing reparations for mass atrocities. The Herero and Nama genocide occurred before World War II, when there were no words to describe its brutality so the crime was nameless.¹³⁴ The Germans denied that the atrocities committed were genocide, and ruled out any reparations for the descendants. Lawsuits were filed several times by representatives of the Herero people but were always fruitless. Ochab further argues that any tort committed in breach of international law or a convention should be considered remediable. The author stated that Germany should be held liable for the Herero and Nama horrors, just as it was for the Holocaust against the Jewish people, and war reparations should be granted to survivors.

Ovaherero Paramount Chief Vekuii Rukoro, Nama Chief Johannes Isaack, and Barnabas Veraa Katuuo, director of the Association of the Ovaherero Genocide in the US, sued Germany in January 2017 for genocide, theft, and expropriation of property while Namibia was ruled by Germany.¹³⁵ Petitioners wanted

131 Bartels A Eckstein L Waller N and Wiemann D *Postcolonial Literatures in English* 2017 1-20.

132 Bartels A Eckstein L Waller N and Wiemann D 'Postcolonial Justice: An Introduction' (2017). *Postcolonial Justice*, vii-xxix.

133 Orakçı S 'The History that Germany Wants to Forget: The Namibian Genocide' *The Namibian* 18 February 2017.

134 Ochab E U 'The Herero-Nama Genocide: The Story Of A Recognized Crime, Apologies Issued And Silence Ever Since' (2018) 1.

135 Rukoro et al v Federal Republic of Germany, *United States District Court Southern District of New York* 1: 17-cv-

recompense like that given to Holocaust survivors after WWII. Namibia and Germany wanted to debate colonial atrocities. Germany made a motion to dismiss the indictment, arguing "genocide is not applicable in this situation."¹³⁶ Germany acknowledged genocide in Namibia in May 2021.¹³⁷

Ovahereros compensation claims are based on recent German precedents. Germany granted reparations to individual Jews and the State of Israel for 1930s and 1940s genocide only 30 years after the Herero War. What is the legal or moral difference between the German genocide of the Jews and the genocide in Namibia? This study will fill the gap left by the following arguments and concerns stated in the literature review. In legal precedent, race or ethnicity cannot explain this policy difference. Thus, Hereros concerns must be viewed as Jewish.. That is what this research will critically investigate further and examine in the next chapters of this thesis.

2.13 LAST AGREEMENT AND AMOUNT OF COMPENSATION OFFERED BY GERMANY IN 2021

The majority of Herero still want an apology and the return of stolen land from the government almost a century after the genocide. After nine rounds of negotiations beginning in 2015, the governments of Namibia and Germany agreed on a joint declaration and a total of €1.1 billion, to be distributed in instalments over the course of 30 years to various aid programs. This money will be used for foundation programs like cultural projects and youth exchange programs to help bring the two governments together again, even though victims were not included in the negotiations.¹³⁸

Historic violence of WWII affected descendants' livelihoods. As a result, the possibility of reparations for historical violations of human rights has emerged. Litigation has been brought against Germany in an attempt to 'heal the wounds', yet remains unsuccessful.¹³⁹ On several occasions, Germany has consistently denied being responsible for atrocities committed before 1948 relating to the Hague Convention that was

00062-LTS.

136 Rukoro et al v Federal Republic of Germany, *United States District Court Southern District of New York* 1: 17-cv-00062-LTS.

137 Melber H 'Germany and reparations: the reconciliation agreement with Namibia.(2022) 111 *The Round Table*, 484.

138 Oltermann P 'Germany agrees to pay Namibia €1.1bn over historical Herero-Nama genocide: Germany calls atrocities 'genocide' but omits the words 'reparations' or 'compensation' from a joint statement' *The guardian* for 200 years 28 May 2021 1.

139 Cooper AD 'Reparations for the Herero Genocide: Defining the limits of international litigation' (2007) 106. *African Affairs*, 106(422), 116.

in use,¹⁴⁰ Fortunately, international law has considered international crimes of that time, so Herero rights were protected, all atrocities committed were considered accountable, and the perpetrators could be prosecuted under law.¹⁴¹ On 16 August 2004, Germany acknowledged the atrocities committed but ruled out paying reparations because Namibia could not pressure Germany to pay reparations, thus government didn't even support the claim.¹⁴² In September 2011, the German government repatriated some human remains and skulls to the land of brave, and the remaining skulls were returned in August 2018. These had been used as part of disgraced research attempting to prove the racial superiority of whites.

Germany has paid reparations to Israel for the Jewish genocide. Crimes committed against Jews have been accounted for through monetary compensation, yet to date the Herero are still struggling and facing a range of obstacles which hamper the prospects of success in their case; their demands remain neglected. What is found in the literature is not conclusive and that is why this study will further investigate the measures the Herero need to consider in order to reach a conclusive agreement, and to be paid the promised amount.

2.14 CONCLUSION

A number of studies have dealt with the concepts of genocide, and identified various genocidal impacts and frameworks. Very few studies have focused on the long-term impact of the Herero and Nama genocides in the above literature review. The long-term effects of the Herero and Nama genocides on their respective survivors have not been studied in Namibia till today (2022). The long-term effects of the genocide on descendants from 1904-1908 should be studied, despite the fact that they are sensitive, delicate, and traumatic. In this study, researcher will examined the legacy of the Herero and Nama genocides in Namibia via a critical lens. Literature review enabled the researcher to gather baseline knowledge on the topic and identify the research gap. This study will fill that research gap.

140 Cooper AD 'Reparations for the Herero Genocide: Defining the limits of international litigation' (2007) 106. *African Affairs*, 106(422), 117.

141 Anderson R 'Redressing colonial genocide under international law: the Hereros' Cause of action against Germany' (2005) 93 *Calif. L. Rev.* 1189.

142 BBC news 'Germany officially recognises colonial-era Namibia genocide' available at <https://www.bbc.com/news/world-africa-57961151> (accessed 03 January 2022).

CHAPTER 3

THE SOCIAL, ECONOMIC AND PSYCHOLOGICAL IMPACTS OF THE NAMA AND HERERO GENOCIDE ON SURVIVORS

3. INTRODUCTION

Long-term impacts of genocide refer to the effects that persist after the underlying cause has receded. This chapter addresses the devastating impacts of genocide on survivors and their descendants across time. Inequality, landlessness, and the long-term effects of a traumatic genocide are the greatest issues Nama and Herero endure presently.

The repercussions of a traumatic event extend well beyond the initial destruction. It takes time to mourn and heal the lives of victims, just as it takes time to reconstruct structures that have been destroyed. Following a horrific genocide, normalcy has not yet returned to family life. Genocide has destroyed the victims' familial relationships and responsibilities.

A tragic event such as genocide can have far-reaching effects on multiple major elements of victims' lives, making it extremely challenging to repair their emotional lives. To date, genocide victims have experienced both emotional and physical exhaustion. The loss of their livestock, lands, homes, and enterprises, in addition to their income, had resulted in a loss of self-respect. Unresolved emotional issues, pre-existing problems, and previous losses may resurface. To date, nothing recognizes or memorializes the genocide of the Herero and Nama people of Namibia; there is no planned commemoration event of a traumatic event to honor the victims and remind them of their losses; researchers still consider this genocide to be forgotten. Hence, when homes are destroyed or damaged, families may be compelled to live in temporary housing or with family or friends, resulting in greater crowding and tensions. Some family may be forced to migrate, so disrupting connections and the customary network of support. In the aftermath of a genocide-related traumatic event, parents may be physically or emotionally unavailable to their offspring, and children may be expected to assume more adult roles, such as observing siblings or assisting with household chores, leaving less time to spend with friends or engage in routine activities, such as self-development. Descendants are experiencing economic distress, and interacting with the government might exacerbate the situation. Despite the financial aid requested to rebuild and repair damages, nothing has been resolved, which adds to the stress caused by the traumatic event. This chapter delves into the social-economic and psychological impacts of survivors of the Nama and Herero genocide.

Moreover, continuous challenges will be tackled in detail, and proposed measures to address the burning issue will be considered.

3.1 SOCIO-ECONOMIC IMPACTS

Germany's genocide of the Nama and Herero left an indelible impact on descendants of the victims regarding land, and the economic means of production. According to the Nama leader Swartbooi, the Nama and Herero communities lost their land because of the genocide and colonial occupation, an issue that was highlighted by Dr Nakuta who stated that Namibia is 'the world's second most unequal republic'.¹⁴³

Since independence, the country's ruling party has prioritized economic stability by passing legislation that encourages free-market economics over socialist ones. These initiatives have been ineffective so far, resulting in many Namibians to continue to suffer.¹⁴⁴

The vast majority of peasant farmers were self-employed. The economic downturn began in late 1904 when pressure impacted the agricultural system. Minority communities like the Herero and Nama have suffered from the ruling party's broken promises following independence. Socio-economic standing of Namibians has collapsed since the governing party failed to utilise their mandate to significantly help and boost the economy. The stress of dealing with the traumatic occurrence itself is worsened by the effort required to seek financial aid to rebuild and repair damages. SWAPO failed to bring justice through reforms, and inequality prevails today.

The mixed economy has disadvantaged many vulnerable minority communities, because many members of these groups remain landless, unemployed, displaced, powerless, discriminated against, and voiceless and the capitalist approach did not include reparation. Germans continue to hold vast tracts of farmland in Namibia and exert a significant economic impact on the country, but their dark colonial legacy has never been properly acknowledged. In a contemporary sense, the historic violence perpetrated by the Germans on their victims has not yet healed. The government approval committee declared Herero and Nama descendants' groups' permission is not vital to ratifying the discussion arrangement, so some traditional

143 Taylor H 'Namibia: A Week of Justice 115 years after the genocide of the Ovaherero and Nama peoples' Rosa Luxemburg stiftung May 2019 2.

144 Baker J The immediate and long-term effects of Namibia's colonization process 2011 35.

leaders and descendants were omitted from reparation negotiation panels.¹⁴⁵ The economic marginalization of ethnic groups and the denial of participation is a highly serious and broad issue requiring autonomous treatment since victims are unable to put an end to the situation and move on because they are drained by the ceaseless marches of financial reparations.

3.2 DISPLACED POPULATION

The displacement caused by the Herero genocide began in 1883- 1884 with the establishing by Adolf Lüderitz. Families were forced to move out of their area and the forced relocation of family disrupted relationships and the customary network of support. Millions of inhabitants and many economically active citizens became displaced, thus reducing local economic activity, because many individuals never returned home.¹⁴⁶

Many members of the Herero population were displaced from their native land and were uprooted to Botswana and South Africa.¹⁴⁷ A study done in Germany reported that displaced survivors exhibited less resilience, life satisfaction and increased anxiety, which to date contributes to the core health challenge of mental health among these people.¹⁴⁸

The argument of Kuwert et al is consistent with a study performed in Australia, which reported that psychologically traumatic events among war-displaced survivors caused higher depressive symptoms due to the exposure of victims to traumatic events, which contributed to increased rates of long-term psychiatric morbidity and high mortality rates.¹⁴⁹

3.3 LAND DISPOSSESSION

The Native Ordinances of 1907 was a law adopted during German colonial times that mandated that neither Africans nor mixed-race individuals who were classified as ‘natives’ could own land or have freedom of movement.¹⁵⁰ African people were made to identify themselves with badges with identification

145 Tjitemisa K ‘Chiefs reject genocide reparations deal’*New Era* 27 May 2021 2.

146 Le Gall Y *Remembering the Dismembered* (published Doctoral dissertation, University of Potsdam,2019) 91.

147 Servaas van den Bosch ‘Namibia: German Occupation Left Deep Divisions Among Ethnic Groups’ available at <https://www.refworld.org/docid/5034f8852>. (Accessed 03 January 2022).

148 Kuwert P Brähler E Glaesmer H. Freyberger HJ and Decker O ‘Impact of forced displacement during World War II on the present-day mental health of the elderly: a population-based study’(2009) 21 *International Psychogeriatrics*,748.

149 Steel Z Silove D Phan T and Bauman A ‘Long-term effect of psychological trauma on the mental health of Vietnamese refugees resettled in Australia: a population-based study’ (2002) *The Lancet*,360 1060.

150 Kössler R ‘Entangled history and politics: Negotiating the past between Namibia and Germany’(2008) 26 *Journal*

numbers, and their residency was strictly controlled.¹⁵¹ This law was the pillar in dispossessing the people of their land. Furthermore, the Native Ordinances of 1907 mandated the wholesale confiscation of all land belonging to Ovaherero and most Nama communities. This land theft also included a ban on the possession of large stock, a pass system to identify ‘natives’, and in Namibia, Germans continue to possess vast tracts of farmland.¹⁵²

As has been noted, land is collective property and an important element of the local community. The utilisation of all resources remains the rights of all Namibians, but until now the order of Native Ordinances 1907, which did not permit Africans, specifically Herero and Nama to own land, cattle, or horses, unless granted approval by the governor,¹⁵³ still persists, because Herero and Nama rights remain limited while they cannot reacquire the land that was illegally dispossessed. The right to acquire, own, and dispose of all types of property in any area of Namibia is guaranteed under Article 16(1) of the Namibian Constitution.¹⁵⁴ Article 16 of the Namibian Constitution has not done well for the genocide victims who lost land and it appears to be silent, based on the slogan of willing buyer, willing seller.

The land of the Herero and the Nama was rich in mineral wealth, such as gold and diamonds. As a result, German colonisers came with the deceptive offer of supporting them and protecting them from the British Cape Colony, by providing them with arms;¹⁵⁵ but they misled them in order to acquire land for settling on, as well as to take over the natural resources, the coloniser are in total control of the land and its resources. This situation has been inherited by the current white settlers.

Herero society was drastically affected by the loss of land, and this remains a problem, resulting in the unending issue of many Herero threatening to grab farmland from the German descendants because of landlessness and diminished livelihoods.¹⁵⁶ Their health facilities, schools, recreation grounds, mines and public markets are in disrepair and roads are unpaved, affecting the survivor’s livelihoods and income

of Contemporary African Studies,314.

151 Miescher G *Namibia’s Red Line The History of a Veterinary and Settlement Border* (2012) 44.

152 EISA ‘Namibia: German annexation and African resistance (1884-1915)’ available at:

<https://www.eisa.org/wep/namoverview4.htm> (accessed 28 September 2022); Madley B ‘Patterns of frontier genocide 1803–1910: the Aboriginal Tasmanians, the Yuki of California, and the Herero of Namibia’ (2017) 6 In *Genocide and Human Rights* 182 184.

153 Prein P ‘Guns and top hats: African resistance in German southwest Africa, 1907–1915’. (1994) 20 *Journal of Southern African Studies*,103.

154 Constitution of the Republic of Namibia Act 34 of 1998

155 Drechsler H *Let us die fighting: the struggle of the Herero and Nama against German imperialism (1884-1915)’* (1980) 31.

156 Faul M ‘Germany’s return of Namibian skulls stokes anger’ available at <https://www.nbcnews.com>(accessed 03 January 2022).

negatively. Herero society is currently struggling to reconstruct and transform its areas because of a lack of financial and human resources, as well as a lack of political power.¹⁵⁷ As of 2022, the land issue remains the most controversial issues facing Namibians, and more than 200,000 people need land.¹⁵⁸ Schlettwein blames the current state for the failure, because the state does not have sufficient resources to implement land reform. Schlettwein further adds that the current land reform and resettlement programmes are pushing people into poverty due to the lack of support the state is giving.¹⁵⁹ To date land resettlement is for the well-connected and wealthy individuals with lack of skill and knowledge on how to utilise it. Communal land grabbing, farm labourers' mistreatment and exclusion of women and vulnerable groups from resettlement remain a crucial issue. Conciliation and dialogue will remain meaningless without land reform and the restructuring of the Namibian state. Thus, to date the dignity of people has not yet been restored.

3.4 DESTRUCTION OF CAPITAL AND INFRASTRUCTURE (DAMAGE TO HEALTH AND EDUCATION, DEFORESTATION AND HABITAT)

The German government ordered the murder of the native Herero and Nama people through forceful fight, forced dehydration, forced hunger, sexual violence, life-threatening medical experiments, and incarceration in concentration camps. Before, during, and after the genocide, German colonial institutions maintained a racial hierarchy ideology. This philosophy justified German control over much of Namibia's arable land, as well as mass massacres of indigenous people that either directly opposed German control or were merely occupying territory that Germans desired.¹⁶⁰

Namibia is rich in natural resources such as fertile land, rich and diverse wildlife, rich marine resources and mineral products such as gold, diamond, copper, lead and uranium. Namibian resources were the reason that Germany selected the territory, and established there.¹⁶¹ During the 19th century missionaries from England started building churches in Namibia, and were joined by German missionaries in the 1840s with the same principal interest, to capture farmland. Germany built its first military castle in Windhoek in order to get access to the Namibian territories. It began setting up an education system known as the Südwest, a system of schools built for German children.¹⁶² Namibian coastal land was suited to tobacco

157 Gewald J *Herer Heroes a Socio-political History of the Herero of Namibia 1890-1923* (1999) 8.

158 Ministry of Lands, Resettlement and Rehabilitation; *The National Land Policy* (1998) 5-7

159 Iikela S 'Land reform pushing people into poverty' *The Namibian* 01 February 2022 2.

160 Reutersward CF *Genocides and Conflicts in the 20th and 21st Centuries* (2021) 5.

161 SAHO 'Namibia' available at: <https://www.sahistory.org.za/place/namibia> (accessed 31 May 2022).

162 Owens J 'Blood Ties and Tongue Ties: The Role of Children in Shifting the Boundaries of Namibia's German-

production and merchandising so Germany selected Namibia as its 'protectorate'.¹⁶³ The Herero accepted the "protection treaties," but the Germans took their farms and a considerable quantity of their cattle. The Nama people resisted because they had worked out that German aim was to turn South-West Africa into a settler colony. The German soldiers attacked the Nama, and, despite the Nama – Herero coalition, they were defeated. They were exterminated, forced to relocate in the desert, compelled to do certain labour, and suffered imprisonment. These actions forced Herero and Nama to forfeit their fertile land, the tobacco mass-production land. This negatively affected the Herero and Nama because they could no longer support themselves on farming without attempting to integrate into the wage-based economy. Despite Namibian natural resources, mining, the tobacco industry and rich fertile land, Namibia remains largely economically dependent; this is the result of former colonial domination.

Both human capital accumulation and local infrastructure were disrupted, which inhibited future business investment patterns. Namibia remains dependent on international capital and foreign assistance for existence, and these put a burden on economic growth, because Namibia is still unable to control capital flows in and out of the country.¹⁶⁴

Resource scarcity, structural inequality, and historical constraints have forced governments to make difficult choices by continuously borrowing from the International Monetary Fund (IMF) to sustain overall spending on health, education, and housing. The borrowed capital comes with interest and has a detrimental effect on the Namibian economy, so the country continuously accumulates interest on its loans, which affects long-term payback. Namibia's total government debt was around 69.92 per cent in 2021 and 71 per cent of GDP in 2022.¹⁶⁵ The country's debt poses a critical and serious threat to the economic growth and security of future generations, resulting in increased long-term interest rates and inflation, which causes worry and stress, interrupts sleep, and has a bad impact on overall health.

3.5 HEALTH SYSTEM

Namibia continues to be one of the world's most unequal countries, and health services remain a pressing issue.¹⁶⁶ Access to health varies widely between different racial groups and regions. Some individuals

Speaking Community' (2008) 1 *History of Childhood and Youth* 240.

163 EISA 'Namibia: German annexation and African resistance (1884-1915)' available at: <https://www.eisa.org/wep/namoverview4.htm> (accessed 28 September 2022).

164 The World Bank 'Namibia Overview', available at: <https://www.worldbank.org/en/country/namibia/overview> (accessed on 28 September 2022)

165 Deloitte 'Namibian Budget 2022/23 Reimaging, a Better Future for the Youth' available at: <https://www2.deloitte.com/za/en/namibia/pages/tax/articles/Deloitte-Namibia-Namibian-Budget-Guide-202011.html> (accessed 28 September 2022).

166 Dausab FH 'Education versus Development in Namibia' *Windhoek observer* 14 January 2021 2; Staff Reporter

receive more professional and advanced care when compared to others.¹⁶⁷ Most of the Herero and Nama populations living in those areas are limited as to resources because there are insufficient health professionals. The Herero and Nama experience problems with the accessibility of health services, which increases the overall mortality rate.¹⁶⁸ The majority of historians concur that the earliest residents of Herero and Nama were farmers and forest dwellers, and that the victims had adequate access to resources such as land, clean water, and livestock prior to 1904. Men, women, and children lived in freedom, were not imprisoned, worked for themselves by maintaining gardens or at home, and were not compelled to labor on government infrastructure projects or be rented out to neighborhood businesses. In addition to not being on a subsistence diet, they were also living in comfortable homes with enough food and water. Moreover the victims were healthy because they were having sufficient herbs to treat conditions arising and were not being held in concentration camps. Despite modernize services, the family was intact and free from conflict as well as from rape and sexual assault. Education and healthcare services for Herero and Nama were above the minimum standards because Herero and Nama people were using folklore as the custom to communicate and educate each other.

The collapse of property (home base care) evidence by victims forced into concentration camps and the dire state of many schools affect the survivors in different ways.¹⁶⁹ A healthy community is a wealthy community. Affected communities' health and wealth were impacted by the genocide, and infrastructure was destroyed, leading to a scarcity of home health care which are needed to diagnose, treat, and manage different types of ailments and diseases. This scarcity of services among the Herero survivors mean that death, disease, disability, poverty, and loss of dignity persist to date. Many of the Herero hopes and needs cannot be met due to scarcity of infrastructure and skilled human resources.

3.6 EDUCATION SYSTEM

During the period of German colonialism, Germany established a system of education known as the Südwest, an arrangement of schools established solely for German children in German Southwest Africa GSWA. The schools thus embodied the inequality and separation between whites and blacks in GSWA

'Letter-Poverty and inequality in Namibia' *New Era* 18 September 2020 1.

167 Jauch H Edwards L, Cupido B 'Inequality in Namibia-OSISA' 2015:181-255.

168 Central Bureau of Statistics National Planning Commission report 2008- A review of poverty and inequality in Namibia Report (2008) 22.

169 Rukoro v Federal Republic of Germany 2017 (19) 17-0062.

and created even more separation between Germans and indigenous Namibians.¹⁷⁰ The German schools focused on the German tradition as a more advanced and greater culture, and the German-speaking schools communicated that indigenous Namibians must accept German culture.¹⁷¹

As a result of these and other factors, the Namibian education system remains fragmented among minorities, and illiteracy rates remains high because state resources are concentrated more in the urban areas.¹⁷² Prior to independence the education system was impacted by apartheid policies that fostered institutional racism.¹⁷³ In modern society, Dausab and Dr Amupanda has stated that, apart from the significance of education on economy, education is a tool of social justice and helps with bearings, navigation and coordination of life, so nothing can replace it.¹⁷⁴ Additionally, Article 20 of Namibian Constitution, dealing with education, states that all individuals shall have the right to education and the government shall provide reasonable facilities to render effective and quality education to residents within Namibia and establish and maintain schools.¹⁷⁵ Currently the ruling government lacks the resources to transform the educational capacity in Herero and Nama communities. The Ovaherero Traditional Authority continues to request reparations to initiate project development relating to construction of educational infrastructure, water supply and professional training. Education is essential for comprehending and confronting violent pasts, as well as creating the knowledge and attitudes necessary to prevent future atrocity crimes. Hence, Initiative in support of education and capacity development programme are needed to enhance the institutionalization of education. Despite current economic reforms, economic growth remains slow and challenged, and the high rates of unemployment persist because of the failing education system.¹⁷⁶ Major inequalities in social and physical living conditions fuel health inequality among the descendants of the Herero and Nama. Namibia is affected by significant gaps in social and physical living. The most inhibitory challenges to date relate to lack of education, quality health, low income, inadequate sanitation, and water supply constraints.

170 Owens J 'Blood Ties and Tongue Ties: The Role of Children in Shifting the Boundaries of Namibia's German-Speaking Community'(2008) 1 *The Journal of the History of Childhood and Youth*, 240.

171 Baker J 'The immediate and long-term effects of Namibia's colonization process' 2011 15.

172 Darling-Hammond L Inequality in teaching and schooling: How opportunity is rationed to students of color in America in *The right thing to do—The smart thing to do* (2001) 208-233.

173 Faust B 'The unique history of education in Namibia' available at <https://borgenproject.org/history-of-education-in-namibia/> (Accessed 03 March 2022).

174 Dausab FH 'Education versus Development in Namibia' *Windhoek observer* 14 January 2021 2.

175 Constitution of the Republic of Namibia Act 34 of 1998

176 Baker J 'The immediate and long-term effects of Namibia's colonization process' 2011 47.

3.7 DEFORESTATION AND HABITAT DESTRUCTION

The social harmony of survivors and their descendants was destroyed through environmental devastation caused by armed conflict, which destroyed considerable agricultural areas. This impacted the Herero community immensely because they are nomadic herders; and with insufficient land they have no means of subsistence and cannot maintain their herds on their chosen land, leaving their cattle with minimal grazing areas, restricted to agricultural areas with little economic value.

The adverse agricultural impact began in 1896, when imported European cattle, a source of rinderpest (a viral disease contagious to livestock), began infecting Herero herds. Cattle essentially being their source of sustenance and wealth, the Herero succumbed to social and economic devastation. The infestation likewise impacted the herds of neighboring Nama and Ovambo.¹⁷⁷

The rinderpest impacted the society because survivors lost their cattle due to it.¹⁷⁸ The majority of the survivors ended with limited access to cattle, and even now they are in crisis because the economic and cultural beliefs about cattle ownership as a backbone of their society in earlier times have collapsed.

Finally, the privatisation of natural resources, especially land, a defining characteristic of capitalist economies, destabilised the Nama and Herero societies profoundly. Systems of land ownership based on race, exclusive usage, fixed boundaries, registration of title deeds, alienability and perpetual settlement are not part of Nama and Herero traditional values and norms.

3.8 HERERO SOCIO-POLITICAL AND RELIGIOUS IMPACTS

Although political decentralization took place in the Herero society in 19th century,¹⁷⁹ the Herero political system remains a pending transformation matter. Herero people in Namibia are a minority group, to date there is no centralized leadership among the Herero apart from patri-clan heads known as *omukuru* (chief). The three divisions which share the same language and cultural norms the Ovaherero, Ovahimba and Ovambanderu are not united as one. Each division acts independently of the others, and this affects decisions about the future. Although Namibia is a democratic country, the impact of genocide left power vacuums within Herero society, and this ethnic group continues to struggle in their claims to recover their rightful property from German descendants. This problem is coupled with challenges related to lack of

177 Klein M 'Paradise in the Realm of the Hottentots' available at <https://blogs.loc.gov/maps/2019/07/paradise-in-the-realm-of-the-hottentots/> (accessed 11 January 2022).

178 Gewald J *Herer Heroes a Socio-political History of the Herero of Namibia 1890-1923* (1999) 137.

179 Gewald J *Herer Heroes a Socio-political History of the Herero of Namibia 1890-1923*. (1999) 12

freedom to exercise individual's rights, and economic activities keep declining, because they are deprived of their political and economic leadership.

When the missionaries arrived, the Rhenish missionaries started providing protection, aid, Christianity and information, and teaching the Herero how to read and write as well as providing identity documents, baptising and registering the Herero in Rhenish records as Christians. The mission also printed their issues in the Herero language to capture their interest.¹⁸⁰ Right now, the Herero religion has collapsed and they have been systematically robbed and deprived of their religious rights and assets because they attached their lifestyle to the Rhenish missionaries' faith and adopted the European models.

3.9 PSYCHOLOGICAL IMPACTS

Many descendants suffered from the impact of stories about their ancestors being enslaved, dying of diseases, and being abused. These traumas are invariably passed on to future generations and create transgenerational trauma.

The Ministry of Health and Social Services (MOHSS) and the World Health Organisation (WHO) have stated that mental health services receive low priority in government operations. The current situation in Namibia shows that a decline in mental health care is still noticeable, and not prioritised widely.¹⁸¹ This constraint is observed in the state health sector due to the shortage of hospitals, rehabilitation facilities, programmes, and qualified professionals.

The colonial political system, and the apartheid system of racial domination, have negatively impacted Namibians, and the psychological effects damages individuals' mental states.¹⁸² Many Herero livelihoods have been diminished due to high unemployment rates, poverty, chronic diseases, and landlessness, and as a result they suffer from high rates of mental disorders.¹⁸³

The German and Namibian governments have not adequately addressed the deeper emotional and psychological wounds associated with the genocide against the Nama and Herero in German Southwest Africa.¹⁸⁴ Geiseb, member of the Namibian Nama Genocide Technical Committee states that "less known and discussed is the impact the rape of young girls and women, as well as massacres (especially of women

180 Gewald J *Herer Heroes a Socio-political History of the Herero of Namibia 1890-1923*. (1999) 203

181 Ministry of Health and Social Services; National policy for Menta Health (2005)2.

182 Ministry of Health and Social Services; National policy for Menta Health (2005)4.

183 Gewald J *Herer Heroes a Socio-political History of the Herero of Namibia 1890-1923* 5.

184 European Center for Constitutional and Human Rights (ECCHR), Colonial repercussions: Namibia: 115 years after the genocide of the Ovaherero and Nam (2019) 1-79

and children), forced labour, and confinement in concentration camps, had on the psyche of the survivors and descendants. There is no doubt that the present-day socio-economic challenges confronting us (Nama's) as a people are 'scars' left by the genocidal atrocities committed more than a century ago.¹⁸⁵

A Director of the Institute for Legal Intervention suggests that descendants of former colonisers need to acknowledge their present-day privileges resulting from colonisation, and the consequent universalisation of Eurocentric concepts and values.¹⁸⁶ Memories of the crimes committed by German Schutztruppe soldiers live on for the Namibian people and the Ovaherero and Nama in the diaspora until today, as does the socio-economic impact. Their perspectives need to be at the core of any effort dealing with the colonial past. Collective trauma, inequalities and socio-economic resulting from the genocide and colonial land grabs can be meaningfully addressed if solutions are developed together with and supported by majority of genocide victims.¹⁸⁷

3.10 CONCLUSION

The Genocide that occurred in Namibia did not only affect the Herero and Nama survivors, but also their descendants, and the greater population of Namibia was impacted. Despite Namibian independence and its abundant natural riches, Herero, and Nama communities are still poor, underdeveloped, and vulnerable. Inequality persists, and health care and education services are rendered poorly due to the lack of skilled professionals. Additionally, allocation of land and housing remains a challenge.

Genocide was not only a traumatic experience for the direct victims, but their descendants continue to suffer due to the traumas imposed on their ancestors.

185 European Center for Constitutional and Human Rights ECCHR, Colonial repercussions: Namibia: 115 years after the genocide of the Ovaherero and Nam (2019) 1-79

186 ECCHR, Colonial repercussions: Namibia: 115 years after the genocide of the Ovaherero and Nam (2019) 4.

187 ECCHR, Colonial repercussions: Namibia: 115 years after the genocide of the Ovaherero and Nam (2019) 4.

CHAPTER 4

REPARATIONS

4.1 INTRODUCTION

As the research has noted, there was genocide committed by the Germans in 1904-1908 and despite many decades of denial, the Germans have now acknowledged this fact and the question of reparations must now be addressed. As reflected in the previous chapter, Genocide in Namibia did not only affect the Herero and Nama survivors, but also their descendants, and the greater population of Namibia. The genocide was the impetus of the national inequality that exists in Namibia today. Reparations refer to the action of restoring to a proper state; whether restoration or renewal, the aim is to return the victims of injustice to at least symbolic pre-injury status quo ante. Reparations may consist of monetary compensation, the return of property, rehabilitation, or symbolic actions like apologies or memorials.¹⁸⁸ Typically the term refers to the procedures that a state must take after it violates a rule of international law. Reparations can also apply more commonly to alleviating all wrongs, whether committed by a country and its agents, or by private parties.¹⁸⁹ Reparations for genocide and crimes against humanity normally necessitate corrective action by both individual perpetrators and the state involved, since such acts are criminal under global and national law.¹⁹⁰ Mainly it is the moral imperative seeking to mend what has been broken. Human rights law and humanitarian law also place a duty on countries to ‘exercise due diligence’, to prevent violations of human rights by private persons.¹⁹¹ If the state fails to do so, it will be responsible for providing reparations.¹⁹² In an early international court case, the Permanent Court of International Justice called the obligation to make reparations for an unlawful act ‘a general principle of international law’ and part of ‘a general conception of law’.¹⁹³ This reflects the fact that all legal systems require those who cause harm through illegal or wrongful acts to take action to repair the harm they have caused.¹⁹⁴

188 International Criminal Court ‘*Understanding the International Criminal Court*’ 2020:55; Hughes PM ‘Reparations’ in Chatterjee D.K. (eds) *Encyclopedia of Global Justice* (2011) 946.

189 International Center for Transitional Justice ‘justice, Truth and Dignity ‘Reparations’ Available from: <https://www.ictj.org/reparations> (accessed 14 May 2022).

190 Nathan C ‘Reparations for victims of genocide, crimes against humanity and war crimes: Systems in place and systems in the making The Peace Palace’ 2007 *Research Centre and the Redress Trust* 5-6.

191 Nathan C ‘Reparations for victims of genocide, crimes against humanity and war crimes: Systems in place and systems in the making The Peace Palace’ 2007 *Research Centre and the Redress Trust* 6.

192 Stilz A ‘Collective responsibility and the state’ (2011) 19 *Journal of Political Philosophy* 190-208.

193 Chorzow Factory case (Germany v. Poland), 1928 P.C.I.J. (ser. A), no. 17 at 29 (September 13).

194 Chorzow Factory case (Germany v. Poland), 1928 P.C.I.J. (ser. A), no. 17 at 29 (September 13).

4.2 HISTORICAL SIGNIFICANCE OF REPARATIONS

Victims of historical injustices who have no positive law claim against reprobates often seek reparations from governments, and sometimes they obtain them. The best-known reparations plans are those for Japanese-Americans who were incarcerated by the United States government during World War II, and for casualties of the Nazi Holocaust. The significance and civil reasons for and against reparations in disparate frameworks have received substantial consideration, but challenges of legal and established design have received almost none.¹⁹⁵

Within the prescriptive debates, supporters of reparations often concentrate on the historical wrongs perpetrated upon victim parties, while diminishing the significant dilemmas of policy design that reparations pose. Opponents of reparations in the USA downplay the injustices and portray reparation suggestions as unusual or even extraordinary, ignoring the fact that reparations have often been paid in the past. White supremacists have stated that reparations are not needed. Woodson condemned the idea of reparations in that it is a waste of time engaging in reparation discussions. The argument continues that all the slaves are dead, that no white person or immigrants living today owned slaves and not all Black people living in America today are descendants of slaves. Further McConnell also opposed the idea arguing that ‘none of them currently living are responsible’ for America’s ‘original sin’.¹⁹⁶

Reparations are often viewed as a contemporary issue, but the concept has a long historical background. France paid Germany reparations after the Franco-Prussian War of 1872.¹⁹⁷ Germany paid France reparations after World War I, and the Soviet part of Germany paid reparations to the Soviet Union after World War II.¹⁹⁸ Iraq paid, and still is required to pay reparations, on account of the destruction it caused during the Gulf War.¹⁹⁹

195 Dawson MC and Popoff, R ‘Reparations: Justice and greed in Black and White’ (2004) 1 *Du Bois Review: Social Science Research on Race* 55-57.

196 Hare B and Criss, D ‘Six questions about slavery reparations, answered’ available at <https://www.cnn.com/2020/08/15/us/slavery-reparations>(accessed 12 May 2022).

197 Howard M The Franco-Prussian War: The German Invasion of France 1870–1871 446-51; Devereux, M.B & Smith, G.W ‘Transfer problem dynamics: Macroeconomics of the Franco-Prussian war indemnity’ (2007) 54.

198 Marc Trachtenberg M ‘Reparation in World Politics: France and European Economic Diplomacy, 1916–1923’ (1983) 758.

199 Nebehay S ‘Iraq resumes payments of Gulf War reparations to Kuwait’ available at <https://www.reuters.com/article/mideast-crisis-iraq-kuwait->(accessed 13 May 2022).

The most well-known case of reparations are the Holocaust reparations paid by West Germany after World War II.²⁰⁰ Although the United States and other countries did pressure Germany to pay reparations to Holocaust victims, and although the West Germany reparations can be traced to earlier reparations programs imposed from 1947 to 1949 by the occupying powers, the Holocaust case differs from the standard cases of coerced wartime reparations. The Holocaust reparations did not go to the victorious powers, and the programme emerged autonomously from the German political system, at a time (the 1950s and 1960s) when Germany was no longer under imminent threat of further physical or economic destruction.²⁰¹ German leaders such as Konrad Adenauer believed that Holocaust reparations would persuade the international community that West Germany had shaken off its Nazi past and could be trusted with political autonomy.²⁰²

In the United States, the first reparations programme was created by Congress in 1946 to recompense a wide range of rights pressed by Indian tribes, including abuses of treaties for which a jurisdictional preparation was contradicted, and the loss of lands under treaties signed under coercion.²⁰³ More than forty decades passed before the United States Congress approved reparations for Japanese-Americans who had been jailed during World War II, but then Congress passed three more programmes in rapid sequence.²⁰⁴ A movement seeking reparations for the enslavement of African Americans started in the late 1960s, but diminished before enjoying a revival in the late 1990s.²⁰⁵

4.3 RECTIFICATORY JUSTICE: A THEORY IN JUSTIFYING THE RIGHT TO REPARATIONS

Rectificatory justice is the class of justice concerned with righting injustice, which simply means making an apology.²⁰⁶ Aristotle's rectificatory justice implies that rectification restores a predecessor condition: the perpetrator (who unfairly gains) must lose something, for instance, liberty, wealth, or social repute and the victim (who unfairly loses) must gain something, for example, the truth and financial restitution.²⁰⁷

200 Schwerin K 'German compensation for victims of Nazi persecution' (1972) 67 *Nw. UL Rev* 499.

201 Woolford, A and Wolejszo, S 'Collecting on moral debts: Reparations for the Holocaust and Pořajmos' (2006) 4 *Law & Society Review*, 874.

202 Schwerin K 'German compensation for victims of Nazi persecution' (1972) 67 *Nw. UL Rev* 499.

203 Debo A *History of the Indians of the United States* 1970 346.

204 Mitchell A 'Clinton regrets" clearly racist' 1997 *The New York Times*,10.

205 Lewin T 'Calls for slavery restitution getting louder' 2001 *The New York Times* 4.

206 Roberts R.C Rectificatory Justice. In: Chatterjee D.K. (eds) *Encyclopedia of Global Justice* (2011) 937.

207 Knoll MD 'The Meaning of Distributive Justice for Aristotle's Theory of Constitutions' (2016) 57-97.

When one sustains harm as a result of a violation of a right, one has the right to have the damage repaired.

208

Crocker has stated eight goals one can implement in rectifying injustice or setting right past wrongs and these are: truth; a public forum for victims; accountability and punishment; rule of law; victims compensation; institutional reform; and long-term development, reconciliation, and public discussion.²⁰⁹

Currently, Herero and Nama societies are discussing and negotiating around the clock on what to do about the crimes against humanity, rape, and torture committed during 1904 – 1908. Aristotle defines rectificatory justice theory as an attempt to account for past wrongs in an appropriate manner. To rectify means to put things right.²¹⁰ Justice implies a right of reparation; thus, the Herero and Nama descendants have the rights to public apology, compensation of descendants of the survivors and their families, literary and historical writing by the German state, and scheduling of memorials to victims. Germany continues to call efforts to seek redress with the Namibia government in the conflict ‘healing of wounds’ instead of reparation. However the ‘healing of wound’ term is just a covering-up in order to avoid the accountability and reparation and not merely to heal because victims are not prior consulted regarding the measure toward atrocities committed and they are excluded from negotiation proceeding. Thus, it can be concluded that Germany does not want to use the term reparations, because it could possibly open the door for more litigation from other victims of their colonial regimes. For example, upon Germany engaging in acts of reparations for its colonial past, the country may have to face similar reparations payment, like in the case of Tanzania where political factions are seeking reparation from Germany for Maji-Maji revolt atrocities in 1905–1907.²¹¹

4.4 THE MORAL OBLIGATION FOR REPARATIONS

Popular and legal opinion in the US holds that individuals should not be blamed for uncontrollable events.²¹² If someone wrongfully harms another, the transgressor must provide restitution, while a third

208 Crocker DA ‘Rectificatory Justice: Righting Past Wrongs’ in Robert C E (ed) *Institutional Issues Involving Ethics and Justice* (2009) 352

209 Crocker DA ‘Rectificatory Justice: Righting Past Wrongs’ in Robert C E (ed) *Institutional Issues Involving Ethics and Justice* (2009) 352

210 Crocker DA ‘Rectificatory Justice: Righting Past Wrongs’ in Robert C E (ed) *Institutional Issues Involving Ethics and Justice* (2009) 352

211 Bachmann K and Kemp G ‘Was Quashing the Maji-Maji Uprising Genocide? An Evaluation of Germany’s Conduct through the Lens of International Criminal Law’ (2021) *35 Holocaust and Genocide Studies*, 239.

212 Wu EY ‘Reparations to African-Americans: the Only Remedy for the US Government’s Failure to Enforce the 13th, 14th, and 15th Amendments. (2003) *3 Conn. Pub. Int. LJ*, 346 403.

party has no such obligation. Only the perpetrator owes the victim a duty. Thus, only the victim may sue the reprobate for the original wrongdoing.

An essential element of any system of compensatory justice is the establishment of a connection between the wrongdoer and the person responsible for making restitution, as well as between the victim and the person filing an appeal.²¹³

The ethical individualism premise that the culprit and sufferer are distinct people makes it unlikely that compensating justice will ever justify a reparations scheme. This is so that there can be no identification issues in the victim-claimant connection. In contrast, if the offender and victim are groups, then payers or claims may occasionally be people who weren't the original wrongdoers or victims but instead got their rights or obligations via being a part of the group.²¹⁴

To a certain extent, the need for identification can be disregarded under the strict guidelines of ethical individualism. A victim may transfer his or her valid crime claim against the wrongdoer to a third party by selling the claim to that third party.²¹⁵ But the problem facing those seeking reparations is that positive law never recognised the initial claim, or that the victim never assigned the claim even if he could have, or that the decree of limitations bans legal proceedings.²¹⁶

As a moral claim, reparations claims take precedence above the law, and it would be extremely rare for a third party to have a moral claim against an offender who has never harmed this third party, even if the offender had sold the right to the third party.²¹⁷ The offspring of expropriation victims are allowed to request a return of the property under the reparations plans in East Germany and the Czech Republic.²¹⁸ Inheritors could potentially access funds under the Rosewood plan.²¹⁹ The following is one possible justification for these kinds of programs: If children have a legal right to inherit property from their

213 Espindola J 'Compensatory justice and the wrongs of deportation' (2021) *Critical Review of International Social and Political Philosophy* 5.

214 Posner EA and Vermeule A 'Reparations for slavery and other historical injustices' (2003) 689-748.

215 Evans C *The Right to Reparation in International Law for Victims of Armed Conflict* (2012)15-42.

216 Evans C *The Right to Reparation in International Law for Victims of Armed Conflict* (2012)15-42

217 Bergelson V Victims and perpetrators: An argument for comparative liability in criminal law (2005) 8 *Buffalo Criminal Law Review*, 8(2) 431.

218 Bazylar MJ Boyd K.L and Nelson KL *Searching for Justice After the Holocaust: Fulfilling the Terezin Declaration and Immovable Property Restitution* 2019: 481-496.

219 González-Tennant E *The Rosewood Massacre: An Archaeology and History of Intersectional Violence* (2018) 149-173.

parents, then the communist regimes' land confiscations hurt the families of the property as much as the owners themselves.²²⁰

The negligent governments bear responsibility because they had the power to take different measures, and they must compensate the heirs because they knew they would be harmed by the wrongdoing. Sometimes, even if the claim is proven, figuring out how much it's worth is a huge obstacle²²¹ Pain and suffering, missed employment or social opportunities, or reputational injury are all difficult to place a price on, and while this issue is well-known in tort law, it does not make valuation any simpler. However, because to the social unrest and political unrest that the origins of reparations claims are, many valuation issues in the context of reparations are exceedingly difficult.²²²

A different perspective offers a more compelling argument in favor of compensation. The recipient is unjustly benefited and has a responsibility to repay the advantage to the original owner if a communist government wrongly deprives a landowner of his property and does so in order to acquire it. The culprit and payer can be different people. If the original owner gave or bestowed the benefit to another person, like a child, that person may credibly claim he has a superior title to the benefit. The restitution argument is stronger than the compensation argument since the victim and claimant need not be the same person.²²³ Claims under the restitutionary principle will be difficult to prove if there has been a significant amount of time between the wrongdoing and the compensation being sought (for example, if several generations have passed).²²⁴ Some controversial proponents suggest that many African slaves may have benefited from their enslavement and transportation if their only other option was to be killed by an enemy. This proposal argue if the advantage that slaves brought to slave owners should be adjusted downward to account for the harm that they prevented? It must be noted however, that there is scant, if any evidence that suggest actual historical moments where there were only two options for enslaved Africans, those options being killed by an enemy or acceptance of the life condition of enslavement.²²⁵ Based on this idea, some have developed the idea of denying reparations.

220 Posner EA and Vermeule A 'Reparations for slavery and other historical injustices' 2003 *103 Columbia Law Review* 689-747.

221 Alexander GS 'The Complexities of Land Reparations' (2014)39 *Law & Social Inquiry* 874-901.

222 Alexander GS 'The Complexities of Land Reparations' (2014)39 *Law & Social Inquiry* 874-901.

223 Boxhill B 'The Morality of Reparation' in Gross, B.R (ed) *Reverse discrimination* (1977) 401.

224 Minow M 'Between vengeance and forgiveness: South Africa's truth and reconciliation commission' (1998)14 *Negotiation Journal*, 329.

225 Pallua U 'Slavery was Agreeable, its Fortune Desirable, The Acceptance of the Evils of Slavery as a Social

Such moral and ethical dilemmas arrive when suggesting that some descendants should have lessened amounts to pay to the descendants of slaves. In addition, there are complications regarding the mixing of the perpetrator and victim ancestry, non-descendant immigration and other factors. Critics of ethical individualism dispute the role of firms and reject evidence using corporate forms to justify reparations. Individualists deny communal blame, as this ideology does.²²⁶ Philosophers say collective and corporate guilt are justifiable in some cases. Soft ethical individualism is a result of this argument's use of decreased, non-eliminated concepts of individuality.²²⁷ Method has two versions.

Limiting community guilt minimizes the individualist assumption that someone can only be held accountable for their own actions. When someone voluntarily contacts criminals, they may be held responsible for their actions.²²⁸ People develop links to gain from collective activity; as a result, their volitional behaviors and involvement cause negative group effects.²²⁹ Second description asserts that businesses can be considered as persons for moral reason. This version argues that corporations can be blamed and held accountable.²³⁰ According to compensating justice, none of a company's agents are morally liable when they damage a person. The victim demands recompense from the "company," but shareholders must pay.²³¹ This is true even if the current shareholders, who must pay through a drop in share value, were not stockholders at the time of the wrong. In this scenario, falls the Namibia/Germany issue – the tax Euro of the German citizenry should be used to pay reparations owed to the Herero and Nama communities. If adopted, these concerns may apply to restitutionary theory. Ford Motors should pay restitution if Henry Ford benefited from its German plants' slave labor, even though the citizens who pay through the corporation are different from the wrongdoers.

Some may regard a suit against an Indian tribe for illegally taken lands more sympathetic than a claim against a corporation. Because the Indian community doesn't sell anything and people don't buy membership, the children of primary offenders may benefit from benefits for which they aren't

Phenomenon: an Indicator of a Pro-Slavery Approach' (2007) 32 *AAA: Arbeiten aus Anglistik und Amerikanistik*, 197-220.

226 Levmore S 'Changes, anticipations, and reparations' (1999) 99 *Columbia Law Review* 1657,

227 Takov P and Djia V 'Wittgenstein's Ethical Individualism as a Foundation for Environmental Ethics' (2020) 10 *Open Journal of Philosophy*, 427-442.

228 Posner EA and Vermeule A 'Reparations for slavery and other historical injustices' 2003 *103 Columbia Law Review* 689-747.

229 Marion S Collective Responsibility ;*The Stanford Encyclopedia of Philosophy* (2017) 1.

230 French PA *Collective and Corporate Responsibility* (1987) 31-48.

231 Kutz C *Complicity: Ethics and law for a collective age* (2000) 196-200.

qualified.²³² Victim and claimant work together. If the injured party is a corporation, such as an ethical or religious group, it retains its initial claim even if all of its representatives are removed.²³³ This means that generations-removed, unharmed parties will benefit from the corporation's claim.²³⁴ The individualistic theory of corporate accountability, which advocates for members' active engagement, and the less individualistic view, which emphasizes on corporations' role in moral discourse, assume different standards for corporations and non-corporations. Coherence is usually encouraged, with formal decision-making techniques emphasized.²³⁵

Ethical collectivism claims that the individual is not the object of moral care, or not the only object of moral concern, and that the group may be blameworthy and responsible in the same way as individuals, and that its obligations are not reducible to those of its members.²³⁶ At Time 1, Group P harmed Group Q; at Time 2, Group P must pay Group Q reparation. If each group survives from Time 1 to Time 2, it doesn't matter if the members' identities are the same or related by another factor. Group P's members have no moral foundation to object to paying compensation from their own resources.²³⁷ Soft ethical individualism and ethical collectivism may overlap. Individualists disagree on the degree of causation and blameworthiness required to be accountable for a wrong, but certain positions are incompatible with individualism.²³⁸

Adult Germans in Namibia or the GSWA during the Herero and Nama genocides may be held responsible for Imperial Germany's crimes by hard individualists if they actively participated, while soft individualists may hold those who did not oppose the Nazis or did so but remained silent about the larger genocide responsible. All Germans in Namibia during the Genocide, 1904-1908, are equally liable, as is the belief that their children are equally responsible for Nazi crimes, regardless of their level of participation.²³⁹

232 Posner EA and Vermeule A 'Reparations for slavery and other historical injustices' 2003 *103 Columbia Law Review* 689-747.

233 Posner EA and Vermeule A 'Reparations for slavery and other historical injustices' 2003 *103 Columbia Law Review* 689-747.

234 Posner EA and Vermeule A 'Reparations for slavery and other historical injustices' 2003 *103 Columbia Law Review* 689-747.

235 Kutz C *Complicity: Ethics and law for a collective age* (2000) 196-200.

236 Marion S *Collective Responsibility*, *The Stanford Encyclopedia of Philosophy* '(2017) 1.

237 Posner EA and Vermeule A 'Reparations for slavery and other historical injustices' 2003 *103 Columbia Law Review* 689-747.

238 Posner EA and Vermeule A 'Reparations for slavery and other historical injustices' 2003 *103 Columbia Law Review* 689-747.

239 Miller D 'On Nationality' (1995) 14 *Cato Journal* 10-11.

Techniques differ based on the group's importance. The soft ethical individualist values the group because it brings value to members; the individual nevertheless engages morally.²⁴⁰ Ethical collectivists see the collective as moral. Representatives must set aside personal issues. Nationalistic groups provide people moral dignity despite Nazi ideology. Many people believe that living Germans are also culpable for Nazi crimes, and this belief forms the basis for German reparations to Holocaust victims.²⁴¹

Several elements must be considered to estimate whites' harm to blacks.²⁴² A brief introduction shows how the concept of harm might be contextualized to account for the harm the German government perpetrated on the Herero and Nama during the genocide. Does the slave trade include Arabs and Africans change Europeans' guilt? Skeptics of slavery reparations say the concept leads to interminable, bitter fights over who owes what to whom. Moral taint causes ethical collectivist inclinations to be handled differently than individualism. People often feel "morally tainted" by illegal action over which they have no control, even though they are not at fault. Morally polluted persons aren't held accountable. Since they didn't start or direct the conduct, they feel no moral need to change it. However, wrongdoers often feel guilty and are publicly outcast. Shame and stigma are morally illogical yet have emotional and social consequences.²⁴³ Moral stains, stigma, and shame lead people to change their behavior.

Apologize and make amends commensurate with the offense to remove the moral stain. Moral taint explains collective guilt's cognition. Some reparations plans may be considered as a moral cleansing. Few Germans alive in 2022 may be blamed for the Nama and Herero genocide in Namibia. This is primarily because the leaders of that time are deceased. It is debatable if those who voted for those leaders can be assigned much blame for these decisions. Some Germans feel morally guilty for taking and settling in Herero territory.²⁴⁴ Only wrongdoers and payers are morally tainted. If the payer is corrupted, he or she may reimburse the victim. If the victim is dead, the payment may make reparation to relatives, including descendants. This mindset is fostered by the idea that non-victims can be tainted by victim outcomes. So read Hereros and Nama's genocide claims. Moral taint selects people with features shared by significant historical injustice victims, not ethical autonomy. Morally, one group should make apologies for past

240 Miller D 'On Nationality' (1995) 14 *Cato Journal* 10-11.

241 Abramson J 'Ronald Dworkin and the Convergence of Law and Political Philosophy' (1986) 1230.

242 America RF (ed) '*The wealth of races: The present value of benefits from past injustices*' (1990) 132.

243 Williams B '*Moral Luck Philosophical Papers 1973—1980*' (1981) 28.

244 Nebe C 'Namibia: A timeline of Germany's brutal colonial history' available at <https://www.dw.com/en/namibia-a-timeline-of-germanys-brutal-colonial-history/> (accessed 12 May 2022).

wrongs.²⁴⁵ The compensating concept promotes restitution when a criminal pays and a victim or relative claims.²⁴⁶ The restitutionary concept allows compensation when the criminal pays and the victim or a relative loses a reward or endowment.²⁴⁷ Governments and international institutions will consider these theories when considering whether to introduce new compensation systems.

4.5 RESTORATIVE JUSTICE A MEANS FOR REPAIRING THE OVAHERERO AND NAMA COMMUNITIES

According to Kapofi, a Namibian MP, restorative justice for victims of crimes of extreme gravity, such as genocide, requires, as a matter of public policy and international humanitarian law, the German government's acknowledgement of responsibility.²⁴⁸ As an alternative to traditional criminal justice systems, Restorative Justice encourages victims, offenders, and the society at large to work together with law enforcement to find solutions to criminal behavior.²⁴⁹ Such approaches become more difficult however, when the crime was perpetrated over a century ago and the direct perpetrators of the crime and their victims have long passed away, as in the case of the genocide committed against the Ovaherero and Nama populations. Nonetheless, principles of restorative justice include inviting the direct participation of those most affected by a situation (in this sense the Government of the Republic of Germany and the descendants of the genocide victims, and the affected communities).

Weisberg argues that restorative justice encompasses a wide range of practices, including restitution, confession, and reintegrating offenders into society (with or without further disciplinary action).²⁵⁰ Typically, in a restorative justice setting, victims and offenders meet directly (face-to-face), sometimes with a mediator, to address the harm done by the offender(s), make amends to the victim(s),²⁵¹ through both emotional and monetary means, and come to a place of mutual understanding, forgiveness, and commitment to future actions to prevent further harm. Blumenson suggests that the four R's of restorative

245 Posner EA and Vermeule A 'Reparations for slavery and other historical injustices' 2003 *103 Columbia Law Review* 689-747.

246 Perez N 'On compensation and return: Can the 'continuing injustice argument for compensating for historical injustices justify compensation for such injustices or the return of property' (2011) 28 *Journal of Applied Philosophy*, 151-168.

247 Emily S 'Reparations and unjust enrichment' (2004) 84 *Boston University Law Review* 1443-1465.

248 Honourable Kapofi K 'Genocide, Apology and Reparation' available at <https://www.parliament.na/wp-content/uploads/2021/09/Genocide-Statement-Apology-And-Reparation-By-Hon-Frans-Kapofi> (accessed 12

February 2022); [Siririka P](#) 'Reparations should not divide us – Kapofi' *New Era* 22 September 2021 2.

249 Marshall TF '*Restorative justice: An overview*' (1999) 5-31.

250 Weisberg R 'Restorative justice and the danger of "community' (2003)1 *Utah Law Review* 343-374.

251 Weisberg R 'Restorative justice and the danger of "community' (2003)1 *Utah Law Review* 343 374.

justice are reparation, restoration, reconciliation, and reintegration of wrongdoers and sufferers into the community. The practice of restorative justice gives rise to significant philosophical, social, and empirical questions.²⁵² When considered from a theoretical and sociological perspective, restorative justice create critical query on who should have authority over criminal behavior, wrongdoing, punishment, restitution, compromise, and the best interests of the community as a whole.²⁵³

4.6 THE CALL FOR REPARATIONS IN NAMIBIA FOR GERMAN ACTS OF GENOCIDE

The Herero and Nama leadership of Namibia have sought reparations from the German government and German corporations who played a role in the crimes committed in German Southwest Africa. Nonetheless, Germany has continually denied the Herero's claim to reparations, and for many years, these leaders declined to issue an official apology to the Herero and Nama communities for the colonial violations. The Germans on their part have often argued that the current Germany government cannot be held liable for the colonial atrocities because international law at the beginning of the twentieth century did not have any provisions allowing ethnic minorities to seek reparations.²⁵⁴

Under international law, a State responsible for an internationally wrongful act must make full reparation for the injury caused by the internationally wrongful act.²⁵⁵ For such obligation to arise, damage is not required; rather an injury suffices. The essential assumptions on reparations under international law are primarily customary standards that operate exclusively in relationships between States.²⁵⁶ However, some of those principles could apply in relation to breaches of international obligations owed not only by States but also by individuals. Furthermore, as a special branch of international law, international human rights law has also reinterpreted some of those principles and has even created its own rules to respond to the nature of the violations it deals with.²⁵⁷

252 Blumenson E 'The challenge of a global standard of justice: peace, pluralism, and punishment at the International Criminal Court' (2005) 4 *Columbia Journal of Transnational Law* 798.

253 Von Hirsch A Roberts JV Bottoms AE Roach, K and Schiff M. (ed) *Restorative justice and criminal justice: Competing or reconcilable paradigms* (2003) 195.

254 Oltermann P 'Germany rules out financial reparations for Namibia genocide' *The Guardian* 21 May 2021 2.

255 International Law Commission's Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001):31-35.

256 Amezcua-Noriega O 'Reparation Principles under International Law and their Possible Application by the International Criminal Court: Some Reflections' (2011) 1 *Briefing Paper*, 1-11.

257 Amezcua-Noriega O 'Reparation Principles under International Law and their Possible Application by the International Criminal Court: Some Reflections' (2011) 1 *Briefing Paper*, 1-11.

The essential opinion on reparation under international law was expressed by the Permanent Court of International Justice (PCIJ) in the case concerning the Factory at Chorzow: ‘reparation must, as far as possible, wipe out all consequences of the illegal act and reestablish the situation which would, in all probability have existed if that act had not been committed’.²⁵⁸ International legal exclusions against instances of genocide were created prior to categorisation in the UN Genocide Convention, and were entrenched in treaty and customary law by the late nineteenth century. An evaluation of international law during the early twentieth century indicates that the war of destruction waged by the German colonial administration against the Herero and Nama ethnic groups desecrated several treaties to which Germany was a participant, as well as the period’s customary law.²⁵⁹ Moreover, documents from the 1884 Berlin Conference, the 1890 Anti-Slavery Conference in Brussels, and the 1899 Hague Conference on the Laws of War support the Hereros’ claim for reparations against the German government and associated German enterprises. The 1885 Berlin West Africa Convention provides an additional avenue for redress under the third-party recipient principle.²⁶⁰

4.7 REPARATIONS CLAIMS FOR GENOCIDE UNDER RELEVANT INTERNATIONAL LAW

4.7.1 Customary law

Under customary international law and the Convention on the Prevention and Punishment of the Crime of Genocide 1948 (Genocide Convention), all states have a duty to prevent and punish genocide.²⁶¹ According to Article I of the Convention, ‘The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish’. The Genocide Convention entered into force on 12 January 1951.²⁶² By directly referring to the ICJ’s finding in the *Genocide Convention Reservation Advisory Opinion*, the two *ad hoc* tribunals held that the 1948 Genocide Convention on the Prevention and Punishment of the Crime of Genocide echoes customary law.²⁶³

258 Case concerning the Factory at Chorzow (Merits), PCIJ, Series A, No. 17, 1928, 47.

259 Anderson R ‘Redressing colonial genocide under international law: the Hereros’ Cause of action against Germany’ (2005) 93 *California Law Review* 1155-1190.

260 Anderson R ‘Redressing colonial genocide under international law: the Hereros’ Cause of action against Germany’ (2005) 93 *California Law Review* 1155-1190.

261 ICJ Global Redress and Accountability Initiative Questions and Answers on the Crime of Genocide (summary report) Legal Briefing Note, available at <https://www.icj.org/wp-content/uploads/2018/08/ICJ> (accessed 28 March 2022)

262 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro) Judgment, I.C.J. Reports 2007 (I) 110-111, 161.

263 *Prosecutor v Jelisić* (Judgment) ICTY-95-10-T (14 December 1999) (*Jelisić* Trial Judgment) para 60; *Rutaganda* Trial Judgment (n 19) para 46; *The Prosecutor v Alfred* (Judgment and Sentence) ICTR-96-13-T (27 January 2000) para 151; *Prosecutor v*

Thus, it can be concluded that Germany's attempt to annihilate the Ovaherero and Nama peoples during the 1904 – 1908 period, and its unlawful claim to their properties without recompense, debased international law as it were during this German colonial period of 1885 – 1915, including (i) customary international law; positive international law; (ii) and (iii) and the legal requirements as codified in Germany's treaties prohibits the acts of violence Germany committed during 1885-1915.²⁶⁴

4.7.2 Hague Conference on the Laws of War

In 2001, several Herero organisations sued the State of Germany and relevant German corporations for the genocide of 1904 – 1908. The class action lawsuit was based on the Alien Torts Claims Act and claimed compensation for 'crimes against humanity' and 'violations of fundamental principles of international law' including genocide, slavery, forced labour and systematic abuse of women. Germany refused to acknowledge the service of the action under Article 13 of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters with reference to sovereign State immunity.²⁶⁵

The Herero locate their claim in terms of the international laws of war as defined in the Second Hague Convention of 1899, a Convention at which the Germans were represented, and which bound the European powers as they engaged in warfare between signatory nations. Germany tried to argue, in the twenty-first century, that there was, after 1899, one set of rules for European countries engaged in wars with each other and a wholly dissimilar set of rubrics for those same nation's when at war with Africans and ethnic peoples, which is obviously an indefensible legal and ethical position.²⁶⁶ The Hague Convention on the Laws and Customs of War by Land was signed on July 29, 1899, taking effect on September 4, 1900. Intended to regulate modern warfare, the Convention contains several provisions that, were obviously violated by Germany in the Herero War. Chapter II, Article 4 requires that 'prisoners of war in the power of the hostile government must be honourably treated'.²⁶⁷ The Article further states that 'the government into whose hands prisoners of war have fallen is bound to maintain them'.²⁶⁸ Article 23 states that, 'it is

Sikirica et al. (Judgment) ICTY-95-8-T (3 September 2001) para 55; *Prosecutor v Tolimir* (Judgment) ICTY-05-88-2-T (12 December 2012) para 733; Convention Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 (Genocide Convention)

264 Mccallion KF and Murtfeld R 'Germany's Responsibility Under International Law to Compensate the Ovaherero and Nama Peoples of Namibia for the 1904-1908 Genocide' 2018 *Harvard International Law Journal* 3.

265 Buser A 'German Genocide in Namibia before US Courts: Ovaherero and Nama sue Germany over Colonial Injustices–Again' 2017 *Völkerrechtsblog* 1-6.

266 The Hague Convention on the Laws and Customs of War by Land, 1899(1899) II.

267 The Hague Convention on the Laws and Customs of War by Land, 1899(1899) II.

268 The Hague Convention on the Laws and Customs of War by Land, 1899(1899) II.

especially prohibited to kill or wound treacherously individuals belonging to the hostile nation or army; to declare that no quarter will be given; to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessity of war.' Finally, Article 46 states that, 'family honours and rights, individual lives and private property must be respected'.²⁶⁹ It would follow that a systemic violation of that Convention, for example, in an order to kill all the Herero and starve their women and children, obviously a pronouncement that 'no quarter will be given', would be legally criminal under whatever regime of international application the Hague Convention recognises, but the Herero were not represented at the Hague, and could not, consequently, sign the Convention.²⁷⁰

4.7.3 Alien Torts Claim Act of 1789

The Herero also unsuccessfully used the Alien Torts Claim Act of 1789 to seek reparations in a US federal court for war crimes committed overseas. A suit filed by Herero representatives against the German government and Deutsche Bank in 2001 was terminated. The Herero representatives sued Germany under the Alien Torts Claim Act, a US law dating back to 1789 which is often mentioned in human rights cases.

4.7.4 Pursuit of reparations via individual Herero and Nama leaders

As documented by Van Wyk,²⁷¹ after attaining independence from apartheid rule from South Africa, a battle for reparations began. It started with the initial, well-known movement of the late Kuiama Riruako, the Paramount Chief of the Ovaherero. Riruako and his supporters planned protests during the first official visits of high-ranking German officials to Namibia. They requested the German government to respond, apologise, and pay reparations of \$600 million (US) to the Ovaherero community.²⁷² The German government refused, which caused Riruako to introduce a court case against the German government and German corporations for their involvement in colonial genocide.²⁷³ During mid-September 2006, Riruako introduced his 'Reparations Motion' in the Namibian parliament. The motion, which requested that the German and Namibian governments engage in bilateral talks on genocide reparations, was tremendously supported by Namibian politicians and the public. It took almost ten years for official talks between the

269 The Hague Convention on the Laws and Customs of War by Land, 1899(1899) II.

270 Harring SL 'German reparations to the Herero nation: An assertion of Herero nationhood in the path of Namibian development' (2002) 104 *West Virginia University* 393-417.

271 Van Wyk B Apology and Reparations? Reflections on the genocide reparations agreement between Germany and Namibia (unpublished Anthropology thesis, University of the Western Cape, 2021).

272 Oltermann P 'Germany agrees to pay Namibia €1.1bn over historical Herero-Nama genocide' *The Guardian* 28 May 2021.

273 German cos. lawsuit (by Hereros) (2001) available at: https://www.nid.org.na/images/pdf/analysis_views/Herero_lawsuit_against_the_Deutsche_Bank (accessed 12 May 2022).

two governments to begin. The negotiations commenced in 2015, after Germany's acknowledgment that the events between 1904 and 1908 were in fact genocide.²⁷⁴ The acceptance was made by the German Foreign Ministry before the commencement of genocide reparations negotiations between Germany and Namibia.

4.8 BI-LATERAL REPARATIONS INITIATIVES

4.8.1 Namibia's negotiation strategy

The German and Namibian governments held multiple negotiations between 2016 and 2021.²⁷⁵ In mid-May 2021 the special envoys of Germany and Namibia made a joint declaration. The declaration circumvented the setting of precedence for reparations, but was acknowledge in moral and political, but not legal terms.²⁷⁶ The negotiation process willingly ignored international participation rights based both on treaties and customary international law. It must be noted that the Namibian and German government refused to listen to the descendants of victims of the genocide, and their traditional leaders and there were no initiatives that sought to return the land to its rightful owners, as part of the reparations process.

It must be further noted that this declaration purposely failed to use the word 'reparations'. The monies earmarked and identified as development funds entail an amount of 1.05 billion Euro over a period of 30 years for development projects to Namibian regions for the descendants of the genocide victims. This amount aligns with the same amount of development aid that Germany has allocated to Namibia since its independence in 1990. Moreover, an additional 50 million Euro 'will be dedicated to the projects on reconciliation, remembrance, research and education' over the same period.²⁷⁷ Without giving any further details on the negotiation process, Mbumba acknowledged that the German government's offer of 1.1 billion euro (18 billion Namibian dollars) in reparations given over 30 years was a far cry from what Namibia wanted. The negotiating team initially submitted a claim of 70 billion euro (1.1 trillion Namibian dollars), calculating the loss of life, livelihoods, and land for the communities. Germany put forward a

274 Beck L Bearak M and Immanuel S 'Germany acknowledges colonial genocide in Namibia and promises development projects' 2021 *democracy die in darkness*. 1-3

275 Van Wyk B Apology and Reparations? Reflections on the genocide reparations agreement between Germany and Namibia (unpublished Anthropology thesis, University of the Western Cape, 2021).

276 Melber H 'Why reconciliation agreement between Germany and Namibia has hit the buffers' available at <https://theconversation.com/why-reconciliation-agreement-between-germany-and-namibia-has-hit-the-buffers-173452> (accessed 06 May 2022).

277 Joint Declaration By The Federal Republic Of Germany And The Republic Of Namibia "United In Remembrance Of Our Colonial Past, United In Our Will To Reconcile, United In Our Vision Of The Future".

counteroffer of 289 million euro, calling it a ‘special’ compensation for ‘the healing of wounds’ and not reparations for genocide.²⁷⁸ Germany’s second offer was slightly higher at 300 million euro, while the third of 700 million included an additional offer of 780 million euro in the form of development loans.

All these offers were, however, rejected by the Namibian government, which eventually forced Germany to offer 1.1 billion. The Namibian government agreed to this sum after Germany’s offer to fund land reform. An apology by the German Federal President, Frank-Walter Steinmeier, was also issued in the Namibian parliament. All of this was agreed upon between the German and Namibian governments in their ‘joint declaration’.²⁷⁹ Founding president Nujoma further added that the genocide deal is woefully insignificant, and has ruled out negotiation peace, descendant of the genocide victims continue to suffer and deal with the outcome of this aggressive and brutality act.²⁸⁰ In agreement with the founding father Swartbooi stated that the current agreed deal between states is unconstitutional and racist, thus it does not constitute reparations as stipulated in international law as termed restitution, satisfaction and compensation are ignored.²⁸¹ The German government acknowledged its responsibility for the ‘events’ of 1904 – 1908 and deemed it genocide only from ‘today’s perspective’ leading merely to a ‘moral responsibility’ but never a legal one. Consequently, the term reparations are not mentioned whatsoever. The German government only agreed to make available the amount of 1.1 billion Euros as a grant to implement projects as part of reconstruction and development programmes.

4.8.2 Exclusion of affected Ovaherero and Nama communities

Article 18 in the United Nations Declaration on the Rights of Indigenous People,²⁸² which has been signed by both countries, states:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures. Moreover international law further stated that affected communities must be consulted prior to any decision affecting

278 Van Wyk B Apology and Reparations? Reflections on the genocide reparations agreement between Germany and Namibia (unpublished Anthropology thesis, University of the Western Cape, 2021).

279 Melber H ‘Why reconciliation agreement between Germany and Namibia has hit the buffers’ available at <https://theconversation.com/why-reconciliation-agreement-between-germany-and-namibia-has-hit-the-buffers-173452> (accessed 06 May 2022).

280 Tjitemisa k ‘Nujoma: 18bn genocide deal woefully insignificant’, The Namibian 12 May 2022 2.

281 Tendane S ‘Genocide deal racist and unconstitutional’ The Namibian 23 September 2022 3.

282 United Nations Declaration on the Rights of Indigenous Peoples (A/61/L.67 1 (2007)).

them and be allow to participate freely and be recognized, without coercion, manipulation on matters pertaining their wellbeing.

The declaration made by Germany and Namibia caused protests both on the side of the affected communities of the Ovaherero and Nama (Royal Houses, Traditional Authorities, the Nama Genocide Technical Committe (NGTC), the Nama Traditional Leaders Association (NTLA) and Ovaherero Genocide Foundation (OGF), and also in the Namibian parliament and civil society; they are still ongoing.²⁸³ No equality portrayed in the inclusion of the affected communities despite their rights of participations well established under international law and united nation.

According to the State House media address by Vice-President Nangolo Mbumba, seven consultative meetings were held between Dr. Ngavirue and Traditional Leaders, which were fully incorporated in the negotiations.²⁸⁴ These meetings most notably did not include the Ovaherero Traditional Authority (OTA) and Nama Traditional Leaders Association (NTLA), the main representatives of the communities impacted by the genocide, meaning that the Namibian government negotiated on their behalf. These communities did not participate because they did not want to be deemed as simply onlookers in the discussions, the government's initial proposal to incorporate the Herero and Nama leadership in a merely advice-giving role, which these affected groups declined to engage in.

The Herero and Nama leadership demanded a full participatory role during the negotiations with the German government. Nonetheless, the government of Namibia failed to holistically include them in the negotiations. Additionally, the German government adamantly rejected the idea of negotiating with the communities directly, and maintained their desire to engage in state-to-state negotiations, even though they had negotiated with the Israeli government and several other lesser Jewish communities and associations in the 1950s.²⁸⁵ Nonetheless, the Namibian government considers itself as the primary caretaker of all Namibians and as such, suggests that there is no need to incorporate the Herero and Nama leadership and communities as involved stakeholders in the consultations.

283 Kamuiiri K 'OTA, NTLA, LPM, Nudo and IPC reiterate Joint Declaration rejection chorus' Observer24 7 September 2021; Petersen S & Nagtjiheue C 'German-genocide-offer- an-insult' The Namibian 28 May 2021.

284 Van Wyk B Apology and Reparations? Reflections on the genocide reparations agreement between Germany and Namibia (unpublished Anthropology thesis, University of the Western Cape, 2021).

285 Lustick IS 'Negotiating Truth: The Holocaust, "Lehavdil", and "Al-Nakba' (2006) 60 *Journal of International Affairs* 51–77.

It must be noted however that there were some delegates, from lesser known Ovaherero Royal Houses and Nama traditional groups that agreed with the Namibian government's proposal, and were subsequently incorporated in government arrangements for the negotiations. These groups include the Zeraua, Maharero, and Kambazembi Royal Houses. For the Nama, they are the Vaalgras, Aman, and /Hai-/Khaua of Berseba.²⁸⁶ Together, these groups comprise the Chiefs' Forum, established by the government, which held eight consultative sessions, supported by a Technical Committee headed by Judge Tonata Emvula to provide recommendations on matters of research, history, and economy. A Cabinet Committee was also established by the Office of the Vice President.

4.9 CONCLUSION

Thus far we have attempted to shed light on the rationale of reparations from a historical perspective. The investigation was not meant to attack or defend any reparations proposals. However, this section sought to illuminate relevant ethical, moral, legal, and institutional problems issues in a manner which provides a comprehensive perspective which could inform and elucidate issues surrounding the debate around the reparations owed to Nama and Herero communities by the German government. Many stakeholders strongly support or oppose particular proposals concerning reparations, or hold that what has been agreed upon is not adequate considering the damage done to communities. Moreover, many reparations arguments proceed based on large-scale notions about justice and injustice. Hence, in this section the researcher sought to develop a reasoned discussion about reparations that is sensitive to historical and legal precedence, the moral imperative of reparations, restorative justice, and finally bilateral negotiations between countries to resolve disputes around the topic or reparations for German genocide against Herero and Nama peoples.

286 Van Wyk B Apology and Reparations? Reflections on the genocide reparations agreement between Germany and Namibia (unpublished Anthropology thesis, University of the Western Cape, 2021).

CHAPTER 5

RECOMMENDATIONS AND CONCLUSION

5. INTRODUCTION

The previous chapter highlighted the need and rationale of reparations from a historical perspective. This chapter provides a summary of the thesis, followed by recommendations to be considered in order to bring closure to the forgotten genocide.

The wounds inflicted by the great massacre of Namas and Herero's in the former colony of Southwest Africa have yet to heal. Added to the concentration camps and slave labour are the scars from the exhibition of human remains in museums and their manipulation for racist scientific theories. After a century of denial, the governments of both countries agreed to compensation of 1.1 billion euros over a period of 30 years. However, the descendants of the victims do not feel that their demands have been heard.²⁸⁷ An estimated 60,000 Herero and 10,000 Nama lost their lives at the hands of the German forces. It is not only about the number of lives lost, but also the social, economic, and psychological impact. Genocide during colonial periods is often ignored in the realm of research on genocide because such studies are measured by using the Holocaust as an index for genocide, and are focused on the Nazi and Stalinist governments, or the genocides that impacted Rwandans, Armenians, or Cambodians. Only relatively recently has there been substantial research devoted to investigating genocide and colonialism.²⁸⁸

The research has validated that the impact of genocide is not over once the acts of genocide has ended. However, the trauma and socioeconomic impact of genocide persist in the lived experiences and memories, of the communities that were affected by acts of genocide. Such historical realities play an influential role in defining communities and their amount of economic and political influence or vulnerabilities. Perceived in this manner, genocide ceases to be a series of individual events and turns into a systemic continuous structure of oppression. In present-day Namibia, this system involves approximately 18,000 to 20,000 German speakers, principally descendants of those who arrived during the German colonial period, owning the majority of the nation's agricultural land, continuing the legacy

287 Hitchcock R and Kelly M 'Reconciliation agreement between Germany and Namibia: a path towards reparation of the first genocide of the 20th century' 2021 *IWGIA News* 1

288 Hitchcock R and Kelly M 'Reconciliation agreement between Germany and Namibia: a path towards reparation of the first genocide of the 20th century' 2021 *IWGIA News* 1

of inequality and dispossession that occurred during the colonial period. Until descendants own the ancestral land, the genocide will continue.

As there is no statutory basis for or precedent for ancestral land claims in Namibian law and the Namibian constitution, the descendants of the victims have largely remained landless and these require legal direction for ancestral land claims in Namibia. They are among the poorest of the poor in a country marked by major social disparities, and where the descendants of the white German colonialists, settlers and soldiers still belong to the upper classes.²⁸⁹ Very little has been done in response to the horrific genocidal chapter of the shared colonial past. Genocide has been a trauma for the society as a whole, one whose psychological, economic, social, cultural, and political dimensions continue to have an effect 100 years later.²⁹⁰ The researcher has noted that much of the Herero population continues to barely survive on infertile land, while the descendants of German settlers still enjoy what many consider to be stolen land. Most of the Herero and Nama people live on less than N\$30 a day. According to Kamatuka, this systemic poverty has its genesis in the genocide, and the dispossession of the original inhabitants' land.²⁹¹

The research has confirmed that the genocide that occurred in Namibia, was a crime against humanity which exterminated about 81 per cent of the Herero, 57 per cent of the Damara, 51 per cent of the Nama, and other Black African people in what was formerly known as German Southwest Africa.²⁹² Moreover, it is a historical reality that this genocide was a product of the decision taken at the racist Berlin Conference of 1884 – 1885 to seize Namibia's so-called protectorate of Imperial Germany. Many current stakeholders strongly support or oppose the suggested and the ultimately agreed upon reparations' particular proposals and agreements. Moreover, many reparation arguments have been based on perceptions about justice and injustice. Hence, the research presented sought to develop a reasoned discussion about reparations that is sensitive to historical and legal precedence, the moral imperative of reparations, restorative justice, and bilateral negotiations between Namibia and Germany, to resolve disputes around the topic or reparations for German genocide against the Herero and Nama peoples.

289 Melber H 'Colonialism, land, ethnicity, and class: Namibia after the second national land conference' (2019)54 *Africa Spectrum*, 75-66; Fredrik C *Genocides and Conflicts in the 20th and 21st Centuries* (2021) 5-6.

290 Brosda C 'Senate Reception for the Herero- and Nama Delegation of the Second Transnational Herero and Nama Congress' 2018 2.

291 Ghai R 'Genocide uncovered' available at <https://www.downtoearth.org.in/news/agriculture/genocide-uncovered> (accessed 17 May 2022).

292 !AUCHAB A 'GENOCIDE' available at <https://www.parliament.na/wp-content/uploads/2021/09/Genocide> (accessed 17 May 2022).

5.1 PSYCHOSOCIAL AND ECONOMIC IMPACTS

The study has stated that there has been limited research on the impact of the rape of young girls and women, as well as massacres, forced labour, and imprisonment in concentration camps, on the psychological well-being of the descendants of survivors. Additionally, adverse impacts affect the diaspora of the affected groups, who in many instances have been forced to leave their country due to the economic situation of their surroundings and community. The contemporary socio-economic challenges facing the descendants of the survivors of the genocide have created long-standing psychosocial and economic burdens as a result of the killings committed more than a century ago.²⁹³

Luipert is of the view that the Germans confiscated land and property, raped women, and forced people into slave labour, and that all these horrors happened to real people. Thus, Luipert suggests that society needs to comprehend that this is not just something that happened over 100 years ago; there continues to be residual effects because according to her, 'justice has not been served'.²⁹⁴ Today, German descendants and absentee landlords occupy Herero and Nama land. The impact of German colonialism is that, today, Nama and Herero people are a vulnerable minority. In 1990 when Namibia gained its independence, approximately 45 per cent of the total land area and 74 per cent of the potentially arable land was owned by white German descendants. Of approximately 4,000 commercial farms in Namibia, over 3,000 of them are still in the hands of the whites.²⁹⁵

The research literature was scant on the contemporary impact of genocide on the victims' descendants. However, it did verify that there remain long-term psychological, spiritual, economic, social, cultural, enslavement and political impacts of the genocide on the Ovaherero and Nama people in Namibia, as well as in the diaspora.²⁹⁶ The research also revealed that the socioeconomic conditions of affected communities indicate that the genocide did not only impact the Herero and Nama survivors, but also their descendants, and that the greater population of Namibia was impacted. Genocide was not only a traumatic experience of the direct victims, but their descendants continue to suffer due to the traumas imposed on

293 Geiseb S 'The genocide against the Ovaherero and Nama peoples' (2019) *Völkerrechtsblog* 5.

294 Luipert S 'A personal account of the genocide against the Nama' (2019) 46-47.

295 Ghai R 'Genocide uncovered' available at <https://www.downtoearth.org.in/news/agriculture/genocide-uncovered> (accessed 17 May 2022).

296 Berlin Resolution 2016 'Restorative Justice After Genocide Joint Resolution of the Delegates to the Transnational Congress on the Ovaherero and Nama Genocides Berlin', available at <https://genocide-namibia.net/2016/10/berlin-resolution-2016> (accessed 12 May 2022).

their ancestors. Moreover, there are few events commemorating the German-Herero genocide and respecting past experiences. This lack of outward symbolic references has caused feelings of distrust, and a lack of respect by the impacted communities.

The study confirmed that many descendants of genocide victims remain landless because the victim's homesteads had been destroyed. Nama and Herero communities still lack power and control over their socio-economic life, and their opinions are often disregarded, as they were in the reparation discussions between Germany and Namibia. Additionally, the research attempted to shed light on the rationale of reparations from a historical perspective. The investigation was not meant to be biased towards any side of the reparations proposals. The research sought to illuminate relevant ethical, moral, legal, and institutional problems, to provide a comprehensive perspective which could inform and elucidate issues surrounding the debate around the reparations owed to Nama and Herero communities by the German government. The Herero-Nama genocide did not only result in the loss of people but also triggered a sinister effect on the socio-economic aspect of the Herero and Nama culture. Those who survived the genocide lost both their land and cattle to Germans. The socio-economic impact of the genocide continues to this day. The ongoing issue of land inequality is an important aspect of the legacy of genocide. The land which is now owned by Germans, South Africans, and the African elite, mostly consists of private farms or game reserves.

As has been revealed by the research, international human rights law has specified the framework for negotiations regarding acts of genocide, which include consultations, and legal precedence to determine the legal consequences for acts of genocide. While this is necessary for a greater level of legal understanding and precedence, it is not enough to mitigate the greater emotional and traumatic damage related to the genocide in German Southwest Africa. Moreover, legal agreements often fail to bring about a fair and just outcome. To achieve the latter, moral arguments seem unavoidable.²⁹⁷ One of the most important areas not mentioned in the Reconciliation Agreement was the issue of land. The affected communities want acknowledgment that restitution of stolen land should be part of the Reconciliation Agreement. However, the Namibian government has refused to entertain such discussions.²⁹⁸ The impacted groups feel strongly that the only way that reconciliation can be achieved is to have the victim

297 Du Pisani A 'from ideological fixity to moral argument Nama' (2019) *Völkerrechtsblog*, 42-43.

298 Hitchcock R and Kelly M 'Reconciliation agreement between Germany and Namibia: a path towards reparation of the first genocide of the 20th century' 2021 *IWGIA News* 1

groups participate fully in decision-making about how restorative justice for the descendants of the genocide should be addressed.

From the perspective of historical research today there is no doubt that the war of extermination in German Southwest Africa constituted a war crime and genocide. This conviction has also been reflected since 2015 in the policy guidelines of the German Federal Government. The survivors of the genocide were dispossessed, interned in camps, abused, raped, and subjected to heavy forced labour. The consequences of the genocide are palpable to this day.²⁹⁹ Although it took over 100 years for the German government to admit that their actions in Namibia amounted to genocide, this admission prompted the commencement of the German-Namibian bilateral negotiations in 2015. It has also been noted by a diverse group of stakeholders that neither the German nor Namibia government have offered significant direct representation to the descendants of communities affected by the genocide.³⁰⁰

Considering the above mentioned facts, it is necessary to delve into the ramifications and long-term impacts of the genocide by reflecting on the words of Sylvester, who stated that in Swakopmund tourists engage in recreational activities in a converted railway station built by slave labour, enjoy drinks and food overlooking the site of a concentration camp, and ride dune buggies over the mass graves of Herero prisoners of war.³⁰¹ In Lüderitz, campers set up camping facilities and enjoy barbecues on the municipal camping ground at Shark Island, an island where thousands of Nama prisoners were starved and beaten to death in 1905 – 1907.³⁰² At the Waterberg Nature Reserve, hikers and tourists camp on land that served as part of the battleground where the Herero were defeated by German colonial soldiers, and enjoy drinks and refreshments in a renovated German police station where historical colonial (in)justice was delivered in the form of ‘parental chastisement’.³⁰³ Moreover, Silvester and Gewalt argues that the non-appearance of obvious heritage markings leaves the past ‘a foreign country’ and transforms Namibians into tourists

299 Brosda C ‘Senate Reception for the Herero- and Nama Delegation of the Second Transnational Herero and Nama Congress’ 2018 2.

300 Petersen S and Nagtjiheue C ‘German genocide offer ‘an insult’ The Namibian 28 May 2021 1.

301 Silvester J ‘A Living Cemetery in Swakopmund’, The Namibian Weekender, 21st November 1997 9; Silvester J ‘Death on the Rocks’, The Namibian Weekender, 22nd August 1997 9.

302

303 Silvester J ‘Layers of History at the Place of the Calabashes’, The Namibian Weekender 23rd June 2000 4.

in their own historical landscape.³⁰⁴ Hence, Namibians living in their own country engage subconsciously in the German colonial reading of the county's past.³⁰⁵

5.2 RECOMMENDATIONS

The researcher understood that last year's decision was not reached due to division and critiquing from the affected majority, the researcher is of the opinion that before the final and binding agreement over the ceaseless talk of 1904-08 Nama-Ovaherero genocide, German government must directly consult the genocide victims to discuss and investigate their current livelihood prior the payment agreement and the consultation must be inclusive and participatory. More over if possible Namibian government must consider returning to the negotiating table with full participatory of genocide victim's in order to reach a concrete agreement. In light of the study's findings, concrete solutions are sought to entirely forget the genocide, adding to what has been agreed upon thus far by the Governments of Germany and Namibia. The researcher recognises that because an agreement has already been agreed upon (pending authorization), that recommendations should be made to develop a framework by which the affected communities can adequately benefit from the reparation money promised by the government of Germany.

5.2.1 Formal apologies

It is understood that the German government plans to make an official apology which is slated to be delivered by the German Head of State to the affected in the Namibian parliament, at a yet to be determined future date.³⁰⁶ The researcher recommends that the German President make an additional in-person apology to the affected communities in their respective areas and regions.

5.2.2 Ovaherero-Nama Commemoration day

Memorialization is creating public memorials to commemorate a certain historical event in public settings. There are no events which commemorate the German – Herero genocide to respect past experiences. This lack of outward symbolic references has caused feelings of distrust and a loss of respect by the impacted communities. The researcher recommends Namibian government and law makers to

304 Lowenthal D, *The Past is a Foreign Country*, 1985 13-36.

305 Silvester J and Gewald JB *Words cannot be found: German colonial rule in Namibia: an annotated reprint of the 1918 Blue Book* (2003) 19-247.

306 Republic of Namibia - Office of The Prime Minister Parliament Briefing on the Conclusion of The Negotiations on Genocide, Apology and Reparations between The Republic of Namibia and The Federal Republic of Germany (2021) 10.

structure the Herero and Nama annual commemoration day in order to repair the fissures and polarization that are prevailing in Herero and Nama societies currently.

5.2.3 Payment agreement

Germany agreed to provide monetary compensation for reconciliation and reconstruction programmes for the affected communities. The reparations package will include two components, reconciliation, and reconstruction programmes. Within the framework of the reconstruction programme, a programme will be set up to assist the development of the identified needs of the descendants of the affected communities. According to the agreement, representatives of these communities will participate in this process in a decisive capacity.³⁰⁷ Under the programme, projects will be created in the following Regions: Erongo, Hardap, //Kharas, Kunene, Khomas, Omaheke and Otjozondjupa. The projects will be carried out in the following sectors: Land Reform/Land Acquisition within the framework of the Namibian Constitution and Land Development; Agriculture; Rural Livelihoods and Natural Resources; Rural Infrastructure; Energy and Water Supply; and Technical and Vocational Education and Training (TVET).³⁰⁸

Within the above-described framework, the following recommendations are made:

1. Land reform/acquisition: Funds used for land reform should include the provision of land in the ancestral areas of the descendants of the genocide victims. Land acquisition should also include relevant training to ensure that the beneficiaries acquire the relevant knowledge and skills to be able to adequately maximise the land's use. Moreover, affected communities should be able to acquire livestock and relevant tools to add value to the land that they acquire.
2. Agriculture: In line with the above recommendation, adequate agricultural tools such as seed, animals, and land infrastructure should be provided to the recipients of land, and formal training should be provided to ensure that all of the agricultural capacity that they receive, is in line with agricultural best practices.

307 Republic of Namibia - Office of The Prime Minister Parliament Briefing on the Conclusion of The Negotiations on Genocide, Apology and Reparations between The Republic of Namibia and The Federal Republic of Germany (2021) 11.

308 Republic of Namibia - Office of The Prime Minister Parliament Briefing on the Conclusion of The Negotiations on Genocide, Apology and Reparations between The Republic of Namibia and The Federal Republic of Germany (2021) 12.

3. Economic loss: The researcher is of the opinion that critical infrastructure should be reconstructed, the physical structures, facilities, networks and other assets which provide services that are essential to the social and economic functioning of a community or society, such as homes, schools, hospitals, commercial and governmental buildings, transport, energy, telecommunications infrastructures and other infrastructure. Business assets and industrial plants must be allocated sufficient funds to recover and regain full functionality in order to benefit the vulnerable descendants.
4. Rural livelihoods: Interventions in the rural livelihoods of the impacted communities should be focused on livelihood resilience and food and nutrition security. Resilience is understood as the ‘ability of a system, community or society exposed to hazards to resist, absorb, accommodate, adapt to, transform, and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions through risk management. Hence, all rural livelihoods should be focused on the above-mentioned factors.
5. Energy and water supply: The affected communities should receive sufficient resources to develop and construct facilities that will ensure adequate water and energy supplies. A focus should be on including the youth in the affected communities, having their capacity built through employment in building and sustaining energy and water resources for the community. Moreover, solar power should be the focus in all energy and water construction infrastructure interventions.
6. Technical and Vocational Education and Training (TVET): The researcher recommends that all TVET interventions be implemented according to Namibia’s national TVET policy.³⁰⁹ Moreover, such training must guarantee that graduates of TVET programs are guaranteed internships and jobs upon successful completion. This caveat is necessary to ensure that skilled graduates of the affected community have employment that they can look forward to upon completing TVET training.

As far as the reconciliation programme is concerned, Germany states that it will promote and support ‘reconciliation between the people of Namibia and Germany through preserving the memory work of the

309 Ministry of Higher Education, Technology and Innovation (MHETI) Government of the Republic of Namibia 2021 16-17.

colonial era, in particular the period of 1904 – 08 for future generations, by supporting research and education, cultural and linguistic issues, as well as encouraging meetings of and exchange between all generations, in particular the youth'.³¹⁰ The researcher recommends that the phrasing of such ideas of reconciliation be targeted directly at the affected communities first, and then at the whole of Namibian society. The researcher perceives the wording as not being adequately specific towards the Nama, Herero and Damara communities impacted directly by the actions of the German colonial government. Moreover, the researcher recommends that emphasis should be placed on education of the youth in affected communities. Although the agreement does make specific mention of TVET, there was no mention of higher education support for aspiring university students from the affected communities. Provisions in the form of scholarships and study abroad programmes need to be made available to qualified descendants of victims of the genocide. This is a very critical point, because otherwise it can be inferred that the Governments of Germany and Namibia believe that youth from these communities are only qualified for TVET, and not for formal higher education.

5.2.4 Policies formulation

In Namibia, Germans continue to own vast swaths of farmland, to date this land are either private farms or wildlife reserves. In reference to Article 16(1), the law and policy formulation firm should include not only ownership but must empower parliament to enact policy prohibiting or regulating the right of foreigners to acquire property, and that measures must be taken to ensure that all foreign-owned land operates in the public interest.³¹¹

5.2.5 Solidarity

Due to Germany's exclusion of the plaintiffs from discussions with Namibia about what transpired and its public declaration that any settlement will not include victim reparations, even if Namibia itself receives

310 Republic of Namibia - Office of The Prime Minister Parliament Briefing on the Conclusion of The Negotiations on Genocide, Apology and Reparations between The Republic of Namibia and The Federal Republic of Germany (2021) 12.

311 Article 16 (1) Property All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.

compensation, as well as the Namibian government's lack of initiative and the negotiation team in general, colonialism had long-lasting effects not only on the Herero and Nama, but also on the Namibian nation at large. So, it was required and suggested that Namibian nationals set aside racial deference and unite in order to address racial inequality and colonial-era trauma 'One Namibia, one nation.

5.3 SUMMARY

This mini thesis highlights that, contrary to the proposals made for the Herero and Nama to recover from the heinous crimes committed against them, establish justice and achieve reconciliation as a Transitional Justice measure, state – state negotiation may not be suitable for addressing the injustice. By examining studies done on the German-Herero genocide, this study concludes that the best opportunity to gain acknowledgment with a genuine apology for the crime of genocide, as well as reparation, repatriation, reconciliation and concise agreement, the negotiation committees must be represented by the descendants of the victims and the German Government, who will be responsible for redressing the wrongs, the damages, and the destruction.

This study has shown that, despite the UN convention of 1948, the Namibian Herero and Nama communities are still struggling to cope with the consequences of Namibian German genocide. A total of 80 per cent of the Ovaherero, and over 40 per cent of the Nama were killed, and most fertile land and livestock were also confiscated, resulting in them becoming the most unequally disadvantaged societies in Namibia. Ongoing negotiations between states and victims remain futile and inconclusive, suggesting that the lives lost and descendants' suffering are of no or very little relevance to most Germans; the descendants of the survivors feel ignored and dishonoured. This study argues that no amicable solution is in sight to address atrocities committed in 1904 – 1907, because all nine rounds of negotiations took place behind closed doors, and the descendants of the Ovaherero and Nama victims were not consulted. The UN Declaration of the Rights of Indigenous Peoples of 2007, Article 18, which gives indigenous peoples the explicit right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves, has been violated by the two states, and the genocide negotiation has become a trialogue instead of a simple dialogue, despite the German government's official recognition of German responsibility for the genocide (after almost 110 years). The research identifies key problems in the existing negotiation framework and, in the absence of restorative justice mechanisms from the government, the German government is still failing to engage and directly hear from the affected

communities. This is delaying reconciliation. The recent state – state round of discussions has concluded that reconstruction of projects and financial support for development over a 30-year period will be initiated (date unknown) in the regions of the victims affected. To date Germany’s long-awaited apology for the crimes perpetrated has not been manifested, apart from the disparaged apology delivered by a German development minister in 2004. Germany has always been reluctant to do so, and the unwillingness to apologise is delaying the process of soothing wounds and healing broken hearts. An apology for genocide remains the key component of reconciliation. For constructive engagement and collaboration, one needs to acknowledge wrongdoing, and promise not to repeat such action in order to confirm the notions of transitional justice. State – state negotiation and an indisputable acknowledgment of the genocide, an apology, and compensation remain a long-term goal in addressing pain, injustice and disruption. Failure might actually jeopardise the goal of unity, and the maintenance of peace and harmony.



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